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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 JAWAUN FRASER,

4 Plaintiff,

5 v.

20 CV 4926 (CM)

6 CITY OF NEW YORK, et al.,

7 Defendants.

Trial

8 New York, N.Y.
9 March 13, 2023
9:30 a.m.

10 Before:

11 HON. COLLEEN McMAHON,

12 District Judge

13 APPEARANCES

14 JOEL B. RUDIN
15 Attorneys for Plaintiff

-and-

16 BLOCH & WHITE LLP
17 BY: MICHAEL L. BLOCH
BENJAMIN D. WHITE
CRISTINA ALVAREZ

18 SYLVIA HINDS-RADIX
19 Corporation Counsel for the City of New York
Attorney for Defendants

20 BY: BRIAN C. FRANCOLLA
21 CAROLINE McGUIRE

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1 (Case called)

2 MR. BLOCH: Good morning, your Honor. For Mr. Fraser,
3 Michael Bloch from Bloch & White.

4 MR. RUDIN: Good morning. Joel Rudin, your Honor.

5 MR. WHITE: Ben White also for Mr. Fraser.

6 THE COURT: For the City?

7 MR. FRANCOLLA: Good morning. Brian Francolla on
8 behalf of the City, the three individual defendants, including
9 to my left, Detective Deltoro, and to his left Detective
10 Regina.

11 MS. McGUIRE: Good morning. Caroline McGuire for
12 defendants.

13 THE COURT: Have a seat. The jurors are running late.
14 I want to do two things first. First of all, I want to be sure
15 that I get this right. But I'm proposing to explain to the
16 jurors right off the bat that two of the defendants are here,
17 that one of the defendants works undercover, that he'll only be
18 here during his testimony. That's normal, ordinary, customary,
19 they shouldn't draw any adverse inferences against anybody for
20 or against anybody because of that.

21 Does the City have any problem with that?

22 MR. FRANCOLLA: None, your Honor.

23 THE COURT: Okay. So, I just want to read something
24 into the record so we can get the intent issue out of the way,
25 and then you have it for whoever someday may take this case to

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1 the Second Circuit, which I really think should stop
2 pussyfooting around and rule. Okay. I said the same thing in
3 the Purdue Pharma case. They should stop pussyfooting around
4 and rule. That was last December, the oral argument on the
5 expedited appeal was heard in April of last year, and they're
6 certainly not ruling. So, I don't know what they are doing.
7 Okay.

8 In *Walker v. the City of New York*, the Second Circuit
9 held that police officers satisfy their obligations under *Brady*
10 when they turn exculpatory evidence over to prosecutors who
11 then have the duty to ascertain whether that evidence qualifies
12 as *Brady* for purposes of giving it to the defense.

13 Now, we all know that in the context of a criminal
14 case, *Brady* imposes on prosecutors an absolute obligation to
15 turn over exculpatory evidence. It is a strict liability
16 violation. It admits of no exceptions for inadvertence or
17 negligence. If there is evidence that is favorable to the
18 accused within the definition of favorable to the accused, it
19 must be turned over. There is no good faith defense for a
20 prosecutor who slices the salami too thin, and the state of
21 mind of the prosecutor is irrelevant. Intentional, reckless,
22 deliberately indifferent, negligent -- it is all of a piece.
23 The City does not disagree.

24 Plaintiff argues that there is no basis on which to
25 conclude that the time strict liability rule of *Brady* in the

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1 criminal context applies not only to prosecutors, but to other
2 government officials involved in the prosecution, notably
3 police officers. And that that applies in the civil context as
4 well. The Supreme Court has clearly announced in *Parratt v.*
5 *Taylor* that Section 1983 does not have its own intent
6 requirement; rather any requirement of a culpable mental state
7 must be based on the element of the underlying constitutional
8 violation that's made actionable under that statute. Because
9 it is axiomatic that *Brady* does not require any showing of
10 intent or bad faith, but gives rise to a constitutional
11 violation whenever evidence is suppressed by the state either
12 willfully or inadvertently, plaintiff argues that the police
13 officers -- who are unquestionably representative of the
14 state -- are no less bound by *Brady's* lack of culpable state of
15 mind than are prosecutors.

16 The City argues that a *Brady* violation by police
17 officers requires a culpable state of mind. And the City
18 believes that the culpable state of mind is intent. It cites
19 to a footnote in a recent Second Circuit opinion involving the
20 non-disclosure of exculpatory evidence by police, *Bellamy v.*
21 *the City of New York*, 914 F.3d 727, 751 n. 23, in which the
22 Court states: "We have suggested though without so concluding,
23 that a civil *Brady* claim requires a showing that the
24 non-disclosure was intentional." This footnote has been
25 interpreted by some of my district court colleagues as setting

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1 a non-strict liability standard in a civil Section 1983 action.

2 The closest that the Second Circuit has come to
3 holding squarely that a civil *Brady* claim against a police
4 officer requires intentional conduct -- I assume this is where
5 they suggested without so concluding -- is *Fappiano v. City of*
6 *New York*, which is of course a non-precedential summary order
7 published at 640 F.App'x 115, in which the Court said: "We have
8 never held that anything less than an intentional *Brady*
9 violation establishes a due process claim for damages, and we
10 decline to do so here." Citing *Bermudez v. the City of New*
11 *York*, 790 F.3d 368, 376, a case in which police officers
12 intentionally misled a prosecutor about certain things that
13 were relevant to the prosecution, and *Poventud v. City of New*
14 *York*, 750 F.3d 121, 138. Police officers had "willfully
15 withheld exculpatory evidence that undermined the credibility
16 of the only witness who placed the defendant at the scene of
17 the crime." This hardly resolves the matter. The only thing
18 that's clear is that the Second Circuit has not yet
19 definitively ruled.

20 Because the Supreme Court precedent holding that any
21 mens rea element in connection with a Section 1983 claim
22 derives from the underlying constitutional violation, the only
23 way I can make sense of all this is to note that the Section
24 1983 violation alleged here is a violation of the defendant's
25 due process right to a fair trial. That right was allegedly

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1 violated by *Brady* violations, but the actual violation at issue
2 in this civil action is a violation of the right to a fair
3 trial, which is guaranteed by the due process clause. Normally
4 due process violations under Section 1983 require a showing of
5 intentional or at least reckless conduct. Interestingly, two
6 circuits that have spoken directly to this issue, the Ninth
7 Circuit in *Tennison v. San Francisco*, and the Seventh in
8 *Steidle v. Fermon*, do impose a mens rea requirement on a
9 Section 1983 due process fair trial claim occasioned by a
10 police officer's *Brady* violation, notwithstanding the strict
11 liability imposed on prosecutors themselves in connection with
12 the criminal action -- but the culpable mental state that they
13 require is recklessness, not intent.

14 One reason I can think of why different standards
15 might apply, whether that be to prosecutors versus police, or
16 in the criminal context versus the civil context, is when
17 justifying its determination that police satisfy their *Brady*
18 obligations by turning material over to the prosecutor, not
19 directly to the defendant, the Second Circuit in *Walker*
20 indicated that police officers ought not to be charged with
21 making the final legal call about whether evidence had to be
22 disclosed to the defendant pursuant to *Brady*.

23 Now, of course there is a logical fallacy inherent in
24 *Walker's* holding that a police officer has to disclose
25 exculpatory evidence, but should not be required to decide what

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1 constitutes exculpatory evidence because he lacks the legal
2 acumen to do so. How the officer is supposed to do the first
3 without engaging in the second evaluative exercise is, frankly,
4 something only an appellate judge could possibly figure out.

5 I find the plaintiff's argument appealing as a matter
6 of facile logic, but I'm loath to adopt it in the face of the
7 fact that he cites not a single case in which strict liability
8 was imposed in a civil action for damages under Section 1983
9 arising out of a police *Brady* violation. Now, I confess to a
10 particular fondness and respect for the late Judge Frank
11 Murnaghan, whom I met when he was a famous lawyer and I was
12 literally in my first two weeks of practice, and whose
13 reasoning in the dissent in the second en banc decision in *Jean*
14 *v. Collins*, 221 F.3d 656, is both scholarly and persuasive.
15 But Judge Murnaghan was dissent from a Fourth Second holding
16 that police officers have no obligation to produce exculpatory
17 evidence under *Brady* -- a manifestly incorrect decision since
18 the Supreme Court has held otherwise, and in any event, not
19 good law in the Second Circuit. *Jean* did not focus on whether
20 there was a mens rea requirement in a civil action for damages
21 against a police officer under Section 1983. Now, it's easy
22 enough to read the tea leaves and see how Judge Murnaghan would
23 likely have ruled. I suspect he would have rejected the notion
24 that strict liability under *Brady* was not applicable to every
25 member of the prosecution team, including the police, and that

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1 he would have so held in the civil as well as the criminal
2 context. But it seems to me that the effect of *Walker*, the
3 *Walker* court's emphasis on the prosecutor's role in making the
4 ultimate call about whether evidence qualifies as *Brady*
5 material or not, undermines the rationale for holding police
6 officers, who, according to the *Walker* court, are ill-equipped
7 to make such judgments, strictly liable for failing to produce
8 evidence that turns out to fall in the parameters of the phrase
9 "favorable to the accused."

10 Interestingly, the plaintiff in this case concedes
11 that police officer defendants cannot be held liable for
12 depriving Fraser of a fair trial by failing to produce *Brady*
13 material if they did not know about the *Brady* material. See
14 the plaintiff's letter brief at docket 145 at page 3.

15 Now, knowingly is not strict liability. It is a
16 culpable state of mind, utterly inapplicable to prosecutors in
17 criminal matters. Indeed, Mr. Fraser's conviction would not
18 have been overturned if the prosecutors were subject to a
19 knowing standard, since it's undisputed that the poor ADA in
20 this case could not turn over things about which he was
21 unaware. But the plaintiff concedes that a *Brady* violation by
22 these defendants must be a knowing violation, and I will so
23 instruct the jury. And that means the plaintiff concedes at
24 least that there is some mens rea requirement applicable to
25 police officers who are accused of depriving a defendant of a

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1 fair trial by withholding exculpatory evidence.

2 So until the Second Circuit rules squarely that the
3 suggestion noted in *Fappiano* and *Bellamy* is incorrect, I
4 believe that the better course of action is to adopt a mens rea
5 requirement on the theory that here we are dealing with a
6 constitutional violation under the due process clause right to
7 a fair trial, and that due process violations have mens rea
8 requirements.

9 I agree with the plaintiff that the better course of
10 action is to instruct on intent or recklessness, since it
11 hasn't been decided. And maybe this will be the case in which
12 somebody will go to the Second Circuit on this issue, and the
13 Second Circuit will have no choice but to rule.

14 The plaintiff has its exception, and the City has its
15 exception on recklessness.

16 So, we did a really deep dive into this, folks. It's
17 a really interesting question. Okay. So, those were the two
18 things that I wanted to do.

19 What's the state of play downstairs? I should tell
20 you guys while she's finding this out, we cannot sit tomorrow
21 afternoon. The problem with putting the trial off by a week is
22 I've got so many sentences on for tomorrow afternoon, I just
23 can't reschedule them. I've got this big multi-defendant union
24 case, and a bunch of guys are getting sentenced tomorrow. So
25 tomorrow we'll go from 9:30 until 2, and we'll take a 40 minute

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1 break somewhere in the middle and I'll get the jurors a snack.
2 And since I hear the weather is going to get bad by that time
3 anyway, I'm sure everyone will be happy to go home. Except me,
4 I can't go home. But otherwise, we're just going to plow
5 straight through. Okay?

6 What is going on downstairs? 10 more minutes.

7 Does the plaintiff have anything to put on the record
8 before we bring the jurors up?

9 MR. BLOCH: Yes, Judge. Thank you. Two things. One,
10 just to catch the Court up on some stipulations we have reached
11 with the defendants.

12 THE COURT: Stipulations.

13 MR. BLOCH: I thought I'd start with good news. One
14 is that we have a stipulation as to the answers, the answers to
15 the civil complaints that your Honor admitted.

16 THE COURT: There were eight civil complaints that I
17 admitted.

18 MR. BLOCH: With some redactions. We've agreed on the
19 redactions, we've also agreed with the City they can put the
20 answers in subject to redacting the corresponding portions of
21 the answers.

22 THE COURT: Right. Okay.

23 MR. BLOCH: Secondly, we had an agreement with respect
24 to ADA Sangermano, who both sides agree has information that
25 both sides want. For purposes of efficiency, we've agreed that

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1 the People will call ADA Sangermano in their case, and we will
2 cross-examine them.

3 THE COURT: The People aren't here. Only the
4 corporation counsel is here.

5 MR. BLOCH: I apologize.

6 THE COURT: It's okay.

7 MR. BLOCH: Probably --

8 THE COURT: The hardest thing for me after just three
9 years in state court coming to federal court was getting used
10 to calling the government "the government" instead of the
11 People, because I like the People. That's a really nice --

12 MR. BLOCH: Me too, Judge. That may not be the last
13 time I make that slip up.

14 THE COURT: That's okay.

15 MR. BLOCH: The City.

16 THE COURT: But we'll tell the jurors that in case
17 they don't watch Law & Order, that the People is the same thing
18 as the City.

19 MR. BLOCH: I see police officers and I think the
20 People. So I think --

21 THE COURT: I think police officers.

22 MR. BLOCH: Is that it as far as stipulations?

23 THE COURT: Great. What I decided to do was at the
24 end of -- I forget. Do we have any stipulated facts at all in
25 this case in the pretrial order?

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1 MR. FRANCOLLA: Not in the pretrial order, your Honor.
2 I think the only stipulation that at least in terms of --

3 THE COURT: What you all sent last week.

4 MR. FRANCOLLA: With respect to the decision.

5 THE COURT: At the very end of my preliminary
6 instructions, which is when I usually read the stipulated facts
7 to the jurors, I'm going to read that to them. I'm going to
8 tell them we are going to put this in a context, here's what
9 the parties want you to know about that. Okay? Rather than
10 get into it in total depth with the whole voir dire panel.

11 Could I ask the two individuals who are sitting in the
12 back for the moment, if you could just during the jury
13 selection, if you all could actually move just toward the back.
14 That would be helpful so I can seat jurors. You can move right
15 back up when we're done with the voir dire. Okay?

16 MR. FRANCOLLA: Your Honor, she's from our office
17 Ms. Corsi. Is it okay if she can sit there for now?

18 THE COURT: Sure.

19 MR. FRANCOLLA: Thank you.

20 MR. BLOCH: May I ask one process question of voir
21 dire?

22 THE COURT: Yes.

23 MR. BLOCH: We have a list of juror questions on our
24 desk when we walked in. I wondered if these are the questions
25 your Honor is planning on reading.

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1 THE COURT: No. That will be passed out to the
2 jurors, and at an appropriate moment during the voir dire, we
3 will ask them to tell us a little bit about themselves using
4 these questions as a guide. There are more questions. The
5 voir dire is longer than that.

6 MR. BLOCH: Understood. Thank you, Judge.

7 THE COURT: There is something that's relevant to this
8 case in the voir dire.

9 MR. BLOCH: Thank you.

10 THE COURT: That's not something I would have ever
11 eliminated. Certainly after what happened to Judge Rakoff in
12 the Second Circuit a few weeks ago, we will not be omitting
13 merits related questions.

14 MR. BLOCH: Thank you, Judge.

15 THE COURT: Okay.

16 They randomize the jury list downstairs. So as soon
17 as we get a list in random order, we are going to photocopy and
18 make sure everybody's got one before we bring anybody in.

19 (Jury selection off the record)

20 (Continued on next page)

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AFTERNOON SESSION

2:05 p.m.

(Trial resumed; jury note present)

THE COURT: OK. Case on trial continued. The parties are present. The jurors are not.

Apparently, a couple of them aren't back. We're going to find out which ones, because if they're not on the jury, we're just going to keep going.

Have a seat. We need to put the challenges on the record.

THE LAW CLERK: The following jurors will struck for cause: Juror No. 8, Wolodymyr Szczupak.

THE COURT: Szczupak, S-z-c-z-u-p-a-k.

THE DEPUTY CLERK: Juror No. 16, Elena Ranguelova, R-a-n-g-u-e-l-o-v-a; Juror No. 19, Evelyn Gallardo; Juror No. 30, David Hargreaves, H-a-r-g-r-e-a-v-e-s.

For the peremptory challenges, in the first round, plaintiff struck Juror No. 15, Maria Corriero, C-o-r-r-i-e-r-o.

Defendant struck Juror No. 6, Martin Fernandi, F-e-r-n-a-n-d-i.

In the second round, plaintiff struck Juror No. 14, Kenneth Hoffman.

Defendant struck Juror No. 10, Marjory Appel, A-p-p-e-l-l.

THE COURT: P-e-l.

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1 THE LAW CLERK: In the third round, plaintiff struck
2 Juror No. 18, Sadiul Akhanji, and defendant struck Juror No. 5,
3 Kyle Tompkins.

4 In the fourth round, plaintiff struck Juror No. 11,
5 Emanuel Armfield, and defendant struck Juror No. 3, Jonathan
6 Suttmiller.

7 THE COURT: So your jurors are Juror No. 1, Eric
8 Fredericks; Juror No. 2, Fatema Hasnin; Juror No. 4, Jeffrey
9 Masse; Juror No. 7, Judith Ortega; Juror No. 9, Darlene
10 Phillips; Juror No. 12, Alexis Richards; Juror No. 13, Robert
11 Bastedo; and Juror No. 17, Kripa Joshi.

12 Is that correct?

13 MR. FRANCOLLA: Yes, your Honor.

14 MR. BLOCH: Yes, your Honor.

15 THE COURT: Of course, this is the day we didn't need
16 the eight extra jurors that we went downstairs and got, but you
17 never can tell.

18 (Discussion off the record)

19 THE COURT: And of course the missing juror would be
20 one you selected, so we're trying to find her.

21 (Discussion off the record)

22 MR. BLOCH: Judge, while we're waiting, I just want to
23 mention, we have a demonstrative that we've shown Mr. Francolla
24 that we'd like to show during the opening on the easel. I
25 don't know if your Honor would like -- it's an overhead of the

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1 neighborhood.

2 MR. FRANCOLLA: We're fine with it.

3 THE COURT: As we know, that's not what the case is
4 about, but that's fine. You want to show them the
5 neighborhood, show them the neighborhood.

6 OK. Are we ready? Are we ready?

7 (Discussion off the record)

8 THE COURT: Let's bring them in.

9 (Continued on next page)

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1 (Jury present)

2 THE COURT: Hi, folks. So good to see you again.

3 All right. We have a jury. So, Josie, would you ask
4 the jurors to take seats. The first four jurors will be in
5 seats No. 1, 2, 3, and 4 in the front row, and the other four
6 in the second row right behind them. OK.

7 THE DEPUTY CLERK: Juror No. 1, Eric Fredericks.

8 THE COURT: Come right back to your seat,
9 Mr. Fredericks.

10 Juror No. 2, Fatema Hasnin; Juror No. 3, Jeffrey
11 Masse; Juror No. 4, Judith Ortega; Juror No. 5, Darlene
12 Phillips; Juror No. 6, Alexis Richards; Juror No. 7, Robert
13 Bastedo; Juror No. 8, Kripa Joshi.

14 Are the remaining jurors acceptable to the plaintiff?

15 MR. BLOCH: Yes, Judge.

16 THE COURT: The defendants?

17 MR. FRANCOLLA: Yes, your Honor.

18 THE COURT: Would you please swear the panel.

19 (A jury of 8 was impaneled and sworn)

20 THE COURT: Thank you.

21 The rest of you are excused to go back to the jury
22 room downstairs. Thank you so much.

23 (Remaining jurors excused)

24 THE COURT: So let's get started. While this is
25 happening, we're going to pass out notebooks to you. The

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1 notebooks are to allow you to take notes, when we get to the
2 evidence, on anything that you feel is worthy of taking down
3 for your own purposes. Your notebooks are not the record in
4 the case. The court reporters are taking down the record in
5 the case. OK? So you can use your notes for yourself, but you
6 can't use your notes to explain -- to refresh the recollections
7 of other people on the jury. If you can't remember something,
8 we have to go back to the original record.

9 All right. As I told you this morning, it's your
10 function in this case to decide the issues of fact, and your
11 decision on the issues of fact is to be based solely on the
12 evidence.

13 What's that? Well, nothing I say is evidence.
14 Nothing that the lawyers say to you is evidence. The questions
15 they ask by themselves are not evidence. The objections they
16 make are not evidence. And even testimony from a witness is
17 not evidence if I say that's stricken or I exclude it and tell
18 you to disregard it.

19 The evidence consists of the sworn testimony of the
20 witnesses, the question plus the answer, and some exhibits that
21 will be received into evidence, documents, things for your
22 consideration. In some instances there may be facts that
23 during the course of the trial the lawyers will agree on.
24 That, too, is evidence.

25 Now, there are two kinds of evidence: direct and

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1 circumstantial. Direct evidence is direct proof of a fact,
2 such as the testimony of an eyewitness. Juror No. 8 is wearing
3 a yellow blouse. I'm the witness. I'm looking at her. I can
4 see that she's wearing a yellow blouse. I perceive that with
5 my senses. That's direct evidence.

6 Circumstantial evidence is proof of facts from which
7 you can infer or conclude that other facts exist. The classic
8 example: You come into court this afternoon. It's not
9 raining. Looks like it might rain. It's not raining. You
10 can't see outside. We can't hear anything that's going on
11 outside. As the afternoon wears on, people come, because I've
12 got some matters on at the end of the day. They're wet.
13 They're shaking umbrellas. They're shaking water out of their
14 hair as they walk into the courtroom.

15 What you see is people shaking water out of their hair
16 and people shaking their umbrellas. That's what you see.
17 That's the direct evidence. But you could draw the conclusion
18 that it had started to rain as a result of seeing that direct
19 evidence. So that's what circumstantial evidence is. It's
20 direct evidence of fact A from which you can draw the
21 conclusion that fact B exists.

22 Now, in a case in federal court, you can rely on
23 direct evidence, circumstantial evidence, or both kinds of
24 evidence in reaching your verdict. One is not necessarily
25 better than the other. OK?

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1 You're the ones who are going to make decisions about
2 who and what you believe. And how do you do that? Well, you
3 listen to the witnesses, you observe their demeanor on the
4 witness stand, and then you consciously ask yourself questions
5 that we always subconsciously ask ourselves in everyday life.
6 We don't think about it very much, but when we talk to someone,
7 we're thinking:

8 Does that person sound like he knows what he's talking
9 about?

10 Does she strike me as being candid and open?

11 Does he seem like he's trying to hide something or
12 hold something back?

13 Does she have a reason to falsify or to exaggerate
14 what she's telling me?

15 Those are the kinds of questions you'll ask about what
16 the witnesses say here on the stand, and then you'll use your
17 common sense and good judgment to evaluate their testimony
18 based on all the circumstances.

19 Now, it's very important that you keep an open mind
20 throughout this case and that you not form any judgments until
21 the evidence has all come in and the case is submitted to you.
22 Remember, things are going to happen here step by step, and
23 until the last lawyer sits down after the last closing argument
24 and I tell you what the law is, you won't have all the
25 information that you need to make a decision in this case.

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1 That, by the way, is why we have the "don't discuss the case"
2 rule. We have the "don't discuss the case" rule because when
3 you start to talk about something, there's just no help for it.
4 You begin -- your opinions tend to start to gel. We don't want
5 that to happen until you have all the information that you
6 need. We don't want you to make a decision prematurely. OK?

7 Now, if you have, I don't know, friends or relatives
8 who are present in the courtroom who come to watch, they think
9 it would be fun, guess what? It's a public courtroom.

10 Delighted to have them here, but we would like to know if you
11 know anybody who is sitting in the back. And that way we can
12 caution that person not to talk to you about the case, and
13 particularly in case we have to excuse you for a few minutes to
14 do something that we are required to do out of your hearing,
15 and that will happen a couple of times during the trial. We
16 don't want anybody telling you what was going on.

17 So if you have a friend or a relative who comes with
18 you, be sure and notify Josie so she can tell me.

19 Don't do your own research. This is -- now, I told
20 you this morning this is not the time for you to pretend that
21 you're a member of Congress and make your own law. It's also
22 not the time for you to give rise to your inner Sherlock
23 Holmes. You don't have to solve the case. The lawyers are
24 going to present you with the evidence from which you will make
25 a decision.

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1 Now, I don't have any reason to think that there's
2 going to be anything in the newspapers or on the media about
3 this particular case. There's some cases going on in this
4 courthouse right now that the media is covering very
5 attentively. This is not one of them.

6 That said, I could be wrong. Some reporter could take
7 a tremendous interest in this case all of a sudden. So if you
8 hear or see anything outside the courtroom, including in the
9 media, about this case, turn away, turn the page, turn it off,
10 and tell Josie what happened, what you saw, what you heard so
11 we can deal with it. All right?

12 And don't be looking up stuff. Again, I don't think
13 you'll find anything about this case on the Internet, but don't
14 prove me wrong, OK? Don't be looking up stuff about this case
15 on the Internet. The lawyers will tell you everything you need
16 to know to decide the case, and you're limited to deciding the
17 case on the evidence that they present to you here in the
18 courtroom.

19 Now, the lawyers and I and the parties, the
20 detectives, Fraser, are not allowed to talk to you outside the
21 courtroom. We're not allowed to talk to you unless we're all
22 present and there's a court reporter here taking down what we
23 say. That's a professional obligation for the lawyers and me,
24 and we take it very seriously.

25 When they built this courthouse, they did not build a

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1 separate entrance for jurors, although we're going to give you
2 a card that's going to get you to the head of the line from now
3 until the trial is over. But they didn't build a separate
4 entrance for jurors, so we're going to end up coming in the
5 same doors, walking through the same lobbies, and going up and
6 down in the same elevators. There's just no help for it.

7 If we should see you, if we should pass you in the
8 hall, if -- and this does happen -- the elevator door closes
9 and you look up and there's one of the lawyers or me in the
10 elevator, we won't say a word to you. And we're not being
11 rude; we're being professional.

12 I would ask that you not talk to strangers. You have
13 seven new friends that you can make over the course of the next
14 few days. You don't know who the witnesses are who are going
15 to testify in this case. You have no idea if you strike up a
16 conversation with somebody out in the hallway or in the
17 elevator, that person might be the next witness in the case.
18 You just don't know. So I just want to caution you about that
19 as well.

20 Now, how are we going to proceed? Well, first the
21 lawyers are going to make opening statements to you.
22 Statements aren't evidence. They're not argument. They're not
23 going to be long. They serve one purpose, and that's to give
24 you an idea in advance about what the lawyers expect the
25 evidence will show. OK? It's like a preview, like a sneak

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1 preview at the movies. And just remember that they might give
2 you a roadmap through the evidence, but they are not evidence.

3 After the opening statement, you're going to hear the
4 testimony of the witnesses. Each witness will first be
5 examined by the lawyer who calls that witness to the stand and
6 then will be examined by the lawyer for the other side.

7 First the plaintiff will call all the witnesses the
8 plaintiff wants to call. Then the defendants will call any
9 witnesses who have not yet been called who the defendant wants
10 to call. We try to keep it to one appearance by a witness in a
11 civil case.

12 After all of the evidence has come in, the lawyers
13 will have an opportunity to address you again. This time
14 they'll argue the case. They'll sum up. They'll have the
15 evidence and they'll be able to explain it to you and interpret
16 it for you and suggest to you the conclusions that you should
17 draw from the evidence. The summations, again, are not
18 themselves evidence, but you may find, as I generally tend to
19 find, that they're the most interesting part of the case
20 because by that time you've heard everything, and it's
21 interesting to know what the lawyers make of it all.

22 After the summations, I will instruct you on the law.
23 And following my instructions, you'll go into the jury room,
24 you'll review the evidence, you'll review the exhibits, and
25 based on that evidence and your discussion of it, you will

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1 decide what the verdict is in this case.

2 At the conclusion of the trial, I'll tell you in some
3 detail what the plaintiff must prove in order to recover on
4 each of the claims that he is asserting. For the moment, all
5 I'm going to say is the plaintiff, the party who brought the
6 civil action, filed the lawsuit, has the burden of proving that
7 he's entitled to relief. And in a civil case, the burden is to
8 prove by a preponderance of the evidence that he's entitled to
9 relief, which means it's more likely than not that he is
10 entitled to relief.

11 It's not a criminal case. We're not worried about
12 beyond a reasonable doubt or anything like that, but the
13 plaintiff has to tip the scale in favor of your believing that
14 he's entitled to relief, and that's on each of his claims.

15 Now, having completed my preliminary instructions, I
16 would normally read you facts that have been stipulated to by
17 the parties. Instead, the parties have asked me to read you
18 one stipulation. So I'm going to do that right now, ahead of
19 the opening statements. The parties want me to bring this to
20 your attention, so I'm going to bring this to your attention.

21 As I told you all this morning, Mr. Fraser was
22 convicted of a crime, robbery in the third degree, in the New
23 York State Supreme Court. On December 6, 2019, a state court
24 granted Mr. Fraser's motion to vacate his conviction on the
25 basis that his constitutional right to disclosure of

1 information favorable to the defense under a case, Supreme
2 Court case, called *Brady v. Maryland* had been violated.
3 Specifically, the Court found that the District Attorney's
4 Office had failed to disclose information about certain
5 lawsuits that had been brought against Detective Regina, and
6 that required that the conviction be overturned.

7 Now, it's because the state court vacated Mr. Fraser's
8 conviction that we are here today. So knowing that a state
9 court overturned his conviction is necessary background in the
10 case. However, and this is very important, the state court
11 judge did not decide the issues that you are going to decide in
12 this case. OK? You're going to decide those issues. Nobody
13 else has decided them ahead of you.

14 All right. Is the plaintiff ready?

15 MR. BLOCH: Yes, Judge, if we could just have --

16 THE COURT: Are the defendants ready?

17 MR. FRANCOLLA: Yes, we are, your Honor.

18 THE COURT: Thank you. Would you please open.

19 MR. BLOCH: Thank you, Judge.

20 Good afternoon, everyone. The Constitution protects
21 all of us.

22 THE COURT: Could you do me, and especially the court
23 reporter, a big favor?

24 MR. BLOCH: Stand back here?

25 THE COURT: Stand behind that podium.

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Opening - Mr. Bloch

1 MR. BLOCH: Thank you, Judge. Apologies.

2 THE COURT: Yes. So much easier to hear you. The
3 better to hear you, my dear.

4 MR. BLOCH: Thank you, Judge.

5 The Constitution protects all of us. The criminal
6 justice system has rules for a reason, so that innocent people,
7 like Jawaun Fraser, are not convicted of crimes they didn't
8 commit.

9 These New York City police officers violated the
10 Constitution in several fundamental ways:

11 First, they falsely arrested Jawaun. They fabricated
12 a story, and then they lied to prosecutors to have him charged
13 and convicted of a crime he didn't commit.

14 Second, two of these officers, Detective Deltoro and
15 UC 84, withheld from Jawaun the fact that they had been sued on
16 eight prior occasions. Sued for what? Falsely arresting
17 people, fabricating evidence, and lying to prosecutors to have
18 people charged with crimes they didn't commit.

19 Jawaun Fraser spent nearly two devastating years in
20 prison because these officers believed the rules didn't apply
21 to them. Fortunately, as you've heard, two years after Jawaun
22 got out, a New York State Supreme Court judge overturned and
23 vacated his conviction. But nobody has ever held these
24 officers accountable, and that's why we're here.

25 Now let me tell you what the evidence will show

1 happened in this case. On October 21, 2014, this team of
2 officers was conducting what's called -- what they call an
3 undercover buy-and-bust operation. "Buy and bust" means they
4 select specific neighborhoods to infiltrate, they go out
5 looking to buy drugs, they buy drugs, and then they bust those
6 people for selling those drugs, buy and bust.

7 The team consisted of multiple officers, including
8 Detective Deltoro, Detective Regina, and somebody we refer to
9 as UC 84, Undercover 84.

10 Everything is planned in advance. They plan which
11 neighborhoods to target. They plan who will be doing the
12 buying, who will be doing the busting. They bring specific
13 kinds of evidence -- of equipment, sorry. They know that
14 they're going to be making arrests, so they bring evidence --
15 excuse me, they bring equipment designed to generate evidence,
16 like what they call prerecorded buy money.

17 Prerecorded buy money, you will hear, is actual dollar
18 bills. They Xerox the serial numbers and they bring those
19 dollar bills out in the field with them, and they use those
20 dollar bills in transactions. So if the dollar bills wind up
21 in somebody's pocket, they know that it's evidence that that
22 person was involved in a crime.

23 The undercover officer wears an audio transmitter.
24 It's called a Kel. Other officers on the team are listening to
25 the Kel so that they can hear whatever communications he has in

1 the neighborhood with people in the neighborhood. That Kel is
2 capable of recording if they want it to. They bring cell
3 phones with cameras on them so they can take pictures if they
4 want. They bring chains with multiple sets of shackles on
5 them. They bring a number of cars and vans, one of which they
6 call a prisoner van, to hold the people that they plan to
7 arrest.

8 The center of the buy-and-bust operation is the
9 undercover officer. And as you heard, in this case we refer to
10 the undercover as UC 84. We call him that and not by his real
11 name because there's nothing more important to him, to his
12 safety, and to his career than hiding his true identity as a
13 police officer.

14 UC 84 has been an undercover for at least 15 years.
15 It's a long time. He's specifically trained to deceive people
16 for a living. He creates different personas, he changes his
17 appearance, he carries a fake ID, all designed to convince the
18 strangers he meets in the neighborhood that he's something that
19 he's not so that they will sell him drugs so that he can arrest
20 them.

21 You'll hear that UC 84 was praised by his supervisors
22 for finding creative ways to approach and interact with what
23 they call wary subjects, people who are otherwise reluctant to
24 speak to him. And you will hear that if UC 84's identity as an
25 undercover is blown in the community, his safety is immediately

1 in jeopardy, and his career as an undercover is over.

2 On October 21, 2014, the team targeted the Jacob Riis
3 Houses. The Jacob Riis Houses is a low-income, predominantly
4 minority community on the Lower East Side that has historically
5 struggled with drugs and crime. To the police, the Jacob Riis
6 Houses is a target-rich environment. To the people who live
7 there, like Jawaun Fraser did, it's their home.

8 Jawaun Fraser grew up in the Jacob Riis Houses with
9 his mother. On October 21, 2014, he was 18 years old. He had
10 worked hard that summer studying for an entrance exam to Local
11 28, a union of sheet metal workers. He passed that exam in
12 September. He had been placed with a company called United
13 Sheet Metal. Jawaun was making \$400 a week. It was his dream
14 job, a union job, and he knew that if he stayed there for a
15 number of years, he could be making five times that.

16 Jawaun will be the first to tell you that by
17 October 2014 he had come a long way. As a 16-year-old boy
18 growing up in that community, he was inspired by some of the
19 older cool kids to sell drugs. He wasn't that good at it, and
20 he didn't make a lot of money. So by the time he was 18, he
21 stopped selling drugs. He had gotten his GED. He had spent a
22 semester in college, and he had a child, a daughter named
23 Winter, and he was working hard at that time to find stable
24 employment for his family.

25 I'd like to show you on the monitor this photograph.

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Opening - Mr. Bloch

1 This was taken and posted on Instagram on October 17, 2014.

2 This was Jawaun's third day of work, and this is him in his new
3 work uniform. On October 17 Jawaun was on his way up, and he
4 wanted the world to know.

5 We can take that down. Thanks, Cristina.

6 But four days after this photograph was taken,
7 everything changed. October 21, 2014, Jawaun got home from
8 work, he took off his work clothes, he said hello to his
9 mother, and his mother told him that she had a headache. She
10 asked Jawaun to get her medicine at the local Rite Aid, and so
11 he did.

12 Let me just show you to orient you. This is an
13 overhead of the Jacob Riis Houses. You'll see it more
14 throughout this case, but approximately here is where Jawaun
15 lived with his mother. Down here is the local Rite Aid. This
16 is the path that Jawaun took through the neighborhood to get to
17 the Rite Aid. But he never made it to the Rite Aid because on
18 his way through the neighborhood, right about here, he ran
19 right smack through the middle of UC 84's undercover
20 buy-and-bust operation.

21 The team of police officers got to the neighborhood at
22 around 8 p.m., and they started setting up their operation.
23 There were people out in the neighborhood. And UC 84 started
24 walking around trying to find drugs to buy. He ran into a
25 woman named Diane Smith. Diane Smith was a drug user, and

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Opening - Mr. Bloch

1 UC 84 gave her \$50 to help him buy drugs. Diane Smith then saw
2 Jawaun coming through the neighborhood, and she recognized
3 Jawaun because he had sold her drugs in the past. And so she
4 went up to Jawaun and asked him for drugs.

5 Diane Smith didn't realize that Jawaun had stopped
6 selling drugs by that time, and so he told her he had nothing
7 for her, and he tried to continue on his way to the store. He
8 also told her that she ought to get out in no uncertain terms,
9 and that's when UC 84 engaged Jawaun directly.

10 Now, when UC 84 saw Jawaun Fraser, he didn't see a
11 young man with a mother and a daughter and a job and a future.
12 He saw an opportunity to make an arrest. When Jawaun saw
13 UC 84, he saw an out-of-place white guy trying to buy drugs in
14 his neighborhood, and he immediately suspected UC 84 was a
15 police officer, an officer that Jawaun wanted absolutely
16 nothing to do with.

17 So Jawaun tried to step around him and continue on his
18 way to the store, but UC 84 persisted. He tried to convince
19 Jawaun he was not a police officer, a lie that he had practiced
20 time and time again in his career. He even at one point
21 offered to show Jawaun his identification. Jawaun tried to
22 continue on his way to the store, and finally, in one of UC 84
23 creative attempts to try to get Jawaun to talk to him to try to
24 make it seem like he belonged there, he told Jawaun: I know
25 you. I live in your building. I know your mom.

1 And that last lie caught Jawaun's attention. He
2 stopped. He then engaged with UC 84, and he tried to call his
3 bluff. He asked UC 84 for his identification, and UC 84 handed
4 it to him. And then right then and there, right in front of
5 UC 84, Jawaun took out his cell phone, took a picture of the
6 identification, planning to text it to his mother to see if she
7 knew him. But Jawaun never got to text that photo to his mom
8 because when that photograph was taken, UC 84 lost it.

9 THE COURT: I don't mean to, but I'm going to stop you
10 exactly at 3:00 o'clock. And that's a long opening in my
11 courtroom. So I would move on if I were you.

12 MR. BLOCH: Judge, may we approach?

13 THE COURT: No.

14 MR. BLOCH: Finally, when that flash went off, UC 84's
15 photograph was on Jawaun's phone. He knew his identity was
16 compromised in a neighborhood that he worked countless times as
17 an undercover, and so he panicked. He sent a signal to his
18 field team that he needed help. He grabbed Jawaun, and that ID
19 fell to the ground. The field team came in, identifying
20 themselves as police. There was a crowd that formed that had
21 been watching this interaction, and they yelled, "Police."

22 Jawaun was struggling to get away from UC 84. Jawaun
23 knew what happens at the hands of -- young men like him in his
24 neighborhood at the hands of angry police officers, and so he
25 ran. He ran back this way towards his mother's house. The

1 detectives all gave chase. Deltoro, Regina, UC 84 chased him
2 on foot. Lieutenant Patane, the supervisor, was in one of
3 those vans. He drove through the neighborhood after Jawaun,
4 and Jawaun was caught here, near this circle, and he was
5 handcuffed and searched. The officers searched him thoroughly.
6 They found a little more than \$100 in cash. They found his
7 work phone, and most importantly for their purposes, they found
8 that phone with that photograph on it. So they seized the
9 phone, and they arrested Jawaun.

10 The problem was that Jawaun had done nothing wrong.
11 He hadn't committed a crime. Even the police officer will tell
12 you there's no evidence that he was selling drugs. He had no
13 drugs on him. None of that money was prerecorded buy money.
14 He had no weapons, no contraband. There's nothing illegal
15 about taking a photograph of an ID card. There's nothing
16 illegal about running from the police when they have no
17 probable cause to stop you.

18 But the police knew that they had just chased a young
19 man through the neighborhood with everyone watching, tackled
20 him, seized his stuff, and they needed to hold on to that
21 phone, and so they made up a story to justify their false
22 arrest. UC 84 would go back to the precinct and write a report
23 which was false. You will see that. And they lied to
24 prosecutors to have him charged with a crime he didn't commit.

25 This, I will show you briefly, is the criminal court

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Opening - Mr. Bloch

1 complaint. You don't need to read it now. We'll go over it
2 more. I just wanted you to get a sense of it.

3 The officers claim that Jawaun had robbed UC 84 of his
4 identification and \$20 prerecorded buy money. They claimed
5 that Jawaun threatened the officer; that Jawaun said: Give me
6 your money and your ID, or I will fuck you up. And that only
7 then did UC 84 hand him the ID.

8 That was the first lie. That crowd that had formed.
9 They claimed Jawaun had called them over to assist him in
10 robbing the police officer. That was the second lie. And
11 Jawaun was charged with robbery in the second degree, a "C"
12 violent felony in New York, facing up to 15 years in prison.

13 You'll hear that the charges in this case were not
14 just fabricated, they were utterly absurd. They claim that
15 Jawaun, knowing UC 84 was a police officer, decided to
16 antagonize him, threaten him, rob him in front of people
17 without a weapon of his ID and \$20 prerecorded buy money. They
18 claimed he robbed the officer of the prerecorded buy money even
19 though when they caught Jawaun about two and a half blocks
20 later, he had no buy money in his pocket.

21 Later, Detective Regina would claim that he found an
22 identification, that he found UC 84's identification in
23 Jawaun's pocket, but there was no evidence of it. It was all
24 made up. What they had and what they'll have in this case is
25 these officers' word, a word that you will learn is not worthy

1 of your belief.

2 You will hear about the so-called investigation that
3 happened in this case. There was no investigation. The police
4 never went back to the neighborhood to look at surveillance to
5 see what was on the cameras. They never talked to a witness
6 who was out there that night. They never asked Diane Smith
7 what she saw. They never talked to any of those six people
8 they claim helped Jawaun in this robbery.

9 That audio transmitter that UC 84 wears, capable of
10 recording, they'll tell you it didn't record. They didn't do
11 DNA tests, fingerprint analysis, fiber analysis -- all the
12 tools that they have as the New York City Police Department.
13 They didn't do these things, ladies and gentlemen, because they
14 knew that it wasn't going to back up their story. And you will
15 hear that at least one of the documents that one of these
16 officers created that night disappeared before they were
17 required to turn it over in this case. You'll also hear that
18 every time these officers tell this story, it changes in
19 significant ways.

20 After he was arrested, Jawaun began the long fight to
21 prove that these officers were lying. He saw a judge, and he
22 pleaded not guilty. He insisted on his right to trial. He
23 fought this case for more than a year. He came back to court
24 more than 20 times to fight this case, and by November of 2015,
25 Jawaun finally got his day in court.

1 But by the time that trial started, there was
2 something that Jawaun and his lawyer didn't know. They didn't
3 know that Detective Deltoro and UC 84 had been sued eight
4 times, eight times by other people alleging that they had done
5 exactly the same thing to them that they did to Jawaun. Jawaun
6 was told that there were two lawsuits, but the other eight were
7 hidden from him. And because Jawaun didn't know about these
8 lawsuits, his jury never found out about them either.

9 Now, as the judge told you, you will learn a lot about
10 the Constitution in this case. You will learn that police
11 officers are required to disclose facts that bear on their
12 credibility, that juries can use to assess whether they are
13 honest witnesses or not. Prior acts of misconduct like alleged
14 wrongs in lawsuits.

15 As the judge told you, it's called the *Brady* rule, and
16 the rule exists so that people like Jawaun, accused of crimes,
17 can cross-examine police officers in front of the jury and so
18 the jury can assess whether they're honest or not. By the time
19 Jawaun's case went to trial, UC 84 had been sued in 2011, 2013,
20 twice in 2015. One of those lawsuits was still pending at the
21 time he got up on that witness stand and swore to tell the
22 truth against Jawaun. Detective Deltoro had been sued four
23 time prior to Jawaun's case for similar acts of misconduct.

24 Each of those defendants had been served with the
25 complaints in those cases. Each of them were represented by

1 lawyers. Each of them understood the obligation to turn it
2 over, and neither one of them said one word to Jawaun or his
3 lawyer or the prosecutor trying that case.

4 You'll learn that these clear *Brady* violations were no
5 accident. You will hear from policymakers at the NYPD, and you
6 will learn that those policymakers were deliberately
7 indifferent. In other words, they did not care whether their
8 police officers understood and complied with the constitutional
9 requirement to turn over, or disclose, civil lawsuits to those
10 accused of crimes. You'll hear this from police witnesses
11 themselves, and you will see the constitutionally deficient
12 training materials themselves.

13 You will hear that year after year after year the NYPD
14 systematically failed to train its officers that they needed to
15 disclose facts that bore on their credibility, like civil
16 lawsuits. And you will know by the end of this case that the
17 responsibility for these *Brady* violations lies not just with
18 these individual officers but also with the City of New York.

19 Now, because of these constitutional violations,
20 Jawaun went to trial with both hands tied behind his back.
21 When those officers got up on that witness stand and told their
22 story, Jawaun was --

23 THE COURT: You have one minute. This is not the time
24 to argue your case.

25 MR. BLOCH: Understood.

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Opening - Mr. Bloch

1 THE COURT: Finish your opening statement.

2 MR. BLOCH: Judge, I have a little bit more than one
3 minute, but --

4 THE COURT: One minute. You have one minute.

5 MR. BLOCH: Jawaun was convicted at trial of robbery
6 in the third degree. He was sentenced to two to six years in
7 prison. He will tell you about his time in prison. He
8 witnessed horrific acts of violence. He was beaten down
9 physically and emotionally. I won't go into it. Jawaun will
10 tell you about it.

11 After serving about a year and a half in prison,
12 Jawaun was up for parole, and you'll learn that in order to get
13 parole, you need to convince a panel of parole officers that
14 you deserve it. And Jawaun had spoken to some of the
15 old-timers in prison who told him that the only way you get
16 parole is to show remorse and take responsibility for your
17 crime, which, as you might imagine, is difficult for an
18 innocent person to do. Jawaun tried to walk a fine line in
19 that parole hearing. He tried not to challenge these parole
20 officers who assumed, without hearing from Jawaun, that he was
21 a drug dealer and that he was convicted of robbery.

22 THE COURT: OK. That's it. Sorry. Sit down.

23 MR. BLOCH: Judge, I do have --

24 THE COURT: I'm sorry. You're done with your opening
25 statement. You will have an opportunity at the end of the case

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Opening - Mr. Bloch

1 to argue everything.

2 MR. BLOCH: May I approach briefly, Judge?

3 THE COURT: No, you may not approach at all. You may
4 sit down.

5 Mr. Francolla.

6 MR. FRANCOLLA: Ms. McGuire will be handling openings.

7 THE COURT: Ms. McGuire, fine. I'm sorry. We need to
8 get to the evidence in this case --

9 MR. BLOCH: Understood.

10 THE COURT: -- because what you say is not evidence.
11 They and I wish to hear the evidence.

12 Ms. McGuire, forewarned is forearmed.

13 MS. MCGUIRE: Yes, your Honor.

14 Good afternoon, ladies and gentlemen. On October 21,
15 2014, plaintiff robbed an undercover police officer, forcibly
16 took his identification and money. Plaintiff was arrested. He
17 was indicted by a grand jury. He went to trial, and at the end
18 of that trial, a jury convicted plaintiff of robbery in the
19 third degree. Eventually his conviction was vacated, for
20 reasons I'll get to shortly, but to be absolutely clear, it was
21 not because he was innocent.

22 Plaintiff got really lucky, but now he's exploiting
23 the fact that his conviction was vacated to trick you into
24 awarding him money.

25 MR. BLOCH: Objection.

1 MS. McGUIRE: The evidence --

2 THE COURT: Overruled. Move on.

3 MS. McGUIRE: The evidence will show you should not
4 give him a dime.

5 On October 21, 2014, plaintiff was a drug dealer, and
6 that is not an accusation. It is the truth. Plaintiff's own
7 words. On that day at around 8 o'clock at night, an undercover
8 police officer, who we will refer to as UC 84, was doing a buy
9 and bust. A buy and bust is when an undercover police officer
10 buys drugs from someone and then other members of the team
11 apprehend the drug dealer.

12 I just want to pause here and acknowledge that UC 84,
13 one of the officers plaintiff is suing, is still an undercover
14 police officer. So while he is here, he is not sitting with us
15 at counsel's table. His job is dangerous and his identity
16 cannot be known. He is listening to this trial in a separate
17 room, and when he testifies, the courtroom will be closed to
18 the public to protect his identity.

19 So back to October 21. Initially, UC 84 began talking
20 to Diane Smith. Ms. Smith is an older woman who apparently
21 lived in the same building as plaintiff. UC 84 asked Ms. Smith
22 if she could get crack cocaine for him. She agreed. He gave
23 her \$50 of marked money and waited on the bench for -- waited
24 on a bench for the drugs. About ten feet away, plaintiff was
25 in the courtyard. He was talking to a group of people. He saw

1 Ms. Smith speaking to UC 84 and walked over to her. Plaintiff
2 told her that she was speaking to a cop and to "get him the
3 fuck out of here." His words, not mine.

4 UC 84 did not -- plaintiff then started accusing UC 84
5 of being a cop and yelling at him to "get the fuck out of
6 here." UC 84 denied he was a police officer. He said he was
7 waiting for a friend to get him crills, which is a street term
8 for crack cocaine. He said he didn't need anything from
9 plaintiff.

10 In response, plaintiff balled up his fist and kept
11 accusing UC 84 of being a cop. The crowd came closer and was
12 getting rowdy. Then plaintiff demanded UC 84's identification
13 and money. Plaintiff was trying to verify that UC 84 was not a
14 police officer. UC 84 showed plaintiff a fake identification
15 and folded up a marked \$20 bill behind it. Plaintiff snatched
16 the identification and the money out of UC 84's hand, took a
17 photo of the identification, and shoved the items in his
18 pocket.

19 That, ladies and gentlemen, is the robbery. Robbery
20 is when someone takes something with force. Robbery is what a
21 jury convicted plaintiff of.

22 The fact that plaintiff took a photo of an undercover
23 officer's identification is extremely dangerous. Plaintiff
24 could have shown it to other people and blown his cover.

25 After plaintiff pocketed the ID, he refused to give it

1 back. Instead, he rushed at UC 84, and they simultaneously
2 grabbed each other. In the midst of this, UC 84 signaled to
3 his field team for help. The field team started moving in.
4 Detectives Deltoro and Regina, who plaintiff is also suing,
5 were part of this team. Once plaintiff learned that police
6 were after him, he bolted. When he was apprehended, Detective
7 Regina found UC 84's identification in his pocket.

8 So that's what happened, and there is no doubt that
9 plaintiff robbed UC 84. And, again, this is not an accusation.
10 After plaintiff was convicted at trial but before his
11 conviction was vacated, plaintiff literally admitted to the
12 robbery during his parole hearing. He admitted that he was
13 selling drugs on October 21, 2014; that he made a bad decision
14 that day; that he asked for UC 84's identification to see if he
15 was a police officer; that he understood that what he did on
16 that day was, in fact, a robbery.

17 Fast-forward to plaintiff's conviction being vacated.
18 Once that happens, he brings this lawsuit. And during this
19 lawsuit, plaintiff was asked questions about his admissions in
20 what's called a deposition. During this proceeding, plaintiff
21 was confronted with his statements and a bunch of other ones
22 that you haven't even heard about yet. So how did he respond?

23 MR. BLOCH: Objection, Judge.

24 THE COURT: Overruled.

25 MS. MCGUIRE: Well, he didn't say, for example, yeah,

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Opening - Mr. Bloch

1 I said it, but I was lying to get better treatment from the
2 parole board. No, he blamed the court reporter.

3 MR. BLOCH: Objection, Judge.

4 THE COURT: All right. Let's just move on. Move on.
5 Not evidence. Move on.

6 MS. MCGUIRE: You will hear these admissions. His
7 answers are open-ended, his own words. His explanation is not
8 that there are minor errors, like a missing comma or missed
9 spelling. No, his explanation is that the court reporter got
10 it wrong.

11 MR. BLOCH: Objection.

12 THE COURT: I told you to move on. I don't want to
13 hear about the court reporter in the opening statement, OK?
14 Move on.

15 MS. MCGUIRE: Plaintiff's robbery conviction was
16 vacated because of a rule that requires prosecutors to disclose
17 civil lawsuits filed against police witnesses who will testify
18 at trial to the defense. As you can imagine, people don't like
19 being arrested, and sometimes police officers are the target of
20 lawsuits. But at their core, lawsuits are just allegations.
21 Some lawsuits have merit and some do not. For example, the
22 evidence will show this lawsuit does not have merit,
23 considering that plaintiff claims he was framed for a robbery
24 even after he admitted to doing it.

25 MR. BLOCH: Objection.

1 THE COURT: Overruled.

2 MS. McGUIRE: In plaintiff's criminal case, the
3 prosecutor gave some, but not all, of the civil lawsuits to
4 plaintiff's criminal defense attorney. The officers told the
5 prosecutor about the lawsuits they knew about. However,
6 throughout this trial you will learn that police officers do
7 not always remember when they are sued.

8 Importantly, for plaintiff to prevail in this civil
9 case, he must demonstrate three things:

10 First, that the officers knew about the undisclosed
11 lawsuits and withheld them from the prosecutor;

12 Second, that the outcome of plaintiff's criminal case
13 would have been different if he knew about all the lawsuits;

14 Third, that the officers made up the robbery and the
15 recovery of the ID.

16 Plaintiff cannot prove any of these, but I want to
17 draw your attention to the second category of information, that
18 the lawsuits would have changed the outcome of
19 plaintiff's criminal case. It would not have. And how do we
20 know? Typically, the prosecutor and the criminal defense
21 attorney conduct their own search for lawsuits.

22 MR. BLOCH: Objection.

23 THE COURT: Is there going to be -- why don't you just
24 say "the evidence will show" if someone's going to testify. If
25 nobody's going to testify, then I don't want to hear about it.

1 MS. MCGUIRE: Yes, your Honor.

2 The evidence will show that this information is
3 publicly available. You will hear from --

4 MR. BLOCH: Objection, Judge.

5 THE COURT: I would like you to stop. Let her finish.

6 MS. MCGUIRE: You will hear from plaintiff's criminal
7 defense attorney, Mr. Stewart. You will learn that he was not
8 fazed by the officers' lawsuits. Mr. Stewart never even
9 questioned -- pardon.

10 The evidence will show Mr. Stewart never even
11 questioned the officers about the lawsuits he knew about. The
12 evidence will also show that Mr. Stewart did not search for
13 lawsuits on his own, despite the fact that it would have taken
14 him only five minutes.

15 Mr. Stewart testified that the plaintiff's criminal
16 case, it would have been a "waste of time" to search for these
17 lawsuits. But because plaintiff -- because the evidence will
18 show --

19 THE COURT: OK. Now I've really got to interrupt. My
20 first instruction of law, under the *Brady* rule, a defense
21 lawyer has no obligation to look for lawsuits. OK. Not
22 required to look for lawsuits, not required to go to a
23 courthouse and comb through the public record against the
24 possibility that he'll find some lawsuits. That's the first
25 thing you need to know about *Brady*.

1 You had better watch it. Finish your opening.

2 MS. McGUIRE: But because the evidence will show that
3 plaintiff actually did it, these lawsuits would not have
4 changed the outcome of his criminal case.

5 And how do we know that plaintiff did it? Because he
6 openly admitted to it in parole hearings where he had no reason
7 to lie. He was already convicted, and his conviction had not
8 yet been set aside. But he has to lie now. If he committed
9 the robbery, then the lawsuits would not have changed the
10 outcome of his criminal case. Likewise, if he committed the
11 robbery, then, obviously, the officers didn't make it up. So
12 plaintiff -- if plaintiff doesn't change his story, the civil
13 case falls apart.

14 So what's plaintiff's story now? The evidence will
15 show it's ludicrous. For example, plaintiff now states that he
16 took a photo of UC 84's identification so he could send a
17 picture of it to his mom to see whether or not she knew him.
18 This was what someone does when they're caught in a big lie,
19 the likes of which are now in federal court.

20 MR. BLOCH: Objection.

21 MS. McGUIRE: They have to continue to lie.

22 One final point. Once plaintiff's conviction was
23 vacated, it was sent back to the District Attorney's Office for
24 the D.A. to decide how to proceed. Notably, they did not
25 dismiss the charges against plaintiff. At that point plaintiff

1 had two options: He could have either gone to trial again, now
2 with the knowledge of all the lawsuits, or take a plea. He
3 took the plea, pled guilty to disorderly conduct.

4 One final point. I know you've heard about an alleged
5 false arrest. There is no false arrest claim in this lawsuit.
6 Plaintiff was lucky enough to have his criminal conviction
7 vacated. He now comes before you asking for money. Do not
8 reward him.

9 THE COURT: OK. I need you folks to leave the
10 courtroom for about five minutes. And what we're going to do,
11 you can take your stuff, and Josie's going to take you back to
12 the jury room, and you will see your room, which belongs to you
13 for the duration of the trial.

14 Don't discuss the case. Keep an open mind.

15 (Jury excused)

16 (Continued on next page)

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N3DHFra2

1 (Jury not present)

2 THE COURT: Sit down.

3 Ms. Miller, do you have an explanation for why one of
4 your assistants would come into my courtroom and suggest that a
5 defense lawyer has an obligation to go look up material that he
6 doesn't have any obligation under *Brady* to look up? Ma'am, I
7 know you and I know your people, and I just don't understand
8 this at all.

9 MS. MILLER: Can I comment on that, your Honor?

10 THE COURT: This is Patricia Miller, the chief of
11 federal litigation in the Corporation Counsel's office.

12 MS. MILLER: Do you want me to comment on it?

13 THE COURT: Yes, I'd like to know what's going on
14 here.

15 MS. MILLER: I think what the attorney is trying to
16 say is that part of the analysis is would it have made an
17 impact one way or the other on the outcome of the case? The
18 defense attorney -- not to say that there's any obligation on
19 the defense attorney -- we know from deposition was of the
20 position -- was of the mind that none of this would have
21 mattered. It is some evidence.

22 THE COURT: Then that's all she had to say --

23 MS. MILLER: OK.

24 THE COURT: -- is that you will hear from his defense
25 attorney who didn't ask any questions about the two lawsuits he

N3DHFra2

1 knew about and who was of the position that nothing else would
2 have mattered without ever going into this "he didn't go and
3 look for it." You get into all kinds of trouble. I just -- I
4 mean, we've talked about -- you haven't been here. I'm sorry.
5 Thank you.

6 MS. MILLER: That's fine. May I?

7 THE COURT: No, no, we've talked about *Brady* so much,
8 ad nauseam, in this lawsuit, and I just --

9 MS. MILLER: I think, your Honor, I think maybe
10 perhaps it wasn't crafted in a way that --

11 THE COURT: It was not crafted well, let's put it that
12 way.

13 MS. MILLER: But if I may, though, your Honor, you did
14 give the impression to this jury that my attorney was
15 misleading this jury, and there was no intention on her part to
16 do so, not at all. And in fact, I think what she's saying is
17 that's evidence that, you know, weighs in -- with respect to at
18 least one prong of this analysis.

19 THE COURT: It doesn't weigh into any prong of the
20 analysis. OK.

21 MS. MILLER: Thank you.

22 MR. FRANCOLLA: Your Honor, just to add to my
23 supervisor's -- our understanding from the *in limine* decision
24 was that we can't make the argument, and we're not going to.
25 This was -- again, to the extent it wasn't, you know, crafted

N3DHFra2

1 to make that clear, obviously, we'll accept that, but we
2 weren't making an argument. Our understanding of your Honor's
3 ruling was it's fair game.

4 THE COURT: Ladies and gentlemen of the jury, we're
5 not allowed to argue this, but I'm telling you anyway, that's
6 ridiculous.

7 MR. FRANCOLLA: Your Honor, with all due respect, they
8 moved to preclude evidence of this as well as the argument.
9 Your Honor precluded the argument in terms of saying it was
10 their fault but made clear that if it's part of the analysis,
11 particularly with favorability, which is where we were going --

12 THE COURT: I'm here to tell you what came out of
13 Ms. McGuire's mouth was not permissible. Favorability is not
14 impacted by whether the defense lawyer did or did not go out to
15 look for additional lawsuits. The law is clear that he has no
16 obligation to do so. That he must follow-up on information
17 known to him, but he doesn't have any obligation independently
18 to go out and acquire knowledge about lawsuits. And I'm sorry,
19 that's the law.

20 And to suggest that the favorability analysis would be
21 somehow impacted by the fact that this lawyer didn't go out and
22 look for additional lawsuits is -- not in my courtroom. If
23 that was the argument that you intended to make, that it had
24 something to do with the favorability analysis and I
25 misunderstood the *in limine* motion, not in my courtroom, no.

N3DHFra2

1 MR. FRANCOLLA: OK. Just if I could just elaborate
2 briefly on what --

3 THE COURT: No point elaborating. I want to get to
4 the evidence.

5 MR. FRANCOLLA: This was just -- like I said, it was
6 in reference to the defense attorney's deposition testimony
7 where he said typically he would search for these things, but
8 due to various aspects of this case, he did not. So --

9 THE COURT: I'm not sure I'll let that in, but we'll
10 get there when we get there. He's not testifying now. I
11 believe Undercover 84 is testifying, is that correct?

12 MR. FRANCOLLA: That's correct.

13 THE COURT: So I need everybody who's not associated
14 with the law firms or the Corporation Counsel's office to leave
15 the courtroom.

16 Is there anybody in the courtroom who qualifies? Do
17 we see any strangers in the courtroom? Because we're going to
18 lock the door.

19 Where's the agent? Where's the officer? Where's the
20 undercover? He should come out here and get on the stand.

21 MR. BLOCH: Judge, do we, I take it, cross-examine
22 from where the podium is right now?

23 THE COURT: You can turn it so it faces the witness,
24 but, yes, that's where you cross-examine from. I do everything
25 in my courtroom from behind that podium.

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MR. BLOCH: OK.
(Continued on next page)

N3DHFra2

UC 84 - Direct

1 (Jury present)

2 THE COURT: Call your first witness, please.

3 MR. BLOCH: Judge, Mr. Fraser calls UC 84.

4 THE COURT: Sir, stand and raise your right hand.

5 Would you swear the witness, please.

6 UNDERCOVER OFFICER 84,

7 called as a witness by the government,

8 having been duly sworn, testified as follows:

9 THE COURT: Actually, don't state your name. Your
10 name for our purposes is Undercover Officer 84.

11 THE WITNESS: Undercover C0084 assigned to Manhattan
12 South Narcotics.

13 THE COURT: I tried to get rid of this before the
14 trial but failed, so it will disappear at some point. But use
15 that microphone.

16 OK. You may proceed.

17 MR. BLOCH: Thank you, Judge.

18 DIRECT EXAMINATION

19 BY MR. BLOCH:

20 Q. Good afternoon, detective.

21 A. Good afternoon.

22 Q. Detective, you joined the NYPD right after college, right?

23 A. Yes, I did.

24 Q. And you've been a member of the NYPD your whole career,
25 right?

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UC 84 - Direct

1 A. My whole law enforcement career, yes.

2 Q. And that's approximately 19 years or so?

3 A. Approximately, yes.

4 Q. And you've been an undercover for approximately 17 of those
5 19 years, is that right?

6 A. About 16 and a half, yes.

7 Q. Fair to say that you've been an undercover police officer
8 for the NYPD for virtually your whole career?

9 A. Yes.

10 Q. I'd like to talk a little bit about what an undercover
11 officer does.

12 Your job, generally speaking, as an undercover is to
13 go out and buy drugs?

14 A. We buy drugs, firearms, do murder for hires, things of like
15 that nature.

16 Q. But you pose as a buyer to attempt to make purchases of
17 those sorts, right?

18 A. Yes, that's part of the job.

19 Q. And there are different types of drug operations, correct?

20 A. Yes.

21 Q. One type is called a buy-and-bust operation?

22 A. Yes, it is.

23 Q. And that's the kind of operation that you were engaged in
24 when Mr. Fraser was arrested?

25 A. Yes.

N3DHFra2

UC 84 - Direct

- 1 Q. And in a buy-and-bust operation, you go out into a
2 neighborhood with a team of officers?
- 3 A. Yes.
- 4 Q. And that team you refer to as the field team?
- 5 A. Yes.
- 6 Q. And then the undercover walks through the neighborhood
7 trying to buy drugs?
- 8 A. Correct.
- 9 Q. And if you buy drugs, you give a signal to the team that
10 you refer to as a positive buy signal, right?
- 11 A. Yes.
- 12 Q. And then when you give that signal, the team moves in and
13 makes an arrest?
- 14 A. They attempt to make an arrest, yes.
- 15 Q. Of the person that you purchased from?
- 16 A. Correct.
- 17 Q. You received training as an undercover?
- 18 A. I do.
- 19 Q. There's a two- to three-week training course?
- 20 A. Yes.
- 21 Q. And you also will learn from the more senior undercovers
22 when you are assigned to your command?
- 23 A. Correct.
- 24 Q. And when you go out in the field to buy drugs, you pretend
25 you're not a police officer, right?

1 A. Correct.

2 Q. And you were specifically trained by the more senior
3 officers on how to dress, right?

4 A. Yeah, to assimilate into the neighborhood, yes.

5 (Continued on next page)

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N3d3fra3

UC 84 - Direct

1 Q. You are trained on how to act, right?

2 A. I wouldn't say you were trained how to act. But, yeah, you
3 get different pointers from different undercovers, and then you
4 create your own style and how you want to work when you are out
5 on the street.

6 Q. Would you say when you get to your command, you learn from
7 more senior officers there on the best way to dress and how to
8 act? Do you agree with that?

9 A. Yeah, depending on the neighborhood you are working in.

10 Q. You also take on different kinds of false identities; fair?

11 A. Yes.

12 Q. Sometimes you will pretend to be -- sometimes you'll put on
13 a suit and go to Wall Street and buy a bunch of cocaine?

14 A. Yes, that's happened.

15 Q. Sometimes you go into a NYCHA building and pretend you were
16 part of that community?

17 A. No. Well, every situation is different. I typically
18 wouldn't go into a NYCHA community and act like I'm from that
19 community, because they are all tight-knit communities. So I
20 wouldn't say, yeah, I can act like I am from that neighborhood.
21 You can act like you are from the area, but you can't say you
22 are from a certain building, because if the person lives in
23 that building, they know who lives in their building.

24 Q. Well, would you agree with me you adjust how you present
25 yourself, depending on the situation?

N3d3fra3

UC 84 - Direct

1 A. Yes.

2 Q. Sometimes you change your look, right?

3 A. Yes.

4 Q. When you go out into the field, you will think through
5 ahead of time about how to answer certain questions that you
6 might get asked, right?

7 A. Sometimes.

8 Q. You also carry a fraudulent New York State identification,
9 right?

10 A. Yes.

11 Q. The ID is a real New York State license with an actual
12 photograph of you, right?

13 A. Yes, it is a real ID given to me by the DMV.

14 Q. But has a fake name and address?

15 A. Correct.

16 Q. You usually carry that with you into the field?

17 A. I do.

18 Q. You do that to prove to somebody, if necessary, that you
19 are not a police officer?

20 A. Yes, and to enter different businesses and things.

21 Q. When you go into the neighborhood, you have different
22 techniques to engage potential buyers, right?

23 A. Yes.

24 Q. Sometimes you walk around the neighborhood and you nod at
25 people?

N3d3fra3

UC 84 - Direct

1 A. Yes.

2 Q. Sometimes you say hi to random people and see if they'll
3 sell you drugs?

4 A. Correct.

5 Q. Sometimes you pretend you are looking for something to try
6 to get people to approach you?

7 A. Yes.

8 Q. You have been praised by your NYPD supervisors for finding
9 new and creative ways to approach and interact with wary
10 subjects, right?

11 A. I believe a supervisor wrote that on one of my evaluations,
12 something along that nature.

13 Q. Wary subjects are people that are reluctant to speak with
14 you, right?

15 A. Yes.

16 Q. People that are skeptical of you?

17 A. Yes.

18 Q. Is it fair to say you are constantly looking for creative
19 ways to get people to speak with you?

20 A. No.

21 Q. Well, one of the things you've proposed was getting an
22 apartment in a building in a certain neighborhood so you can
23 convince people that you live in their neighborhood, right?

24 A. We were sometimes offered apartments in SRO, single
25 occupancy room hotels, they will offer us apartments to prove

N3d3fra3

UC 84 - Direct

1 that you live there, because only individuals that live there
2 are allowed into the buildings.

3 Q. You do that so that you can convince people in the
4 neighborhood that you live in the neighborhood, right?

5 A. Correct.

6 Q. You have come up with different ways to gain access to
7 buildings that you are not allowed in, right?

8 A. Yeah, that's one of the ways, is getting an apartment.

9 Q. That's one of the ways that you have been praised for
10 finding creative ways to get wary people to talk to you, right?

11 A. I don't recall specific praise for that, but yes, I've done
12 that.

13 Q. You've suggested getting an ID card for like a shelter so
14 you can come in and out of the shelter so people see you in the
15 neighborhood, right?

16 A. I haven't suggested it, but I have had an ID card for that
17 reason.

18 Q. Isn't that one of the ways that you were praised for coming
19 up with an imaginative solution to improve operations and
20 tactics?

21 A. I don't recall anyone giving me praise for getting an ID to
22 go into a shelter, no.

23 Q. Well, you did give testimony in this case, right?

24 A. Yes.

25 Q. A deposition testimony in 2021, right?

N3d3fra3

UC 84 - Direct

1 A. Yes.

2 Q. At that deposition, you were asked this question and you
3 gave this answer, page 258, line 24. Referring to your
4 evaluation, at the top there it I says:

5 "Q. They're always looking for new and creative ways to
6 approach and interact with wary subjects. And they are always
7 looking for new intelligence on the sets in the area of
8 enforcement on the subjects in the area to devise new tactics
9 to replace ones familiar to those subjects, can successfully
10 improvise and find imaginative solutions to problems that
11 improve operations and field team's tactics.

12 "And what do you understand that to mean?"

13 And you answered: "I mean, it depends on the
14 situation and how we go about things, you know, whether it be,
15 you know, come up with an idea, hey, maybe we should get an
16 apartment in this building. And then this way people will, you
17 know, have me coming in and out. You know, so people will get
18 used to seeing me and I will have an apartment there or just an
19 ID card for like a shelter, just come in and out so people see
20 me in the neighborhood. You know, just coming with different
21 ideas and how to interact through the course of our jobs."

22 Did you give that testimony?

23 A. Yes, but I didn't say that I was specifically given praise
24 for coming up with an ID. I was just giving examples of why
25 bosses would give you praise. I don't independently recall a

N3d3fra3

UC 84 - Direct

1 boss saying "good job. You got an ID from a shelter."

2 Q. That's how you interpreted your evaluation, right?

3 A. Yes.

4 Q. You have been praised by your supervisors for being good at
5 convincing people that you are not an officer and actually
6 belong there. Right?

7 A. Yes.

8 Q. Detective, you agree with me that if someone discovered
9 your identity, your real identity as a police officer, it would
10 endanger your safety?

11 A. Yes.

12 Q. And in fact, if someone believed you are a police officer,
13 your life might be in danger?

14 A. Yes.

15 Q. You believe it would jeopardize your family's safety,
16 right?

17 A. Yes, it would.

18 Q. You believe it would impact your ability to work as an
19 undercover, right?

20 A. Yes.

21 Q. Is it fair to say that you take extensive precautions to
22 keep your identity as a police officer hidden?

23 A. Yes, I take precautions.

24 Q. You travel in unmarked cars, right?

25 A. Yes.

N3d3fra3

UC 84 - Direct

1 Q. You enter courthouses through side doors?

2 A. Yes.

3 Q. You ask that the courtroom be closed when you testify,
4 right?

5 A. Yes.

6 Q. Like right now. You've never testified in open court using
7 your real name, right?

8 A. No.

9 Q. All of these precautions are to prevent people from finding
10 out you are a police officer?

11 A. Correct.

12 Q. Would it be fair to say you believe these precautions, if
13 not taken, would put your life in danger?

14 A. Yes.

15 Q. Is it fair to say that you don't want a photograph of you
16 floating around because it might endanger your safety?

17 A. I don't want a photograph of myself floating around, no.

18 Q. Because it might endanger your safety, right?

19 A. Yes.

20 Q. I'd like to talk about some of your teammates and their
21 role on the buy and bust team, okay?

22 A. Okay.

23 Q. The team consists of about 9 to 10 officers, right?

24 A. I don't recall exactly how many officers, but yes, there
25 would have been at least nine.

N3d3fra3

UC 84 - Direct

1 Q. All of the officers go together into the neighborhoods
2 where you conduct operations, right?

3 A. They are in different vehicles, but we all go to the same
4 area.

5 Q. Everybody on the team, by and large, has an assigned role?

6 A. Yes.

7 Q. One person is the primary undercover, right?

8 A. Yes.

9 Q. And that was you in this case?

10 A. Yes, it was.

11 Q. One person plays the role of the ghost undercover, right?

12 A. Yes.

13 Q. And the ghost job is to watch the undercover wherever he
14 goes?

15 A. The ghost job is to follow the primary undercover around
16 and put over radio transmissions to the field team to let them
17 know any descriptions of any individuals that the primary
18 undercover is speaking with. And the ghost job is to hopefully
19 see positive buy sign or distress signals, and to let the field
20 team know about that as well.

21 Q. He does all that by watching the undercover, right?

22 A. He or she does, yes.

23 Q. In this case, somebody referred to at UC 17 was the
24 ghosting undercover, right?

25 A. Yes.

N3d3fra3

UC 84 - Direct

1 Q. There are also a number of officers that come in to the
2 scene in unmarked police cars?

3 A. Yes.

4 Q. And one of those cars is referred to as the leader car?

5 A. Yes, it is.

6 Q. A number of officers sit in the leader car, right?

7 A. Each operation is different. Sometimes just the supervisor
8 is in the leader car. Sometimes there could be one other
9 detective with him or more. It just depends on the operation
10 for the day.

11 Q. In this case, Lieutenant Patane was the supervisor,
12 correct?

13 A. Yes.

14 Q. And he was the one sitting in the leader car?

15 A. Yes, he was.

16 Q. Detective Deltoro was also assigned to the leader car,
17 right?

18 A. I don't know who was assigned to sit where.

19 Q. Would looking at the -- you know what a tac plan is?

20 A. I do.

21 Q. And the tac plan is a document that the NYPD creates that
22 sort of sets out the logistics for the day, right?

23 A. Yes. The arresting officer assigned for that day or the
24 supervisor will fill out the tactical plan meeting.

25 Q. Would looking at the tac plan refresh your recollection as

N3d3fra3

UC 84 - Direct

1 to whether Detective Deltoro was assigned to the leader car?

2 A. Yes.

3 MR. BLOCH: Can we show UC 84 the tac plan, please.

4 If you can scroll.

5 Q. Detective, is this the tac plan in this case?

6 A. Yes.

7 MR. BLOCH: This is in evidence, why don't we show the
8 jury as well.

9 Can the jury see it?

10 Q. Detective, does this refresh your recollection that Patane,
11 Regina, and Deltoro were assigned to the leader car, according
12 to the tac plan?

13 A. According to the tac plan, yes.

14 MR. BLOCH: We can take that down.

15 Q. There is also what's referred to as a prisoner van, right?

16 A. Yes.

17 Q. And there is one arresting officer assigned to a buy and
18 bust, correct?

19 A. Yes.

20 Q. In this case that was Detective Regina?

21 A. Yes, it was.

22 Q. Now, the team, well, the team that you were assigned to in
23 2014 included Detective Regina, right?

24 A. Yes.

25 Q. Detective Deltoro, right?

N3d3fra3

UC 84 - Direct

1 A. Yes.

2 Q. And a number of other officers?

3 A. Yes.

4 Q. Generally, day-to-day, you worked with the same people?

5 A. Generally speaking, yeah. Sometimes if a person is on
6 vacation or out sick, we'll borrow from another team to go out.
7 But it's generally a core group of people.

8 Q. Generally it is the same teammates that go out into the
9 field every day?

10 A. Yes.

11 Q. You go out in the field with them multiple times a week,
12 right?

13 A. Yes.

14 Q. It will be fair to say that when you are out in the field,
15 you guys protect each other?

16 A. Yes.

17 Q. You back each other up?

18 A. Yes.

19 Q. You also socialize with the team, right?

20 A. Yeah, we talk.

21 Q. You in fact still work with Detective Deltoro in the same
22 building?

23 A. I do.

24 Q. Now, each day, I just want to talk about what goes into
25 planning a buy and bust.

N3d3fra3

UC 84 - Direct

1 You begin the day with a meeting, right?

2 A. Yes.

3 Q. And that's called a tac meeting?

4 A. Yes. That's not as soon as the day starts, but before we
5 go out on the street.

6 Q. And the whole team meets to discuss logistics for the day?

7 A. Yes.

8 Q. All those people that we just talked about, Regina,
9 Deltoro, they were all part of this tac meeting, right?

10 A. Yes.

11 Q. And one of the things you do at the tac meeting is you
12 select which neighborhoods to go to?

13 A. Yes, these locations are chosen based upon community
14 complaints.

15 Q. You pick six or seven neighborhoods in any given day to go
16 conduct operations in, right?

17 A. Yes, but we -- just because it is on the tac plan as where
18 you might go there, we don't go to every location.

19 Q. You also bring standard equipment out into the field with
20 you, right?

21 A. Yes, we do.

22 Q. That includes chains and shackles?

23 A. I'm not sure exactly what the rest of the team brings out.
24 I'm responsible for my equipment.

25 Q. The buy and bust team as a team brings chains and shackles

N3d3fra3

UC 84 - Direct

1 with them, right?

2 A. I'm not sure. As an undercover I don't operate in those
3 other roles. So, it's a better question for one of the
4 detectives that would possibly be in that situation.

5 Q. You don't know what the rest of the team brings?

6 A. I have a general idea. But I don't know if they always
7 have leg shackles or not. I know everyone carries a radio and
8 police identification.

9 Q. You were part of this tac meeting, right?

10 A. I was.

11 Q. In this case?

12 MR. BLOCH: Could we show PX 1 again, the tac plan.

13 We can show both the witness and the jury.

14 Q. You agree, Detective, that the tac plan includes a list of
15 the equipment that you bring each day, right?

16 A. Yes.

17 Q. And right in the middle of the page, does it say that the
18 equipment that you brought, among other things, was chains and
19 shackles?

20 A. I see chains written down there in the check mark box. But
21 again, I have no knowledge of what people bring out just
22 because it's marked on a box. Yeah, that's up to the prisoner
23 van and the detectives who do the arrests.

24 Q. But just so we're clear, you do see the part of the page in
25 the middle where it says equipment: Chain and shackles?

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1 A. I see where it says chains. I don't see shackles.

2 Q. Do you see where it says prisoner van?

3 A. Yes.

4 Q. Do you see where it says chains and shackles there?

5 A. Yes. I was looking above that where it says chains.

6 Q. You also bring what's called a prisoner van, right?

7 A. Yes. The field team drivers the prisoner van.

8 Q. You agree with me that you may arrest four or five people
9 in any given buy and bust operation?

10 A. Yes, the arresting officer would.

11 MR. BLOCH: We can take that down.

12 Q. Another piece of equipment you bring with you is called a
13 kel device, right?

14 A. Yes.

15 Q. That's K-E-L?

16 A. Yes, K-E-L.

17 Q. A kel device is a one-way transmitter?

18 A. Yes, it is.

19 Q. You have the transmitter on your person, right?

20 A. Yes, I do.

21 Q. That's the part that you speak into?

22 A. I don't speak into it. It's on my person and it picks up
23 sounds around me.

24 Q. Okay. The receiver, the hearing part, is in the leader's
25 vehicle, right?

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1 A. Yes.

2 Q. And that way the officer in the leader's vehicle can hear
3 what's going on around you, the undercover?

4 A. That's the idea behind it, yes.

5 Q. The kel device is one way the undercover communicates with
6 the field team, right?

7 A. No. I wouldn't say communicates with the field team as
8 using the kel.

9 Q. I'm sorry?

10 A. No. I would say no, it's not a communication device.

11 Q. Well, they can hear you, and whatever is going on around
12 you, right? It is a one-way transmitter, right?

13 A. It is a one-way transmitter that doesn't work 90 to
14 95 percent of the time.

15 Q. So the NYPD -- well, that device exists for your safety,
16 right?

17 A. Yes.

18 Q. And these are very dangerous operations, right?

19 A. Yes.

20 Q. And is it your testimony that the NYPD outfits you with a
21 device that doesn't work 95 percent of the time?

22 A. Yes. The kels are technology from the '70s and '60s.

23 Q. Well, let's talk about whether this one worked.

24 You turn on the kel as soon as you step out of the
25 vehicle, right, and begin the operation?

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1 A. Yes.

2 Q. And you don't turn it off until the operation is over,
3 right?

4 A. Correct.

5 Q. So the kel is running the entire time you are conducting
6 the operation?

7 A. Yes.

8 Q. Lieutenant Patane was the one in the leader vehicle
9 listening to the receiver; isn't that true?

10 A. Because I'm not near the vehicle, I can't testify as to who
11 was or was not around the receiver.

12 Q. Well, don't you test the kel with Lieutenant Patane?

13 A. Prior to going out on the street, yes.

14 Q. So, isn't it true that Lieutenant Patane was the one in the
15 leader vehicle with the receiver?

16 A. Again, I was not near the van where the receiver was, so I
17 cannot testify as to who was or was not around the receiver.

18 Q. Detective, you gave testimony at Mr. Fraser's trial in this
19 case; isn't that true?

20 A. Yes.

21 Q. And that was in 2015?

22 A. Yes.

23 Q. And you were under oath when you testified at that trial?

24 A. Yes.

25 Q. And that means that you are sworn to tell the truth, right?

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1 A. Yes.

2 Q. The prosecutor was asking you questions?

3 A. Yes.

4 Q. And defense attorney was asking you questions, right?

5 A. Yes.

6 Q. And at trial, were you asked these questions and did you
7 give these answers?

8 And I'm referring to page 65, line 16.

9 MR. FRANCOLLA: Mr. Bloch, can you point us to the
10 date by chance?

11 MR. BLOCH: Of the testimony?

12 MR. FRANCOLLA: Yes.

13 MR. BLOCH: November 18.

14 MR. FRANCOLLA: Okay.

15 Q. Were you asked these questions and did you give these
16 answers:

17 "Q. This device known as a kel transmits sound to a receiver.
18 I think that you said would be in the leader's vehicle, right?

19 "A. Yes.

20 "Q. That would be in this particular instance the vehicle that
21 Lieutenant Patane was operating, right?

22 "A. Yes."

23 Did you give that testimony?

24 A. Yes. But what I did not say was who was listening to the
25 transmitter. I don't know if Lieutenant Patane switched spots

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1 with anybody. But it was assigned to his vehicle.

2 Q. Well, isn't it true that you test the kel to make sure it's
3 working multiple times before you go out in the field?

4 A. Yes, every day we test the kel prior to going out on the
5 street.

6 Q. You test it in the precinct before you go out in the field,
7 right?

8 A. Out in the parking lot, yes.

9 Q. Of the precinct?

10 A. Of the building, yes.

11 Q. Okay. And you test it again as you step out of the
12 vehicle, right?

13 A. Yes.

14 Q. And the way you test it is you speak into it, and then the
15 leader gives you a green, a green once he hears the
16 transmission, right?

17 A. Correct.

18 Q. And you did that in this case?

19 A. Yes.

20 Q. And leader who gave the green was Lieutenant Patane, right?

21 A. Yes.

22 Q. And the kel was operational in this case, right?

23 A. When I first stepped out of vehicle, the kel worked, yes.

24 Q. And that's something specifically that Lieutenant Patane is
25 charged with documenting, right, whether or not the kel works,

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1 right?

2 A. I'm not sure if he has to document it or not.

3 MR. BLOCH: Can we show the tac plan again, PX 1,
4 please.

5 Q. Do you see, Detective, in the upper third of the page that
6 one of the things that is specifically asked is whether the kel
7 is operable, and it's checked with the name Lieutenant Patane,
8 and actually is the signature by Lieutenant Patane right next
9 to where he said it was operable? Do you see that?

10 A. Yes.

11 MR. BLOCH: We can take that down.

12 Q. The kel has the capability of recording, right?

13 A. Yes, it does.

14 Q. But according to you, the kel wasn't set to record on
15 October 21, 2014, correct?

16 A. In my 16 years as an undercover, the kel was not been
17 recorded once.

18 Q. Is that because it doesn't work, according to you,
19 95 percent of the time?

20 A. Yes. The kel relies based upon a point-to-point waves, so
21 the receiver has to be within line with the transmitter. And
22 in Manhattan, the second you walk around the corner, there is a
23 building in the way and the kel goes dead. From training and
24 working with it, all you hear on the other end is scratching
25 loud noises, and so, we treat the kel as a safety device.

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1 That's solely what it's used for. It's not used for any sorts
2 of evidence collection.

3 The hope is if I'm in a stairwell, if I'm in an area
4 where I need help, and a fight is happening, that possibly or
5 hopefully, one or two sentences or words come over that will
6 alert the team to let them know I'm in trouble.

7 Q. So even though, according to you, the kel device never
8 works and never records, it's used in every single drug
9 operation you conduct, right?

10 A. Yes.

11 Q. You also bring something into the field called prerecorded
12 buy money?

13 A. Yes, I do.

14 Q. And the way that works is one of the officers Xeroxes the
15 serial numbers of some dollar bills?

16 A. Yeah, they -- it's regular U.S. currency that is
17 photocopied usually by the arresting officer, and it's
18 photocopied so all the serial numbers are visible. So money,
19 if they make any arrests, they could match up the money to the
20 Xeroxed copy.

21 Q. You compare the money, the serial numbers with any money
22 you may recover from somebody in the field to see if they
23 match, right?

24 A. Well, I don't. That's the arresting officers and the field
25 team's job. I just purchase narcotics.

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1 Q. That's the way it works with prerecorded money. That's a
2 way to check whether the money used in a transaction is the
3 same money that winds up in somebody's pocket, right?

4 A. Yes.

5 Q. And you are given the buy money after the tac meeting?

6 A. Yes, I am.

7 Q. You carry all the money for the operations for that day?

8 A. Myself or the other undercover, other undercover or
9 undercovers I'm with.

10 Q. You agree -- well, on October 21, 2014, you were carrying
11 some prerecorded buy money, right?

12 A. Yes.

13 Q. You also had your cell phone with you?

14 A. Yes.

15 Q. I want to talk about how you document what happens in the
16 field. Okay?

17 I'm just orienting you.

18 A. Okay.

19 Q. There is a process after you make an arrest for documenting
20 the arrest after the fact, correct?

21 A. Yes.

22 Q. There are specific reports that you are trained to fill out
23 after you make an arrest?

24 A. Yes, after the arresting officer makes an arrest, yes.

25 Q. Well, there are specific reports that you as the undercover

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1 are trained to fill out in addition to what the arresting
2 officer fills out, right?

3 A. Yes.

4 Q. One of those reports is called a buy report?

5 A. Yes.

6 Q. And that's also known as a DD-5?

7 A. Those are two separate reports.

8 Q. You filled out a buy report in this case, right?

9 A. I did not.

10 Q. You did not fill out a buy report in this case?

11 A. No. I filled out a DD-5 in this case.

12 Q. Okay. The DD-5 is where you document the so-called
13 undercover buy attempts, right?

14 A. The DD-5 is an informational report which we do during any
15 types of transactions that do not result in the undercover
16 purchasing actual narcotics.

17 Q. So, let's just show, you filled out one report in this
18 case, right?

19 A. No.

20 Q. You filled out more than one report?

21 A. Yes.

22 Q. Which reports did you fill out in this case?

23 A. I did an expense report that shows which money was expended
24 during the day's operation, and then also a DD-5 which is a
25 synopsis of the events that happened.

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1 Q. I stand corrected. You filled out two reports, right?

2 A. Yes.

3 Q. You filled out one report that details what you say
4 happened in the field, right?

5 A. Yes.

6 Q. The expense report is a way to account for the prerecorded
7 buy money, right?

8 A. Correct.

9 Q. But it's the DD-5 that documents what you say happened in
10 the field, right?

11 A. Yes.

12 MR. BLOCH: Could we show PX 9, please, to the witness
13 and the jury.

14 Q. This is the DD-5 that you filled out in this case, right?

15 A. Yes.

16 Q. And just to orient the jury to what's on this form. There
17 is a blank space in the middle where you write down what you
18 say happened in this case, right?

19 A. In the middle of the report is my synopsis of what
20 happened, yes.

21 Q. You can write whatever you want in there, right?

22 A. I write the events that happened that day.

23 Q. And you know that when you fill out that document, that
24 that document will be used by prosecutors to understand what
25 you say happened, right?

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1 A. Yes.

2 Q. You know that prosecutors will use your reports to make
3 decisions about whether to charge people with crimes, right?

4 A. Yes.

5 Q. You know that other officers may rely on your reports to
6 refresh their recollections?

7 A. I do.

8 Q. You know that this document could become evidence in a
9 criminal case, right?

10 A. Yes.

11 Q. You also know that you may need to testify about what
12 happened, right?

13 A. I do.

14 Q. And you use this document to refresh your recollection if
15 you have to testify, correct?

16 A. If I need to refresh my memory, I do come back to this
17 document, yes.

18 Q. You created this report on October 22 in the early morning
19 hours; isn't that right?

20 A. Yes.

21 MR. BLOCH: We can take that down.

22 Q. Detective, sticking with the subject of documents, the day
23 after you created this DD-5, you helped create what's called a
24 criminal court complaint, right?

25 A. Criminal court complaint is done with the arresting officer

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1 and the district attorney.

2 Q. Well, we'll show the complaint in a minute. But, generally
3 speaking -- well, let's just show it.

4 MR. BLOCH: Can we show the complaint. That's PX 6,
5 please.

6 Q. I'm showing PX 6 on the monitors. This is the criminal
7 court complaint for Mr. Fraser's case, right?

8 A. It appears to be, yes.

9 Q. And the way, what it says, I won't go through all of it
10 yet. But it is signed by Detective Regina, right?

11 A. Yes.

12 Q. And there is a part in the middle that says the factual
13 basis for this charge is as follows, right?

14 A. Yes.

15 Q. And then it says I am informed by UC 84 that informant was
16 conducting a buy and bust operation when he was approached by
17 the defendant. And then it goes on, right?

18 A. Yes.

19 Q. And so, the way a complaint is generated, is you tell
20 Detective Regina what happened, and he tells the prosecutor I
21 am informed by UC 84 that this happened. Right?

22 A. Yes.

23 Q. And you know that's how the process works, right?

24 A. Yes.

25 Q. And then Detective Regina signs this document under oath,

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1 right?

2 A. Yes, he does.

3 Q. And that very day Jawaun Fraser is charged with a crime
4 based on this document, right?

5 A. I'm not exactly sure the whole process, but, if that's what
6 you say.

7 Q. You know this is the charging document in a case, right?

8 A. Yes, it is.

9 Q. And the charges in this case are based on what you said
10 happened, right?

11 A. Yes.

12 Q. As a police officer, you are trained on the elements of
13 certain crimes, right?

14 A. Yes.

15 Q. And in this case, Mr. Fraser was initially charged with
16 robbery in the second degree, right?

17 A. That's what it says there. I didn't know that at the time.

18 Q. Well, that's what he was charged with that day, right?

19 A. That's what this form says, yes.

20 Q. You know that robbery in the second degree -- well, it's
21 defined on this form, right? What it says is on or about
22 October 21, 2014, at about 8:10 p.m. at 465 East Tenth Street,
23 in the County and State of New York, the defendant forcibly
24 stole property while being aided by another person actually
25 present.

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1 Right?

2 A. That's what it says.

3 Q. And you know that it is the "while being aided by another
4 person actually being present" that makes this a second degree
5 robbery, right?

6 A. No, I don't.

7 Q. You know that somebody faces 15 years for robbery in the
8 second degree?

9 A. I do not.

10 Q. You don't know what makes up the elements of robbery?

11 A. I deal with drug crimes. I'm more up on drug laws. Very
12 rare that I'm involved in any sort of robbery. So I do not
13 know all the ins and outs of every single robbery charge, no.

14 Q. Okay. Well, according to this complaint, you said
15 defendant -- that refers to Mr. Fraser, right? Defendant then
16 called approximately six other individuals over who stood close
17 to informant. Right?

18 A. That's what it says on this paper. What I wrote on my DD-5
19 and what I testified to is what actually happened.

20 Q. So you agree with me that what this charging document says
21 is not what actually happened, right?

22 A. In this case, the defendant was Mr. Fraser. Mr. Fraser was
23 standing approximately 6 inches from my face, and there was
24 approximately five to six other males standing feet away
25 telling Mr. Fraser to fuck me up.

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1 Q. Right. But my question is, well, this complaint states
2 that you said defendant called approximately six other
3 individuals over who stood close to you, right?

4 A. That's what this paper says, yes.

5 Q. You agree that's not what actually happened in this case,
6 right?

7 A. They did not stand closer than 5 feet to me.

8 Q. And he also didn't call them over, right?

9 A. I don't recall that.

10 THE COURT: What does that mean, "I don't recall
11 that"?

12 THE WITNESS: I don't recall the -- I don't remember
13 whether or not he called individuals over.

14 Q. Whether or not you said that, we can agree that that's what
15 this charging document says he did, right?

16 A. Yes.

17 Q. You also claim that he said to you give me your money and
18 your ID or I'll fuck you up, right?

19 A. Yes.

20 Q. And just so we're clear on the timeline. Mr. Fraser was
21 arrested on October 21, 2014, right?

22 A. I believe so. That's the date, yes.

23 Q. And you created the buy report that very night, right?

24 A. Yes, into the next morning's hours, but yes, that night.

25 Q. And this complaint was generated the next day, right?

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1 A. I'm not sure exactly when it was generated.

2 Q. Well, this was signed on October 22, 2014, right?

3 A. Okay, yes.

4 Q. And Jawaun Fraser was then charged with second degree
5 robbery because of the things that you claimed he did, right?

6 A. Yes.

7 Q. Now, another important part of your job is testifying in
8 court?

9 A. Yes.

10 Q. When someone is charged with a crime based on what you say
11 happened, you often need to testify about what you say
12 happened, right?

13 A. Yes.

14 Q. You are trained in testifying?

15 A. Not really trained, but there's a very small amount of
16 training during the police academy about testifying. But, yes
17 testifying is important.

18 Q. Detective, just going back for a second. You claim that
19 the truth about what happened is what you put in your DD-5?

20 A. Yes.

21 MR. BLOCH: Can we just show PX 9.

22 Q. Isn't it true you also said in your DD-5 that Mr. Fraser
23 called over some other persons?

24 THE COURT: Does it say that? Yes or no?

25 THE WITNESS: I'm reading it, ma'am.

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1 Yes.

2 MR. BLOCH: Okay. We can take that down.

3 Q. Going back to testifying. You've testified in the grand
4 jury hundreds of times, right?

5 A. Yes.

6 Q. You've testified in criminal trials more than 10 times?

7 A. Probably around 10. Maybe a little more.

8 Q. And you agree that before you testify, you review your
9 paperwork, right?

10 A. Yes, I refresh my memory with my paperwork, yes.

11 Q. You also review your grand jury testimony, right?

12 A. I do.

13 Q. You also meet with the prosecutor to help you prepare to
14 testify?

15 A. Yes.

16 Q. You also speak with your colleagues about what happened
17 before you testify, right?

18 A. Yes.

19 Q. In this case you had spoken with Detective Regina about the
20 incident before you testified, right?

21 A. I don't have an independent recollection of that, but it
22 would not be rare to talk to the arresting officer, no.

23 Q. You had spoken with Detective Deltoro about the incident,
24 right?

25 A. Again, I don't have an independent recollection of talking

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1 to Detective Deltoro, but I most likely would have.

2 Q. Well, you testified at trial in this case, right, we talked
3 about that?

4 A. Yes.

5 Q. And did you give this testimony at trial, page 60, line 23:

6 "Q. And did you discuss with some of your team members, let's
7 say Detective Regina, did you talk to him about the occurrences
8 of October 21, 2014?

9 "A. Yes."

10 Did you give that testimony?

11 A. Yes.

12 Q. Going to page 61, line 11. Were you asked this question
13 and did you give this answer:

14 "Q. And before you testified here, you had occasion to discuss
15 it with Detective Deltoro; is that right?

16 "A. Yes."

17 Did you give that testimony?

18 A. Yes.

19 Q. Does that refresh your recollection that you had spoken to
20 both Detective Regina and Detective Deltoro about this incident
21 before you testified?

22 A. Yes, I would have talked to them.

23 Q. Isn't it true, Detective, that you pretty much always
24 remember the cases that you testify about?

25 A. If I'm testifying about it, it's because I remember it.

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1 Q. So you would agree with that, that you pretty much always
2 remember the cases that you testify about, right?

3 A. Yes.

4 Q. And you know that you may need to testify multiple times
5 after you make an arrest, right?

6 A. Yes. After I make a buy and the arresting officer makes an
7 arrest, I do have to testify.

8 Q. And in this case, you have actually testified more than
9 five times, right?

10 A. I'm not sure the exact amount. But, yes, if that's what
11 you say.

12 Q. You testified at the grand jury, right?

13 A. Yes.

14 Q. You testified in the pretrial hearing?

15 A. I did.

16 Q. You testified at Mr. Fraser's trial?

17 A. Yes.

18 Q. You testified in the deposition about this case?

19 A. Yes.

20 Q. And you're testifying now, right?

21 A. Now is the fifth. You said more than five.

22 Q. You're right. I stand corrected.

23 And you in fact have an independent recollection of
24 this incident?

25 A. I do.

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1 Q. Even before reviewing any paperwork or documents, you have
2 an independent recollection of this whole incident, right?

3 A. Yes.

4 Q. So let's talk about what actually happened on October 21.

5 Detective, the neighborhood where you went to conduct
6 this operation is called the Jacob Riis Houses, right?

7 A. Yes.

8 Q. And you had conducted drug operations in that area before?

9 A. Yes, I've had purchases in that area.

10 Q. In fact, you have been going to that location regularly for
11 years, right?

12 A. Yes.

13 Q. And you had purchased drugs and made arrests there before?

14 A. I don't make arrests. I purchase drugs. Arrests are made
15 by the field team.

16 So yes, I've purchased drugs, and the field team has
17 made arrests.

18 Q. So, just to be clear, you have purchased drugs and people
19 have been arrested as a result of drugs you purchased, right?

20 A. Yes.

21 Q. Do you agree with me that you had never interacted with
22 Mr. Fraser before the day you arrested him, right?

23 A. Not to my knowledge.

24 Q. And as far as you are aware, nobody on your field team had
25 ever interacted with him before that day, right?

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1 A. Not to my knowledge.

2 Q. Now, on October 21, you arrived to the location some time
3 between 7:30 or 8 or thereabouts?

4 A. Yeah, around that time.

5 Q. And you walked around the neighborhood trying to purchase
6 drugs?

7 A. I did.

8 Q. You had a conversation with somebody named Diane -- you
9 knew her as Diane, right?

10 A. Yes.

11 Q. You had seen Diane in the neighborhood before?

12 A. Yes.

13 Q. Did you approach her or did she approach you?

14 A. I don't remember at this time who approached who. But I
15 did have a conversation with her about buying crack cocaine.

16 Q. And you told her in fact that you were looking for \$50
17 worth of crack?

18 A. Yes, I used the street term krills, but that means crack
19 cocaine.

20 Q. And you then handed her \$50?

21 A. Yes, I did.

22 Q. And the \$50 you handed her was prerecorded buy money,
23 right?

24 A. Yes, it was.

25 Q. And you say she then agreed to make a phone call to get you

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1 \$50 worth of crack, right?

2 A. I observed Diane make a phone call, yes.

3 Q. Right. And you testified at trial that you actually
4 observed her make a phone call, right?

5 A. Yes.

6 Q. You said you actually heard her and saw her make a phone
7 call, right?

8 A. I did.

9 Q. And you said that Diane said to you that she would make a
10 phone call to bring someone to you, right?

11 A. She told me someone was going to come down from the
12 buildings, speaking about 118 Avenue D.

13 Q. And that she was going to make a phone call, right, to
14 bring that person down?

15 A. Yes.

16 Q. Diane then walked away with your \$50, right?

17 A. Diane walked towards 118 Avenue D, and I sat on the benches
18 where she told me to sit in front of 108 Avenue D, which is,
19 you know, approximately 20 to 30 feet away from where Diane was
20 standing.

21 Q. Was it your understanding that Diane lived in 108 or 111?

22 A. I am unsure of where Diane lived.

23 Q. But she didn't give the \$50 back, right?

24 A. No, I never received the \$50 back that day.

25 Q. The \$50 prerecorded buy money is potential evidence of a

1 crime, right?

2 A. Yes.

3 Q. And you're specifically trained to keep track of what
4 happens to that evidence?

5 A. As undercovers we try our best to see where the money goes,
6 but that's not always possible.

7 Q. But you know that Diane never gave you the \$50 back, right?

8 A. Yes.

9 Q. Now one of the times you testified in this case was in a
10 pretrial hearing we talked about, right?

11 A. Yes.

12 Q. And you were under oath during that hearing?

13 A. I was.

14 Q. Meaning you swore to tell the truth under penalty of
15 perjury?

16 A. Yes.

17 Q. And were you asked this question and did you give this
18 answer:

19 "Q. And did she say anything to you or Mr. Fraser at that
20 time?

21 "A. Not to my memory, other than Diane said here is your money
22 back, and gave me \$50."

23 Did you give that testimony under oath?

24 A. I did.

25 Q. So, to be clear, under oath, you claimed that you had a

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1 memory of her saying to you here's your money back, right?

2 A. Yes.

3 Q. And under oath you claimed that you had a memory of her
4 actually handing the money to you, right?

5 A. Yes.

6 Q. And neither of those things actually happened, right?

7 A. No, they did not.

8 Q. I'd like to talk about your interaction with Jawaun. Okay?

9 A. Yes.

10 Q. At some point, Jawaun starts talking to you, right?

11 A. As I am sitting on the bench, Jawaun was standing near the
12 railing of 108 Avenue D and started yelling at me.

13 Q. I see. The first thing that happened is Jawaun started
14 yelling at you?

15 A. Yes. He was talking to me in a loud voice. He wasn't
16 screaming. But it was an agitated voice, and he was asking me
17 what I was doing there.

18 Q. Isn't it true that when he first started talking to you, he
19 was talking in a normal level?

20 A. He was talking in an elevated voice, which I noticed.

21 Q. I see. So we've gone from yelling to elevated?

22 A. Yes. He wasn't, as I said, he wasn't screaming. But he
23 was speaking loudly and seemed agitated and he was asking me
24 what I was doing there.

25 MR. BLOCH: One moment, Judge.

1 Q. Isn't it true, Detective, that he was talking in a normal
2 level?

3 A. When I first encountered Mr. Fraser, he was talking loud
4 enough so I could hear him from 10 to 15 feet away. Speaking
5 at normal level, it's not exactly normal. It was elevated, and
6 he was asking me what I was doing there.

7 Q. Well, you gave testimony in this deposition in this case,
8 right?

9 A. Yes.

10 Q. And you were under oath?

11 A. Yes, I was.

12 Q. And were you asked this question and did you give this
13 answer.

14 "Q. Was he more than --

15 MR. FRANCOLLA: Sorry. Page and line?

16 THE COURT: I'm sorry. I can't, Mr. Francolla.

17 MR. FRANCOLLA: I'm asking that we get notified of the
18 page.

19 THE COURT: Page and line, please.

20 MR. BLOCH: Apologies. Page 134, line 6.

21 "Q. Was he more than arm's length from you?

22 "A. Yes, he was feet away. He was at least 10 feet, like, you
23 know, to where, like, I could talk at a normal level and he
24 hears me, and he talks in a normal level and we hear each
25 other, but not close enough where we can touch each other."

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1 Did you give that testimony?

2 A. Yes. But I did not say that he was talking at a normal
3 level. I said I could talk at a normal level and he could hear
4 me. But he was talking at an elevated level.

5 Q. He is at least 10 feet away from you at that point, right?

6 A. Yes.

7 Q. When he first talked to you -- withdrawn.

8 One of the things, one of the first things you
9 remember Mr. Fraser asking you was whether or not you were a
10 police officer, right?

11 A. Yes.

12 Q. And you agree with me, Detective, that he never offered to
13 sell you drugs, right?

14 A. No, he never offered to sell me drugs.

15 Q. As far as you recall, you never asked him for drugs, right?

16 A. I did not ask him for drugs, no.

17 Q. You never asked him if he knew anyone who sold drugs,
18 right?

19 A. I did not.

20 Q. And during this interaction, there were other people
21 around, right?

22 A. Yes, after Mr. Fraser started speaking with me, I noticed
23 five to six other individuals in front of 108 Avenue D.

24 Q. And the truth is, you don't know whether Mr. Fraser was
25 with that group or not, right?

N3d3fra3

UC 84 - Direct

1 A. I'm not sure if he was in the group before I noticed him or
2 not, no.

3 Q. Right. So the truth is, you don't know whether Mr. Fraser
4 was with that group or not, right?

5 A. Right.

6 Q. And the truth is, you never saw him physically standing
7 with that group of people, right?

8 A. I did not.

9 Q. You don't recall Mr. Fraser saying anything to that group
10 of people, right?

11 A. I don't recall, no.

12 Q. You testified at trial on this issue, right?

13 A. I did.

14 Q. And you testified that he did have one or two sentences of
15 conversation with them, but I don't remember what he said,
16 right?

17 A. If that's what you are saying the minutes say, then I said
18 that at trial, and that's what I remembered at the time. Right
19 now, I don't remember him having conversations with the group.

20 Q. Now, at some point --

21 MR. BLOCH: One moment, Judge. I apologize.

22 Q. At some point, you and Mr. Fraser came face to face, right?

23 A. Yes, Mr. Fraser approached me as I was sitting on the
24 bench, and stood directly in front of me and I stood up.

25 Q. And at some point you say Mr. Fraser was calling you a cop,

1 right?

2 A. He was asking whether or not I was a cop, yes.

3 Q. And you claimed -- if we can put up the criminal court
4 complaint, PX 6, please.

5 You claimed in the criminal court complaint that
6 Mr. Fraser said to you "Give me your money and ID or I'll fuck
7 you up," right?

8 A. That's what it says on this piece of paper, yes.

9 Q. Because that's what you claimed happened, right?

10 A. That's -- Mr. Fraser did demand my ID and money, yes.

11 Q. Isn't it true that you claimed that Mr. Fraser said "Give
12 me your money and ID or I'll fuck you up"?

13 A. I don't remember the exact phrasing now, almost 10 years
14 later. But, he did threaten to beat me up. He was balling up
15 his fists and he came within 6 inches of my face.

16 Q. My question is, what you said he said in October 2014 and
17 reading from the complaint, isn't it true that you claimed he
18 said "Give me your money and ID or I'll fuck you up"?

19 A. I don't fill this out. This piece of paper is done by the
20 AO and the ADA. My testimony is what I remember and my notes
21 and my DD-5 are what happened.

22 Q. I see. So, did Detective Regina tell something untrue to
23 the district attorney on his own?

24 MS. McGUIRE: Objection.

25 THE COURT: Objection sustained.

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1 Q. Are you denying that you said these things that Detective
2 Regina says you said?

3 A. No. What I'm saying is now, being so far along ago, I
4 don't remember every single sentence that Mr. Fraser said to me
5 during the event.

6 Q. Don't you have an independent recollection of what happened
7 that day?

8 A. I do.

9 Q. Before I move on, you agree that this criminal court
10 complaint is not accurate, right?

11 A. Other than the part with the other individuals approaching
12 me, it's accurate. It's just the other individuals, I don't
13 remember ever saying that they approached me.

14 Q. Okay. So you claim that he said to you "Give me your money
15 and ID or I'll fuck you up," right?

16 A. I don't remember the exact phrasing of every sentence of
17 that night. But, he did threaten me. He did get within
18 6 inches of my face. And was threatening to beat me up.

19 THE COURT: Let's move on, please.

20 Q. Well, you claim that the truth is reflected in your buy
21 report, right?

22 A. In my DD-5.

23 Q. Your DD-5, right?

24 A. That and my testimony, yes.

25 Q. We're going to talk about your testimony. But, I want to

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1 first read what you said happened that day in your DD-5. If we
2 could put up PX 9, please. This is your DD-5 on the screen,
3 right?

4 THE COURT: Oh, for crying out loud.

5 A. Yes.

6 Q. And did you say in this DD-5 -- J.D. Black refers to
7 Mr. Fraser, right?

8 A. Yes.

9 Q. "J.D. Black told me to show him my ID to show I was not a
10 cop or else we would punch me in the face."

11 A. Yes.

12 Q. "I stood up from the benches as J.D. Black got closer.
13 J.D. Black started balling up his fists. J.D. Black called
14 over some other persons. There was a group of six who stood
15 5 feet off to my right. J.D. Black then told me to give him my
16 money or else he'd fuck me up. I took out \$20 prerecorded buy
17 money and my ID."

18 Did you write that in the buy report?

19 A. Yes, I did.

20 MR. BLOCH: We can take that down.

21 Q. Detective, you were asked in your deposition in this case
22 to just tell the whole story from start to finish in your own
23 words, right?

24 A. I don't remember every question in the deposition, but if
25 that's what you say, then, yes.

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1 Q. Well, I'd like to read from page 98, line 13 of your
2 deposition:

3 "Q. And what was that recollection?

4 "A. I recall basically almost the whole incident. I just
5 don't, before reviewing everything, I didn't recall the words
6 and everything that was said because of the time frame but I do
7 remember the whole incident.

8 "Q. And can you describe what you remember before your memory
9 was refreshed?

10 "A. Yes. So I remember going to a location and interacting
11 with a female. I remember she telling me that she was calling
12 somebody up to bring me down drugs. She took money from me. I
13 gave her money. At that point in time, I was waiting for the
14 drugs. A male approached me and there was a group of males off
15 to the side, a group of persons. They were all yelling to fuck
16 me up. The male in front of me was balling his fists and being
17 very aggressive and demanded to know if I was a cop or not. I
18 gave him my excuses, and I told him I didn't need anything from
19 him. At which time, I showed him my license to show him I
20 wasn't a cop. And he took -- snatched my ID and money out of
21 my hand. I then remember being really afraid of the situation.
22 I was kind of backed up against a bench, stepped off to the
23 side and someone yelled there's the cops, I remember that, and
24 then he ran at me. We tussled for a second. The subject then
25 ran away northbound and I remember chasing him to let the field

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1 team know where he was going."

2 And then it goes on. Right? Did you give that
3 testimony?

4 A. Yes.

5 Q. You agree that when you were asked to tell that story start
6 to finish, you didn't say one word about Mr. Fraser demanding
7 your identification?

8 A. I didn't review all of my paperwork. That question was
9 what I remembered before reviewing any paperwork.

10 Q. Okay. Well, let's talk about what you said after you
11 reviewed your paperwork. Page 100, line 2.

12 "Q. And what additional details did you recall after you
13 refreshed your recollection with various documents?

14 "A. After I refreshed my memory, the money values I
15 remembered, so you know, I gave \$50. I remember the female's
16 name being Diane. I remember the subject's name being Mr.
17 Fraser and I remember having \$20 and the ID in my hand that he
18 took. I remember the group yelling for him to punch me, and I
19 remember him telling me he was going to get me good and
20 reaching into his waistband."

21 Right?

22 A. Yes.

23 Q. Do you still agree with me that in all of that testimony,
24 before reviewing your paperwork, after reviewing your
25 paperwork, you never said one word about Mr. Fraser demanding

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1 your ID?

2 A. During the deposition, no. During all of my prior
3 testimony, yes.

4 Q. In that story that we just read, you didn't say one word
5 about Mr. Fraser demanding your money, right?

6 A. I'm sorry. What story are you talking about?

7 Q. What I just read. You didn't say a word about Mr. Fraser
8 demanding money, right?

9 A. No, but I said Mr. Fraser snatched the ID and money out of
10 my hand.

11 Q. You didn't even say he asked for money.

12 A. During the deposition, no.

13 Q. You didn't even say he asked for your ID?

14 A. During the deposition, no.

15 Q. Well, at trial, you were also asked to testify as to what
16 Mr. Fraser supposedly said to you, right?

17 A. Yes.

18 Q. Let's read what you said at trial.

19 THE COURT: Page, line?

20 Q. Page 42, line 24:

21 "Q. Now when he got to within a few feet of you, what did he
22 say?

23 "A. The defendant walked in right into my personal space. He
24 was, you know, less than a foot away and he again started
25 saying how do I know you're not a cop. Do you have ID on you.

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1 Things of this nature. While he was still, like, elevated,
2 almost yelling voice.

3 "Q. In addition to the defendant, did you notice anybody else
4 in that area, in the area at that point?

5 "A. Yes. At this point I heard a group of individuals to my
6 right, which would have been just east of me there. They were
7 approximately 10 to 15 feet away. Who started yelling towards
8 myself and the defendant things like punch him, fuck him up,
9 things like that.

10 "Q. How did the defendant react when they were saying things
11 like that?

12 "A. As the yelling was going on to my right, the defendant was
13 still in my face still asking me to prove I wasn't a cop. I
14 told him I had ID on me. I would show him I wasn't a cop. I
15 then took an ID out of my pocket. The defendant was
16 threatening to punch me, to beat me up. I showed, as I took
17 the ID out of my pocket, I had \$20 which I keep folded up next
18 to my ID which is, you know, I took it all out of my pocket at
19 one time. And I showed the defendant still holding my ID.
20 Look, see, I have an ID. A cop wouldn't show you an ID as he
21 was still yelling at me."

22 THE COURT: Yes?

23 Q. Did you give that testimony?

24 A. Yes.

25 Q. There is a little bit more.

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1 "Q. At that point, is the defendant satisfied that you showed
2 him the ID? Does he stop at that point?

3 "A. No, he does not.

4 "Q. What does he do with regard to the identification that you
5 had?

6 "A. As I was holding it, I just showed it so he could observe
7 it. The defendant takes it, kind of snatches it out of my
8 hand, my right hand, with the \$20 that was also in my hand."

9 Did you give that testimony at trial?

10 A. Yes.

11 MS. McGUIRE: Can you please read the next question
12 and answer for completeness.

13 THE COURT: No, you can do that.

14 MR. BLOCH: I would be happy to.

15 THE COURT: Okay.

16 "Q. So what did he do with the ID when he had it?

17 "As he took the ID, I was like yo, give that back, you know.
18 It's my ID. I need it. And then the defendant says I just
19 want to look at it. I just want to, you know, see who you are.
20 And then takes out a cell phone and snaps the picture. The
21 flash goes off on my ID."

22 Did you give that testimony?

23 A. Yes.

24 Q. When you told the story at trial, you claimed what he said
25 was do you have ID on you, right?

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1 A. Yes.

2 THE COURT: Move on, please.

3 MR. BLOCH: Okay, Judge.

4 Q. Isn't it true, Detective, that you offered to show
5 Mr. Fraser your ID before he ever said anything about it?

6 A. No.

7 Q. That's not true?

8 THE COURT: He just said no. Ask your next question.
9 Don't argue with him. Don't repeat. Ask your next question.

10 MR. BLOCH: Okay.

11 Q. Did you give this testimony in your deposition, Detective.

12 THE COURT: Page, line?

13 MR. BLOCH: Page 143, line 9.

14 "Q. Was he the one that asked you for your ID or did you offer
15 to show it to him to prove that you weren't an undercover?

16 "A. When he first was interacting with me, when he was up
17 close in my face and he kept calling me a cop, I did say, no,
18 listen, you know, I have an ID. Like I'm a normal person. I'm
19 not a cop. At which point he then said, you know, give it to
20 me. I held it in my hand to show him and that's when he
21 snatched it out of my hand.

22 "Q. Why would having a license show that you are a normal
23 person? Like how would it prove you are not a cop?

24 "A. Because an undercover is not going to give somebody their
25 personal information. Not going to show their real name.

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1 They're not going to, oh, this has an address, this is a real
2 person, you know, not everybody knows that we have you know,
3 fraudulent IDs, so it does put a lot of people at ease."

4 Did you give that testimony in your deposition?

5 A. Yes.

6 Q. That was true, right, when you gave it?

7 A. Yes.

8 Q. So can we agree that the truth is it was your idea to show
9 the ID?

10 A. I didn't tell him I was going to show him the ID. He is
11 the one that demanded to see the ID.

12 THE COURT: We've gone over this now with this witness
13 20 times. I don't want to hear another question on this
14 subject. Ask him about something else.

15 MR. BLOCH: Understood, Judge.

16 Q. You claim, Detective, that the sequence of events that
17 happened here is Mr. Fraser demanded the ID and the money, and
18 then he reached into your pocket and took out the ID and the
19 money, right? That's your claim?

20 THE COURT: I said ask him about something else.

21 MR. BLOCH: Sorry.

22 THE COURT: We're not going to go over this again.

23 Q. Well, you spoke to Detective Regina shortly after this
24 incident, right?

25 A. That night I would have spoke to him, yes.

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1 Q. And when you spoke to Detective Regina, isn't it true that
2 you never said Mr. Fraser stole money from you?

3 A. No.

4 Q. That's not true?

5 A. I would have told him what happened. And Mr. Fraser stole
6 my money and ID, so I would have told Detective Regina that.

7 THE COURT: You would have or you did?

8 THE WITNESS: I did.

9 Q. At some point, we can agree that Mr. Fraser had your ID in
10 his hand, right?

11 A. Yes.

12 Q. And that's one of the things that you claim he robbed you
13 of, right?

14 A. Yes.

15 Q. And after he had that ID in your hand, he didn't walk away,
16 right?

17 A. No. He put it in his pocket after taking a photo.

18 Q. He didn't walk away, right?

19 A. No.

20 Q. He didn't run away, right?

21 A. No.

22 Q. He stayed right in front of you with your ID in his hand,
23 right?

24 A. In his pocket.

25 Q. Well, before you claim he put it in his pocket, you had a

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1 conversation with him about the ID, right?

2 A. Yes.

3 Q. You say that you asked for it back?

4 A. I did.

5 Q. And he said I just want to look at it, I just want to see
6 who you are, right?

7 A. Yes.

8 THE COURT: We've done this multiple times. I don't
9 think -- maybe I'm not making myself understood. Anything
10 you've already asked him, you can't ask him again.

11 MR. BLOCH: Understood, Judge.

12 THE COURT: And we have gone through this encounter,
13 his version of it, repeatedly. So move on to something else.

14 Q. You agree that Mr. Fraser took a photograph of your ID,
15 right?

16 A. Yes.

17 Q. Isn't it true, Detective, that when Mr. Fraser took a
18 photograph of your ID, you were immediately afraid for your
19 safety?

20 A. To clarify my last answer, I did not see in front of his
21 phone. I do not know what the photo was taken of. A flash did
22 go off on his smart phone, and it made the camera sound that
23 phones make. So, I am assuming he did take a photo of my ID.
24 He was holding the ID in front of the phone at the time. And
25 yes, a photograph of myself is something that we try not to

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1 have happen.

2 Q. And you immediately feared that your cover was blown,
3 right?

4 A. No.

5 Q. Isn't it true that you told Detective Regina that you were
6 immediately afraid for your safety at that point?

7 A. I was afraid for my safety, because of Mr. Fraser's
8 aggressive attitude, balling up his fists, threatening to punch
9 me along with the group off to the side yelling to fuck me up.
10 That was my biggest fear. The photograph was just secondary,
11 something that we try not to have happen.

12 Q. Isn't it true, Detective, that you told Detective Regina
13 that Mr. Fraser taking a picture of your ID made you afraid for
14 your safety?

15 A. Yes, that's one of the aspects of it.

16 Q. Didn't you tell Detective Regina that you feared that your
17 cover was blown by the picture? Didn't you tell Detective
18 Regina that?

19 A. I don't remember saying that.

20 Q. Shortly after he took a picture, you issued your distress
21 signal, right?

22 A. Depends on your definition of shortly after. Other events
23 happened before that.

24 Q. Well, let's go step by step.

25 You agree it was after he took the picture that you

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1 issued your distress signal, right?

2 A. Yes.

3 Q. It was quickly after he took the picture, right?

4 A. Again, depends on your definition of quickly. In a
5 situation like that, time moves very slowly. To one person a
6 minute could be quick. To another person 30 seconds could be
7 quick. I can't say quickly.

8 Q. Can we agree it was a matter of seconds that you issued the
9 distress signal?

10 A. It was within a minute.

11 Q. And after he took the photo, you also grabbed him, right?

12 A. No.

13 Q. When you testified at a pretrial hearing in this case, were
14 you asked this question and did you give this answer, page 80,
15 line 19:

16 "Q. When you issued the distress signal, he didn't do anything
17 physical to you, right?

18 "A. No.

19 "In fact, you grabbed his clothing, right, as you saw after the
20 distress signal police officers are arriving, right?

21 "A. Yes.

22 "Q. You grabbed him, right?

23 "A. As Mr. Fraser ran toward me, yes."

24 Did you give that testimony?

25 A. I did. But that's not what you asked --

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1 THE COURT: The answer is yes. You gave it. Next
2 question.

3 Q. Mr. Fraser was trying to get away from you, right?

4 A. No.

5 Q. At trial, did you give this testimony, page 86, line 16:

6 "Q. And Mr. Fraser is essentially trying to get away from you;
7 would that be fair to say?

8 "A. As the field team members are moving in, yes, he tries to
9 get away."

10 Did you give that testimony?

11 A. Yes.

12 Q. Mr. Fraser didn't throw any punches or anything like that,
13 right?

14 A. He grabbed me.

15 Q. Mr. Fraser didn't throw any punches, right?

16 A. No.

17 Q. You also testified at trial that Mr. Fraser "reached into
18 the front side of his waistband area" after this whole ID
19 exchange happens, right?

20 A. Yes.

21 Q. As if he had a gun, right?

22 A. I believe I said a gun or some sort of weapon, something
23 along that nature.

24 Q. But he didn't have a gun, right?

25 A. No, he did not.

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1 Q. So according to you, Mr. Fraser reached into his waistband
2 in front of an entire team of police officers and pulled out an
3 empty hand. That's your testimony, right?

4 A. No.

5 Q. Now, according to you, Detective, I think you mentioned
6 this earlier, you say that after Mr. Fraser took your ID and
7 your money, he put both your money and your ID in his pocket?

8 A. Yes.

9 Q. And according to you, both items went into his left pants
10 pocket?

11 A. Yes, gray sweatpants I believe.

12 Q. And then you chased him, right?

13 A. At what point?

14 Q. Well, after you say he put the items in his pocket, you ran
15 after him, right?

16 A. After other things that happened, yes.

17 Q. Well, what I'm focused on is, you claim the items were in
18 his pocket and, according to you, they are still in his pocket
19 when he starts to run, right?

20 A. Yes.

21 Q. And you run after him?

22 A. Yes.

23 Q. And Detective Deltoro runs after him?

24 A. Yes.

25 Q. And Lieutenant Patane drives him after him, right?

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1 A. Yes.

2 Q. And Detective Regina runs after him?

3 A. Yes.

4 Q. If I could just show this overhead again.

5 Detective, can you see that from there?

6 THE COURT: No, he can't see it. I can't see it.

7 MR. BLOCH: I didn't think so.

8 THE COURT: The jury can't see it. It's way too far
9 away. If you are going to use it, you are going to have to
10 make marks on it.

11 MR. BLOCH: Understood. Do we have a version we can
12 put on the screen?

13 THE COURT: No. Ask a question. Ask a question.
14 Move, move, move.

15 MR. BLOCH: Okay.

16 Q. Detective, Mr. Fraser ran back up through the neighborhood;
17 is that fair to say?

18 A. Which -- what do you mean by up?

19 Q. Well --

20 THE COURT: Do you see the picture in front of you,
21 Detective?

22 THE WITNESS: Yes, I do now.

23 THE COURT: Do the jurors see it? Okay.

24 Q. So, Detective, do you agree with me that the interaction
25 you had with Mr. Fraser took place -- can I mark on this?

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1 Yeah. Approximately where that hand is?

2 A. No. I would say down to the left a little bit.

3 Q. Okay. Can we move it down to the left. Are we able to
4 mark on this? Is the witness able to mark?

5 THE COURT: I don't know. I don't do the technology
6 here. You're supposed to figure that out.

7 Q. I believe, Detective, can you try to mark on your screen
8 where this interaction with Mr. Fraser happened.

9 A. I've never used this sort of system.

10 Q. Just touch it and see what happens.

11 A. I'm -- is this --

12 THE COURT: Indicating what? What does the touch
13 indicate? Put something on the record.

14 Q. The touch generally indicates where the interaction between
15 you and Mr. Fraser --

16 THE COURT: Which is where?

17 MR. BLOCH: I'm sorry.

18 THE COURT: Which is where? You need words in a
19 record. You think the court of appeals someday, if this case
20 ever gets there, will know what you are talking about? They
21 are not going to know what you are talking about.

22 MR. BLOCH: Fair enough, Judge. The detective has
23 marked on the screen I would say approximately one inch to the
24 right of Avenue D, just to the right of East Eighth Street.

25 Q. Is that fair to say?

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1 A. I'll put a circle around it because there's other marks on
2 my screen. I am not sure if it shows up on --

3 LAW CLERK: If you want to clear, tap the bottom left
4 of the screen.

5 THE COURT: Detective, Detective, did your interaction
6 take place near the corner of Avenue D and Eighth Street?

7 THE WITNESS: Yes, right --

8 THE COURT: Near the corner of Avenue D and Eighth
9 Street.

10 Next question, please.

11 Q. And the route that you chased Mr. Fraser, are you able to
12 trace that on your screen?

13 A. Yeah. I can try. Making all sorts of lines. We went --
14 Mr. Fraser ran eastbound through the housing authority almost
15 to the FDR. He then turned and ran northbound through the
16 housing authority. There is a pathway, walkways, and
17 courtyards, and he ran to the center island on Tenth Street,
18 which is between Avenue D and the FDR.

19 THE COURT: And that's a circular island.

20 THE WITNESS: That's the circular island, and that's
21 where Lieutenant Patane apprehended Mr. Fraser.

22 Q. Thank you, Detective. And you agree with me you never saw
23 Mr. Fraser drop anything?

24 A. I was unable to see Mr. Fraser for the entire foot chase.

25 Q. Do you agree with me you never saw Mr. Fraser drop

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1 anything?

2 A. No.

3 Q. Just to clarify. Do you agree with that?

4 A. No, I did not see him drop anything.

5 Q. You mentioned that Lieutenant Patane was the one that
6 actually put the cuffs on him, right?

7 A. I'm not sure if Lieutenant Patane cuffed him or not. I
8 observed the leader vehicle stop on Tenth Street. Lieutenant
9 Patane get out, and put his hands on Mr. Fraser, at which point
10 I started to walk away.

11 Q. Didn't you see Lieutenant Patane starting to put cuffs on
12 Mr. Fraser?

13 A. Again, I saw him put his hands on him. He might have had
14 cuffs on him. Now, my best recollection, I do remember him in
15 the custody of Lieutenant Patane.

16 Q. Did you give this testimony at your deposition, page 172,
17 line 11:

18 "Q. And who was he apprehended by?

19 "A. I seen him in Lieutenant Patane's custody. I saw
20 Lieutenant Patane starting to put the cuffs on him, and several
21 minutes later I saw Detective Regina there."

22 Did you give that testimony?

23 A. Yes.

24 Q. When Mr. Fraser was in custody, Detective Regina, Detective
25 Deltoro, and Lieutenant Patane were all there, right?

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1 A. I don't remember if Detective Deltoro was there or not. I
2 remember Detective Regina, I remember Lieutenant Patane.

3 Q. Did you give this testimony at trial, page 51, line 25:

4 "Q. Ultimately, did Detective Regina also reach the defendant
5 in that little circle?

6 "A. Yes. Detective Regina showed up shortly after because we
7 were still chasing the defendant. He didn't stop like myself.
8 Detective Regina and Detective Deltoro and Lieutenant Patane
9 were there when I saw the defendant in the custody of Detective
10 Regina."

11 Did you give that testimony?

12 A. Yes.

13 Q. To be clear, you did not see Mr. Fraser get searched,
14 right?

15 A. No, I did not.

16 Q. You agree, Detective, that after Mr. Fraser was arrested,
17 you and your teammates discussed with each other the events of
18 that day, right?

19 A. Yes.

20 Q. And you talked to Lieutenant Patane immediately after this
21 happened, right?

22 A. Yes.

23 Q. After you spoke with Lieutenant Patane, you had a
24 conversation with Detective Regina about what happened?

25 A. Yes.

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1 Q. And you had a conversation with Detective Regina about what
2 you say happened while you were still out in the field, right?

3 A. I don't remember exactly when I spoke to Detective Regina.
4 But I did speak with him that night.

5 Q. Do you agree with me you testified at trial that you spoke
6 with Detective Regina about what you say happened while you
7 were still out in the field?

8 A. Yes.

9 Q. You also spoke to UC 17 about what you say happened, right?

10 A. Yes.

11 Q. And you spoke with your teammates back at the command,
12 right?

13 A. Yes.

14 THE COURT: Okay. So, we're going to quit for today.

15 I spent some part of the last 10 minutes trying to
16 figure out what the weather situation is going to be for
17 tomorrow, because I know it's on people's minds and it's on my
18 mind. And it's not at all clear what the weather situation is
19 going to be in the morning.

20 Since we are going to break early tomorrow anyway, I
21 know what it's going to be like at 6 o'clock tomorrow night.
22 But my district executive can't give me a read on whether we're
23 not going to be in session tomorrow. I'm not getting a good
24 information.

25 Okay. So here's the deal. First of all, as I pointed

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1 out to the lawyers, some of you live pretty far north. So, you
2 are going to get a phone number from us. When you go back to
3 the jury room, we are going to get some information. We need
4 you to call the phone number that we give you hopefully by
5 8 o'clock tomorrow morning to let me know what's going on,
6 where you are, and what it looks like. And I'll just have to
7 be here real early and make a call. That's my job.

8 So, also, if things are really bad in the morning and
9 the courthouse is going to be closed, there is a number which
10 Jim's got the number. We'll give it to you. Starting at 6:30
11 in the morning you will be able to call and that they will tell
12 you the courthouse is open, the courthouse is closed, what have
13 you.

14 All right? I wish I could be clearer. I mean, these
15 weather forecasts are just ridiculous. And if everybody lived
16 in the city, I wouldn't be nearly as concerned as I am about
17 the fact that some of you are upstate. And looks like you are
18 going to have it worse than we are in the city. So, and I have
19 to care about all of you.

20 So, that ends our first day of testimony. We'll
21 continue with the undercover tomorrow, I hope. Wednesday if
22 not.

23 Don't discuss the case. Okay. We're only scratching
24 the surface. Keep an open mind. And I'll see you when I see
25 you. Okay?

N3d3fra3

1 A JUROR: What time tomorrow?

2 THE COURT: Ah. 9:30 is when I would like to start
3 because I want to end early. Okay? And maybe even a little
4 earlier than I had originally planned. So, okay? I'll see you
5 when I see you.

6 (Jury excused)

7 THE COURT: Okay. Have a seat. Look, we are not
8 going to go over 25 times anything else. You got one shot.
9 You ask him what his story is. If you got impeaching
10 testimony, you read it. You got two things of impeaching
11 testimony, you read them both. If you got three, you read all
12 three. And we move on.

13 MR. BLOCH: Understood.

14 THE COURT: I don't think there is anything else to be
15 said by the undercover about the encounter, okay. We have his
16 version of events. We have your argument that perhaps he
17 wasn't consistent in that, and we're done. We're done with
18 that part.

19 Okay? I've been listening very closely. And we're
20 done.

21 MR. BLOCH: Understood, Judge.

22 THE COURT: He does have something else to testify
23 about.

24 MR. BLOCH: Yes.

25 THE COURT: Okay.

N3d3fra3

1 You can leave until tomorrow. I remind you you are
2 under oath, and you are basically on cross so you can't talk to
3 anybody.

4 THE WITNESS: Thank you.

5 (Witness temporarily excused)

6 THE COURT: I'm sorry. Among the things I discovered,
7 my grandson has some kind of sinus infection which might
8 explain why my throat has been getting increasingly sore over
9 the course of the afternoon. I did see my grandson on
10 Saturday. I don't have COVID. I can tell you that. I've had
11 two COVID tests today, both PCR tests. They are both negative.
12 Okay.

13 Let's pretend we are actually going to go forward
14 tomorrow and the next day. What's the order of events? What's
15 the order of witnesses? I assume you are going to do your
16 direct, I assume you are going to do your direct of this guy
17 because you want him out of here.

18 MS. MCGUIRE: Yes, your Honor.

19 THE COURT: Right. Okay. So, when he's done, who is
20 next?

21 MR. RUDIN: I'll question Detective Regina.

22 THE COURT: After that, who is next?

23 MR. RUDIN: Detective Deltoro.

24 THE COURT: Okay.

25 MR. RUDIN: Except, your Honor, the defense attorney

N3d3fra3

1 Geoffrey Stewart is going out of town on Thursday. So,
2 actually probably we'll call him Wednesday morning.

3 THE COURT: We will slip him in, we'll slide him in.
4 If we have to interrupt the witness, we'll interrupt the
5 witness.

6 MR. RUDIN: Probably do him Wednesday morning.

7 THE COURT: Okay. Great. All right.

8 I should have known when we had to postpone last week,
9 I should have known that it was going to snow. And I can tell
10 you right now that the people who live in Pomona and Blauvelt
11 and places like that, they are going to be slammed. So, the
12 governor has already announced a state of emergency, and of
13 course she's from Buffalo, so she cares a lot about upstate New
14 York.

15 But, it's hard to get weather about the sort of
16 greater Southern District area. That's my problem. And the
17 district executive is not helping me, which is unusual.

18 So, you guys should call in too. You know to call
19 chambers. Mariela is in at 7:30 in the morning. 805-6325.
20 And I will come in really early in the morning and we'll figure
21 it out. We'll make the call. I'd like to get this guy out of
22 here. Okay. Okay. See you I hope tomorrow.

23 (Adjourned until March 14, 2023, at 9:30 a.m.)
24
25

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Examination of:	Page
UNDERCOVER OFFICER 84	
Direct By Mr. Bloch54

N3EHFral

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 JAWAUN FRASER,

4 Plaintiff,

5 v.

20 Civ. 4926 (CM)

6 CITY OF NEW YORK, *et al.*,

7 Defendants.

Trial

New York, N.Y.
March 14, 2023
9:35 a.m.

10 Before:

11 HON. COLLEEN McMAHON,

12 District Judge

13 APPEARANCES

14 JOEL B. RUDIN
Attorneys for Plaintiff

15 -and-

16 BLOCH & WHITE LLP
BY: MICHAEL L. BLOCH
BENJAMIN D. WHITE
17 CRISTINA ALVAREZ

18 SYLVIA HINDS-RADIX
Corporation Counsel for the City of New York
19 Attorney for Defendants

20 BY: BRIAN C. FRANCOLLA
CAROLINE McGUIRE

N3EHFral

1 (Trial resumed; jury not present)

2 THE COURT: Case on trial continued. The parties are
3 present. The jurors are not present.

4 Several of the plaintiff's lawyers aren't here.
5 Plaintiff is here. The questioning lawyers are here. All the
6 jurors are here, and we're going to start.

7 Jury entering.

8 (Jury present)

9 THE COURT: Good morning, everybody. It is so good to
10 see you this morning. You're looking at me. You're saying,
11 why is she wearing a mask? I don't have COVID. I have a
12 grandson, OK, and my grandson has given me whatever my -- I
13 have bad sinuses chronically. And my grandson was sick when I
14 saw him on Saturday with a cold or something, and he's given it
15 to me.

16 I want to be sure -- the great thing about the
17 post-COVID era is that even if you don't have COVID, you feel
18 it incumbent upon yourself not to spread stuff around. So I
19 ain't spreading this around, and that's why I put a mask on at
20 3:30 yesterday afternoon when I got an email about my grandson,
21 and it's staying on.

22 All right. Terrific. Detective, you are still under
23 oath.

24 THE WITNESS: Yes, ma'am.

25 THE COURT: And I believe you're still questioning.

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UC 84 - Direct

1 MR. BLOCH: Thank you, Judge.

2 UNDERCOVER OFFICER 84, resumed.

3 DIRECT EXAMINATION CONTINUED

4 BY MR. BLOCH:

5 Q. Good morning, detective.

6 A. Good morning.

7 Q. Detective, I want to turn to civil lawsuits.

8 OK. Sorry, everybody.

9 THE COURT: Are we having mic problems?

10 MR. BLOCH: Yes, my fault.

11 THE COURT: No, it's not your fault. It's the stupid
12 system.

13 MR. BLOCH: Thanks, Judge.

14 BY MR. BLOCH:

15 Q. Detective, prior to Mr. Fraser's trial in November of 2015,
16 you agree that you had been sued multiple times for your
17 conduct as an undercover officer, right?

18 A. Yes.

19 Q. I want to talk first about what happens when a police
20 officer from the NYPD is sued.

21 After a complaint is filed in court, the complaint is
22 served on the NYPD, right?

23 A. I don't know the full procedure, but, yes, I do know
24 complaints end up with the NYPD.

25 MR. BLOCH: And could we show PX 152, please.

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UC 84 - Direct

1 Q. I'll ask you while we're waiting, detective, you're
2 familiar with the patrol guide, right?

3 A. I'm familiar with it, yes.

4 Q. The patrol guide is a document created by the NYPD?

5 A. Yes.

6 Q. And it sets forth rules and policies and procedures that
7 police officers must follow, right?

8 A. Yes. But a lot of what happens in the patrol guide does
9 not happen with regards to undercovers because we're a little
10 different.

11 Q. This is on your screen. I'm showing PX 152, showing it to
12 the jury as well. This is a page out of the patrol guide,
13 right?

14 A. Yes, it is.

15 Q. And the title of this portion of the patrol guide is
16 "Obtaining Assistance of Corporation Counsel"?

17 A. Yes.

18 Q. And its purpose is, reading at the top, to ensure that
19 legal representation is provided to a member of the service,
20 uniformed or civilian, who is served with a summons or
21 complaint or who otherwise becomes aware that he or she is a
22 defendant in a civil lawsuit arising from an act or omission
23 occurring in the performance of duty, correct?

24 A. Yes.

25 Q. Timeliness is essential to prepare a response?

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1 A. Yes, it does.

2 Q. And do you agree with me that you, even as an undercover
3 officer, are a member of the service, right?

4 A. I am.

5 Q. The patrol guide says that, reading in the middle of the
6 page, "This is the procedure when a member of the service is
7 served with a summons and complaint or otherwise becomes aware
8 that he or she is a defendant in a civil lawsuit," right?

9 A. I don't see exactly where it says that, but --

10 Q. Do you see where it says "Procedure" on the left-hand side?

11 A. Yes. OK. I read it, yes.

12 Q. And what happens, the rules are that when a summons and
13 complaint is personally served upon a member of the service at
14 their command, the desk officer or supervisor is to accept
15 service of the summons and complaint for a member assigned to
16 the command, right?

17 A. Yes.

18 Q. The NYPD is obligated to accept service, right?

19 A. Yes.

20 Q. And then the patrol guide sets out what the NYPD is
21 supposed to do and point -- after they accept service, they
22 then document the fact that they've been served, right? They
23 make a command log entry including date and time of service at
24 the command, right?

25 A. We don't have -- we're not a regular precinct. We're a

1 nondescript building. We don't have desk officers that do
2 things like that.

3 Q. Well, so my question is the NYPD's procedure is that when a
4 summons and complaint is served, the desk officer/supervisor is
5 to make an entry of the fact that it was, right?

6 A. That's what this paper says.

7 Q. And the next thing that the NYPD is to do, according to
8 NYPD policies, is to notify member concerned immediately,
9 right?

10 A. Yes, that's what this paper says.

11 Q. This paper is the patrol guide that sets out rules and
12 procedures for the NYPD, right?

13 A. Yes.

14 Q. The next thing that the NYPD does is delivers papers to
15 member, right?

16 A. That's what the patrol guide says, yes.

17 Q. And so the officer that's been sued is actually handed a
18 copy of the complaint against that officer, right?

19 A. According to the patrol guide, yes.

20 THE COURT: So that's what supposed to happen?

21 THE WITNESS: Yes, ma'am.

22 THE COURT: Don't fight with him, please.

23 Q. Isn't it true, officer, that you are actually handed the
24 complaint by what's called an integrity control officer?

25 A. Not in all cases, no.

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1 Q. Well, let's -- I guess let's go step by step.

2 When you are handed a complaint, it is given to you by
3 an integrity control officer, right?

4 A. The complaint can be given to me by the administrative
5 supervisor or the integrity control officer, the ICO.

6 Q. And you, in fact, have been handed the complaints in the
7 majority of the lawsuits that you've been sued in, right?

8 A. Yes, in the majority.

9 Q. When you are handed the complaints, you are handed the
10 complaints by an integrity control officer or the admin office,
11 right?

12 A. Yes.

13 Q. In fact, you claim that there's only one or two of your
14 lawsuits that you think you didn't receive, right?

15 A. Correct.

16 Q. And when you're sued, when you are -- withdrawn. Excuse
17 me.

18 When you are served, you have to fill out a form,
19 right?

20 A. I don't always fill out a form. I have in more than half
21 of my lawsuits filled out the form.

22 Q. Right. So the procedure is when you're served with a
23 lawsuit, you fill out a form called a Request for Legal
24 Assistance?

25 A. Yes.

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1 Q. And that's one of the rules in the patrol guide also,
2 right?

3 A. I believe so, yes.

4 Q. And then you deliver that request for legal assistance to
5 your commanding officer immediately, right?

6 A. We give it to the administrative office or the ICO. The
7 integrity officer holds on to it.

8 Q. Well, I guess -- I'm not asking what that person does. You
9 give the form that you fill out to that person, right?

10 A. I give the form to the admin office or the ICO.

11 Q. And that's how you get an attorney, right?

12 A. Yes.

13 Q. When you do that, when you fill out -- withdrawn.

14 When you fill out the request for legal
15 representation, you are provided an attorney by the City,
16 correct?

17 A. Yes.

18 Q. And that's Mr. Francolla's office?

19 A. Yes, it is.

20 Q. And that attorney then files documents on your behalf,
21 right?

22 A. I believe they're supposed to, yes.

23 Q. Well, specifically, they file what's called an answer to
24 the complaint, right?

25 A. Again, I don't know everything they do. I think they do.

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1 I'm not exactly sure.

2 Q. You're aware, are you not, that there are answers to a
3 complaint filed on your behalf, right?

4 A. Yes.

5 Q. And in the answer, you admit some facts and you deny some
6 facts, right?

7 A. I've never seen these answers. I don't know what is
8 written in them.

9 Q. You've never seen an answer?

10 A. No.

11 MR. BLOCH: Could we show -- I'm actually not sure
12 what PX number this is.

13 Judge, may I have a moment to check the PX number?

14 THE COURT: Sure. You're trying to refresh his
15 recollection as to whether he's ever seen an answer or not?

16 MR. BLOCH: Yes, and I want him to -- I want to go
17 through an answer.

18 Q. Showing on the screen PX -- what's the PX number, the last
19 number?

20 Judge, can we have this deemed marked PX-something?

21 THE COURT: It's deemed marked PX the next in
22 sequence. I don't know what that number is. Let's keep going.

23 MR. BLOCH: Thank you, Judge.

24 Q. Detective, you see on the screen this answer on behalf of
25 defendant City of New York and Undercover No. 84?

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1 A. Yes.

2 Q. And if you scroll down a little bit, Cristina, please, it
3 says -- it has a series of sentences, right?

4 A. Yes.

5 Q. And some of them say deny the allegations?

6 A. Yes.

7 Q. And let's go to page 3.

8 You agree that some of them say, like 14, that --
9 admit only that on that date defendant UC 84 approached the
10 plaintiff in that case?

11 A. Yes, that's what it says here.

12 Q. So these answers, they admit some things and they deny some
13 things on your behalf, right?

14 A. Yes. I've never seen these form before, but that's what it
15 said at the top.

16 Q. Well, isn't it true, detective, that before your lawyer
17 files answers that admit some things and deny some things, they
18 have a conversation with you?

19 A. I don't know when lawyers submit what paperwork, but I do
20 have conversations with the lawyers in regards to my lawsuits.

21 Q. And isn't it true you've had conversations with lawyers in
22 regards to your lawsuits where they ask you things like do you
23 admit this, do you deny this?

24 A. Yes.

25 MR. BLOCH: In this case could we show PX 38-A,

1 please.

2 Q. Showing on the screen PX 38-A, detective, this was a
3 lawsuit filed against you by somebody named Kevin Wright,
4 correct?

5 A. Yes.

6 Q. And this is the complaint in that case, right?

7 A. Yes.

8 Q. And it's a ten-page document?

9 A. I'm not sure how many pages.

10 Q. See at the top it says "page 1 of 10"?

11 A. Yes.

12 Q. And this is, in fact, the lawsuit that an answer was filed
13 for you on your behalf that we just looked at, right?

14 A. Yes.

15 Q. And you actually remember this incident involving
16 Mr. Wright, correct?

17 A. Just going off the name, no. I would need to have more
18 information than that.

19 Q. Well, this case, the criminal case, Mr. White's criminal
20 case, went to trial, right?

21 A. I'm not sure.

22 Q. You were asked questions about this lawsuit in your
23 deposition, correct?

24 A. Yes.

25 Q. And on page 237, line 17, you were asked these questions

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1 and you gave these answers:

2 "Q. Does this document refresh your recollection?

3 "A. Yes, I remember this case. I just didn't remember the
4 name."

5 Right?

6 A. Yes.

7 Q. And so you remember the set of facts that are alleged in
8 this complaint?

9 A. No.

10 Q. Is there something that would help you refresh your
11 recollection?

12 A. Any of my testimony involving this case, the buy report,
13 something of that nature.

14 Q. OK. So in your deposition you were asked this question and
15 you gave this answer --

16 THE COURT: That's not refreshing his recollection.

17 MR. BLOCH: I'd like to read -- I'd like to refresh
18 the recollection with the deposition.

19 THE COURT: Well, that's not how we refresh
20 recollection. We show it to the witness. But go ahead. I
21 can't teach -- I can't sit here and teach evidence.

22 MR. BLOCH: I'm happy to share the deposition as well.

23 THE COURT: Go ahead, please.

24 BY MR. BLOCH:

25 Q. Were you asked this question, did you give this answer,

1 detective, page 238, line 2:

2 "Q. What do you remember about this case?

3 "A. I remember Mr. Wright sold me drugs. I can't remember
4 which drug. It was right off Avenue D, just west of Avenue D
5 on whatever street we were on. I can't remember which street.
6 But he was part of a drug sale. I do remember it went to
7 trial. That's kind of why I remember this case. But other
8 than that, I don't recall, like, all the facts of this case and
9 exactly what happened."

10 Did you give that testimony?

11 A. Yes, I did.

12 Q. Does that now refresh your recollection as to the incident
13 reflected in the Wright complaint?

14 A. No, it does not.

15 Q. So we agree that you remembered it as of your deposition in
16 April 2021, right?

17 A. Yes, I don't know what paperwork I looked at that day, but
18 I did give that statement.

19 Q. Well, Mr. Wright alleged that you approached him and
20 another man named Joiner to buy heroin, correct?

21 A. I don't remember the case.

22 MR. BLOCH: OK. Could we show PX 38-A.

23 Q. Showing on the screen PX 38-A, Mr. Wright alleged that
24 defendant undercover officer approached plaintiff and
25 acquaintance from the neighborhood, Robert Joiner, right?

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1 A. Yes, that's what it says.

2 Q. Does it refresh your recollection that that, in fact,
3 happened?

4 A. I do not remember this case.

5 Q. You did give fairly extensive testimony about the facts of
6 this case in your deposition, right?

7 A. I don't remember every question in the deposition. It's
8 possible.

9 Q. OK. I'm reading from the deposition, page 239, line 16:

10 "Q. Could you please look at paragraph 16 where it says,
11 'Plaintiff informed Mr. Joiner that he believed the undercover
12 officer to be a police officer, and he went to wait for his bus
13 up town.' Does that refresh your recollection or ring a bell
14 at all?

15 "A. No, that never happened. The plaintiff never said that.

16 "Q. Well, what's your specific recollection of what happened
17 in this incident that you remember now?

18 "A. I don't ever remember being called a police officer during
19 this incident."

20 Did you give that testimony?

21 A. Yes.

22 Q. Does that now refresh your recollection about the *Wright*
23 case?

24 A. Yes, I remember parts of the case now.

25 Q. And is it, in fact, true that Mr. Wright never asked you if

1 you were a cop?

2 A. I don't remember the entire case, but that's what I
3 testified to, yes.

4 THE COURT: Can I see counsel at sidebar for a moment.

5 (Continued on next page)

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1 (At sidebar)

2 THE COURT: Look, the relevance of this is in this
3 case were you accused of suppressing evidence? Yes. Were you
4 accused of making up a story? Yes. Did you disclose this, did
5 you give this case to the district attorney? Yes. We're not
6 going to try Mr. Wright's case here or any of the other seven
7 cases.

8 MR. BLOCH: Agree.

9 THE COURT: We're not going to do it, OK, because this
10 jury is going to be told, and they're going to be told today,
11 the fact of a lawsuit is irrelevant. Anybody can sue anybody
12 and say anything. That the only issue is whether the
13 underlying facts are facts about which the witness could be
14 cross-examined. I mean --

15 MR. BLOCH: I agree. I totally agree. I don't
16 have --

17 THE COURT: Glad to hear it. Rarely do people agree
18 with me.

19 MR. BLOCH: Not that it matters that I agree. You
20 make the rules.

21 THE COURT: That doesn't happen often.

22 MR. FRANCOLLA: I agree, too, your Honor.

23 MR. BLOCH: I am -- I have, I believe, one or two more
24 questions on the facts of the *Wright* case because he made, I
25 think, a false statement about it.

1 THE COURT: OK. We're not trying these cases.

2 MR. BLOCH: On the other ones, I don't intend to.

3 (Continued on next page)

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1 (In open court; jurors present)

2 BY MR. BLOCH:

3 Q. Detective, you testified at Mr. Wright's criminal trial,
4 right?

5 A. Yes.

6 Q. And you were under oath at that criminal trial?

7 A. Yes, I was.

8 Q. And were you asked these questions and did you give these
9 answers --

10 THE COURT: Page and line?

11 MR. FRANCOLLA: Your Honor --

12 MR. BLOCH: Page 17, line 7.

13 THE COURT: Excuse me. Do you have an objection?

14 MR. FRANCOLLA: No, I'm just saying we don't have a
15 copy of this, that's all.

16 MR. BLOCH: Here you go.

17 Q. Page 17, line 7:

18 "Q. During that time, period of time, what happened?

19 "A. During that time period, I was waiting with Mr. Wright.
20 Mr. Wright asked me if I was a cop or not. I told him I was
21 not. Mr. Wright then asked me for my name and where I lived.
22 I gave him a fake name, gave Mr. Wright a fake name and a fake
23 address of where I live." And then it goes on.

24 Did you give that testimony?

25 A. Yes.

N3EHFra2

UC 84 - Direct

1 Q. You also noted in your buy report in that case that the
2 person you called JD Black, referring to Mr. Wright, asked me
3 if I was a cop and several other questions. I said no, I was
4 not, right?

5 A. I don't know. I haven't looked at that buy report in
6 almost ten years.

7 Q. Would seeing the buy report refresh your recollection?

8 A. Yes.

9 MR. BLOCH: Could we show just Mr. -- just the
10 detective the buy report from the *Wright* case.

11 Q. Detective, this is the buy report that you filled out in
12 the *Wright* case, correct?

13 A. Yes.

14 Q. And this was on November 12, 2014?

15 A. Yes.

16 Q. That's about three weeks after Mr. Fraser was arrested?

17 A. Yes.

18 Q. And if we scroll down to the narrative, did you write: "JD
19 Black," referring to Mr. Wright, "asked me if I was a cop and
20 several other questions. I said no, I was not"?

21 A. Yes, I did.

22 MR. BLOCH: OK. We can take that down. Thanks,
23 Cristina.

24 Q. After Mr. Wright asked you if you were a cop, you arrested
25 him, right?

N3EHFra2

UC 84 - Direct

1 A. I purchase drugs, and I don't make arrests.

2 Q. Well, he was arrested because you said you purchased drugs
3 from him, right?

4 A. Yes, because I did purchase drugs.

5 Q. Mr. Wright sold you drugs?

6 A. I don't remember the entire case, but Mr. Wright was
7 involved in the drug sale, yes.

8 Q. Now, focusing on the lawsuit, Mr. Wright sued you on
9 June 10, 2015, correct?

10 A. Yes.

11 Q. And you were served with the complaint on June 17, 2015,
12 right?

13 A. I'm not sure what day I was served.

14 Q. Would looking at the affidavit of service refresh your
15 recollection?

16 A. Possibly.

17 MR. BLOCH: Could we show PX 134, please.

18 Q. Detective, do you see the affidavit of service on the
19 screen?

20 A. I do.

21 Q. Does it -- if we could scroll down a little bit.

22 Does it say on June 11, 2015, One Police Plaza,
23 deponent served with summons and complaint on Undercover Police
24 Officer 84?

25 A. Could you scroll down to the rest of the page?

N3EHFra2

UC 84 - Direct

1 Q. Sure.

2 A. That's the date the NYPD received the complaint. That is
3 not the date that I was served.

4 Q. Well, you were represented in that case, right?

5 A. Yes.

6 Q. And the answer that we looked at before was filed on
7 August 31, 2015, correct?

8 A. I'm not sure. If that's what the page says, then yes.

9 MR. BLOCH: Can we stipulate that's what the page
10 says, or do you want me to show him?

11 MR. FRANCOLLA: We don't see it.

12 MR. BLOCH: Could we show the detective the answer.

13 THE COURT: Look, what does the document say?

14 MR. BLOCH: It says August 31.

15 THE COURT: Fine. That's what the document says.

16 Let's move on.

17 BY MR. BLOCH:

18 Q. Now --

19 MR. BLOCH: Cristina, put PX 38-A up while we're
20 waiting.

21 THE COURT: What's going on here? Don't pay any
22 attention to us. We're not interrupting anything.

23 MR. BLOCH: OK. Thank you, Judge.

24 BY MR. BLOCH:

25 Q. Detective, Mr. Wright sued you for false arrest, right?

N3EHFra2

UC 84 - Direct

1 A. Yes.

2 Q. He sued you for malicious prosecution, right?

3 A. I would have to read the whole page.

4 MR. BLOCH: Could we just scroll to 3348.

5 Q. He sued you for malicious prosecution, right?

6 A. Yes.

7 Q. He specifically alleged that you misrepresented and
8 falsified evidence before the New York County District
9 Attorney, right?

10 A. Yes.

11 Q. He specifically alleged that you filled out false -- if
12 we'd go to paragraph 25.

13 He specifically alleged that you filled out false
14 and/or misleading police reports and forwarded them to the
15 prosecutors at the New York County DA's office?

16 A. Yes.

17 Q. If we could go to paragraph 40. He also alleged that you
18 withheld exculpatory evidence from the district attorney,
19 correct?

20 A. Yes.

21 MR. BLOCH: Now turning to PX 34, please.

22 One moment, Judge, please.

23 (Counsel confer)

24 Q. Detective, on August 12, turning to a new lawsuit,
25 August 12, 2011, you were sued by a guy named Robert Best,

N3EHFra2

UC 84 - Direct

1 right?

2 A. Yes.

3 Q. And he sued you for an arrest that took place on
4 November 21, 2009?

5 A. Again, I don't remember this case, so I don't know exactly
6 when it took place. It would say it in this complaint, though.

7 MR. BLOCH: Could we just scroll down to the
8 allegations.

9 Q. You agree that he alleges an incident took place in
10 November of 2009?

11 A. Yes.

12 Q. You were a member of the Narcotics Borough of Manhattan
13 South command on that date?

14 A. Yes, I was in undercover.

15 Q. And you worked with a guy named Jose Valentin, right?

16 A. Yes.

17 Q. And he's also sued in this case?

18 A. Yes.

19 Q. Now, Mr. Best, if we could go to paragraph 7, alleges that
20 you arrested him on 42nd Street between Eighth and Ninth
21 Avenues?

22 A. I would have purchased the drugs. I did not make the
23 arrest. But, yes, he was arrested.

24 Q. And he alleges that he was arrested by your team without
25 any reason to believe he had committed a crime, correct?

N3EHFra2

UC 84 - Direct

1 A. Yes.

2 Q. He also alleges he was then slammed to the ground and
3 punched in the face a number of times?

4 A. Yes.

5 Q. He alleges he had a knee put in his neck, obstructing his
6 breathing?

7 MS. MCGUIRE: Objection. Relevance.

8 THE COURT: The objection's sustained.

9 Q. He alleges that he was falsely charged with selling
10 marijuana, right?

11 A. I don't see that written here, but if it's in the
12 complaint, yes.

13 THE COURT: Are you willing to stipulate that that's
14 what the complaint charges, alleges, that he was falsely
15 arrested for selling marijuana?

16 Apparently you're not, so let's keep going.

17 MR. FRANCOLLA: We're looking at it.

18 THE COURT: I just want to know.

19 MR. FRANCOLLA: Yeah, we need a moment to look at it,
20 that's all. Can we take a moment? Sorry. More than likely
21 we'll happily stip.

22 MR. BLOCH: If we could direct you to page 4 of the
23 complaint.

24 MR. FRANCOLLA: Yes, that's what it says on the
25 complaint on No. 12.

N3EHFra2

UC 84 - Direct

1 BY MR. BLOCH:

2 Q. And he alleges fabrication of evidence by you?

3 A. Yes.

4 Q. And as part of his fabrication of evidence claim, he
5 alleged that you and your team misrepresented to the DA's
6 office that he had committed a crime?

7 A. Yes.

8 Q. He sued you for malicious prosecution, right?

9 A. Yes.

10 Q. Your lawyer filed an answer in this case on your behalf,
11 right?

12 A. I'm not sure.

13 MR. BLOCH: Could we show PX 127.

14 Q. In the meantime, you were represented by a lawyer in this
15 case, right?

16 A. I don't really remember this case at all, but I'm
17 represented in the cases brought against me, yes.

18 Q. You agree with me you were represented in this case, right,
19 in the Robert Best case?

20 A. Yes.

21 Q. And that lawyer filed an answer on your behalf, right?

22 A. Yes.

23 Q. And that answer made certain admissions, correct?

24 A. I'm not sure what the document says.

25 Q. Well, if we could just go to paragraph 7, 8, and 9.

N3EHFra2

UC 84 - Direct

1 Paragraph 7, 8, and 9 of the answer filed in your
2 behalf says deny the allegations as set forth in paragraph 7
3 except admit that plaintiff was placed under arrest, right?

4 A. Yes.

5 Q. And eight says substantially the same thing, it denies part
6 of it, admits that he was placed under arrest?

7 A. Yes.

8 Q. And it specifically admits he was placed under arrest at or
9 near 351 West 42nd Street, right?

10 A. Yes.

11 Q. And you agree with me that your lawyer wasn't a witness to
12 this incident, right?

13 A. No, he was not.

14 Q. Your lawyer didn't have any personal knowledge that that's
15 where the arrest took place, right?

16 A. No.

17 Q. Your lawyer also admitted, going to page -- paragraph 19,
18 that the charges against plaintiff in that underlying case were
19 dismissed on July 15, 2020, right?

20 A. Yes.

21 MS. McGUIRE: Objection. Relevance.

22 THE COURT: OK. Objection's sustained.

23 Q. Turning to another lawsuit, Mr. Parris, detective, you were
24 sued by a man named Gary Parris on September 20, 2013, right?

25 A. I'm not sure.

N3EHFra2

UC 84 - Direct

1 Q. Well, that name at least is familiar to you, right?

2 A. Parris sounds familiar. I don't know what case that's
3 from.

4 MR. BLOCH: Could we show PX 35.

5 Q. This is a lawsuit that Mr. Parris filed against you and
6 others, correct?

7 A. Yes.

8 Q. And Mr. Parris alleges that he was arrested around -- on
9 July 3, 2013, right?

10 A. Yes.

11 Q. And you were, in fact, working at Narcotics Borough
12 Manhattan South on that date?

13 A. Yes, I was.

14 Q. And he was arrested at 351 West 45th Street?

15 A. Yes.

16 Q. And 351 West 45th Street is within your jurisdiction,
17 right?

18 A. Yes, it is.

19 Q. And if we go to paragraph 16, Mr. Parris alleges that he
20 was approached by Officer McCalla, you, and John Doe-1 and
21 ordered to place his hands upon a nearby vehicle, right?

22 MS. MCGUIRE: Objection. Relevance.

23 THE COURT: Officer McCalla, you, and John Doe, is
24 that what you said?

25 MR. BLOCH: Yes.

1 THE COURT: Overruled.

2 A. Yes.

3 Q. And Mr. Parris alleges that he was searched by you,
4 McCalla, and John Doe without any information to believe that
5 he had committed a crime, right?

6 A. Yes.

7 Q. Mr. Parris was charged -- if we can go to paragraph 22 --
8 Mr. -- one moment, Judge.

9 Mr. Parris sued you for false arrest, right?

10 A. Yes.

11 Q. False imprisonment, page 4?

12 A. Yes.

13 Q. Malicious prosecution?

14 A. Yes.

15 Q. And he alleges that you misrepresented and falsified
16 evidence before the district attorney, right?

17 A. Yes.

18 Q. And that you withheld exculpatory evidence from the
19 district attorney, right?

20 A. Yes.

21 Q. You were represented by a lawyer in Mr. Parris' case?

22 A. Yes.

23 Q. On December 9, 2013, a lawyer filed an answer on your
24 behalf after speaking with you, right?

25 A. Yes.

N3EHFra2

UC 84 - Direct

1 Q. And you were sued in that case about a year before you
2 arrested Mr. Fraser, right?

3 A. About that, yes.

4 MR. BLOCH: Turning to another lawsuit, Mr. Pieralisi,
5 please. If we could show PX 37.

6 Q. You were sued by somebody named John Pieralisi, correct?

7 A. Yes.

8 Q. And you remember this incident, right?

9 A. I'm not sure. I would need more information than just a
10 name.

11 Q. The case was in *The New York Times*, right?

12 A. I'm not sure.

13 MS. McGUIRE: Objection.

14 THE COURT: The objection's overruled. He doesn't
15 know. Let's move on. There will be no more questions about
16 that.

17 Q. The suit by Mr. Pieralisi was filed on May 15, 2015,
18 correct?

19 A. Yes.

20 Q. That's about five months before Mr. Fraser went to trial,
21 right?

22 A. Yes.

23 Q. And you were sued in your capacity as an undercover officer
24 based on something that happened on December 28, 2013, right?

25 A. I'm not sure. Yes.

1 Q. If you could just look at what's on the screen in front of
2 you and just read the screen and let me know if that refreshes
3 your recollection about that case.

4 A. No.

5 Q. Mr. Pieralisi alleges, paragraph 12, that he was lawfully
6 present on the southwest corner of Eighth Avenue and West 33rd
7 Street, right?

8 A. Yes.

9 Q. And that he was with his stepson, right?

10 A. I don't see where it says that.

11 Q. So paragraph 14 says: "Defendant NYPD officers told
12 plaintiff that he was being arrested for selling drugs,
13 shocking and emotionally distressing plaintiff and his stepson
14 who was standing nearby and intended to attend a concert at
15 Madison Square Garden with plaintiff."

16 A. Yes.

17 Q. Does that refresh your recollection about the incident?

18 A. No.

19 Q. In your deposition you testified on page 235, line 13.

20 "Q. Can you tell me what your recollection is?

21 "A. Yes. I remember it was near Madison Square Garden and the
22 subject sold me drugs. I can't remember exactly what drugs.
23 He was involved in the sale. That's pretty much all I
24 remember. It was right on the corner. Yeah, I can't remember
25 which corner. That's all I remember."

N3EHFra2

UC 84 - Direct

1 Did you give that testimony?

2 MS. McGUIRE: Objection and ask that counsel start at
3 line 4.

4 MR. BLOCH: OK.

5 THE COURT: Do you mind doing that?

6 MR. BLOCH: I don't mind.

7 THE COURT: Thank you.

8 MR. BLOCH: (Reading)

9 "Q. Can you please read paragraphs 11 through 26 and let me
10 know when you're done.

11 "A. OK.

12 "Q. Does this document refresh your recollection?

13 "A. A little bit. I do remember the incident. Not much about
14 it, but I remember it a little bit.

15 "Q. Can you tell me what your recollection is?"

16 And then it gets to the part that I read.

17 A. Yes.

18 Q. And Mr. Pieralisi alleges that he was charged based
19 exclusively on a false criminal complaint, right?

20 A. Yes.

21 Q. Mr. Pieralisi -- do these as a group -- sued you for
22 deprivation of civil rights, false arrest, malicious abuse of
23 process, malicious prosecution, right?

24 A. If that's what the document says, yes.

25 Q. And specifically, he alleged that you were -- he was

N3EHFra2

UC 84 - Direct

1 falsely arrested just to improve the arrest numbers of the
2 NYPD, right?

3 MS. McGUIRE: Objection.

4 MR. BLOCH: It's paragraph 40 --

5 THE COURT: The objection is overruled.

6 A. Yes.

7 Q. Now, the NYPD was served in that case on June 24, 2015,
8 right?

9 A. I'm not sure the exact date.

10 MR. BLOCH: Can we stipulate to that date? No. OK.

11 Can we show PX 131.

12 Q. I'm showing on the screen PX 131. Is this an affidavit of
13 service in this *Pieralisi* case, detective?

14 A. Yes.

15 Q. And I think I misread the date. Do you agree that the NYPD
16 was served on June 12, 2015?

17 A. Yes.

18 Q. And it says that deponent served the summons and complaint
19 on PO C0084 therein named by delivering a -- thereat a true
20 copy of each to Cynthia Busby, a coworker of yours, right?

21 A. I don't know who that name is, but it was served to 1PP.

22 Q. 1PP is One Police Plaza, right?

23 A. Yes.

24 MR. BLOCH: Thanks. We can take that down.

25 Q. You were represented by a lawyer in that case, right?

N3EHFra2

UC 84 - Direct

1 A. Yes.

2 Q. By Mr. Francolla's office?

3 A. Yes.

4 Q. That lawyer filed an answer on your behalf on September 7,
5 2015, correct?

6 A. I don't know the date.

7 MR. BLOCH: Can we stipulate that the answer was filed
8 on September 7, 2015?

9 MR. FRANCOLLA: Hold up. Probably. Sorry.

10 (Counsel confer)

11 MR. BLOCH: Do we have the *Pieralisi* answer? Could
12 you just show it.

13 (Counsel confer)

14 BY MR. BLOCH:

15 Q. The answer -- I'm showing PX 132. The answer filed on your
16 behalf by your lawyer was filed on September 7, 2015, right?

17 A. Yes.

18 Q. And if we could go to paragraph 19.

19 Paragraph 19 admits what is in paragraph 19 of the
20 complaint, right?

21 A. Yes.

22 Q. And if we could just go back to the complaint to see what
23 it was that you admitted there, or what was admitted in the
24 answer on your behalf.

25 So what was admitted on your behalf was that defendant

N3EHFra2

UC 84 - Direct

1 NYPD officers transported plaintiff to the NYPD 14th Precinct,
2 right?

3 A. Yes.

4 Q. And you agree with me that's not a fact that
5 Mr. Francolla's office would have had personal knowledge of,
6 right?

7 A. No.

8 MS. McGUIRE: Objection.

9 THE COURT: The objection's overruled.

10 A. No.

11 Q. Detective, you're aware -- I'm finished going through
12 lawsuits.

13 Detective, you're aware that there are rules about
14 what sort of information needs to be turned over to the defense
15 in a criminal case, right?

16 A. Yes.

17 Q. And there's a number of different types of information that
18 you are required to disclose, right?

19 A. To the prosecutor, yes.

20 Q. But you understand that you disclose it to the prosecutor
21 so that it's disclosed to the defense, correct?

22 A. Yes.

23 Q. And so, for example, one of the things that you need to
24 disclose to the prosecutor is anything that you write down,
25 right?

N3EHFra2

UC 84 - Direct

1 A. Yes.

2 Q. That's called the *Rosario* rule, right?

3 A. Yes.

4 Q. And you're familiar with that rule?

5 A. Yes.

6 Q. So, for example, if you have a notepad and you write in it,
7 that needs to be turned over, right?

8 A. Yes.

9 Q. Isn't it true, detective, that you intentionally don't take
10 notes specifically so that you don't have to turn that over?

11 MS. McGUIRE: Objection.

12 THE COURT: The objection's sustained.

13 Q. Detective, you gave testimony in your deposition regarding
14 what things need to be turned over, right?

15 A. I'm sorry. I can't really hear you. I think your mic --

16 Q. I'm sorry. You gave testimony in your deposition regarding
17 what needs to be turned over to the defense, right?

18 A. Yes.

19 Q. And were you asked this question, did you give this answer,
20 page 201, line 6:

21 "Q. And when did you --

22 "A. If I have a notepad, all that is *Rosario*. I don't have a
23 notepad for that reason, and I don't take notes. All my
24 paperwork is put into these reports that you see."

25 Did you give that testimony?

N3EHFra2

UC 84 - Direct

1 A. Yes.

2 Q. You're also aware of what's known as the *Brady* rule, right?

3 A. Yes.

4 Q. And you know that that means that if there's evidence in
5 favor of a criminal defendant, you have to turn that over,
6 right?

7 A. Yes.

8 Q. And you were aware of that obligation at the time of
9 Mr. Fraser's trial?

10 A. Yes.

11 Q. You were also aware prior to Mr. Fraser's trial that you
12 had an obligation to disclose evidence that might affect your
13 own credibility, right?

14 A. Yes.

15 Q. And that included an obligation to disclose the fact that
16 you had been sued, right?

17 A. Yes.

18 Q. Because you understand that that, too, gets turned over to
19 the defense, right?

20 A. Yes, it does.

21 Q. And you understand that you can be cross-examined about
22 your lawsuits?

23 A. Yes.

24 Q. You have actually been questioned at trials before about
25 your lawsuits, right?

N3EHFra2

UC 84 - Direct

1 A. I have.

2 Q. And one of the things you do before you testify at a trial
3 is you meet with the prosecutors on your cases?

4 A. I do.

5 Q. And one way to disclose the fact that you have been sued is
6 to tell the prosecutor on that case?

7 A. Yes.

8 Q. In other cases you have met with prosecutors that have
9 asked you about your lawsuits, right?

10 A. Yes, I have.

11 Q. And you remember being asked by prosecutors about lawsuits
12 in some of your other cases, right?

13 A. Yes.

14 Q. And you have told those prosecutors about your lawsuits,
15 right?

16 A. I have.

17 Q. You met with prosecutors in this case prior to Mr. Fraser's
18 trial?

19 A. Yes.

20 Q. You met with them a few times?

21 A. Yes.

22 Q. And we agree that prior to Mr. Fraser's trial, you had been
23 sued on at least four separate occasions for your conduct as an
24 undercover officer, right?

25 A. Yes.

N3EHFra2

UC 84 - Direct

1 Q. We just went through those, right? Correct?

2 A. I said yes.

3 Q. Isn't it true, detective, that in this case you have no
4 recollection of having ever told the prosecutor in this case
5 about the fact that you were sued?

6 A. No.

7 Q. That's not true?

8 A. I don't have an independent memory of having that exact
9 conversation, but I would have, yes.

10 Q. You were asked questions about this in your deposition in
11 this case, right?

12 A. Yes.

13 Q. And specifically, you were asked these questions and you
14 gave these answers on page 210, line 5:

15 "Q. Well, do you have any specific recollection before
16 Mr. Fraser's trial of disclosing any such information to the
17 prosecution referring to lawsuits?

18 "A. I don't remember everything that I told to the
19 prosecutors. It was a long time ago. And, you know, I assume
20 they do their job right, and if he took notes, maybe he would
21 know. But I don't take notes.

22 "Q. So you don't have a recollection?

23 "A. No."

24 Did you give that testimony?

25 A. Yes.

N3EHFra2

UC 84 - CROSS

1 MR. BLOCH: I have nothing further at this time,
2 Judge.

3 THE COURT: Ms. McGuire, Mr. Francolla, whose witness
4 is this?

5 MS. MCGUIRE: It's mine, your Honor.

6 THE COURT: OK. You may inquire.

7 CROSS-EXAMINATION

8 BY MS. MCGUIRE:

9 Q. Good morning, detective.

10 A. Good morning.

11 Q. What is a nondescript precinct?

12 A. Nondescript location is a location that we operate out of.
13 It's not a publicly known building to the public. It's not a
14 police precinct. Uniformed officers don't walk in and out.
15 There's not marked patrol cars. It's for undercovers and the
16 detectives that do narcotics operations.

17 Q. And do you have a desk officer at that precinct?

18 A. No, we do not.

19 Q. Do you have an integrity control officer at the precinct?

20 A. Sometimes we do. Currently we do. Sometimes we don't.

21 Q. And what is 1PP?

22 A. 1PP is One Police Plaza. That's the headquarters of the
23 police department.

24 Q. Is that your precinct?

25 A. No, it is not.

N3EHFra2

UC 84 - CROSS

1 Q. When you were asked about the *Wright* case just now by
2 counsel, in your deposition did counsel show you any of the
3 documents that he showed you now?

4 A. Some of the documents, I believe. I'm not exactly sure.

5 Q. Did he -- in your deposition did he show you the buy report
6 in the *Wright* case?

7 A. No.

8 Q. Did he show you the criminal court transcripts in the
9 *Wright* case?

10 A. I don't remember.

11 Q. Was the *Wright* case prosecuted by the New York District
12 Attorney's Office?

13 A. Yes.

14 Q. Approximately how many arrest situations have you been
15 involved in as an undercover?

16 A. Thousands.

17 Q. Do you remember every arrest situation that you're involved
18 in?

19 A. No.

20 Q. Why is that?

21 A. I've been an undercover for a very long time, and we deal
22 with subjects, multiple subjects, every week. So many buys --
23 sorry.

24 We have so many buys and we deal with so many people,
25 I only remember the cases that stand out in my mind, cases that

1 I've had multiple dealings with.

2 Q. Now, how do you know that a neighborhood is having an issue
3 with drug sales?

4 A. We get community complaints that generate what is known as
5 a kite, which the detective investigators get, not the
6 undercovers, and then we go to those locations based upon the
7 community complaints.

8 Q. Had the department received any community complaints about
9 the Jacob Riis Houses?

10 MR. BLOCH: Objection.

11 THE COURT: Overruled.

12 A. Yes. There's always complaints in that neighborhood.

13 Q. And generally speaking, what are the complaints about?

14 A. Sales of narcotics.

15 Q. On October 21, 2014, did you have the occasion to encounter
16 the plaintiff?

17 A. Yes.

18 Q. Around what time of day did that happen?

19 A. It happened approximately 8 p.m. at night.

20 Q. So how did the incident begin?

21 A. That night I was attempting to purchase narcotics. I was
22 interacting with a female who I knew to be named Diane. Myself
23 and Diane walked to Eighth Street and Avenue D where she told
24 me she was going to place a phone call to have narcotics
25 brought down out of 118 Avenue D to me. At this point is when

N3EHFra2

UC 84 - CROSS

1 I was told to sit on the bench by Diane, which I did, and
2 that's when Mr. Fraser started speaking to me from -- coming
3 from 108 Avenue D against the railing.

4 Q. Prior to encountering the plaintiff, what, if anything, did
5 you give Diane?

6 A. I gave Diane \$50 of U.S. currency, prerecorded buy money,
7 so I could purchase the drugs that were supposed to be brought
8 down it me.

9 Q. Do you always give an individual money before obtaining the
10 drugs?

11 A. No.

12 Q. Why did you do that here?

13 A. I felt comfortable with Diane. We take it on a
14 case-by-case basis. She seemed trustworthy, and she wasn't
15 going very far. She was approximately 20 feet from me to
16 30 feet. I was in the same courtyard as the building.

17 MS. McGUIRE: I would like to have my cocounsel
18 publish what's already in evidence as Plaintiff's 156.

19 Q. Detective, do you recognize this?

20 A. Yes.

21 Q. What is it?

22 A. These are the benches in front of 108 Avenue D.

23 Q. And are these the benches that you sat on on October 21,
24 2014?

25 A. Yes. Specifically, I was on the bench more towards the

1 right on the screen.

2 Q. And when you encountered the plaintiff, how far away was he
3 when he first started talking to you?

4 A. He was approximately 10 to 15 feet away on the railing
5 opposite the benches.

6 MS. McGUIRE: I would now like to have my cocounsel
7 publish what's already in evidence as Plaintiff's 159.

8 Q. Detective, what is this?

9 A. This is a view from the courtyard between 108 and 118
10 Avenue D. It's a little bit east of the buildings going
11 towards the FDR. This shot is facing westbound. You could see
12 the benches where I was sitting. And the railing where
13 Mr. Fraser was standing is facing the benches. Going to the
14 left, you see next to those garbage cans there.

15 Q. Now, where would the crowd have been in this photo?

16 A. A little to the left of the shot that this photo shows.

17 Q. And does this photo indicate anything else?

18 A. You could see Avenue D, the traffic lights there at that
19 location.

20 Q. So at this point what, if anything, did the plaintiff say
21 to you?

22 A. As I was sitting on the bench, Mr. Fraser had multiple
23 conversations -- had a long conversation with me. He asked me
24 what I was doing there. He asked me whether I was a cop or
25 not, and he approached me.

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1 Q. And how did you respond?

2 A. Once Mr. Fraser got within arm's reach of me, I stood up
3 from the bench to protect myself because he was talking in a
4 raised voice and he seemed agitated. As I stood up from the
5 bench, I told Mr. Fraser during the conversation that we had, I
6 told him that I was looking for crills, which is a common
7 street term for crack cocaine. Mr. Fraser was still
8 questioning me, whether I was a cop and what I was doing in the
9 neighborhood. I told him I was good; I didn't need anything
10 from him. That Diane was taking care of me. I had someone
11 coming down. I was meeting somebody at that location.

12 Q. What happened next?

13 A. During all this conversation, Mr. Fraser was balling up his
14 fists. At one point he tightened his sweatpants in the front.
15 He kept getting closer to me, and as this was going on, I could
16 hear the group off to my right, which is approximately
17 five feet away, closer to 108 Avenue D, yelling to Mr. Fraser
18 to punch me, to fuck me up.

19 Q. And what happened after that?

20 A. As this was going on, I was getting more and more nervous.
21 I was trying to calm the situation down. I was speaking in a
22 normal tone of voice. Mr. Fraser demanded that I give him my
23 money. I had told him that I had an ID on me; that I was a
24 normal person. Mr. Fraser demanded to see an ID, so I took out
25 the money and the ID from my pocket. I held it in my right

1 hand.

2 As I was holding it in my right hand, Mr. Fraser
3 snatched the ID and money out of my hand, and that's when
4 Mr. Fraser took out his cell phone and took a photo of my ID.

5 Q. Did you have an understanding of why the plaintiff wanted
6 to see your ID?

7 A. I was hoping that he wanted to see that I wasn't a cop and
8 that would possibly calm the situation down.

9 Q. And what ID did you show him?

10 A. A showed him a New York State DMV-issued ID which has
11 fraudulent information for me on it but does have my photo.

12 Q. Why did you show him that ID?

13 A. I showed him that ID in the hopes that it would calm the
14 situation down.

15 Q. Are there any risks associated with showing the ID to a
16 civilian?

17 A. To a normal civilian, no; to a drug dealer, possibly. If
18 they were to take a photo of that or my face, my picture could
19 be circulated amongst that group.

20 Q. In your capacity as an undercover, had you ever shown a
21 civilian your identification before?

22 A. Yes, I had.

23 Q. So what happened next?

24 A. After Mr. Fraser took the photo of my ID, he put it in his
25 gray sweatpants pocket. I repeatedly asked for my ID back. He

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1 told me I wasn't getting anything back. At this point the
2 tensions were getting -- were getting more. I felt Mr. Fraser
3 was getting more aggressive. He was still balling up his
4 fists. So I put over a distress signal to my field team to let
5 them know I was in trouble. I had the bench to my back. I
6 couldn't go to my right, so I felt as though I was closed in.

7 Q. What is a distress signal?

8 A. A distress signal is a physical gesture. Once done by an
9 undercover, any member of the field team that views this knows
10 that the undercover is possibly in a dangerous situation and
11 needs help. So that member will notify the rest of the field
12 team, and the field team will move in to help the undercover.

13 Q. Why did you use your distress signal here?

14 A. I felt in fear for my safety. Mr. Fraser had already taken
15 my ID and my money and was still threatening me harm, still
16 balling up his fists, so I felt I needed help.

17 Q. And what was the exact moment that you need to put over
18 that distress signal?

19 A. Once Mr. Fraser refused to give me my ID back and he was
20 threatening to punch me in the face and the group was still
21 yelling, I felt in fear for my safety.

22 Q. So if the plaintiff had returned your ID and let you walk
23 away, what would you have done?

24 MR. BLOCH: Objection.

25 THE COURT: I'm sorry. Ground?

1 MR. BLOCH: Calls for speculation.

2 THE COURT: Overruled.

3 A. The idea of showing him the ID was to hope to calm the
4 situation down. So if he had given me my ID back and allowed
5 me to walk away or even if he kept my ID and allowed me to walk
6 away, I would have left the location and then communicated with
7 the field team to let them know what had transpired.

8 Q. On October 21, 2014, how many times had you previously
9 given a distress signal?

10 MR. BLOCH: Objection. Relevance.

11 THE COURT: The objection is sustained.

12 Q. Before this moment had a civilian ever taken a photo of
13 your identification?

14 A. No.

15 Q. And since this moment has a civilian ever taken a photo of
16 your identification?

17 A. No.

18 Q. The fact that the plaintiff took a photo of your ID, how
19 did you feel about that?

20 A. I was alarmed. It caused me concern.

21 Q. How long after you gave your distress signal did your team
22 begin coming?

23 A. I don't know exactly when they started moving in or when
24 they saw it. I gave my distress signal approximately three
25 times before I observed a member of the field team. It feels

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1 like a long time when you're in the situation, but it was only
2 several seconds.

3 Q. And what happened after you gave your distress signal?

4 A. As I noticed field team members moving in, I heard the
5 group yell, someone from the group yell something along the
6 lines of, "Yo, it's the cops." At this point, as that was
7 said, Mr. Fraser looked me in the face and he said, "I'm going
8 to get you good."

9 Q. What happened after that?

10 A. After he said that, Mr. Fraser reached into the front area
11 of the sweatpants and put his hand in his sweatpants. I took
12 two steps -- approximately two side steps back. I slid
13 backwards off and to my left. As the benches are angled, I
14 went along that to the left, which is westbound, to try and
15 gain distance between myself and Mr. Fraser.

16 Q. What happened next?

17 A. As I was trying to gain distance from myself from
18 Mr. Fraser, his hand was still in his waistband, obstructed so
19 I could not see it. I feared that he was possibly going for a
20 weapon of some sort, and so I prepared myself to draw my
21 firearm.

22 Q. What happened after that?

23 A. As I was moving backwards away from Mr. Fraser, preparing
24 to draw my firearm, Mr. Fraser took his hand out of the front
25 of his pants. He did not have a weapon in his hand. His hands

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1 were both empty, so I did not draw my firearm.

2 Q. What happened after that?

3 A. As I was continuing, as I was moving backwards, Mr. Fraser
4 ran towards me. This all happened very quickly. So as soon as
5 he took his hand out of his pants and they were empty,
6 Mr. Fraser moved at me. And as he moved at me, we both came
7 together, and we both started grabbing each other. No punches
8 were thrown, but he did grab my upper body and -- as I grabbed
9 his arms.

10 Q. What happened next?

11 A. We struggled for -- for a few seconds, less than a minute.
12 As we were struggling, one of the detectives, either Detective
13 Deltoro or Regina, I don't remember who, arrived at the
14 location and grabbed Mr. Fraser.

15 Q. Did anything happen before Mr. -- the plaintiff was
16 apprehended?

17 A. Before he was apprehended, yes, he ran.

18 Q. So he ran from the bench location, is that correct?

19 A. Yes. After -- after one of the detectives arrived at my
20 location where I was struggling with Mr. Fraser, Mr. Fraser let
21 me go, so I let him go. I started to walk away from the
22 location, and Mr. Fraser ran from the detective that was
23 attempting to apprehend him.

24 Q. What, if anything, did you do next?

25 A. Mr. Fraser was running eastbound through the Housing

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1 Authority, so I ran behind him. I was approximately a block
2 away.

3 Q. Do you normally chase suspects?

4 A. I do not.

5 Q. Why did you do so here?

6 A. I wasn't chasing him to apprehend him. I have no police
7 equipment. I don't have handcuffs. I don't have a radio. I
8 have none of that. I was chasing just trying to keep eyes on
9 Mr. Fraser. In case he were to hide in a bush, go in a
10 building, or hide behind a Dumpster or something, I could call
11 the field team and let them know where he was hiding.

12 Q. You just testified that you don't have a radio or
13 handcuffs. Why is that?

14 A. As an undercover officer, we don't carry any police-type
15 equipment of that nature. We strictly do buys. And we do not
16 arrest anybody. We do not apprehend anybody. We do not
17 handcuff anybody.

18 Q. What happened next?

19 A. As Mr. Fraser got closer to the FDR inside the Housing
20 Authority, he turned northbound and started running from what
21 would be A Street -- it's a walkway. Cars can't go there --
22 northbound towards Tenth Street. I lost sight of Mr. Fraser
23 for a short time as he ran northbound. Once I got to about to
24 turn northbound, I heard a car driving behind me. I turned
25 around and observed one of the team's vehicles. It was a

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1 minivan, so I knew it was the leader's car, and I let the car
2 go by me.

3 Q. What happened next?

4 A. I turned northbound. I could see Mr. Fraser running and
5 the car -- the minivan was going after him. So I started to
6 walk, knowing that whoever was in that car could observe the
7 suspect.

8 Q. And eventually was the plaintiff apprehended?

9 A. Yes. Inside the circle, little grass area of Avenue --
10 between Avenue D and FDR on Tenth Street, he was apprehended by
11 Lieutenant Patane.

12 Q. And what, if anything, did the officers recover from
13 plaintiff?

14 A. I wasn't there during the search, but my --

15 MR. BLOCH: Objection. No foundation for his
16 knowledge of this.

17 THE COURT: No foundation?

18 MR. BLOCH: He says he wasn't there during the search.

19 THE COURT: Fellow officer rule.

20 Please continue.

21 A. I wasn't there during the search, but I was given back my
22 ID, so that was recovered.

23 Q. To your knowledge, did the officers recover the marked
24 money?

25 A. No.

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1 Q. How is it that the plaintiff took the money, but it wasn't
2 recovered?

3 MR. BLOCH: Objection.

4 THE COURT: The objection's sustained. That's
5 speculative. Move on.

6 Q. Were there any efforts to recover the money after the
7 plaintiff was apprehended?

8 A. I'm unsure of what all the other detectives did after he
9 was apprehended.

10 Q. After the plaintiff was apprehended, what happened next?

11 A. After he was apprehended, I spoke with the supervisor. He
12 wanted to make sure I was OK and unharmed. I told him about
13 the events that happened, and I also spoke with Detective
14 Regina.

15 Q. Did you do any paperwork afterwards?

16 A. I did.

17 Q. What paperwork did you do?

18 A. I did the DD5 and I did the undercover expense report.

19 Q. What is an expense report?

20 A. Expense report is a report that I do to account for money
21 that I have used that night or money that was spent.

22 MS. MCGUIRE: I would like to have my cocounsel
23 publish what's already in evidence as Plaintiff's 8.

24 Q. Why did you create this report?

25 A. I created this report. It must be done anytime money is

1 used in an operation.

2 Q. And what did you document having spent?

3 A. On the right side of the document, it says "Funds expended,
4 \$70." That was the \$50 given to Diane and the \$20 that
5 Mr. Fraser took from me.

6 Q. And could you explain the caption, "Funds Recovered."

7 A. In cases in which you do a buy and bust and money is
8 recovered, that's where you would document it.

9 Q. So here, what does it say next to "Funds Recovered"?

10 A. No money was recovered.

11 Q. Why does it say that?

12 A. Because no money was recovered.

13 Q. And can you explain the caption that says "Funds
14 Vouchered"?

15 A. In this case it says zero dollars vouchered. If this was a
16 case in where money was recovered, they voucher into evidence
17 the lowest denomination of money that was spent. So say I
18 spent a hundred dollars, they would voucher 20 if they were all
19 20s, and then they would return, the next caption, return to
20 funds. They would return the other 80. So \$20 would be kept
21 into evidence, and we would reuse the other 80.

22 Q. So had any money been recovered from plaintiff or Diane,
23 how would that be documented on this expense report?

24 A. It would be documented under all those captions.

25 Q. What is the date on this document?

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1 A. 10/21/2014.

2 Q. So you documented that you did not recover any money that
3 day?

4 A. Yes.

5 Q. Now, yesterday counsel read in your testimony from a
6 pretrial hearing that occurred a year after this report was
7 generated where you stated Diane gave you the money back,
8 correct?

9 A. Yes.

10 Q. But when you went to trial two days later, you clarified
11 this, correct?

12 A. Yes, I did.

13 Q. And you clarified that Diane did not give you the money
14 back?

15 A. Correct.

16 Q. And that's, in fact, what's documented on this expense
17 report, correct?

18 A. Yes, I did.

19 Q. Which was created on the date of incident?

20 A. Yes.

21 Q. On the date of incident --

22 THE COURT: Do you have anymore testimony that you
23 would like to give? I mean, I realize that the
24 plaintiff's lawyers don't care if you're leading your witness,
25 but I do.

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1 MS. McGUIRE: Understood, your Honor.

2 Q. On the date of --

3 THE COURT: People at the front table, would you
4 please enforce the Rules of Evidence.

5 MR. BLOCH: Yes, Judge.

6 Q. On the date of incident, do you know what happened to Diane
7 Smith?

8 A. No, I do not.

9 Q. Do you get in trouble if money is taken from you?

10 A. No, I do not.

11 Q. The fact that you spent money that didn't return drugs, is
12 that something you would get in trouble for?

13 A. No.

14 Q. So you mentioned something before called a DD5. What's a
15 DD5?

16 A. DD5 is one of the reports an undercover can do. It's the
17 informational report where I will write a synopsis of the
18 events so that I could later remember what happened.

19 Q. And why did you create a DD5 here?

20 A. I created a DD5 and not a buy report because I was robbed
21 in this instance, and I did not make a drug purchase.

22 MS. McGUIRE: I would like to have my cocounsel
23 publish what's already in evidence as Plaintiff's Exhibit 9.

24 Q. Detective, how long after this incident did you create this
25 report?

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1 A. I would have -- I did create it that night leading into the
2 early morning hours of the next day.

3 Q. Now, do you see towards the bottom of the page it says "JD
4 Brown"?

5 A. Yes.

6 Q. Who is that referring to?

7 A. JD Brown is Diane, the person that left -- that had the \$50
8 that was attempting to get me crack cocaine.

9 Q. And why did you refer to her as JD Brown?

10 A. JD is also known as John Doe or Jane Doe. We give JD names
11 to subjects we're dealing with when we don't know their actual
12 names.

13 Q. Below that do you see where it says "JD Black"?

14 A. Yes.

15 Q. Who is that referring to?

16 A. That is referring to Mr. Fraser.

17 Q. So why did you refer to him as JD Black?

18 A. Because he was wearing a black hoodie that night.

19 Q. So at the time of this report, was plaintiff known to you?

20 A. No.

21 Q. If he was known to you, would you have written something
22 different?

23 A. If I knew his name during the encounter, I would have wrote
24 his name in the report instead of using a JD name.

25 Q. So stepping back, was plaintiff known to you when you first

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1 interacted with him?

2 A. No, he was not.

3 Q. Did you refer to him by his name when you first interacted
4 with him?

5 A. No.

6 Q. Detective, just going back to JD Brown, why did you refer
7 to her as JD Brown?

8 A. She had on a brown leather jacket.

9 Q. OK. So coming back, on the date of incident, did you tell
10 the plaintiff that you knew where he lived?

11 A. No, I did not.

12 Q. Did you tell him that you knew his mother?

13 A. No.

14 Q. As a practical matter, why wouldn't you have said these
15 things to him?

16 A. As an undercover, specifically during buy-and-bust
17 operations, I don't know who I'm dealing with, who I am out on
18 the street purchasing narcotics from. I don't know their
19 history. I don't know anything about their families. I would
20 never use a person that could easily discredit me if they were
21 to call that person up.

22 When I interact with subjects during buy and busts I'm
23 attempting to purchase narcotics off of, I will use other drug
24 dealers that I know are out on the street. I'll say that
25 person knows me. I'll use individuals who I know use drugs out

1 on the street. I would use that. I would never talk about
2 somebody's family member because I don't know if that person
3 has a mother, has a father, has kids, just because I don't know
4 their history.

5 Q. Is there a circumstance where you would know this
6 information?

7 A. During --

8 MR. BLOCH: Objection.

9 THE COURT: Overruled.

10 A. During long-term case operations where we do months and
11 months of buys into one subject, sometimes we are given more
12 background information in order to get into that operation and
13 to get it started. So I sometimes will use people that they
14 might know in the hopes to gain their trust.

15 Q. Did you meet with the assistant district attorney about
16 plaintiff's criminal case?

17 A. Yes, I did.

18 Q. What did you meet with the ADA about?

19 A. I met with the ADA first for the grand jury, and then I met
20 with the ADA leading up to the trial.

21 Q. And what is discussed in the meetings with the ADA?

22 A. Leading up to the grand jury, we discuss the case, and I
23 tell the ADA what happened. We go over my reports. Leading up
24 to the trial, I tell the ADA about my lawsuits. I tell the ADA
25 about any disciplinary history I would have or don't have with

1 the NYPD, and we again go over the facts of the case.

2 Q. Why is it important to disclose your lawsuits to the
3 prosecutor?

4 A. I tell the prosecutors about my lawsuits (1) because I'm
5 required, but (2) you don't want to go into trial and have the
6 prosecutor not know everything that you can be questioned on on
7 the stand.

8 Q. How did do you disclose specifically lawsuit material to
9 the prosecutor?

10 A. I tell the prosecutor --

11 MR. BLOCH: Objection. Judge, could we just clarify
12 what -- if this is generally speaking or in this case?

13 THE COURT: Are you talking about your general
14 practice or what you did with ADA Sangermano in this case?

15 MS. McGUIRE: I'm asking him about his general
16 practice.

17 THE COURT: Thank you.

18 A. When I talk to ADAs, I tell them about that I have
19 lawsuits. I tell them how many I have, I believe I have, so
20 the ADA can go and pull up all the cases.

21 Q. So you give them a ballpark number of lawsuits, is that
22 correct?

23 A. Yes.

24 Q. And why don't you give them additional information?

25 A. I'm not always served in every lawsuit, and I don't always

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1 have conversations multiple times or conversations with the
2 lawyers that are dealing with the lawsuits.

3 Q. And why don't you know every time you've been sued?

4 MR. BLOCH: Objection.

5 THE COURT: Overruled.

6 A. I've been an undercover for a long time. I have a lot of
7 cases to deal with. If I have a lawsuit and I've only ever
8 signed a piece of paper on it and it hasn't gone to trial and
9 there's not a lot behind it, I might forget that. That's why I
10 tell the ADAs how many lawsuits I have, so they could be sure
11 to get all the proper documentation for those lawsuits.

12 Q. And in the cases where you were served, do you necessarily
13 remember the names of those cases?

14 A. No, I do not.

15 Q. In the cases where you were served, do you necessarily
16 remember the docket numbers of those cases?

17 A. No, I do not.

18 Q. If you don't tell the prosecutor the names and docket
19 numbers of every lawsuit, is it your understanding that they'll
20 never know about it?

21 MR. BLOCH: Objection. Objection.

22 THE COURT: Wait a minute. What?

23 First of all, it's a leading question, so I'll strike
24 it.

25 MS. MCGUIRE: OK.

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1 Q. How do you know that you have to disclose lawsuits to the
2 prosecutor?

3 A. I know that just from my history and from training
4 and because I have a background in some law classes.

5 Q. What is your understanding about the prosecutor's ability
6 to follow up on the ballpark number of lawsuits that you
7 provide?

8 MR. BLOCH: Objection.

9 A. The objection's sustained.

10 Q. Did you intentionally withhold information about your
11 lawsuits from the prosecutor in this case?

12 A. No, I did not.

13 Q. Just generally speaking, did you frame the plaintiff for
14 robbery?

15 A. No.

16 (Counsel confer)

17 Q. One last question. You said it's your practice to provide
18 the prosecutor a ballpark number of lawsuits. Why do you do
19 that?

20 A. I do that because I don't remember every single name of
21 every case and every docket number. I want to make sure the
22 prosecutor has the ability to look up the lawsuits using
23 their -- their computer system.

24 MS. McGUIRE: Thank you, detective. No further
25 questions.

1 THE COURT: Recross? Yes?

2 MR. BLOCH: I have nothing further, Judge.

3 THE COURT: Oh, thank you.

4 You may step down. Thank you very much, detective.

5 THE WITNESS: Thank you.

6 (Witness excused)

7 THE COURT: Call your next witness.

8 MR. RUDIN: Your Honor, before we call the next
9 witness, could we have a brief recess, maybe five or ten
10 minutes?

11 THE COURT: Well, actually, since we're going to take
12 one recess, what's going on back there? Do we have our -- OK.

13 MR. RUDIN: I also need to set up. I'm using my
14 paralegal to take Ms. Alvarez's place.

15 THE COURT: Supposed to be set up already. We're not
16 going to do this after every witness, you know. But let me see
17 if we should take our morning -- middle-of-the-day break now.

18 Where's Jimmy? Could I see Jimmy, please.

19 Folks, we're going to take the break now. OK. The
20 bagels aren't upstairs yet, but we're going to take a break
21 now. We're going to be on break for 25 minutes. Don't discuss
22 the case. Keep an open mind. OK?

23 (Jury excused)

24 (Continued on next page)

25

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1 (In open court; jury not present)

2 LAW CLERK: Case on trial continued. Judge is
3 present, parties are present, jury is not present.

4 THE COURT: Okay. So are we ready? Is everything set
5 up?

6 MR. RUDIN: Yes, your Honor.

7 THE COURT: Let's bring the jurors in.

8 (Jury present)

9 THE COURT: Okay. Have seat. We have a new cafeteria
10 operating, so I wasn't sure how that was going to work. But I
11 guess it worked. I got a thumbs up. Okay.

12 Call your next witness.

13 MR. RUDIN: Plaintiff calls defendant Regina.

14 THE COURT: Detective Regina, do you want to come up
15 here. Remain standing and raise your right hand.

16 (Witness sworn)

17 LAW CLERK: Please state and spell your name for the
18 record.

19 THE COURT: Have a seat first so we can all hear you
20 because of this thing.

21 THE WITNESS: Matthew Regina. R-E-G-I-N-A.

22 THE COURT: Could you get within kind of shouting
23 distance of that microphone, otherwise no one will be able to
24 hear you because you are in that box.

25 THE WITNESS: All right.

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Regina - Direct

1 THE COURT: Thank you, much better. Okay.

2 MATTHEW REGINA,

3 called as a witness by the Plaintiff,

4 having been duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. RUDIN:

7 Q. Good morning, Mr. Regina.

8 A. Good morning.

9 Q. Mr. Regina, you became a New York City police officer in
10 2002?

11 A. Yes.

12 Q. Are you still a New York City police officer?

13 A. No, I'm retired now.

14 Q. When did you retire?

15 A. May this year.

16 Q. You attended the police academy?

17 A. Yes.

18 Q. Thereafter you worked at the 70th Precinct in Brooklyn?

19 A. Yes.

20 Q. For about how many years?

21 A. I was there for about five years.

22 Q. Then after that you worked in narcotics?

23 A. Yes.

24 Q. For about how many years?

25 A. For the remainder of my career, so it was like about 15

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Regina - Direct

1 years.

2 Q. How many months did you spend attending the police academy?

3 A. I think it's three months -- or six months. I'm sorry, six
4 months.

5 Q. At the police academy, you studied the procedures and the
6 policies of the NYPD?

7 A. Yes.

8 Q. You studied the penal law?

9 A. Yes.

10 Q. And the penal law sets forth the crimes that the police are
11 authorized to make arrests for?

12 A. Yes.

13 Q. And you studied the elements of each type of crime?

14 A. Yes.

15 Q. For example, you studied the difference between petit
16 larceny and grand larceny?

17 A. Yes.

18 Q. You studied the difference of different levels of assault?

19 A. Yes.

20 Q. You studied different levels of robbery?

21 A. Yes.

22 Q. And you were taught what happens during a prosecution from
23 the point of arrest through trial?

24 A. Yes.

25 Q. You were taught how to handle yourself as a witness in

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Regina - Direct

1 court?

2 A. Yes.

3 Q. And by November of 2015, when the incident -- I'm sorry.

4 Withdrawn.

5 By November 2015, when Mr. Fraser was brought to
6 trial, you had made over 600 arrests; is that right?

7 A. Yes.

8 Q. And you had been involved in thousands of arrest cases?

9 A. Correct.

10 Q. And since then, you have been involved until your
11 retirement in at least hundreds of additional arrests; is that
12 correct?

13 A. Yes.

14 Q. How many times have you testified in the grand jury?

15 A. A lot. A lot of times. Maybe 100 times.

16 Q. How many times have you testified at a pretrial hearing?

17 A. I did a bunch of those too. So I don't know the exact
18 number. It's -- I mean, I'm guessing maybe -- maybe 20.

19 Something like that.

20 Q. How many times have you testified at a trial where your
21 testimony was observed by jurors like these jurors?

22 A. Maybe a dozen or so times.

23 Q. So would it be fair to say you are a very experienced
24 witness?

25 A. Yes.

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Regina - Direct

1 Q. You know how to handle yourself on the witness stand?

2 A. Yes.

3 Q. I'd like to ask you some questions about the issue of civil
4 lawsuits.

5 A. Okay.

6 Q. You understand that Mr. Fraser's complaint alleges that UC
7 84 and Detective Deltoro are responsible for not disclosing
8 their lawsuit history to the Manhattan District Attorney?

9 A. Yes.

10 Q. And you understand that the lawsuit also claims that the
11 City of New York has liability for this as well?

12 A. Yes.

13 Q. Before Mr. Fraser's trial in November 2015, you had
14 received no training concerning the disclosure of civil lawsuit
15 information to prosecutors, correct?

16 A. I received no training?

17 Q. Yes.

18 THE COURT: Sir, I'm having a hard time hearing you
19 and I'm right next to you. So, I would really appreciate --

20 THE WITNESS: I'm sorry. How's that? Is that better?
21 That's good?

22 Q. Just to make sure you understand the question, as of
23 November 2015, when you testified at Mr. Fraser's trial, you
24 had received no training from the NYPD about the disclosure of
25 civil lawsuit information to prosecutors, correct?

N3E3FRA2

Regina - Direct

1 A. I may have. I'm not sure if I have or not.

2 Q. Isn't it a fact that the first such training you received
3 was when you received an NYPD Legal Bureau bulletin on or after
4 January 25, 2017?

5 A. Correct.

6 Q. So prior to January 25, 2017, you received no training from
7 the NYPD about the subject of disclosing civil lawsuit
8 information to prosecutors?

9 A. Yes.

10 Q. The only training you received was more than a year after
11 Mr. Fraser's trial?

12 A. Correct, yes.

13 Q. You received no training at the police academy, correct, on
14 that subject?

15 A. You are asking me after it came out, the 2017 --

16 Q. No. When you attended the police academy in 2002, since
17 that was long before Mr. Fraser's trial.

18 A. Right.

19 Q. You testified that you didn't receive such training until
20 after Mr. Fraser's trial. Would it be fair to say that at the
21 police academy, you did not receive that training?

22 A. Yes.

23 Q. You did not receive that training in 2003, 4, 5, 6, 7, 8,
24 all the way through '15?

25 A. Yes.

N3E3FRA2

Regina - Direct

1 Q. You were personally familiar with what to do when you
2 learned of a lawsuit against yourself, correct, in terms of
3 responding to the lawsuit?

4 A. Yes.

5 Q. You knew from experience that the supervisor would give you
6 the lawsuit with your name on it?

7 A. Yes.

8 Q. He would give you a copy of the complaint?

9 A. Yes.

10 Q. And the complaint would contain the factual allegations
11 accusing you of some form of wrongdoing?

12 A. Yes.

13 Q. And you would typically read that complaint, correct?

14 A. Yes.

15 Q. Because you were concerned when someone accused you of
16 misconduct, right?

17 A. Yes.

18 Q. You wanted at the earliest opportunity to try to remember
19 what had happened, correct?

20 A. Yes.

21 Q. And then you would fill out and sign a request form so the
22 City would give you a lawyer, right?

23 A. Yes.

24 Q. And this was the same procedure that all police officers in
25 2015 and up until the point of your retirement are required to

N3E3FRA2

Regina - Direct

1 follow when they are served with a civil lawsuit, right?

2 A. Yes.

3 Q. This procedure was also published to police officers in the
4 patrol guide 211-21, right?

5 A. Yes.

6 Q. I'd like to ask you some questions about buy and bust
7 procedures.

8 A. Okay.

9 Q. This case began with the arrest of Jawaun Fraser for the
10 alleged robbery of UC 84 on Eighth Street near Avenue D on
11 October 21, 2014, correct?

12 A. Yes.

13 Q. And UC 84 was in the area to make a purchase of narcotics?

14 A. Yes.

15 Q. You were a member of the backup team, correct?

16 A. Correct.

17 Q. You were there for, among other reasons, to protect UC 84?

18 A. Yes.

19 Q. And as of 2015, you had worked together with UC 84 for a
20 good eight years, right?

21 A. Yes.

22 Q. You also worked a couple of years with Detective Deltoro,
23 Lieutenant Patane, and Detective Lee, who was UC 17?

24 A. Yes.

25 Q. Detective Lee was the ghost, right?

N3E3FRA2

Regina - Direct

- 1 A. No, Detective Lee just -- he is an investigator.
- 2 Q. So you had worked a couple of years with Deltoro, Patane,
3 and Lee?
- 4 A. Yes.
- 5 Q. They were part of the backup team along with you?
- 6 A. Correct.
- 7 Q. Prior to October 21, 2014, you had made hundreds of arrests
8 with UC 84 and the same undercover team, correct?
- 9 A. Yeah, it was a lot of arrests, yes.
- 10 Q. Hundreds?
- 11 A. Yeah.
- 12 Q. You continued to work with the same field team after
13 Mr. Fraser was arrested, correct?
- 14 A. Yes.
- 15 Q. And you would agree with me, I'm sure, that conducting
16 undercover narcotics investigations can be dangerous?
- 17 A. Yes.
- 18 Q. You rely on each other in your work for your safety?
- 19 A. Yes.
- 20 Q. It is essential for the undercover officer to be able to
21 purchase narcotics that his identity as a police officer not be
22 known in the community, correct?
- 23 A. Yes.
- 24 Q. Otherwise the ruse that he uses will not work, or may not
25 work?

N3E3FRA2

Regina - Direct

- 1 A. Correct.
- 2 Q. Pretends to be someone he's not?
- 3 A. Yes.
- 4 Q. It is also essential for his safety, correct?
- 5 A. Correct.
- 6 Q. And each day you have a prearranged distress signal?
- 7 A. I mean, it doesn't really change. It's just a --
- 8 non-verbal sign.
- 9 Q. You all understand what the non-verbal sign is that the
- 10 undercover officer should give if he feels like he is in
- 11 distress?
- 12 A. Yes.
- 13 Q. If the undercover flashes the distress signal, you will
- 14 come to his assistance, correct?
- 15 A. Yes.
- 16 Q. You'll also come to his assistance if you observe
- 17 circumstances that make you concerned for his safety, correct?
- 18 A. Yes.
- 19 Q. After all these years working with the same men, you felt
- 20 loyalty to them, didn't you?
- 21 A. Yes.
- 22 Q. You would do whatever was required to guarantee their
- 23 safety, correct?
- 24 A. Yes.
- 25 Q. You were designated that day as the arresting officer for

N3E3FRA2

Regina - Direct

1 any arrests that were made; is that right?

2 A. Yes.

3 Q. That meant you had certain responsibilities?

4 A. Correct.

5 Q. Generally the procedure was for the undercover officer to
6 use prerecorded buy money to make a purchase of drugs, right?

7 A. Yes.

8 Q. And the backup team would then make an arrest of the
9 suspected seller?

10 A. Yes.

11 Q. Or of anyone they suspected had been involved in the sale?

12 A. Correct.

13 Q. You would have the photocopy of the buy money with you in
14 the field, correct?

15 A. Yes.

16 Q. And as the designated arresting officer, you would search
17 the suspect in the field following the arrest?

18 A. Yes.

19 Q. Your no normal practice immediately following the arrest
20 was to compare any money in the suspect's possession to the
21 photocopies of the buy money that you had to see if the person
22 under arrest in fact possessed buy money?

23 A. Are you asking me if I normally check the money on the
24 street?

25 Q. Yes.

N3E3FRA2

Regina - Direct

1 A. No, I don't normally do that.

2 Q. It was not your normal practice to check the money in the
3 possession of the suspect on the street and against the
4 photocopies of buy money to see if the suspect had buy money?

5 A. Correct. I didn't do that.

6 Q. You never did that?

7 A. I -- at the precinct I checked the money with the
8 photocopy.

9 Q. Well, let me show you your trial testimony, page 134, line
10 16. Put that up on the screen, please. Let's start at line
11 11.

12 Do you recall being asked these questions and giving
13 these answers:

14 "Q. The undercover -- when the undercover told you what
15 happened, did he say Mr. Fraser had a weapon?

16 "A. No.

17 "Q. And did he say that Mr. Fraser had drugs?

18 "A. No.

19 "Q. What's being referred to as prerecorded buy money, you
20 actually carry a photocopy of the prerecorded buy money with
21 you, right, as you work in the field?

22 "A. Yes.

23 "Q. And typically when you arrest somebody that you think has
24 prerecorded buy money, you can actually look at it right in the
25 field, compare it to your photocopy, and make that conclusion,

N3E3FRA2

Regina - Direct

1 bingo, we got him, right?

2 "A. Yes, that's right.

3 "Q. You didn't do that in this case though, right?

4 "A. No."

5 Do you remember being asked those questions and giving
6 those answers?

7 A. Yes.

8 MR. FRANCOLLA: I'm going to object. It's not
9 inconsistent.

10 THE COURT: I'm sorry?

11 MR. FRANCOLLA: To the extent he was reading it as
12 impeachment, I'm objecting on the grounds it's not.

13 THE COURT: Well, that's for the jury to decide.
14 Certainly not for me to decide.

15 MR. FRANCOLLA: Okay.

16 Q. Now, Mr. Regina, as the arresting officer, you would be in
17 charge of the preparation of paperwork related to the arrest;
18 is that correct?

19 A. Yes.

20 Q. In that paperwork, you and the other officers would fully
21 document what had occurred?

22 A. Yes.

23 Q. And you knew the district attorney's office would rely on
24 the accuracy and the completeness of that paperwork, correct?

25 A. Yes.

N3E3FRA2

Regina - Direct

1 Q. And you also know that it needed to be complete and
2 accurate, because it would be handed over to defense counsel
3 who could cross-examine you at a criminal trial about it,
4 correct?

5 A. Yes.

6 Q. In fact, police are trained to thoroughly detail in the
7 paperwork the details of the crime; isn't that right?

8 A. Yes.

9 Q. Now, you were trained about that at the police academy,
10 weren't you?

11 A. Yes.

12 MR. RUDIN: Would you put up Plaintiff's Exhibit 61
13 please, page 6.

14 Q. Do you have that document in front of you, Mr. Regina?

15 A. Yes.

16 Q. And do you see that this is a training academy -- well,
17 Theo, would you go to the first page, please.

18 You see this is a document entitled "legal studies
19 court appearances"?

20 A. Okay.

21 Q. Turn to page 6, please. You see the document states at
22 page 6: To do your job properly, you need to ensure that you
23 have all the details of the case thoroughly recorded. And then
24 it has a list of types of information that is included.

25 Do you see that?

N3E3FRA2

Regina - Direct

1 A. Yes.

2 Q. You were trained about this type of responsibility, weren't
3 you?

4 A. Yes.

5 Q. It says: To make a record of the precise time of important
6 events. Right?

7 A. Yes.

8 Q. Then it has a whole list of questions under that?

9 A. Yes.

10 Q. Then it says: Make a record of the time elapsed between
11 important events, right?

12 A. Yes.

13 Q. Layout of indoor locations, right?

14 A. Correct.

15 Q. I am going through the general categories. I'm not going
16 through every question, of course.

17 The next page: Configuration of streets at outdoor
18 locations, right?

19 A. Yes.

20 Q. Exact street addresses?

21 A. Yes.

22 Q. Lighting at crime scenes?

23 A. Yes.

24 Q. The weather?

25 A. Yes.

N3E3FRA2

Regina - Direct

1 Q. Physical characteristics and clothing of suspects?

2 A. Yes.

3 Q. Next page, please.

4 Any statements made by a defendant?

5 A. Yes.

6 Q. Names of other officers assigned to the case?

7 A. Yes.

8 Q. And exact location of seized contraband, right?

9 A. Yes.

10 Q. You were trained, generally speaking, to make records as
11 complete as possible about these types of categories, right?

12 A. Yes.

13 Q. And then it says: Number one, if recovered from the
14 defendant's person, record the precise location, e.g., right
15 front pants pocket.

16 You received that training as well?

17 A. Yes.

18 MR. RUDIN: Theo, would you go to the next page,
19 please.

20 Q. Do you see the category says "chain of custody"?

21 A. Yes.

22 Q. What's your understanding of what chain of custody means?

23 A. It's when the evidence is collected, and who takes
24 possession of that evidence as it -- whoever handles it.

25 Q. You understand that it is important for an arresting

N3E3FRA2

Regina - Direct

1 officer such as yourself to make sure that there is a record of
2 the chain of custody of important evidence in an investigation
3 or an arrest?

4 A. Yes.

5 Q. Because otherwise it may not be admissible in court?

6 A. Yes.

7 Q. And this document states near the bottom, six lines from
8 the bottom, at the first paragraph, "The officer who seizes it
9 either from the defendant or the location, should therefore,
10 voucher it at once."

11 You see that statement?

12 A. I mean, I don't see it, but...

13 Q. You see the hand on the screen?

14 A. Yeah, yes.

15 Q. Did I read that sentence?

16 A. The officer who seizes it. Yes, I see it.

17 Q. That's consistent with your training?

18 A. Yes.

19 Q. On page 9 it says recording the facts.

20 A. Okay.

21 Q. It makes reference to an activity log.

22 A. Yes.

23 Q. Is an activity log the same thing as a memo book?

24 A. Yes.

25 Q. You see the second paragraph?

N3E3FRA2

Regina - Direct

1 A. Yes.

2 Q. It states: Good activity log entries should read like
3 testimony. There should be a minimum number of conclusions and
4 a maximum number of details. Remember that it is the details,
5 even though you may consider them insignificant, which will
6 convince the court or jury that you are telling the truth and
7 that the defendants are guilty of the crime for which you have
8 arrested them.

9 Then it goes on to state, at a very minimum, the kind
10 of information that should be in the activity log entry.

11 Do you see that?

12 A. Yes.

13 Q. Was that consistent with your training as well?

14 A. Yes.

15 Q. Okay. Now, let's talk about the preparation of paperwork
16 and evidence in this case.

17 A. Okay.

18 Q. After Undercover 84's encounter with Mr. Fraser, you saw
19 Mr. Fraser run; is that right?

20 A. Yes.

21 Q. You and the other officers who were comprised of the backup
22 team gave chase?

23 A. Yes.

24 Q. How many officers gave chase?

25 A. It was myself, Deltoro on foot, and with the undercover.

N3E3FRA2

Regina - Direct

1 So that was who was on foot, and everybody else was in cars.

2 Q. You arrived at Tenth Street between Avenue D and the FDR
3 Drive?

4 A. Yes.

5 Q. And Mr. Fraser was already under arrest, correct?

6 A. Yes.

7 Q. Lieutenant Patane, Detective Lee, and Detective Deltoro
8 were all there?

9 A. Yes.

10 Q. As the arresting officer, you searched Mr. Fraser at the
11 place where he was arrested?

12 A. Yes.

13 Q. And as the arresting officer, as we've already discussed,
14 it was your job to prepare and to oversee the arrest paperwork?

15 A. Yes.

16 Q. And the first thing you prepared, the first document was a
17 prisoner property evidence sheet?

18 A. The pedigree sheet.

19 Q. I'm sorry.

20 A. Yes.

21 Q. That pedigree sheet you placed with an envelope where you
22 put evidence that was taken from Mr. Fraser during the search?

23 A. Yes.

24 Q. And this pedigree sheet was supposed to document, among
25 other things, what evidence you had removed from the prisoner

N3E3FRA2

Regina - Direct

1 and placed in the envelope?

2 A. Yes.

3 Q. On this particular document, you wrote in your own
4 handwriting "voucher phones," correct?

5 A. Yes.

6 Q. When you voucher evidence, it's held by the NYPD while the
7 case is pending and possibly permanently, right?

8 A. Yes.

9 Q. So this was a reminder to yourself to make sure that
10 Mr. Fraser's phones were given to the police property clerk and
11 held in the NYPD's possession as evidence, correct?

12 A. Yes.

13 Q. Now, would you agree with me that this was a highly unusual
14 incident for you and your colleagues?

15 A. Yes, it didn't happen often.

16 Q. Well, did you have any other occasion to arrest a person
17 for allegedly robbing an undercover during a buy and bust
18 operation?

19 A. No.

20 Q. This is the first time it ever happened to you?

21 A. Yes.

22 Q. Eight years with Undercover 84, and this never happened
23 before?

24 A. Not while I was there, no.

25 Q. And did you understand that Undercover 84 was pretty shaken

N3E3FRA2

Regina - Direct

1 up by what happened?

2 A. I mean, I imagine he was. I didn't really ask him if he
3 was okay or anything like that. I don't remember talking to
4 him like that.

5 Q. You just heard him testify to a number of things he said
6 happened leading up to Mr. Fraser's flight, correct?

7 A. Yes.

8 Q. You just heard him testify that --

9 MR. FRANCOLLA: Objection.

10 THE COURT: I'm sorry?

11 MR. FRANCOLLA: He is he asking him about testimony of
12 another witness in court that just happened.

13 THE COURT: So? Nothing wrong with that. I'm not
14 aware of any federal -- what federal rule of evidence prohibits
15 that question?

16 MR. FRANCOLLA: Him testifying, attorney testifying as
17 to what was said in court.

18 THE COURT: I'm terribly sorry. People ask, attorneys
19 ask all the time did you hear what the witness said when he was
20 on the stand. Happens in nearly every trial.

21 Please continue.

22 MR. RUDIN: Thank you, your Honor.

23 Q. Did you hear Undercover 84 testify a little while ago that
24 before Mr. Fraser ran from the scene, that Mr. Fraser was
25 physically aggressive with him?

N3E3FRA2

Regina - Direct

1 A. Yes.

2 Q. Threatened him?

3 A. Yes.

4 Q. Balled up his hands and fists as if he was going to punch
5 him?

6 A. Yes.

7 Q. And supposedly the crowd in the area was yelling at him to
8 fuck him up?

9 A. Yes.

10 Q. And that after the undercover team moved in, according --
11 withdrawn.

12 After the backup team moved in, Undercover 84 just
13 told this jury that he saw Mr. Fraser reaching into his pants
14 as if to take out a weapon, right?

15 A. Yes.

16 Q. As undercover -- withdrawn.

17 As the backup team is moving in, the individual who is
18 the subject of the distress signal reaches into his pants as if
19 to draw out a weapon, right?

20 A. Yes.

21 Q. And you are saying that Undercover 84 never told you that
22 he was shaken up by this incident?

23 A. Not that I remember, no.

24 Q. Did he tell you he was frightened?

25 A. I never asked him.

N3E3FRA2

Regina - Direct

1 Q. You just heard him testify he was frightened.

2 A. Right. That's what he said. You are asking me if I had a
3 conversation with him and asked him his feelings.

4 Q. He never told you that?

5 A. No.

6 Q. I assume that after this extraordinary incident, you
7 decided to end the operation and return to the precinct?

8 A. I don't really -- I think we were done. That was it for us
9 that night.

10 Q. You had not planned to be done at that time, right?

11 A. I don't remember.

12 Q. How many buys had you made before that this incident?

13 A. I don't remember. I can look at my memo book for that
14 day.

15 Q. Sure. Why don't we put up Plaintiff's Exhibit 3, the memo
16 book.

17 First of all, do you see the front page. This is a
18 copy of the relevant memo book entries from your memo book?

19 A. Yes.

20 Q. All right. Plaintiff's Exhibit 16. And now let's go to
21 the one page of notes. You see that the notes?

22 A. Yes.

23 Q. And just to begin at the beginning at 1700 hours or 5 p.m.
24 you made a reference to the tac, T-A-C?

25 A. Yes.

N3E3FRA2

Regina - Direct

- 1 Q. Is that to the meeting that you had of the team?
- 2 A. Yes.
- 3 Q. When you adopt a plan for the evening?
- 4 A. Correct.
- 5 Q. And there is a reference to the alleged robbery at 2015
- 6 hours or 8:15. You see that?
- 7 A. Yes.
- 8 Q. How many buys did the team make before that incident?
- 9 A. It looks like two others.
- 10 Q. On a normal evening, you would go out and make four or five
- 11 or six buys, right?
- 12 A. Sometimes, you know, the numbers, you know, sometimes one
- 13 body, sometimes five bodies.
- 14 Q. Sometimes you bring in one body, sometimes you bring in
- 15 five bodies?
- 16 A. Yes.
- 17 Q. That's how you refer to the people you arrest, as bodies?
- 18 A. Yes.
- 19 Q. So, the alleged robbery occurs at 2015, right?
- 20 A. Correct.
- 21 Q. What's the next entry?
- 22 A. The next entry, 2100, one under Avenue B and Sixth Street.
- 23 Q. So after Mr. Fraser threatened the officer, acted as if he
- 24 was going to draw a weapon, balled up his hands and fists and
- 25 the crowd was yelling to fuck him up, you went out and made

N3E3FRA2

Regina - Direct

1 another buy, right?

2 A. Yes.

3 Q. Undercover 84 just proceeded and made another buy?

4 MR. FRANCOLLA: Objection.

5 THE COURT: Objection is overruled.

6 MR. FRANCOLLA: No foundation for that.

7 THE COURT: Objection is overruled.

8 If the answer is "no," the answer is "no." If the
9 answer is "I don't know," the answer is "I don't know."

10 Q. Did your undercover team -- withdrawn.

11 Did your team conduct a buy and bust at 2100 hours
12 leading to an arrest at Avenue B and Sixth Street?

13 A. Yes.

14 Q. Was Undercover 84 part of that team?

15 A. Yes.

16 Q. Did you then make another arrest five minutes later?

17 A. Right. 2105 it says, looks like, two under, Avenue C and
18 Seventh Street.

19 Q. Now you picked up two more bodies at Avenue C and Seventh
20 Street. Right?

21 A. Yes.

22 Q. Now you have five bodies and you went back to the precinct,
23 correct?

24 A. Correct.

25 Q. 2140 hours you return to the Ninth Precinct for processing?

N3E3FRA2

Regina - Direct

- 1 A. Correct.
- 2 Q. Now when you got to the precinct, I assume you spoke to UC
3 84 to find out all the details of what had happened with
4 Mr. Fraser so you could complete the paperwork?
- 5 A. Yes.
- 6 Q. And you spoke with him in the vicinity of the precinct?
- 7 A. Correct.
- 8 Q. And then Detective Lee prepared a complaint report,
9 correct? That's PX 4. Would you put that up, please.
- 10 You recognize PX 4?
- 11 A. Yes.
- 12 Q. You see it says the occurrence through 2015 hours. That's
13 the time of occurrence?
- 14 A. Yes.
- 15 Q. Then it says reported 2300 hours, or 11 p.m.?
- 16 A. Correct.
- 17 Q. Is that when the complaint report was filed?
- 18 A. Yes.
- 19 Q. By that time you had spoken to Undercover 84?
- 20 A. Yes.
- 21 Q. You reviewed the accuracy, you reviewed this report for
22 accuracy and completeness?
- 23 A. Yes.
- 24 Q. Did you make any changes in it?
- 25 A. I don't remember.

N3E3FRA2

Regina - Direct

- 1 Q. Do you have any record of making any changes in it?
- 2 A. I don't know.
- 3 Q. Do you have any version of it that was prepared before this
- 4 version?
- 5 A. No.
- 6 Q. This version was prepared on a computer, correct?
- 7 A. Yes.
- 8 Q. And this is the computerized version. It is spit out by a
- 9 computer?
- 10 A. Yes, it is.
- 11 Q. If there was a prior draft, you don't have it?
- 12 A. There wouldn't be one completed.
- 13 Q. It would not be?
- 14 A. No.
- 15 Q. It would just be this?
- 16 A. Yeah.
- 17 Q. You don't recall making any changes in it?
- 18 A. No.
- 19 Q. Then you prepared an arrest report yourself, PX 2. Do you
- 20 recognize PX 2?
- 21 A. That's the arrest report, yes.
- 22 Q. You prepared that?
- 23 A. If you scroll down, I can tell you who did it.
- 24 No, this was, this was typed up by Detective Lee.
- 25 Q. But it has you down as the officering officer?

N3E3FRA2

Regina - Direct

1 A. Yes.

2 Q. The supervisor approving is Lieutenant Patane?

3 A. Yes.

4 Q. But the report is entered by Detective Lee?

5 A. Yes.

6 Q. You reviewed it to make sure it was accurate and complete?

7 A. Yes.

8 Q. And you don't recall making any changes in it?

9 A. No.

10 Q. This report was also prepared after you spoke with UC 84?

11 A. Yes.

12 Q. Can you tell from this document when the report was
13 prepared, what time?

14 A. Maybe scroll to the top.

15 I don't see when it says the time it was inputted, no.

16 Q. Did you prepare evidence vouchers in this case?

17 A. Yes.

18 Q. You and Detective Deltoro were both involved in preparing
19 the property clerk invoices or evidence vouchers, or am I
20 making a mistake. Are they the same thing?

21 A. The evidence invoices, yeah, that's the same thing. But I
22 don't know if I did any vouchers that night. I'd have to look
23 and see if my name is on there.

24 Q. Put up PX 5.

25 A. This one was typed by Detective Deltoro.

N3E3FRA2

Regina - Direct

1 Q. He's listed as the invoicing officer?

2 A. Yes.

3 Q. What does that mean?

4 A. That means he inputted -- he -- he generated this invoice.

5 Q. All right. It says in the remarks: Item vouchered as
6 arrest evidence.

7 A. Yes.

8 Q. That's a reference to a driver's license?

9 A. A photocopy of a driver's license.

10 Q. You gave that to him?

11 A. Yes.

12 Q. And scroll down, please. Then at the bottom it says:

13 Entered by Detective Matthew Regina.

14 What does that mean?

15 A. I mean, that would mean that I entered it. But he is the
16 invoicing, so I'm a little confused on -- I mean, that's
17 confusing me right now.

18 Q. Would it be fair to say you were both responsible for the
19 production of this document?

20 A. Yes.

21 Q. And the time that you made the entry was at 19 -- 0019 or
22 19 minutes after midnight?

23 A. Yes.

24 Q. And then what's the significance of the time for his
25 invoicing at 31 minutes after midnight?

N3E3FRA2

Regina - Direct

1 A. I do not know.

2 Q. Go back to the top again, please.

3 Do you see that under remarks it says 10/22/2014,
4 0028, item vouchered as arrest evidence?

5 A. Yes.

6 Q. Does that mean that's when the evidence was physically
7 handed to the property clerk?

8 A. No.

9 Q. What does that mean?

10 A. I don't think so. If you can scroll down again to the
11 bottom?

12 Q. Sure.

13 A. Where the lieutenant's name is, that's when he signs off on
14 it, and that's when it gets put into the evidence, where they
15 store the evidence in the precinct.

16 Q. You can't explain the difference in times?

17 A. I mean, I would be guessing. I don't, I don't know the --
18 I don't know why that's like that. I'd make an assumption.

19 Q. We do know, though, that according to your testimony, a few
20 moments ago, the arrest of Mr. Fraser occurred at 8:05 p.m.?

21 A. Yes.

22 Q. That you then came back to the precinct a little after 9?

23 A. Correct.

24 Q. And you spoke to UC 84?

25 A. Yes.

N3E3FRA2

Regina - Direct

1 Q. And then you began to prepare the arrest paperwork?

2 A. Yes.

3 Q. And then you vouchered a photocopy of the identification at
4 some point at approximately 12:30 a.m., correct?

5 A. Yes.

6 Q. Four and a half hours after the arrest, right?

7 A. Yes.

8 Q. After you had the opportunity to speak with UC 84 and the
9 other members of the team, right?

10 A. Yes.

11 Q. You wrote in this document that you were the finder of the
12 evidence, correct?

13 A. Yes.

14 Q. And then the second page of that exhibit is the voucher for
15 the phones?

16 A. Yes.

17 Q. And you were there both the -- you were invoicing officer
18 there?

19 A. Yes.

20 Q. Okay. Thank you.

21 You also wrote out a receipt for \$100 of Mr. Fraser's
22 money that he had on him when he was searched?

23 A. Yes. Whatever property was returned to him was put on a
24 receipt.

25 Q. Do you recall that his mother came to the precinct at

N3E3FRA2

Regina - Direct

1 around a little before 1 o'clock?

2 A. I don't. But that could have happened, yes.

3 MR. RUDIN: Theo, would you put up 162, please.

4 Q. Do you recognize this as a receipt, handwritten receipt in
5 which Janice Robinson acknowledged receiving from you \$100 in
6 U.S. currency belonging to her son?

7 A. Yes.

8 Q. It says 12:50 a.m.?

9 A. Correct.

10 Q. Does that refresh your recollection that Jawaun's mother
11 came to the precinct and you returned \$100 of money that you
12 had found on Mr. Fraser when you searched him?

13 A. Yes.

14 Q. None of this was buy money, correct?

15 A. No.

16 Q. You prepared the memo book entry that we looked at before,
17 PX 3?

18 A. Yes.

19 Q. And then, subsequently, that day, that is the 22nd, you
20 signed under oath a criminal court complaint, correct?

21 A. Yes.

22 Q. Would you put that up. PX 6. This was a sworn statement
23 accusing Mr. Fraser of having committed the robbery of
24 Undercover 84, correct?

25 A. Yes.

N3E3FRA2

Regina - Direct

1 Q. And it included facts that you swore were true, correct?

2 A. Yes.

3 Q. Under penalty of perjury, correct?

4 A. Yes.

5 Q. And these facts included that Mr. Fraser had robbed
6 Undercover 84 of U.S. currency and an identification, correct?

7 A. Yes.

8 Q. And that when he did that, he had been aided by another
9 person, right?

10 A. No -- no.

11 Q. Well, you see where it says the defendant is charged with,
12 and then it says there is a reference to Penal Law Section
13 160.10(1), robbery in the second degree?

14 A. Yes.

15 Q. Then it says that on or about October 21, 2014 at about
16 8:10 p.m., at 465 East Tenth Street, in the County and State of
17 New York, the defendant forcibly stole property while being
18 aided by another person actually present.

19 Correct?

20 A. Yes.

21 Q. You swore that that was true, that that happened?

22 A. Yes.

23 Q. And you understood at the time that you swore that, that if
24 Mr. Fraser had been aided by another person, that made the
25 robbery a more serious crime than if he had just committed the

N3E3FRA2

Regina - Direct

1 robbery by himself, right?

2 A. Can you repeat that?

3 Q. Did you understand at the time that you swore to the
4 truthfulness of this document that if Mr. Fraser was aided by
5 another person in committing a robbery, that made it a more
6 serious crime than if he committed the robbery by himself?

7 A. Yes.

8 Q. You understood that robbery in the second degree was a C
9 felony punishable by up to 15 years in prison?

10 A. I knew it was -- I didn't know how many years you could get
11 for it, but I knew it was a big felony.

12 Q. You knew that simple robbery, just a robbery unaided by
13 another person, is only a D felony. I say "only," but it is a
14 D felony, punishable by up to seven years in prison?

15 A. Yes.

16 Q. So by saying that he was aided by another, the case
17 suddenly became much more serious, correct?

18 A. Yes.

19 Q. You swore that he was aided by another, right?

20 A. Well --

21 Q. Is that your complaint?

22 A. Yes.

23 Q. You swore to it?

24 A. Yes, I did.

25 Q. So you were telling the world that it was truthful, right?

N3E3FRA2

Regina - Direct

1 A. Correct.

2 Q. You were certainly telling the assistant district attorney
3 who prepared it that it was truthful, correct?

4 A. Yes.

5 Q. Before you signed this complaint, you were interviewed by
6 the assistant district attorney, right?

7 A. Yes.

8 Q. And that individual also asked you for your paperwork,
9 correct?

10 A. Correct.

11 Q. You handed over all the paperwork we've been talking about
12 today, right?

13 A. Yes.

14 Q. Including UC 84's DD-5?

15 A. Yes.

16 Q. Including the evidence vouchers where you said you found
17 certain evidence on the person of Mr. Fraser?

18 A. Yes.

19 Q. Where you said you found the ID, right?

20 A. Yes.

21 Q. You had been through this process many times before,
22 correct?

23 A. Yes.

24 Q. You understood that the filing of a criminal court
25 complaint in court is what begins the process of prosecuting a

N3E3FRA2

Regina - Direct

1 person for a crime, right?

2 A. Yes.

3 Q. And that once the criminal court complaint -- once the
4 criminal court complaint is filed, in this case a felony
5 complaint, the person who is the subject of the complaint has
6 to appear in court to answer it, right?

7 A. Yes.

8 Q. Then there is usually a bail hearing at that first initial
9 proceeding which is called an arraignment, right?

10 A. Yes.

11 Q. If the judge sets bail, the person may not be able to go
12 home, right?

13 A. Correct.

14 Q. If the judge set bail in this case, and Mr. Fraser was
15 unable to immediately post that bail, he would go to Rikers
16 Island, right?

17 A. Yes.

18 Q. And he would remain there until he was able to post the
19 bail to obtain his release, if he was able to post a bail,
20 right?

21 A. Yes.

22 Q. If he was unable to post a bail, he might remain in jail
23 for months or even years until he received a trial, right?

24 A. Yes.

25 Q. And you understood that the next step in the process after

N3E3FRA2

Regina - Direct

1 the initial arraignment in criminal court is the presentation
2 of evidence to a grand jury, right?

3 A. Yes.

4 Q. You testified in the grand jury?

5 A. Yes, I did.

6 Q. You testified before a group of people like the jurors here
7 who heard testimony in order to decide whether to formally
8 charge Mr. Fraser with felony offenses, right?

9 A. Yes.

10 Q. And that formal charge is called an indictment, right?

11 A. Yes.

12 Q. And if indicted, Mr. Fraser would have to plead guilty, or
13 if he maintained he was innocent, go to a jury trial, right?

14 A. Yes.

15 Q. And until such a trial was held, he would either be in jail
16 or released on bail and required to return to court?

17 A. Yes.

18 Q. Before testifying in the grand jury, you again met with the
19 prosecutor, right?

20 A. Yes.

21 Q. And you again told the prosecutor that you had obtained
22 that identification from Mr. Fraser's possession?

23 A. Yes.

24 Q. And you testified to that in the grand jury?

25 A. Yes.

N3E3FRA2

Regina - Direct

1 Q. And before the trial, you prepared your testimony with the
2 prosecutor, ADA Sangermano?

3 A. Yes.

4 Q. And during that preparation, he asked you if you had ever
5 been sued before, right?

6 A. Yes.

7 Q. He was the one who brought it up, right?

8 A. Yes.

9 Q. Then you testified at the trial itself, correct?

10 A. Yes.

11 Q. That was in front of a jury like this jury, right?

12 A. Yes.

13 Q. You've had the occasion to review your trial testimony in
14 preparation for today?

15 A. Yes.

16 Q. You read over all your trial testimony, right?

17 A. Yes.

18 Q. As a matter of fact, you read over everything you've ever
19 written or said about this case, correct?

20 A. Yes.

21 Q. You read over your deposition testimony?

22 A. Yes.

23 Q. The grand jury testimony?

24 A. Yes.

25 Q. The pretrial hearing testimony?

N3E3FRA2

Regina - Direct

1 A. Yes.

2 Q. In your trial testimony, you described for the trial jury
3 the undercover operation that was conducted, right?

4 A. Yes.

5 Q. And you talked about the incident that you observed between
6 UC 84 and Mr. Fraser?

7 A. Yes.

8 Q. And you talked about UC 84's distress signal, right?

9 A. Yes.

10 Q. And you talked about what you saw before and after that
11 distress signal?

12 A. Yes.

13 Q. And you talked about your attempt to apprehend Mr. Fraser
14 and the chase that occurred?

15 A. Yes.

16 Q. And you talked about the search of Mr. Fraser following his
17 arrest and what resulted from that search?

18 A. Yes.

19 Q. When you testified, do you recall that you testified at a
20 deposition in the civil case, and that was on April 27, 2021?

21 Do you remember that?

22 A. Yes.

23 Q. You were questioned under oath by an attorney for
24 Mr. Fraser in an office, right?

25 A. Yes.

N3E3FRA2

Regina - Direct

1 Q. It was under oath like any other testimony, but there was
2 no judge or jury present, right?

3 A. Correct.

4 Q. You understood that was part of the process for discovering
5 information in a civil case?

6 A. Yes.

7 Q. Which is very different than a criminal case, right?

8 Have you ever given a deposition in a criminal case?

9 A. No.

10 Q. Doesn't exist, right?

11 A. To my knowledge, no.

12 Q. Mr. Fraser's attorney at the deposition asked you a lot of
13 questions to obtain information for use in this case, correct?

14 A. Yes.

15 Q. In fact, you were asked far more questions about the case
16 at this deposition than you were ever asked at the criminal
17 trial, right?

18 A. Yes.

19 Q. The deposition transcript was 163 pages, compared to the
20 trial transcript of just 31 pages, right?

21 A. Yes.

22 Q. You prepared carefully for that testimony by meeting with
23 Mr. Francolla?

24 A. Yes.

25 Q. How many times did you meet with him?

N3E3FRA2

Regina - Direct

- 1 A. A couple times. I don't know how many times exactly.
- 2 Q. Many hours, right?
- 3 A. I don't remember it being -- I don't know how long it was.
- 4 Q. Well, would you say it was at least four hours?
- 5 A. The prep?
- 6 Q. Yeah.
- 7 A. It could have been, yes. I don't remember.
- 8 Q. Before the deposition, you reviewed all your paperwork and
- 9 all your prior testimony?
- 10 A. Yes.
- 11 Q. You also met with Mr. Francolla and/or Ms. McGuire prior to
- 12 this trial?
- 13 A. Yes.
- 14 Q. And you prepared your testimony for this trial?
- 15 A. Yes.
- 16 Q. You prepared for the examination that's going to occur
- 17 after I finish questioning you?
- 18 A. Yes.
- 19 Q. You and I have never met before, right?
- 20 A. No.
- 21 Q. We've never discussed the questions I was going to ask you
- 22 today, right?
- 23 A. No.
- 24 Q. You've discussed the questions you are going to be asked by
- 25 your attorneys with them, correct?

N3E3FRA2

Regina - Direct

1 A. Yes.

2 Q. Now, I want to move to a different area. To your
3 conversation with UC 84 after the arrest of Mr. Fraser.

4 A. Okay.

5 Q. You had a conversation with UC 84 right after you searched
6 Mr. Fraser, right?

7 A. Yes.

8 Q. And he told you that Mr. Fraser had taken a photograph of
9 his undercover identification, his driver's license?

10 A. Yes.

11 Q. And he told you that he was -- he was fearful that his
12 cover was blown by the picture, right?

13 A. I don't remember that part. My conversation was very
14 brief. He told me, you know --

15 Q. I asked you a specific question. Did he tell you --

16 MR. FRANCOLLA: Objection. If the witness can answer
17 the question.

18 THE COURT: Excuse me. The objection is overruled.
19 Will you please let him finish his question. Thank you.

20 MR. FRANCOLLA: The answer or the question?

21 THE COURT: Mr. Francolla, Mr. Francolla, sit down.
22 And Mr. Rudin said that's not the question I asked you and he
23 began to ask a different question.

24 Let's let him control his own direct.

25 Q. Mr. Regina, did Mr. -- withdrawn.

N3E3FRA2

Regina - Direct

1 Did Undercover 84 tell you that he was fearful that
2 his cover was blown by the picture?

3 A. I don't remember that part of the conversation. He might
4 have -- expressed his concern, you know, that he took a picture
5 of my ID, it's on his phone. Make sure we got to voucher his
6 phone.

7 Q. He might have or he did?

8 A. I don't really remember. I am just -- I'm guessing what
9 the --

10 Q. You're guessing.

11 Did he ever tell you that he was fearful that his
12 cover was blown by the picture?

13 A. He may have. I don't remember.

14 Q. Would you put up deposition page 55, 7 to 10.

15 "Q. And did the undercover express any fear or apprehension
16 that his cover was being blown by the picture?

17 "A. Yes."

18 Did you give that testimony?

19 A. Yes.

20 Q. You were likewise concerned that the picture on
21 Mr. Fraser's phone jeopardized Undercover 84's safety on the
22 street as an undercover, weren't you?

23 A. Yes.

24 Q. And you were concerned that if Mr. Fraser was at large or
25 at liberty, he could send it out over the internet, and let

N3E3FRA2

Regina - Direct

1 everybody know that he, referring to Undercover 84, is an
2 undercover, right?

3 A. Yes.

4 Q. And so, Mr. Fraser having the undercover photo could be
5 dangerous for the undercover, right?

6 A. Yes.

7 Q. Indeed, the undercover told you that Mr. Fraser taking a
8 picture of his identification made him afraid for his safety,
9 right?

10 A. Yes.

11 Q. He told you that he was afraid that if his photo was out
12 there, he couldn't operate anymore as an undercover, right? It
13 would stop him from doing his job. Correct?

14 A. Yes.

15 Q. Which he had been doing up to that point for eight years
16 with you, right?

17 A. Yes.

18 Q. Which he's continued to do ever since?

19 A. Correct.

20 Q. So, on that day, to protect Undercover 84, you had to gain
21 possession of Mr. Fraser's cell phone, correct?

22 A. Yes.

23 Q. To protect Undercover 84, you had to be able to keep the
24 cell phone, right?

25 A. Yes.

N3E3FRA2

Regina - Direct

1 Q. You knew that if you didn't charge Mr. Fraser with a crime,
2 you'd have to release him, correct?

3 MR. FRANCOLLA: Objection.

4 THE COURT: Overruled.

5 A. If we didn't charge him with a crime, then, yeah, we had to
6 release him.

7 Q. You knew if you had to release him, you'd have to give him
8 back his property, right?

9 A. Yes.

10 Q. Including his phone with the photo of Undercover 84's
11 picture, right?

12 A. Yes.

13 Q. Now, turning back to the incident. When Undercover 84 went
14 into the field and had his encounter with Mr. Fraser, you were
15 situated initially on the east side of Avenue D; is that right?

16 A. Yes.

17 Q. You could see the undercover, but you couldn't hear him or
18 those near him, right?

19 A. Correct.

20 Q. If he moved, you moved with him, so that you could
21 continually keep him in your sight, right?

22 A. Yes.

23 Q. And the ghost undercover was also near you, correct?

24 A. Correct.

25 Q. What was his job?

N3E3FRA2

Regina - Direct

1 A. To -- to relay to the field team where the undercover was,
2 and who the undercover was talking to, give like a play by
3 play.

4 Q. He had a radio?

5 A. Yes.

6 Q. And you had a radio?

7 A. Yes.

8 Q. And Undercover 17's job, just like your job, was to
9 maintain eye contact with UC 84, right?

10 A. Yes.

11 Q. And Lieutenant Patane was your commanding officer, right?

12 A. Yes.

13 Q. He was in an undercover unmarked van parked nearby, right?

14 A. Yes.

15 Q. And you were assigned to that van before you went into the
16 field, correct?

17 A. Yes.

18 Q. You had a radio on you that, once you left the van, allowed
19 you to communicate with Lieutenant Patane and anyone who was in
20 the van, right?

21 A. Correct.

22 Q. And UC 84 had his kel device, right, which transmitted to
23 Lieutenant Patane in that lead vehicle?

24 A. Yes.

25 Q. So Lieutenant Patane could hear from you and/or Undercover

N3E3FRA2

Regina - Direct

1 84 what was happening as it was happening?

2 MR. FRANCOLLA: Objection.

3 THE COURT: Ground?

4 MR. FRANCOLLA: He is asking what someone else could
5 hear. So personal knowledge.

6 THE COURT: Would you read that question back to me.

7 (The record was read)

8 THE COURT: Are you aware whether Lieutenant Patane
9 could hear you?

10 THE WITNESS: Yes.

11 THE COURT: Could he?

12 THE WITNESS: Yes.

13 Q. You saw the undercover speak with a woman?

14 A. Yes.

15 Q. And you were about 50 feet from them, right?

16 A. 50, 80 feet, something like that.

17 Q. I'm sorry?

18 A. 50 feet, 80 feet. Something like that.

19 Q. Wait a minute. Weren't you trained as a backup officer?

20 A. Yes.

21 Q. You been a backup officer for at least eight years?

22 A. Yes.

23 Q. And aren't you trained as a police officer to estimate
24 distances?

25 A. Yes.

N3E3FRA2

Regina - Direct

1 Q. You know the difference between 50 feet and 80 feet, don't
2 you?

3 A. Yes.

4 Q. So you testified previously that it was about 50 feet,
5 right?

6 A. If that's what I testified to, then yes.

7 Q. Trial transcript 125, line 19.

8 THE COURT: Are you asking for a stipulation that
9 that's what he testified to or what are we doing here?

10 MR. RUDIN: I want to bring out that's what he
11 testified to.

12 THE COURT: The question is, you can't bring it out by
13 simply saying it. Either you have to ask him if he was asked
14 this question and gave this answer, or you got to get a
15 stipulation from your opponent that that's what he did. One of
16 the two. You are not the witness.

17 MR. RUDIN: Yes, your Honor. I'm sorry.

18 Q. Do you recall being asked these questions and giving these
19 answers:

20 "Q. And you saw a female interact with the undercover before
21 he went a little more eastbound into the area between those two
22 buildings, right?

23 "A. Correct.

24 "Q. Did you see -- how far away from you when you saw him
25 interacting with that female?

N3E3FRA2

Regina - Direct

1 "A. Maybe 50 feet."

2 Do you recall being asked those questions and giving
3 those answers?

4 A. Yes.

5 Q. How far would you say I'm from you?

6 A. Maybe 20, 30 feet.

7 Q. I can mark it off.

8 MR. RUDIN: Your Honor, may I mark it off?

9 THE COURT: You may do anything you'd like. What are
10 you talking about?

11 MR. RUDIN: Until you stop me.

12 THE COURT: Are we suggesting that your foot is a foot
13 long?

14 MR. RUDIN: Yes, your Honor.

15 THE COURT: Okay.

16 MR. RUDIN: I'm happy to have the defense measure it.
17 May I approach the witness, your Honor?

18 THE COURT: Yes.

19 MR. RUDIN: The witness is sitting 30 feet, so that
20 was pretty good. 30 feet.

21 Q. So you can estimate distances pretty accurately, right?

22 A. Yes.

23 Q. So now I am going to go 20 feet in the other direction so
24 we have a total of 50. Hopefully I won't be out of the
25 courtroom.

N3E3FRA2

Regina - Direct

1 We are in the back row. 50 feet. Right?

2 A. Okay.

3 Q. That's how far away you were from Undercover 84 when he was
4 interacting with the female, right?

5 A. Yes.

6 Q. When he was interacting with Mr. Fraser?

7 A. Yes.

8 Q. So a moment ago, when you told the jury it was as much as
9 80 feet, you knew that wasn't true, right?

10 MR. FRANCOLLA: Objection.

11 THE COURT: The objection is overruled.

12 A. I wouldn't say that, no.

13 Q. Now, after you saw the interaction between UC 84 and the
14 female, you saw an interaction between UC 84 and a young black
15 man, right?

16 A. Yes.

17 Q. You later learned his name was Jawaun Fraser?

18 A. Yes.

19 Q. You didn't see where he came from, right?

20 A. No.

21 Q. You saw him and UC 84 have a conversation, correct?

22 A. Correct.

23 Q. You couldn't hear what they were saying, correct?

24 A. That's right.

25 Q. But you saw nearby was a group of people?

N3E3FRA2

Regina - Direct

- 1 A. Yes.
- 2 Q. And initially there were 10 to 15 feet away?
- 3 A. Right, yes.
- 4 Q. Then they came closer, right?
- 5 A. Yes.
- 6 Q. But they were just standing there -- withdrawn.
- 7 Were they just standing there, in your estimation?
- 8 A. Yes.
- 9 Q. You thought they were just doing their own thing, talking,
- 10 right?
- 11 A. Yes.
- 12 Q. You couldn't hear anything they were saying, right?
- 13 A. Correct.
- 14 Q. U.C. 84 gave a distress signal and you moved in, right?
- 15 A. Yes.
- 16 Q. It was a physical movement that was prearranged?
- 17 A. Yes.
- 18 Q. That occurred just about four minutes after UC 84 and
- 19 Mr. Fraser began talking, right?
- 20 A. Yes.
- 21 Q. It wasn't a long encounter, right? It was just four
- 22 minutes?
- 23 A. Not that I remember, right.
- 24 Q. Just four minutes?
- 25 A. Yeah.

N3E3FRA2

Regina - Direct

1 Q. And before the distress signal, Lieutenant Patane did not
2 radio you that anything bad was happening or that he had any
3 concerns that he had learned about through any radio
4 transmission, correct?

5 A. Correct.

6 Q. Before the distress signal, you personally did not
7 communicate over the radio that you had seen Mr. Fraser do
8 anything physically aggressive, just that they were in
9 conversation, right?

10 A. Yes.

11 Q. At no time did you hear threats, screaming, people egging
12 on other people to attack the undercover; anything like that,
13 right?

14 A. Correct.

15 Q. You didn't see Mr. Fraser strike the undercover, right?

16 A. No.

17 Q. You didn't see anything happening that caused you to move
18 in before you saw the distress signal, correct?

19 A. Correct.

20 Q. You heard UC 84 testify that before he gave a distress
21 signal, he claimed that Mr. Fraser grabbed his money and
22 identification, repeatedly balled up his hands and fists, got
23 directly into his face, called over the group of men, and put
24 the money and identification in his pocket. Right?

25 A. That's what he testified to? That's what you are asking

N3E3FRA2

Regina - Direct

1 me?

2 Q. Did you see that happen?

3 A. I didn't see what he said. But what I saw was, you know --

4 THE COURT: The question is did you see what was just
5 read to you.

6 THE WITNESS: No.

7 Q. You didn't see anything that happened that caused you to
8 move in before you saw that distress signal, correct?

9 A. Correct.

10 Q. You only went in because of the distress signal, correct?

11 A. Yes.

12 Q. Yes?

13 A. Yes.

14 Q. And you and Detective Deltoro all rushed towards Mr. Fraser
15 at the same time from opposite directions, right?

16 A. Yes.

17 Q. Nothing was blocking your view, correct?

18 A. Correct.

19 Q. You heard UC 84 testify that after he gave the distress
20 signal, and after the members of the backup team were running
21 to his assistance, that he saw Mr. Fraser reach into his waist
22 as if for a weapon, right?

23 A. Yes.

24 Q. You didn't give that testimony at the trial, did you?

25 A. No.

N3E3FRA2

Regina - Direct

1 Q. You didn't see that happen, did you?

2 A. No.

3 Q. What you saw was that they appeared to be pulling or
4 tugging at each other, correct?

5 A. Yes.

6 Q. You didn't know who grabbed who first, right?

7 A. Correct.

8 Q. You didn't know who was pulling away from the other, right?

9 A. Yes.

10 Q. You didn't know if Mr. Fraser was trying to pull away from
11 the detective?

12 A. Correct. I couldn't tell.

13 Q. They were doing this for only about 10 seconds, right?

14 A. Yes.

15 Q. And within 10 seconds, Mr. Deltoro reached Mr. Fraser,
16 correct?

17 A. Correct.

18 Q. And it was at that point that Mr. Fraser fled north towards
19 Tenth Street?

20 A. Yes.

21 Q. And you chased him all the way to the cul de sac on Tenth
22 Street, right?

23 A. Yes.

24 Q. You didn't see him drop or throw anything to the ground?

25 A. No.

N3E3FRA2

Regina - Direct

1 Q. None of the other officers told you that they saw him drop
2 or throw anything to the ground?

3 A. No.

4 Q. UC 84 did not tell you that Mr. Fraser had a weapon or
5 drugs?

6 A. No.

7 Q. You didn't see him with a weapon or recover a weapon, did
8 you?

9 A. No.

10 Q. And when you searched Mr. Fraser, you didn't find any drugs
11 on him, did you?

12 A. No.

13 Q. You did not find any weapon on him?

14 A. No.

15 Q. For all you knew, when you were observing Mr. Fraser and
16 Undercover 84 tussling or tugging, UC 84 could have been trying
17 to grab Mr. Fraser's cell phone, correct?

18 A. Is that possible? Correct.

19 Q. After Mr. Fraser was arrested, you never asked him for his
20 side of the story, did you?

21 A. No.

22 Q. You didn't ask him why, if he thought Undercover 84 was a
23 cop, he balled up his hands and fists, reached into his pocket
24 like he was going to draw a gun, and rob him of his
25 identification and \$20?

N3E3FRA2

Regina - Direct

1 A. No.

2 THE COURT: Can you slow down a little please.

3 Q. You didn't ask him why, if he had \$100 in his pocket and he
4 had a good job, he would rob a person he believed was a cop of
5 \$20 and an identification card?

6 A. No.

7 Q. You didn't ask him why, as the police were moving in, he
8 would put his hand in his pocket as if he was drawing a weapon,
9 did you?

10 A. No.

11 Q. Did you ask him if he was suicidal?

12 A. No.

13 Q. Did you ask him if he needed to go to Bellevue for a mental
14 health examination?

15 MR. FRANCOLLA: Objection, your Honor.

16 THE COURT: Overruled.

17 A. No.

18 Q. When you saw Mr. Fraser at Tenth Street in the custody of
19 Lieutenant Patane and Detectives Deltoro and Lee, he already
20 was handcuffed, right?

21 A. Yes.

22 Q. After searching him, you spoke with UC 84, right?

23 A. Yes.

24 Q. And this was just a couple of minutes after Mr. Fraser was
25 arrested, correct?

N3E3FRA2

Regina - Direct

1 A. Yes.

2 Q. And you've told us that UC 84 told you what happened?

3 A. Yes.

4 Q. You heard him testify yesterday that he told you that
5 Mr. Fraser took his identification and \$20 in buy money, right?

6 A. Yes.

7 Q. And put it in his pocket?

8 A. Yes.

9 Q. And you recovered \$100 or more from Mr. Fraser?

10 A. Yes.

11 Q. You testified that you recovered that at the scene of the
12 arrest, right?

13 A. Yes.

14 Q. And you've already testified you had a photocopy of the buy
15 money with you at the scene of the arrest, right?

16 A. Yes.

17 Q. And you testified previously that it was your normal
18 practice, when you recovered currency following an arrest, to
19 compare the suspect's money to a photocopy of the prerecorded
20 buy money, right?

21 MR. FRANCOLLA: Objection. Misstates the testimony.

22 THE COURT: If it does, Detective Regina can say so.
23 You can't. You're not a witness.

24 Q. Isn't that the prior testimony you gave that I read to you
25 before?

N3E3FRA2

Regina - Direct

1 A. That I checked the money on the street?

2 Q. Yes.

3 A. I don't normally do that, no.

4 Q. Did you testify at the previous proceeding that you
5 normally do that?

6 A. Right. I think you brought up testimony that's what I
7 said, yes.

8 Q. Well, did you normally do that?

9 A. No.

10 Q. So why did you testify that you normally do that when you
11 don't normally do that?

12 A. I don't know.

13 Q. Doesn't it make sense to examine the money that you find on
14 the suspect who you believe may have been involved in a buy and
15 bust to see if the buy money is in his possession so you know
16 you've arrested the right person?

17 A. Yes. But, it's not a good practice just to start checking
18 multiple U.S. currency bills on the street with the photocopy
19 of the money.

20 Q. Mr. Fraser had a total of \$100 in his possession. Right?
21 Correct?

22 A. Yes.

23 Q. How much buy money did you take out that night?

24 A. I don't remember. Might be on the tac plan. I might have
25 wrote it on the top of the tac plan.

N3E3FRA2

Regina - Direct

1 Q. Can we see the tac plan please. I think it's PX 1.

2 A. That's the top?

3 Q. I guess it is.

4 A. That's -- I don't see it on there.

5 Q. Do you have any recollection of how much buy money you had
6 that evening?

7 A. No.

8 Q. Would you normally take out more than 100 or \$200 in buy
9 money?

10 A. It depended on how much the money -- how much money the
11 supervisor gave you.

12 MR. RUDIN: Do we have an exhibit that has the list --
13 the description of the buy money? There was an exhibit that
14 the defense used before.

15 I'm sorry, your Honor. I wasn't anticipating this.

16 THE COURT: My problem is, maybe it's because I'm
17 stuffy, but I'm having a hard time hearing you.

18 MR. RUDIN: That's a worse problem. Sorry.

19 Q. Do you see Plaintiff's Exhibit 8?

20 A. Yes.

21 Q. Does that give you any indication of how much money, how
22 much buy money was taken out that night?

23 A. No.

24 Q. It says \$70 were expended.

25 A. Well, that's just for this incident. I don't know how much

N3E3FRA2

Regina - Direct

1 money we used for that night.

2 Q. Was there any reason why you couldn't take Mr. Fraser's
3 \$100 on the street, and compare it to the photocopies of the
4 buy money you had in order to see whether or not he had the buy
5 money?

6 A. Yes.

7 Q. What was that reason?

8 A. The reason why I could have? Or I couldn't have?

9 Q. Why you couldn't have.

10 A. Well, just -- just to do it outside on the street, you
11 don't want to mess up money with other money. You don't want
12 to lose any money. It's kind of like not a secure place to do
13 it.

14 Q. How many officers were there at the time following the
15 arrest?

16 A. Myself, Deltoro, Lee, the lieutenant, so at least four.

17 Q. Didn't other officers come to back you up?

18 A. Yes.

19 Q. How many more?

20 A. Maybe there was two more, two more officers there, a
21 detective was there.

22 Q. Didn't you testify in the criminal trial that after you
23 recovered the buy money -- withdrawn.

24 After you arrested Mr. Fraser, you conducted a search
25 of the housing project?

N3E3FRA2

Regina - Direct

1 A. Yes.

2 Q. Didn't you testify that one of the reasons for the search
3 was to look for the buy money?

4 A. Yes.

5 Q. So, you had Mr. Fraser's \$100, you had a photocopy of the
6 buy money, and instead of making the comparison when you had
7 Mr. Fraser handcuffed and under your control, you and other
8 officers searched high and low through the Jacob Riis Houses to
9 see if you could find the \$20 in buy money.

10 Is that your testimony?

11 A. That and any other contraband that could have been
12 discarded during the pursuit.

13 Q. One of the reasons was you were searching for the buy
14 money, right?

15 A. Yes.

16 Q. You could have determined if you had the buy money before
17 you did any search, right?

18 A. Yes.

19 Q. And that buy money, if you found it on Mr. Fraser, would be
20 direct evidence that he had committed a robbery of \$20, right?

21 A. Yes.

22 Q. Isn't it a fact that you were not searching for buy money
23 because you didn't know about any buy money?

24 A. I knew about the buy money. We were searching the general
25 area for anything that could have got discarded.

N3E3FRA2

Regina - Direct

1 Q. Didn't you testify at the suppression hearing, at page 30,
2 lines 14 to 17, pretrial hearing:

3 "When you went back to look, what were you looking for?

4 "A. Anything really.

5 "Q. Drugs?

6 "A. Drugs, weapons, you know, contraband."

7 Did you give that testimony? Were you asked those
8 questions and give those answers?

9 A. Yes.

10 Q. You didn't say anything about looking for money, right?

11 A. No.

12 Q. Because you didn't know that supposedly Mr. Fraser had
13 taken any money at that point, right?

14 A. No, I knew that he took the money, yes.

15 Q. Isn't the reason you didn't look for the money when you had
16 him following his arrest and had a photocopy of the buy money,
17 that in fact Undercover 84 had not told you at that point that
18 Mr. Fraser had taken \$20 in buy money?

19 A. No.

20 Q. Isn't it a fact that the undercover never told you that
21 Mr. Fraser had stolen money from him, right?

22 A. No.

23 Q. Page 27 of the pretrial hearing, please. Line 7.

24 "Q. Did the undercover ever say Mr. Fraser had stolen from
25 him, had stolen money from him?

N3E3FRA2

Regina - Direct

1 "A. No."

2 Did you give that testimony?

3 A. Yes.

4 Q. When you searched the area for whatever you were searching
5 for, you didn't find any money, did you?

6 A. No.

7 Q. The money that, according to Undercover 84, Mr. Fraser had
8 put into his pocket along with the identification simply
9 disappeared. Right?

10 A. What's your question? I'm sorry.

11 Q. The money simply disappeared?

12 A. Yes.

13 Q. You never answered that mystery, right? You never could
14 figure out what happened?

15 A. Correct.

16 Q. Somehow he threw away the buy money, but according to you,
17 he kept the undercover ID?

18 A. Yes.

19 Q. Let's talk about that ID for a few minutes.

20 You prepared the pedigree sheet that we looked at a
21 little while ago after Mr. Fraser was arrested and searched?

22 A. Yes.

23 Q. PX 151. Right?

24 A. Yes.

25 Q. The evidence seized from Mr. Fraser you testified was

N3E3FRA2

Regina - Direct

1 placed in an envelope along with the pedigree sheet?

2 A. Yes.

3 Q. And pedigree sheet listed the clothing that Mr. Fraser had
4 on him, right?

5 A. Yes.

6 Q. And it left space for other items recovered from him, such
7 as drugs or U.S. currency?

8 A. Yes.

9 Q. And then there was a list of various drug law violations by
10 penal law number on that form, right?

11 A. Yes.

12 Q. 220.03, 220.16, 220.39, different crimes you could have
13 charged somebody in a buy and bust operation?

14 A. Correct.

15 Q. You didn't circle any of them, right?

16 A. No.

17 Q. That's because you were not arresting Mr. Fraser for
18 selling or possessing drugs, right?

19 A. Correct.

20 Q. You had no evidence that he was selling or possessing drugs
21 at that time, correct?

22 A. Correct.

23 Q. You did write "voucher phones," right?

24 A. Yes.

25 Q. And that was a reminder to yourself to make sure you

N3E3FRA2

Regina - Direct

1 vouchered the phones that contained on one of them the
2 undercover ID's photograph, correct?

3 A. Yes.

4 Q. But nowhere on that form did you write that you had
5 recovered an identification, did you?

6 A. No.

7 Q. Nowhere did you write a reminder to yourself to voucher an
8 identification, did you?

9 A. No.

10 Q. Let's turn to the complaint report, PX 4, which Detective
11 Lee prepared.

12 Detective Lee was there when you searched Mr. Fraser,
13 correct?

14 A. Yes.

15 Q. In fact, you, Detective Lee, Lieutenant Patane, and
16 Detective Deltoro were all standing together when you conducted
17 the search, right?

18 A. Yes.

19 Q. And you understood that they could observe what was
20 happening, right?

21 A. Yes.

22 Q. And in PX 4, there is a narrative section to describe what
23 happened.

24 A. Yes.

25 Q. And Detective Lee wrote that the defendant, or Mr. Fraser,

N3E3FRA2

Regina - Direct

1 ran from a location and was arrested a short time later without
2 further incident.

3 Correct?

4 A. Yes.

5 Q. Detective Lee made no mention of any photo ID having been
6 recovered from Mr. Fraser, did he?

7 A. No.

8 Q. So you didn't get the money, right? The money, if he had
9 possession of the money, that would have been evidence he
10 committed a robbery, right?

11 A. Yes.

12 Q. You didn't have the money as far as you knew, right?

13 A. Right.

14 Q. So the only other thing that, according to the undercover,
15 was stolen from him was the ID, right?

16 A. Yes.

17 Q. And Detective Lee writes here that there's a search at the
18 scene without further incident and doesn't make a record that
19 the ID was found?

20 A. No.

21 Q. Would you have corrected that if you realized it at the
22 time?

23 A. I don't know.

24 Q. Well, that's not complete, is it?

25 A. I mean, that's what we went with that night.

N3E3FRA2

Regina - Direct

1 Q. That's the most important thing that happened, the recovery
2 of identification, right?

3 A. Yes.

4 Q. That's what proved there was a robbery in your view, right?

5 A. Yes.

6 Q. It is omitted from the complaint form.

7 A. Yes.

8 Q. Now, the alleged victim of the robbery was Undercover 84,
9 right?

10 A. Yes.

11 Q. And supposedly his identification was taken that contained
12 his personal information?

13 A. His picture was on the ID, yes.

14 Q. Then on PX 4 there is a printed section. Theo, maybe you
15 could put the pointer towards it.

16 Was the victim's personal information taken or
17 possessed? And the answer is no. Right?

18 A. Okay.

19 Q. Is that correct? That's what the form shows?

20 A. It says "no," yes.

21 Q. You reviewed that form, right, to make sure it was
22 accurate?

23 A. Yes.

24 Q. Let's look at the arrest report that you prepared. PX 2.
25 It also has a section entitled "details," right?

N3E3FRA2

Regina - Direct

1 A. Okay.

2 Q. And you used the exact same language that Detective Lee had
3 used, right? That he ran from the location and was arrested a
4 short time later without further incident. Correct?

5 A. Correct.

6 Q. So you also didn't make a record of the recovery of the ID,
7 right?

8 A. Yes.

9 Q. Then you prepared notes in your memo book, PX 3. We looked
10 at that before. Here it is again. See it?

11 A. Yes.

12 Q. And you made no mention of recovering the identification
13 from Mr. Fraser in your memo book, right?

14 A. Correct.

15 Q. There is no description of anything that happened in that
16 memo book, except each body that you recovered, right?

17 A. Yes.

18 Q. After the arrest of Mr. Fraser, you personally met with UC
19 84 at the precinct, correct?

20 A. Yes.

21 Q. And you didn't voucher a copy of the identification until
22 nearly 12:30, four and a half hours after the incident, and
23 after you met with Detective UC 84, right?

24 A. Yes.

25 Q. Plenty of time for you and Detective 84 and the other

N3E3FRA2

Regina - Direct

1 detectives to discuss coming up with a story, right?

2 MR. FRANCOLLA: Objection.

3 THE COURT: The objection is sustained.

4 Argumentative. Please.

5 Q. You testified earlier, consistent with the training academy
6 materials that I showed you, that you were trained to make a
7 detailed record of where you find evidence, including if you
8 find it in a pocket, which pocket. Right?

9 A. Yes.

10 Q. Which pocket did you find the identification, Mr. Regina?

11 A. I don't remember.

12 Q. When you testified at the pretrial hearing in this case,
13 which was a number of months, rather than years, after the
14 incident, you didn't remember either, did you?

15 A. If that's the testimony, yes, that's true.

16 Q. True that you didn't remember?

17 A. Yes.

18 Q. Because you made no record of it, right?

19 A. Correct.

20 Q. There isn't a single report or document in this case, other
21 than the voucher -- well, withdrawn.

22 The voucher didn't say the circumstances of recovering
23 the ID, does it?

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

25 Q. There isn't a single document in this case where you

N3E3FRA2

Regina - Direct

1 oversaw the preparation of all the documents, that makes a
2 record of the circumstances of your finding the identification,
3 is there?

4 A. No.

5 Q. Isn't it a fact that when you searched Mr. Fraser, all you
6 found in his pockets were the two cell phones and U.S.
7 currency? That's it?

8 A. No.

9 Q. Deposition 151, please.

10 MR. FRANCOLLA: I am going to have a completeness
11 objection for this.

12 THE COURT: I'm sorry, Mr. Francolla?

13 MR. FRANCOLLA: No, I'm going to have a completeness
14 objection as to what's being read. So I want to put that on
15 the record.

16 THE COURT: Why don't we wait until we see what's
17 read, and then if you have a completeness objection, you can
18 make it.

19 MR. RUDIN: I'll start at page 150, line 25.

20 MR. FRANCOLLA: It is two pages after what I expect
21 you are about to read.

22 THE COURT: You know, can we not talk about what we're
23 expecting. Let's have him read. Let's hear what he reads,
24 let's hear where he stops.

25 Q. Do you recall being asked these questions and giving these

N3E3FRA2

Regina - Direct

1 answers:

2 "Q. At any point from when the undercover first interacted
3 with the female, to when the undercover gave a distress signal,
4 did you lose sight of the undercover?

5 "A. No.

6 "Q. When you searched the black male, what did you find in his
7 pockets?

8 "A. He had personal property of the cell phones and U.S.
9 currency.

10 "Q. That's it?

11 "A. Yes."

12 Do you recall being asked those questions and giving
13 those answers?

14 A. Yes.

15 MR. FRANCOLLA: Objection.

16 Q. Do you recall in the deposition that, after it was
17 finished, after the plaintiff's counsel finished questioning
18 you, you had the opportunity to speak to Mr. Francolla?
19 Remember that?

20 MR. FRANCOLLA: Objection.

21 THE COURT: Ground?

22 MR. FRANCOLLA: I mean --

23 THE COURT: Any objection is overruled.

24 A. Can you repeat that?

25 Q. After you were finished being questioned by a lawyer for

N3E3FRA2

Regina - Direct

1 the plaintiff, did you have the opportunity to talk to
2 Mr. Francolla?

3 A. I think he questioned me after. Is that what you mean?

4 Q. Before he questioned you, was there a recess?

5 A. I don't remember.

6 Q. Did you speak to him during a recess?

7 MR. FRANCOLLA: Objection.

8 THE COURT: Ground?

9 MR. FRANCOLLA: He just said I don't remember if there
10 was a recess, and was asked if he spoke to me during a recess
11 he doesn't remember.

12 THE COURT: Do you recall speaking to Mr. Francolla
13 before he started asking you questions but after the
14 plaintiff's lawyers stopped asking you questions? Do you
15 recall?

16 THE WITNESS: No. I don't remember.

17 THE COURT: Don't remember. Let's move on.

18 Q. Now, would you agree with me that the discovery of the
19 identification, according to you, is the most -- withdrawn.

20 You testified in the grand jury just a few days after
21 the incident?

22 A. Yes.

23 Q. When you testified in the grand jury, and you were asked
24 what you recovered, you initially didn't mention any
25 identification either, right?

N3E3FRA2

Regina - Direct

1 A. Do you have the grand jury minutes?

2 Q. Yeah. Well, do you recall -- I'll read them to you in a
3 minute. Do you recall that the prosecutor had to remind you
4 that allegedly you had recovered identification before you gave
5 that testimony?

6 MR. FRANCOLLA: Objection.

7 THE COURT: Ground?

8 MR. FRANCOLLA: The phrasing of the question.

9 THE COURT: The objection is overruled.

10 A. Can you repeat it? I'm sorry.

11 Q. Do you recall that when you testified in the grand jury,
12 initially you did not say anything about recovering an
13 identification, and you only gave that testimony after the
14 prosecutor had to remind you about the identification.

15 A. No, I don't remember that.

16 Q. Let's go to the grand jury testimony, page 16, line 18.

17 "Q. What, if anything, did you recover from the defendant?

18 "A. U.S. currency and cell phone.

19 "Q. Did you recover anything else belonging to the
20 undercover?"

21 And then you said the undercover's ID card.

22 Do you remember being asked those questions and giving
23 those answers?

24 A. Yes.

25 Q. You had to be reminded by the prosecutor of what you

N3E3FRA2

Regina - Cross

1 allegedly had recovered, even though it was the most important
2 evidence in the case, correct?

3 MR. FRANCOLLA: Objection.

4 THE COURT: Argumentative.

5 MR. RUDIN: Nothing further, your Honor.

6 CROSS-EXAMINATION

7 BY MR. FRANCOLLA:

8 Q. Good afternoon, Mr. Regina.

9 A. Good afternoon.

10 Q. Now, you were asked -- I'm going to hit a couple of topics
11 that were covered on direct examination.

12 You were asked about communication you understood
13 Lieutenant Patane to be able to hear. Do you remember that?

14 A. Yes.

15 Q. And answered that your understanding was he could hear any
16 communication you put over.

17 A. Yes.

18 Q. What method of communication did you use at the time during
19 this operation?

20 A. A point-to-point radio.

21 Q. With respect to the undercover, what method of
22 communication would he have been able to use, if any, on that
23 night?

24 A. The undercover had the kel, and the -- and the leader car
25 would have the kel receiver.

N3E3FRA2

Regina - Cross

1 Q. And focusing on the kel receiver, do you have an
2 understanding as to whether Lieutenant Patane was ever to hear
3 what may have been transmitted, if anything?

4 MR. RUDIN: Objection.

5 THE COURT: Ground?

6 MR. RUDIN: Hearsay.

7 THE COURT: Overruled.

8 A. Yes. If anything was transmitting through the kel, he
9 could hear it.

10 Q. When you say if anything was transmitting, can you explain
11 your understanding of the operability of that machine in the
12 field.

13 A. Well, sometimes it works and sometimes it doesn't. Either
14 sometimes it works really good, and it depends on where you
15 are. If you're around a lot of buildings or it gets moved,
16 depends on where the undercover is wearing it, so that depends
17 on how well, if it's working at all.

18 Q. What generally was surrounding the area where UC 84 and
19 plaintiff encountered one another?

20 A. There was big multi -- housing developments. It was
21 multidwelling apartment buildings.

22 Q. Now, you were asked questions about whether you sought to
23 move in on what you observed between UC 84 and Mr. Fraser prior
24 to the point that UC 84 communicated a distress signal, do you
25 remember that?

N3E3FRA2

Regina - Cross

1 A. Yes.

2 Q. Okay. Why wouldn't you or why didn't you move in prior to
3 the point of a distress signal was made by UC 84?

4 A. Because to what I was observing wasn't -- didn't look --
5 you know, it didn't look bad. It looked just like normal
6 conversation.

7 Q. Okay. At what point was that?

8 A. I guess when they first started interacting.

9 Q. Okay. Now, how did -- what happened once they started --
10 strike that.

11 Describe what you saw when you first saw the
12 encounter.

13 A. It just looked like normal conversation that the two -- two
14 people talking.

15 Q. Did that remain the case?

16 A. No. Then as the conversation went on, it looked to get
17 more tense. Like the conversation was getting a little more --
18 a little more heated.

19 Q. And what led you to that conclusion?

20 A. Just the body movements, body movements, just observing
21 that type of interaction in the past.

22 Q. Okay. And I think you testified that you were about
23 50 feet or so away?

24 A. Yes.

25 Q. Were you in a position at that point to hear anything that

N3E3FRA2

Regina - Cross

1 was happening?

2 A. No.

3 Q. To the extent you were able to observe generally what was
4 going on, were you able to see every movement by either of the
5 participants in the interaction?

6 A. No.

7 Q. When you work with an undercover, who controls the scene
8 with respect to moving in?

9 A. The ghost, ghost undercover.

10 Q. Okay. What does that mean?

11 A. The ghost will relay, you know, if -- there is a positive
12 buy, or the, you know, the distress signal. Something like
13 that.

14 Q. And this particular case, it was UC 84 who issued the
15 distress signal?

16 A. Yes.

17 Q. What did you see prior to that point?

18 A. Prior to the distress sign?

19 Q. Correct.

20 A. Undercover male black were talking in front of -- in front
21 of a building. It looked like it was, you know, looked like a
22 good conversation that they were just talking there, standing
23 there for a little minute together. And then as I said, it
24 gradually kind of got -- the way they were talking, the way
25 they were standing next to each other, it -- it appeared like

N3E3FRA2

Regina - Cross

1 it wasn't going good. It looked like it got more tense. So I
2 put that over the radio. I'm like, it looks like it's getting
3 a little, a little weird. It's getting closer. And maybe a
4 little while after that, I saw the distress sign and I radioed
5 the field team move in. He put the distress sign up. And
6 that's --

7 Q. At the moment that you expressed the concern you just
8 described, why not move in then, as opposed to waiting for the
9 undercover to use the distress signal?

10 A. Maybe the undercover could -- I gave him a little time to
11 see if he could get himself out of it. Or maybe it wasn't what
12 I was observing it to be.

13 Q. Once you saw the signal, the distress signal, what
14 happened?

15 A. I proceeded to where the undercover was and Mr. Fraser.

16 Q. Okay. And what happened when you got there?

17 A. I got there, me and Deltoro kind of got there at the same
18 time. He beat me to it. He said "police." I had my shield in
19 my hand. And Mr. Fraser kind of like did a spin move and took
20 off running.

21 Q. What did you do once he did that?

22 A. Chased him.

23 Q. Okay. Were you able to keep sight of him throughout the
24 entire duration of the chase?

25 A. No.

N3E3FRA2

Regina - Cross

1 Q. How would you describe the area through which the chase
2 took place?

3 A. It was inside the housing development. So it was like a
4 sidewalk, he went towards the -- he went east towards the FDR,
5 and then went northbound to Tenth Street.

6 Q. What were the lighting conditions out?

7 A. It was nighttime, so artificial light.

8 Q. Now, is the plaintiff stopped at some point?

9 A. Yes.

10 Q. What do you see when that happens?

11 A. He is standing with Detective Lee, lieutenant's there, and
12 then I walk up, got the prisoner property envelope. I start
13 taking the pedigree information, and take whatever property he
14 has off -- off his person and put it into the envelope.

15 Q. Okay. And at what point, if any, at this moment do you
16 have a conversation with UC 84?

17 A. Pretty much at that point.

18 Q. How was that communication -- how did you communicate with
19 him?

20 A. Cell phone.

21 Q. What was the sum and substance of that communication?

22 A. It was a real quick conversation. I was like what
23 happened. You know, what occurred. And it's when he informed
24 me he took my ID, U.S. currency, and he took a picture of his
25 ID.

N3E3FRA2

Regina - Cross

1 Q. Now, you testified earlier that at some point you went back
2 over the scene to look for potential evidence. Do you recall
3 that?

4 A. Yes.

5 Q. What led to that?

6 A. Just to -- from what I remember, just to see if anything
7 got discarded, any other contraband, weapons, any other U.S.
8 currency, drugs, narcotics.

9 Q. Now, you were asked some questions about whether you
10 compared the prerecorded buy money numbers, invoice numbers to
11 the money that you found on Mr. Fraser. Do you recall that?

12 A. Yes.

13 Q. Why was it that you did it in the field?

14 A. Why is it that I didn't?

15 Q. Why did you not do that?

16 A. I mean, I have a -- before we go out, I premark the money.
17 I actually mark the money before I take a photocopy of the
18 money.

19 Q. For what purpose?

20 A. To easily -- to easily identify the prerecorded buy money,
21 than looking at however long a serial number is on a bill. So
22 it's easier, I put a little, you know, a little, you know, a
23 little mark on each bill in the same spot, and that's how I can
24 tell if it's prerecorded buy money. And then I'll match that
25 to the photocopy that I made prerecorded buy money.

N3E3FRA2

Regina - Cross

1 Q. Now, when your team is out doing operations, buy and bust
2 operations, how many undercovers are involved?

3 A. It could be two. There could be more than that.

4 Q. Do the undercovers maintain the same roles throughout the
5 operation? Do they alternate? Something else?

6 A. No, they alternate. They could alternate. Sometimes they
7 don't. Sometimes they do.

8 Q. By alternate, what do you mean?

9 A. Well, the ghost undercover would be the primary and the
10 primary become a ghost.

11 Q. And that might alternate in the midst of an actual
12 operation?

13 A. Sometimes, yes.

14 Q. Now, you were asked some questions about the arrest
15 processing. Can you just walk the jury through how that goes
16 with respect to the paperwork being generated, you and your
17 team putting it together.

18 A. Okay. So, when we're all done, we go back to the precinct,
19 whatever precinct we are going to process, and whoever is
20 arrested gets brought in. They get their belt and shoelaces
21 taken away from them, they get put into a holding cell. Myself
22 and other members of the field team usually go into a room
23 inside the precinct and I'll break down the property. This is
24 the evidence for this guy, this is the evidence for this
25 person, this is the evidence for that person. And then

N3E3FRA2

Regina - Cross

1 somebody will input the arrest reports, somebody do the
2 fingerprints, and then other people will do the vouchers for
3 the evidence or safekeeping.

4 MR. FRANCOLLA: All right. Just like to display to
5 the witness what's in evidence as PX 2. To the jury, excuse
6 me, as well.

7 Q. I think you testified this is an arrest report, right?

8 A. Yes.

9 Q. And generally speaking, that was generated by members of
10 your team?

11 A. Yes.

12 Q. When you put together a report like this, who determines
13 what the charge is?

14 A. It would be like the AO and then the supervisor.

15 Q. Okay. Just if you could look at the arrest report for
16 Mr. Fraser, what's the charge that's listed?

17 A. The Penal Law is 160.05.

18 Q. Can you just read the description?

19 A. It says robbery in the third.

20 Q. Okay. Now, I'd like to have my colleague go to Plaintiff's
21 6.

22 This document, the criminal court complaint, who
23 actually drafts this up?

24 A. The assistant district attorney.

25 Q. Okay. And who makes the determination of what the charge

N3E3FRA2

Regina - Cross

1 on this document is supposed to be?

2 A. They do.

3 Q. They do being who?

4 A. The assistant, whoever is drawing up -- drafting, so the
5 assistant district attorney.

6 Q. Okay. And looking at this document --

7 MR. FRANCOLLA: I'm sorry.

8 Q. So if we're looking at this document, who is responsible
9 for the portion that says "the defendant is charged with:" and
10 what follows that paragraph?

11 A. The ADA.

12 Q. Then the factual basis for this charge is as follows.
13 Where does that information come from?

14 A. That comes from the -- the UC DD-5 or the buy report.

15 Q. And this was a document that you signed when?

16 A. The following day.

17 Q. And in this document, does it indicate whether or not
18 Mr. Fraser came into possession of UC 84's currency and
19 identification?

20 A. Yes.

21 Q. And how was that information communicated to the district
22 attorney's office?

23 A. By me, verbally.

24 Q. How did you know it?

25 A. From talking to the undercover.

N3E3FRA2

Regina - Cross

1 Q. You were asked about testimony you gave a year later where
2 you said he did not -- "he" being the undercover -- did not
3 tell you about any money being taken. Do you recall that?

4 A. Yes.

5 Q. Did you testify again as part of that proceeding at some
6 point thereafter?

7 A. Yes.

8 Q. How long after, based on your recollection?

9 A. It was the hearing then the trial, so not too much longer.
10 It was kind of close together I think.

11 Q. When you say "close together," a matter of days, a week?

12 A. Yeah, days.

13 Q. When you testified at the actual trial, did you clarify
14 whether or not you obtained -- you were told about money being
15 taken?

16 MR. RUDIN: Objection, your Honor.

17 THE COURT: Ground?

18 MR. RUDIN: Under the rules of evidence, it is a prior
19 statement made after the motive to falsify.

20 THE COURT: The objection overruled.

21 A. Yes.

22 Q. Were you cross-examined about the portion of testimony
23 plaintiff's counsel read in?

24 A. Yes.

25 Q. And that was before the jury?

N3E3FRA2

Regina - Cross

1 A. Yes.

2 Q. What did the jury ultimately do at the end of that trial?

3 A. They convicted to guilty.

4 Q. You were asked some questions about training. How long
5 have you been retired for?

6 A. Since May. So whatever that is, maybe six, eight months.

7 Q. Are you currently employed at the moment?

8 A. Yes.

9 Q. What are you doing?

10 A. Security.

11 Q. Just generally, what kind of security do you do?

12 A. I work security on -- at the CBS building.

13 Q. How long did you work with the NYPD?

14 A. 20 years.

15 Q. What did you do before that?

16 A. I was in the United States Army.

17 Q. Now, as you sit here today, do you recall the extent of
18 every single training you were provided in the 20 years on the
19 job you retired from?

20 A. Do I remember? No.

21 MR. FRANCOLLA: Your Honor, if you give me one moment.

22 Q. Mr. Regina, did you plant UC 84's identification on
23 Mr. Fraser?

24 A. No.

25 Q. To the extent there is a voucher that includes a photocopy

N3E3FRA2

1 of his identification, why is it that as opposed to the actual
2 identification itself?

3 A. So he could still use the ID.

4 Q. "He" being UC 84?

5 A. Yes.

6 MR. FRANCOLLA: Your Honor, I have nothing further.

7 THE COURT: Thank you, Mr. Francolla.

8 Anything else?

9 MR. RUDIN: No, your Honor.

10 THE COURT: Okay. So you can step down, Detective.

11 THE WITNESS: Thank you.

12 (Witness excused)

13 THE COURT: I think what we're going to do is quit for
14 the day. We're going to start tomorrow at 10 o'clock and we'll
15 go all day. And we're chugging along. So, let's keep chugging
16 along.

17 It looks like the weather really didn't amount to
18 much, even for those of you who are upstate. This is a good
19 thing. But please be careful. And don't discuss the case.
20 Keep an open mind. You can keep those notebooks back in the
21 jury room. We're going to lock the jury room. Nobody will be
22 able to get at them. Okay? See you tomorrow.

23 (Jury excused)

24 THE COURT: Okay. So tomorrow, we have whom? I know
25 we have the ADA because the ADA has to be tomorrow, right?

N3E3FRA2

1 MR. RUDIN: Defense attorney.

2 THE COURT: Defense attorney. Sorry about that. Some
3 lawyer who was involved in the criminal case.

4 MR. RUDIN: Yes.

5 THE COURT: Okay. So, the defense attorney whose name
6 is -- I forget.

7 MR. RUDIN: Geoffrey Stewart.

8 THE COURT: Mr. Stewart. Right. Okay. And we have
9 Detective Deltoro I assume tomorrow?

10 MR. RUDIN: Yes.

11 THE COURT: And who else?

12 Detective Deltoro is nodding his head. He wants to
13 get this over with. And who else?

14 MR. RUDIN: Either Mr. Fraser, or depending on the
15 time of day, we could also read the stipulations, read the
16 excerpts from the 30(b)(6) depositions. So we could play that
17 by ear unless your Honor wants to know for sure.

18 THE COURT: We can play it by ear. Are you calling
19 any other witnesses besides Mr. Stewart? I know that
20 Mr. Sangermano is going to be called by the defendants.

21 Are you calling any witnesses other than Mr. Stewart
22 and your client and Detective Deltoro?

23 MR. RUDIN: We're calling an economist, and we may
24 call Mr. Fraser's mother. We haven't made that decision yet.

25 THE COURT: So you are going have your damages expert.

N3E3FRA2

1 You are going to do the sensible thing and put everybody on the
2 stand who has something to say about the merits before we talk
3 about damages.

4 MR. RUDIN: Yes.

5 THE COURT: I appreciate it.

6 MR. RUDIN: Especially now that you say it's sensible.

7 THE COURT: Well, it's astonishing the number of cases
8 where we're listening to evidence about damages and we haven't
9 heard a word from the plaintiff. I know that's because they
10 want the plaintiff to go last, but it makes no sense. And I
11 haven't noticed that it is particularly effective strategy.

12 So okay. All right. Great. We're moving along.
13 I'll see you in the morning. Okay.

14 MR. FRANCOLLA: You said 10 to the jury, your Honor?

15 THE COURT: I did say 10 because I'm going to stop by
16 my doctor's at 9 and have a culture taken. So I'm not sure
17 I'll be here by 9:30. I know I'll be here by 9:45.

18 MR. FRANCOLLA: Would you like us here by 9:30?

19 THE COURT: Just before 10.

20 MR. RUDIN: Do doctors take federal judges on time
21 always?

22 THE COURT: I'll get here.

23 MR. FRANCOLLA: One other question, your Honor.

24 THE COURT: Yes, Mr. Francolla.

25 MR. FRANCOLLA: Now that Mr. Regina is done, he is

N3E3FRA2

1 working currently.

2 THE COURT: He'd like to work? He'd like to go to
3 work?

4 MR. FRANCOLLA: I imagine if that's okay.

5 THE COURT: That's fine with me.

6 MR. FRANCOLLA: Great. Thank you.

7 THE COURT: Go to work, Detective. What do you do
8 now?

9 THE WITNESS: I'm security. I work with Allied
10 Security. Nothing exciting.

11 THE COURT: Go be a security officer. Okay. Great.
12 Okay. I'll see you in the morning.

13 (Adjourned until March 15, 2023, at 10 a.m.)
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N3F3FRA1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 JAWAUN FRASER,

4 Plaintiff,

5 v.

20 CV 4926 (CM)

6 CITY OF NEW YORK, et al.,

7 Defendants.

Trial

8 New York, N.Y.
9 March 15, 2023
10:30 a.m.

10 Before:

11 HON. COLLEEN McMAHON,

12 District Judge

13 APPEARANCES

14 JOEL B. RUDIN
15 Attorneys for Plaintiff

-and-

16 BLOCH & WHITE LLP
17 BY: MICHAEL L. BLOCH
BENJAMIN D. WHITE
CRISTINA ALVAREZ

18 SYLVIA HINDS-RADIX
19 Corporation Counsel for the City of New York
Attorney for Defendants

20 BY: BRIAN C. FRANCOLLA
21 CAROLINE McGUIRE

N3F3FRA1

1 (In open court; jury not present)

2 LAW CLERK: Case on trial continued. Parties are
3 present, judge is present, jurors are not present.

4 THE COURT: I'm sorry, folks. I had to stand in a
5 pharmacy to wait for prescriptions to be filled.

6 I understand you have sent letters. I haven't read
7 them. I want to get the witness on the stand. I want to get
8 the jurors in the room. I'll read the letters while somebody's
9 testifying.

10 MR. RUDIN: Later on, when you get to this issue I
11 have something to add to the letter.

12 THE COURT: Okay. I mean, I've seen enough of the
13 letter to be able to say that the first person who opened on
14 this was you who injected the fact that your client, guided by
15 older prisoners, the parole board, I don't know. You opened on
16 it. You opened it up. They're going to be able to
17 cross-examine on it.

18 Don't talk to me about misleading openings. You
19 opened on it.

20 I'll read the letters. But the odds that I would not
21 allow the plaintiff to be cross-examined on any statement that
22 he ever made is for you to explain when he is on direct or
23 redirect. It's a ludicrous idea.

24 Okay. Get the jury in.

25 MR. WHITE: Your Honor, our first witness today will

N3F3FRA1

1 be Geoff Stewart, Mr. Fraser's defense counsel. We wanted to
2 raise two issues before he takes the stand, just given the
3 nature of his role and the nature of your Honor's ruling.

4 One goes to the issue you addressed or the opening
5 statement that was provided. We want to make clear that there
6 won't be any inquiry into Mr. Stewart about whether he could
7 have or should have found the *Brady* material that's at issue in
8 the case. We want --

9 THE COURT: Are you assuring me of that? Fine.

10 MR. WHITE: The second issue we'd like to raise is one
11 your Honor mostly reserved on, on the first day of trial, which
12 it appears that the City is going to make some type of argument
13 related to Mr. Stewart's thoughts of the case and statements he
14 made at the trial court below. His views of the evidence.

15 I think your Honor said you'll address that when we
16 get here and you weren't sure you'd allow it in. In our view,
17 Mr. Stewart's, for example, the City at Mr. Stewart's
18 deposition showed him statements he made at his sentence at
19 Mr. Fraser's sentencing, where Mr. Stewart, in trying to get a
20 lenient sentence for his client, said things like he made a bad
21 choice. Things like that.

22 THE COURT: I sentenced people yesterday afternoon.
23 Everybody made a bad choice.

24 MR. WHITE: In our view, those statements are
25 inadmissible hearsay and prejudicial, given the nature of

N3F3FRA1

1 Mr. Stewart's role at the time.

2 THE COURT: It would certainly be my view they were
3 inadmissible hearsay. Look, I'll listen to the question, I'll
4 rule on the objection. Okay? That's what I'll do. I'll
5 listen to the question, and I'll rule on the objection.

6 MR. WHITE: That's a great plan. We wanted to flag
7 the issue.

8 MR. FRANCOLLA: Just because he is going to be
9 testifying and then finished before plaintiff. It was a
10 sentencing hearing where both Mr. Fraser and Mr. Stewart made
11 statements seeking leniency about the substance of the
12 incident. Which with respect to Mr. Stewart, is statements by
13 a party representative in their capacity in the duration of it.
14 All of it is inconsistent with the plaintiff's testimony now,
15 from our perspective.

16 So, the concern, just because he is not going to
17 testify until afterwards, there is a connection there.
18 Because --

19 THE COURT: I'm not sure I'll let the lawyer argument
20 in. I don't think that's necessary.

21 MR. FRANCOLLA: We would submit, your Honor, it's
22 statements --

23 THE COURT: I know what you said, and I'm saying I
24 probably am not going to agree with you, in which case you
25 think I will have committed some type of terrible error, but

N3F3FRA1

Stewart - Direct

1 that's the way we'll try the case.

2 I'll rule on the objection when I get to the question.

3 MR. FRANCOLLA: Okay.

4 (Jury present)

5 THE COURT: Good morning. I'm sorry. This is all my
6 fault. I had to go to the doctor. He sent me to the pharmacy.
7 They made me wait. So I apologize.

8 Call your first witness, please.

9 MR. WHITE: Good morning, your Honor. Mr. Fraser
10 calls Geoffrey Stewart to the stand.

11 THE COURT: Good morning, sir. Will you remain
12 standing in front of the chair and raise your right hand.

13 GEOFFREY STEWART,

14 called as a witness by the Plaintiff,

15 having been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. WHITE:

18 Q. Good morning, Mr. Stewart.

19 A. Good morning.

20 Q. What do you do for a living?

21 THE COURT: Can you use the microphone, please. I
22 know that requires you to stand in front of the podium and you
23 don't like doing that. But, it really helps us all, especially
24 me, because my ears are very clogged up.

25 MR. WHITE: Short people don't like to be behind

N3F3FRA1

Stewart - Direct

1 podiums like this.

2 Is that better?

3 THE COURT: Stay behind the podium. Use the mic.

4 Q. Good morning, Mr. Stewart.

5 A. Good morning.

6 Q. What do you do for a living?

7 A. I'm a criminal defense attorney.

8 Q. What is your educational background?

9 A. I have my undergraduate degree at Hamilton College here in
10 New York, and after a year out of school I went to New York Law
11 School. Graduated with a J.D. And then took the bar exam and
12 became an attorney.

13 Q. What's your professional background after you became an
14 attorney?

15 A. I worked in what I would call a family practice, and did
16 that for maybe 10, 15 years. And then became more of a solo
17 practitioner.

18 Q. Are you still practicing law today?

19 A. Yes, I am.

20 Q. What kind of law do you practice?

21 A. Almost exclusively criminal defense.

22 Q. How many years have you been practicing criminal defense?

23 A. Going on 33 years.

24 Q. Has that always been in New York State court?

25 A. No. It's -- primarily in New York State court, but I also

N3F3FRA1

Stewart - Direct

1 practice in federal court. And in the federal system, with the
2 permission of other courts you are allowed to practice in other
3 jurisdictions. So, I've handled cases in Puerto Rico, in
4 Florida, in California, all in federal court.

5 But the vast majority of my practice is New York
6 court.

7 Q. Are you a member of any professional associations?

8 A. Yes. I'm a member of the National Association of Criminal
9 Defense Lawyers, the New York State Association of Criminal
10 Defense Lawyers, the New York State Defenders Association.
11 There may be one or two more, but those are the primary ones.

12 Q. Does your job as a criminal defense attorney include going
13 to trial?

14 A. Yes.

15 Q. Approximately how many criminal jury trials have you done
16 in your career?

17 A. I would estimate somewhere between 75 to 100. It may
18 actually be more.

19 Q. Let's turn to what actually brings you here today.

20 Do you know the plaintiff in this case, Jawaun Fraser?

21 A. Yes, I do.

22 Q. How do you know Mr. Fraser?

23 A. He was a client of mine back in I think 2015, 2016.

24 Q. Were you retained by Mr. Fraser?

25 A. Yes, I was.

N3F3FRA1

Stewart - Direct

1 MR. WHITE: Can we please pull up PX 6.

2 Q. Mr. Stewart, do you see in front of you what's marked PX 6?

3 A. Yes.

4 Q. Do you recognize this document?

5 A. Yes.

6 Q. What is it?

7 A. This is a criminal court felony complaint. This is kind of
8 the initial charging document that's used in many state cases.

9 Q. Is this --

10 A. Yeah, and this is the complaint that was filed against
11 Mr. Fraser, my client.

12 Q. Is this the case you were retained by Mr. Fraser to work
13 on?

14 A. Yes.

15 Q. What did the prosecutor claim that Mr. Fraser had done?

16 A. Essentially, the claim was that he stole -- I believe it
17 was a driver's license or an identification card from a person
18 that later turned out to be an undercover police officer.

19 Q. What crime or crimes was Mr. Fraser charged with?

20 A. In this document he was charged with robbery in the second
21 degree.

22 Q. You say robbery in the second degree. What does that mean,
23 as opposed to, say, robbery in the third degree?

24 A. In New York State, there are different gradations of
25 robbery, depending on certain factors, some which make it more

1 serious than others.

2 So we have robbery in the first degree, which is the
3 most serious. And it goes down. Robbery second degree,
4 robbery third degree. So, robbery first degree being the
5 worst, robbery third degree being less severe.

6 Robbery first degree is typically stealing property
7 and using a weapon, a deadly weapon or causing serious physical
8 injury.

9 Robbery second degree can be charged in a number of
10 different theories. It may include if a person causes physical
11 injury to the victim of the robbery, or, as is in Mr. Fraser's
12 case, if it is a robbery where the defendant is aided by
13 others, meaning more than one person is present during the
14 robbery.

15 And then robbery third degree is where property is
16 stolen from a person by using force, but there is no other
17 person present, there is no weapon, and there is no injury to
18 the person. So robbery third degree is the least severe.

19 And robbery second degree is classified as a violent
20 felony in New York, therefore, the punishments are much more
21 serious. So robbery second degree, if you're convicted of that
22 charge, you're facing a three-and-a-half year minimum sentence.
23 And the judge has discretion to sentence you up to 15 years.
24 Robbery third degree is a non-violent felony offense, the judge
25 could give you probation, or up to I think it was

N3F3FRA1

Stewart - Direct

1 two-and-a-third to seven-year sentence in state prison.

2 Obviously, any robbery felony charge is a pretty
3 serious charge.

4 Q. Were you Mr. Fraser's initial lawyer on the case?

5 A. No, I was not.

6 Q. Who was?

7 A. A Legal Aid attorney named James McQueeney.

8 Q. You took over for Mr. McQueeney?

9 A. Yes.

10 Q. Did he provide you any materials when you took over from
11 him?

12 A. He did. I believe he gave me copies of his pretrial
13 motions that he had filed, and a copy of the indictment, which
14 had the charge, the same charge that we just saw there. I
15 would have received that complaint, that document we just
16 looked at, as well as -- there is a form call a voluntary
17 disclosure form the prosecution turns over, which has a summary
18 of certain information in the case.

19 So, essentially that's what I would have received from
20 him.

21 Q. Do you recall whether by the time you took over for
22 Mr. McQueeney the prosecution had produced what is called *Brady*
23 material?

24 A. I didn't receive any *Brady* material. So I can't say what
25 he received. But when I received the documents from

N3F3FRA1

Stewart - Direct

1 Mr. McQueeney, I didn't receive anything that looked like *Brady*
2 material to me.

3 Q. Is it your understanding Mr. McQueeney provided you the
4 entirety of his file?

5 A. That was my understanding, yes.

6 Q. Mr. Stewart, stepping back a bit, I just used the term
7 *Brady* material. What is *Brady* material?

8 A. *Brady* material refers to, generally speaking, an obligation
9 that is placed on prosecutors throughout the entire United
10 States. It is a federal case, Supreme Court case, *Brady v.*
11 *Maryland*. And it compels the prosecutor in any criminal case
12 to provide material that may be favorable to the guilt or
13 innocence of a defendant. And yeah. So that's pretty much
14 what *Brady* material refers to.

15 Q. Are you familiar with the term *Giglio* material?

16 A. Yes.

17 Q. What is that?

18 A. *Giglio* is in a similar vein to *Brady*. It's also a federal
19 Supreme Court case that puts the obligation on the prosecution
20 to also provide what we call impeachment material. That being
21 perhaps information negative to prosecution witnesses, things
22 that we as lawyers can use to impeach a witness in a particular
23 case.

24 Q. You mentioned that *Brady* and *Giglio* are both Supreme Court
25 decisions. Right?

N3F3FRA1

Stewart - Direct

1 A. Yes.

2 Q. Do you recall when those decisions were announced by the
3 Supreme Court?

4 A. I would be guessing. I believe they were 1960s and '70.

5 Q. You don't have a specific recollection?

6 A. No.

7 Q. Would seeing the cases refresh your recollection as to when
8 those?

9 THE COURT: Can we stipulate these are 50-year-old
10 cases?

11 MR. FRANCOLLA: We can.

12 THE COURT: Thank you. Nothing recent about them.

13 Q. Mr. Stewart, you testified *Brady* material includes
14 favorable evidence. Is that right? Favorable evidence to the
15 defense?

16 A. Yes.

17 Q. What types of evidence is encompassed within favorable
18 evidence to the defense?

19 A. You know, in any criminal case, it really could -- there is
20 a wide range of things that could be favorable. If you're
21 dealing with civilian witnesses to a particular incident, if
22 one witness says X happened, but another witness contradicts
23 that, that would be *Brady* material. You're entitled to know
24 there is another witness who said it didn't happen this way, it
25 happened a different way.

N3F3FRA1

Stewart - Direct

1 In a case where there are police officers involved, if
2 there's anything that would contradict the police officer's
3 version, then, you know, that's *Brady* material, and we would be
4 entitled to know about that.

5 Q. Are you familiar with the term "impeachment evidence"?

6 A. Yes.

7 Q. What is that?

8 A. Impeachment is, you know, what we as lawyers use to test
9 the credibility of a witness. So, what we're doing right now
10 is having a trial, and you know, even my credibility may be at
11 issue. So, what lawyers try to do is use material to either
12 cast doubt on what a person is saying, to show that they're
13 being inaccurate, fabricating, whatever the case may be.

14 But it's basically material used to challenge a
15 witness's version of events.

16 Q. Specifically to a criminal trial, what types of evidence
17 might be used to undermine the credibility of witnesses?

18 THE COURT: Folks, I just want to make it really
19 clear, and I mean no disrespect to Mr. Stewart, but he knows
20 what I'm about to say.

21 I'm going to talk to you about all this stuff in the
22 jury charge. And what I tell you is *Brady* material is *Brady*
23 material. And what I tell you the kinds of evidence are is the
24 kinds of evidence, because that's issues of law, okay?

25 So, I told you I only have one thing I get to do at

N3F3FRA1

Stewart - Direct

1 this trial. But I really jealously guard my prerogatives to
2 instruct you in the law.

3 That said, Mr. Stewart is a man of great experience,
4 and his understanding of these things is relevant to the case.
5 So, he is going to talk to you about them, too.

6 MR. WHITE: Thank you, your Honor. In that light,
7 I'll rephrase slightly.

8 Q. What types of evidence have you used in your experience to
9 undermine the credibility of witnesses at a criminal trial?

10 A. Probably the most frequently used evidence to impeach
11 witnesses are statements. So if you think of a trial as
12 competing statements that are being introduced by witnesses,
13 what we try to do is collect as many statements about an
14 incident as possible to use in impeachment.

15 So if a witness, a police officer comes and testifies
16 that an incident happened a certain way, but you have it on
17 record in a police report, or in some other instance that it
18 happened a different way, you can use that impeachment to say,
19 the witness is not being accurate, they're fabricating, they're
20 exaggerating, whatever it may be.

21 Also any information about somebody's prior bad acts
22 or misconduct can also be used to impeach the witness as well.
23 To show that, you know, the way they conduct themselves doing
24 their job doesn't always comport with what they are supposed to
25 be doing.

N3F3FRA1

Stewart - Direct

1 So, you have statements, prior bad acts. Sometimes
2 you can impeach a witness with another witness. So if one
3 witness comes in and says it happened like this, but you have
4 another witness who says, no, I was there, and it happened like
5 that, that's another way they can be impeached as well.

6 Q. Focusing specifically on prior bad acts. What types of
7 evidence might you use as a prior bad act to undermine the
8 credibility of a witness?

9 A. Prior bad acts can include criminal acts, things that, you
10 know, are on a person's criminal record. Those are very often
11 very useful, because the fact of the bad act has been
12 established in a criminal conviction. So you can use a
13 person's prior criminal history. But you can also use bad
14 acts, bad things somebody has done that you've learned about
15 through your own investigation, to, again, confront a witness
16 about things they may have done in the past.

17 THE COURT: Folks, this is where it gets really
18 tricky. Because not all kinds of bad acts can be used to
19 impeach. And I'm going to be very, very detailed, and very,
20 very precise in my instructions -- which I had hoped to get out
21 to the lawyers this morning -- on this issue. Okay?

22 Q. Would civil lawsuits filed against witnesses be considered
23 a prior bad act you could use?

24 A. Not the filing of a civil lawsuit. But, in a civil lawsuit
25 there is often allegations of bad acts or misconduct. So to

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1 that extent, yes, civil lawsuits do provide impeachment.

2 THE COURT: Here's where I'm going to jump in just
3 because I think this is so important.

4 The fact that someone has been sued is no evidence
5 that can be used to impeach him under the law of the State of
6 New York, as articulated by the highest court in the State of
7 New York.

8 The kinds of bad acts -- by the way, prior bad acts
9 can't be used as evidence to prove that you did a bad act in
10 this case. Just because you did something bad last week,
11 doesn't mean you did something bad this week. Okay?

12 So, the kinds of bad acts that you can be impeached
13 with are things that bear on your credibility. If you've lied
14 in the past. If you've committed a crime of dishonesty in the
15 past. Those are the kinds of things that can be used to
16 impeach your credibility, and that's what I'm going to charge
17 you as a matter of law. Okay?

18 So, the fact that you've been sued, it's not evidence
19 of anything. People file lawsuits all the time. The fact that
20 you have committed an act of dishonesty is something that can
21 be used to impeach you. Okay?

22 Just a little short preview of what you'll hear in the
23 final charge.

24 BY MR. WHITE:

25 Q. Mr. Stewart, have you ever used allegations within a civil

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1 lawsuit to try to discredit police witnesses during a criminal
2 trial?

3 A. Yes, I have.

4 Q. How many times have you done that in your career?

5 A. I can recall two times. I feel like there may have been a
6 few additional ones, but I know off my own memory two different
7 times.

8 Q. When you use the allegations in civil lawsuits to try to
9 discredit police witnesses, how do you do it?

10 A. My approach is, I look at the specific allegations that are
11 in the civil complaint, because as the judge said, just the
12 filing of the lawsuit doesn't mean anything. So I go into the
13 complaint, and if there is a particular officer in the trial
14 I'm handling, number one, I'm looking at is this an officer
15 whose credibility really matters in the trial. Do I have to
16 challenge their credibility.

17 Secondly, what is the specificity of the complaint
18 against that officer.

19 And most important -- not most important, but
20 important as well is how many different civil complaints have
21 been filed against that same officer.

22 So I kind of mash all that together, and then decide
23 in the context of the trial and the issues of a trial, do I
24 need to confront and try to impeach the officer with those
25 specific allegations, or do I not go down that road and just

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1 not use it.

2 Q. Let's turn back specifically to Mr. Fraser's trial.

3 Who was the prosecutor on Mr. Fraser's trial?

4 A. The name of the prosecutor? Greg Sangermano.

5 Q. Would Mr. Sangermano have been the person responsible for
6 producing *Brady* material to you?

7 A. Yes.

8 Q. Are defense attorneys like yourself generally permitted to
9 trust that a prosecutor's *Brady* production is a complete
10 production of *Brady* material?

11 A. Definitely.

12 Q. Did Mr. Sangermano produce *Brady* material to you in
13 Mr. Fraser's trial?

14 A. Yes, he did.

15 Q. Was any of the *Brady* material that Mr. Sangermano produced
16 to you what you would call impeachment evidence?

17 A. Yes.

18 Q. Do you recall when you received that information or that
19 evidence from Mr. Sangermano?

20 A. My recollection is it was right before we began jury
21 selection in Mr. Fraser's trial.

22 Q. Help the jury understand where jury selection falls
23 temporally in connection with the trial.

24 THE COURT: Wait a minute. They just did it. They
25 know where jury selection falls.

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1 MR. WHITE: Thank you, your Honor.

2 Q. What else do you recall about the circumstances under which
3 Mr. Sangermano provided that *Brady* material to you?

4 A. Right before jury selection, there is a process -- part of
5 the discovery process, we call turning over *Rosario* material.
6 *Rosario* refers to a state case that imposes discovery
7 obligations on prosecutors in New York State. It's not a
8 federal case.

9 So we get *Rosario* material right before jury
10 selection. Those are witness statements of all the witnesses
11 the prosecution intends to call at the trial.

12 So right before we begin jury selection,
13 Mr. Sangermano gives me a pile of documents, nothing's
14 organized, but it has all the *Rosario* material and it also has
15 any *Brady*, *Giglio* material, and in that pile I believe there
16 were some civil lawsuits against one or more of the officers
17 that were testifying in the trial against Mr. Fraser.

18 Q. Do you recall how many civil lawsuits were provided to you
19 by Mr. Sangermano?

20 A. I can't remember exactly how many.

21 Q. Would looking at the attorney affirmation filed in
22 connection with Mr. Fraser's 440 process refresh your
23 recollection?

24 A. Yes.

25 MR. WHITE: Can we publish that just to Mr. Stewart.

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2 Q. Are you able to see that?

3 A. No, I don't have anything on my screen.

4 THE COURT: I've got nothing on my screen. Jurors,
5 can you see anything? Nope.

6 Q. Are you able to see the document I just referenced?

7 A. Yes.

8 THE COURT: Why are the jurors being shown this, they
9 shouldn't be.

10 You can't see? Good. You shouldn't. It's not
11 evidence.

12 Q. Can you review paragraphs 76 through 79.

13 A. Okay.

14 Q. Does that refresh your recollection as to how many civil
15 lawsuits were provided to you by Mr. Sangermano?

16 A. Yes.

17 Q. How many?

18 A. Two.

19 Q. What were the names of those two lawsuits?

20 A. Again, I don't have an independent recollection of the
21 names of the suits, but reviewing this affirmation, it appears
22 they were *Penn*, P-E-N-N, and *Baynes*, B-A-Y-N-E-S.

23 THE COURT: And can we stipulate those were the names
24 of the plaintiffs in the lawsuit?

25 MR. FRANCOLLA: We can.

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1 THE COURT: Thank you. Those were the people who
2 brought the lawsuits. Not the officers who were sued.

3 Q. Mr. Stewart, do you recall the names of the officers that
4 were sued in the *Penn* and *Baynes* case?

5 A. Not offhand, no.

6 Q. If you take a look at paragraph 53 of the document in front
7 of you through paragraph 55, would that refresh your
8 recollection?

9 A. In a general sense, it does refresh me. Again, I -- I
10 wouldn't be able to say particular officer was in the *Penn*
11 caption of the lawsuit versus a particular detective in
12 Mr. Fraser's case.

13 Generally speaking, I recall -- I believe Detective
14 Regina was a named defendant in one, and I believe the
15 undercover in Mr. Fraser's case was named in one of them as
16 well. But, I -- don't have a recollection of the caption of
17 those cases whatsoever.

18 Q. Other than the *Penn* case and the *Baynes* case, the two
19 lawsuits that Mr. Sangermano produced to you right before
20 trial, did you know about any other lawsuits that were filed
21 against witnesses in Mr. Fraser's case?

22 A. No.

23 Q. Did you know about a lawsuit called *Wright* filed against UC
24 84?

25 A. No.

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1 Q. Did you know about a lawsuit called *Pieralisi* filed against
2 UC 84?

3 A. No.

4 Q. Did you know about a lawsuit called *Parris* filed again
5 against UC 84?

6 A. No.

7 Q. Did you know about a lawsuit called *Best* filed against UC
8 84?

9 A. Nope.

10 Q. Did you know about a lawsuit called *A.T.* against Detective
11 Deltoro?

12 A. No.

13 Q. Did you know about a lawsuit called *Nuñez* against Detective
14 Deltoro?

15 A. Nope.

16 Q. Did you know about a lawsuit called *Murray* against
17 Detective Deltoro?

18 A. No.

19 Q. Did you know about a lawsuit called *Loglisci* against
20 Detective Deltoro?

21 A. No.

22 Q. Let's turn to what happened next after you were provided
23 those disclosures.

24 What happened next after you received those
25 disclosures after jury selection?

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1 A. Well, we are in the process of picking a jury. The trial
2 is about to begin, so I have to do a lot of multitasking.
3 Picking a jury and as well going through all of this, what I
4 referred to as *Rosario* material. These are the witness
5 statements, all the police reports, grand jury testimony,
6 handed to me. And during the downtime of the trial, whether
7 lunch breaks or after hours, you know, getting organized,
8 trying to figure out what my cross-examination is going to be.

9 So, included in that, I would look at these lawsuits
10 and kind of scan through it, look for the allegations. As I
11 explained earlier, like, what is the specific allegation, and
12 do I have enough quantity as well as quality of allegations
13 against what I would consider critical witnesses in the case,
14 in the case against Mr. Fraser. Do I want to use these or not.

15 And in that process, I recall just looking through
16 them and saying, okay, we only have two or minimal number of
17 lawsuits here, and I don't even think -- there may be one
18 against one officer and one against the other. I'm not going
19 to use these. Let me just focus on all the other documents in
20 the case.

21 Q. Moving forward to the trial. Do you recall what physical
22 exhibits the prosecution introduced to try to prove its
23 allegations?

24 A. Yeah. I recall there was like a diagram of the location
25 where the incident occurred. I think there was a photograph of

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1 the identification card. Those are the two I recall. I think
2 there was something else, but I can't recall what it was.

3 Q. Would looking at the exhibit sheet from trial refresh your
4 recollection as to what the exhibits were?

5 A. Yeah, it probably will.

6 MR. WHITE: Can we please publish that just to
7 Mr. Stewart.

8 Q. Are you able to see the exhibit sheet?

9 A. Yes.

10 So, yeah, I'm refreshed, and there was also two cell
11 phones that were introduced into evidence.

12 MR. WHITE: We can take that down. Thank you.

13 Q. Apart from those three exhibits, was there any other
14 physical evidence introduced at trial?

15 A. No.

16 Q. Was there any video evidence?

17 A. No.

18 Q. Was there any audio evidence?

19 A. No.

20 Q. Was there any evidence from what's known as a kel device?

21 A. No.

22 Q. Were there any fingerprints?

23 A. No.

24 Q. Was there any forensic evidence, like DNA or blood
25 evidence?

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1 A. No.

2 Q. If not physical evidence, what evidence did the prosecution
3 use to try and prove up their allegations against Mr. Fraser?

4 A. My recollection is it was exclusively police officer
5 testimony. And I believe they called a technical specialist
6 from the DA's office to address some issue about the cell
7 phones. But the case against Mr. Fraser was all police officer
8 testimony.

9 Q. Did you cross-examine the police witnesses?

10 A. Yes.

11 Q. Did you ask them any questions about the allegations in the
12 two lawsuits you were given the night before trial? And I'm
13 talking about the *Penn* case and the *Baynes* case.

14 A. No, I did not.

15 Q. Mr. Stewart, if you had been given six lawsuits against UC
16 84 and four against Detective Deltoro, alleging things like
17 false arrest and malicious prosecution, what would you have
18 done with them?

19 A. I would have used them to impeach both of those witnesses.

20 Q. Why would you do those things if you have 10 civil
21 lawsuits, but not if you have just two?

22 A. You know, in my mind, in my strategy, and not every
23 criminal defense lawyer is the same, but, one thing that is
24 certain -- hopefully the judge won't disagree with me, but
25 if --

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1 THE COURT: You're fine. You're fine.

2 A. If I confront an officer with a bad act that I've taken out
3 of one of those civil complaints, and I say, Officer X, isn't
4 it true you did A, B, and C bad thing, and he or she says no,
5 that's not true. In the context of the trial, I'm not allowed
6 to bring in a witness to say, oh no, he really did do that.
7 I'm not allowed to prove those allegations. They're considered
8 collateral.

9 So, in our parlance, I'm stuck. I'm stuck with the
10 answer. And you know, when you're dealing with a criminal
11 jury, that, you know, I'm trying to connect with on behalf of
12 my client, if I ask a question and I get shut down, the jury --
13 it's almost like the witness has won one on me. And the jury
14 is going to think, like, why did Mr. Stewart ask that question,
15 if he didn't have the goods to back it up. It's not that we
16 don't have the goods, it's just we're not allowed to go down
17 that road because it's collateral. It's not really what the
18 trial is about.

19 If I only have one, and the officer -- you know, he
20 prepares for trial, too. The prosecution -- there's nothing
21 wrong with it. The prosecution can prepare their witnesses.
22 And he says, look, you're probably going to get confronted with
23 some of these allegations, you need to be ready. He says no,
24 sir it never happened, I'm stuck with the answer.

25 If I have four or five or six, that's a different

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1 ballgame. Because, you know, in my opinion, lightning doesn't
2 strike twice in the same place. So if an officer has four,
3 five or six separate unrelated allegations of misconduct, he
4 can say or she can say, no, it never happened all they want.
5 But, I think the jury is going to get the point that different
6 people have alleged in court filings that you did misconduct,
7 whatever it may be. And that's powerful impeachment material,
8 just based off the quantity of the allegations.

9 So that would be why the number of lawsuits would be
10 more important to me, and that's how in other cases I have used
11 them in that vein.

12 Q. Mr. Stewart, let's talk a bit about what happened after the
13 prosecution finished putting on its case.

14 Before we do that, can you explain to the jury and --
15 can you explain to the jury the burden of proof and who had the
16 burden of proof at Mr. Fraser's trial?

17 A. The prosecution, also known as the People of the State of
18 New York, they bear the burden of proof beyond a reasonable
19 doubt of each and every element of a criminal charge that's
20 brought.

21 Q. After the prosecution's evidence is presented and the
22 lawyers provide summations, what happens next?

23 A. The judge delivers the law, the specific charges. And
24 then, as you just mentioned, the burdens of proof, which side
25 bears the burden. And then sends the jury off for

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1 deliberations.

2 Q. What do you recall, if anything, about the jury's
3 deliberations in this case?

4 A. The jury in the case -- originally the charge came in and
5 was indicted as a robbery in the second degree. This charge,
6 that's a serious violent felony. At our request, the judge
7 also charged the jury on a lesser included offense, like a
8 lesser charge of robbery, robbery in the third degree. Both
9 those charges were submitted to the jury. They began
10 deliberating. At some point, they wrote a note to the judge
11 indicating --

12 MR. FRANCOLLA: Objection, your Honor.

13 THE COURT: Overruled. I'm curious.

14 A. They sent a note out saying they were deadlocked, meaning
15 they couldn't come to a unanimous decision. In a criminal
16 trial, the jury has to be unanimous, all 12 have to be in
17 agreement with the verdict. They said they have been
18 deliberating in good faith, could not reach a verdict. And the
19 judge delivered what we call in the state court an *Allen*
20 charge. *Allen* just being the case in New York State referring
21 to when the judge tells the jury, look, you guys have to go
22 back, work harder, spend more time, listen to each other,
23 deliberate in good faith, kind of give it another try. You've
24 only been deliberating X number of hours. Give it another try.

25 So that happened in Mr. Fraser's case. There was a

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Stewart - Cross

1 time when they were deadlocked, then they went back, and
2 ultimately they came back with a verdict on the lesser count of
3 robbery in the third degree.

4 Q. How did they find on the charge of robbery in the second
5 degree?

6 A. Not guilty.

7 Q. Mr. Stewart, what is disorderly conduct?

8 A. Disorderly conduct under New York State law, it is a
9 non-criminal offense. It is classified as a violation. In the
10 scheme of things in the state, we have the worst being things
11 like homicides, then we have felonies, then we have
12 misdemeanors. Lowest on the totem pole is violations, traffic
13 infractions. They're kind of a similar vein.

14 MR. WHITE: I have no further questions.

15 THE COURT: Thank you.

16 CROSS-EXAMINATION

17 BY MR. FRANCOLLA:

18 Q. Good morning, Mr. Stewart.

19 A. Good morning.

20 Q. So, in terms of how the trial itself played out.

21 Ultimately, 12 jurors found Mr. Fraser guilty beyond a
22 reasonable doubt of robbery in the third degree?

23 A. Yes.

24 Q. And you also mentioned how the judge would provide or
25 instruct the jury on the law, as Judge McMahon would do, as

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1 part of that trial, right?

2 A. Yes.

3 Q. One of the instructions was that questions alone are not
4 evidence, right?

5 A. Yes.

6 Q. It needs to be the question and the answer, right?

7 A. Correct.

8 Q. So, by example, if I were to say to you, isn't it true you
9 knew about more lawsuits than you just testified to, and you
10 say no, that's not evidence that you knew about more than you
11 said.

12 A. That's my understanding, although the judge will have to
13 instruct on that.

14 THE COURT: You've tried many more criminal cases than
15 I have. I've tried exactly zero as a defense lawyer. Many as
16 a judge, but exactly zero as a defense lawyer. So I'll leave
17 it at that.

18 A. That's my understanding though, yes.

19 Q. So in the context of -- we were talking about prior bad
20 acts. A civil lawsuit contains allegations of prior bad acts,
21 right?

22 A. Correct.

23 Q. And as you indicated, all you can do with respect to an
24 officer you question about a civil lawsuit they're named in is
25 essentially parrot the allegation made by the plaintiff suing

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Stewart - Cross

1 that particular officer.

2 A. In some cases, you know, if you have limited time, yes.
3 You're only going to be using that information. On occasion,
4 if you can investigate it further, so there are real people
5 behind those allegations. Sometimes you can contact the
6 attorneys who filed the civil lawsuit, or even try to speak to
7 the plaintiff themselves, to get maybe a little bit more
8 detail.

9 But by and large, yeah, you are just, in my
10 experience, I use what I read in the filing.

11 Q. Okay. So, if I understood the caveat you just mentioned,
12 is that in some instances, you may essentially dig a little
13 deeper into the allegations contained in a complaint than
14 what's written in them?

15 A. Right.

16 Q. But by the same token, you're still saying isn't it true
17 you did X based on what that person who was sued said?

18 A. Correct.

19 Q. And in your experience, typically these sorts of questions
20 are usually followed by no, I did not do that?

21 A. That's correct.

22 Q. So, in that scenario, there is no evidence in the record
23 that the officer did in fact do what you asked he or she about?

24 A. Correct.

25 Q. Now, generally with respect to civil lawsuits, am I correct

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1 that the calling up the attorney, as you mentioned you might
2 do, sometimes the reason you do that is to determine whether or
3 not an officer named in a lawsuit is actually involved in the
4 substance of it.

5 A. Yeah, that might be one reason to call the attorney.

6 Q. Like for example, I'm sure you're familiar in some
7 instances where, you know, there was a search warrant, that
8 leads to an arrest, which leads to a lawsuit, and 12 people are
9 named as part of that lawsuit. Right?

10 A. Right.

11 Q. And there may not be a scenario where, for example, one of
12 the officers named is specifically alleged to have done any
13 act?

14 A. Right.

15 Q. Instead the lawsuits contain general claims that "I was
16 falsely arrested" or "I was maliciously prosecuted," things of
17 that nature?

18 A. Yes.

19 Q. Now, you were asked on direct examination about the limited
20 exhibits that were introduced in the trial. Do you recall
21 that?

22 A. Yes.

23 Q. And I think you said it was -- I'm sorry. Could you repeat
24 your understanding of the exhibits?

25 A. There was some sort of diagram of the location of the

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1 incident, to give the jury an idea where people were at certain
2 times. And then there was the actual identification card or
3 driver's license of the undercover, and then the cell phones.

4 Q. And you yourself didn't affirmatively introduce any
5 exhibits?

6 A. Correct.

7 Q. And you had indicated on direct that prior to the trial,
8 albeit I think close is what you said, you received the general
9 police reports, criminal court complaint, things like that?

10 A. Right.

11 Q. In fact, I think the criminal court complaint you would
12 have gotten from Mr. McQueeney when you took over the case?

13 A. Yes. I would have had that well before the trial started.

14 Q. And you didn't use any of those documents against the
15 officers who testified?

16 A. You know, I don't recall. So I would have to, like, reread
17 the trial transcript whether I used some of those documents to
18 impeach with prior inconsistent statements. But -- I don't
19 recall off the top of my head.

20 Q. As you sit here today, do you have a recollection of
21 affirmatively having done that?

22 A. I don't. I don't recall.

23 Q. At least according to the exhibit list, you didn't
24 introduce any of them into evidence, if you did?

25 A. Well, you wouldn't, you wouldn't introduce them. They

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1 wouldn't be on the exhibit list. In state court, if I confront
2 a police officer with a prior inconsistent statement, let's say
3 it is on a police report, the report doesn't come into
4 evidence. The report is being used to impeach them. So it's
5 about their credibility. It's not technically in evidence.
6 It's just bringing to the jury's attention that a statement
7 inconsistent with what they're saying on trial, they are being
8 confronted with it. So, the actual report doesn't get put into
9 evidence.

10 Q. Okay. Would it be unusual in your practice if you didn't
11 use any of the documents in the manner you just described in
12 Mr. Fraser's trial?

13 A. It wouldn't be unusual.

14 Q. I think as you indicated, the way you viewed the case was
15 that it largely rose and fell on the testimony of the officers
16 involved?

17 A. Correct.

18 Q. Now, is your recollection, as you sit here today, that you
19 only -- you're certain you were given two lawsuits by ADA
20 Sangermano?

21 A. I wouldn't say I'm certain that at the time he turned over
22 the material that there were only two. I didn't make a notes
23 of a roster.

24 The way I'm basing that number two is because later on
25 I was asked for essentially what was in my file. And I went

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Stewart - Cross

1 back and looked, and that's what was there. So that's what I'm
2 basing that on.

3 Q. Okay. I think you previously testified that, at least from
4 your recollection's perspective, all you can really say it was
5 just a very small number in your opinion?

6 A. Yes.

7 Q. And there was a conversation -- excuse me.

8 The moment that ADA Sangermano provided you however
9 many lawsuits he provided you was on the record in one of the
10 proceedings, correct?

11 A. I believe that's correct, yeah.

12 Q. And I think on -- I'll ask you a few questions about this
13 back and forth, but if it's easier for you to look at the page
14 in response, all you have to do is tell me and I'll be happy to
15 show you. Okay?

16 A. Okay.

17 Q. Am I correct that the way ADA Sangermano said is he gave
18 you some civil lawsuits?

19 A. That's my recollection.

20 Q. And you used the same phrasing as he did when you were
21 discussing the lawsuits?

22 A. Right.

23 Q. And in addition to making clear that he was going to --
24 that he provided you what he did and you received it, he
25 indicated that he was going to ask the judge to preclude you

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1 from asking any of the questions you discussed earlier?

2 A. I would like to look at that document just to see about the
3 phrasing of that.

4 Q. Yeah, of course.

5 MR. FRANCOLLA: It might be the easiest if I hand him
6 the hard copy, if that's okay.

7 THE COURT: I think that would be easiest. There are
8 really times, folks, when technology is a pain in the neck. A
9 simple piece of paper will do nicely.

10 A. Okay, yes. I've had the chance to review it.

11 Q. Based on reviewing the portion I just provided you, am I
12 correct that ADA Sangermano said if you intended to ask any
13 questions about this, he was going to seek a ruling from the
14 judge to prevent you from doing that?

15 A. Correct.

16 Q. And I would imagine there is at least the possibility that
17 if things played out that way, the judge might grant that
18 request?

19 A. Well, if he did, he would be wrong on the law. All due
20 respect. But, yeah, there is always the possibility that the
21 judge can make an erroneous ruling.

22 Q. Well, but part of that also means you might have lawsuits
23 for a particular officer that don't necessarily, again, don't
24 necessarily allege they did anything?

25 A. Right. And --

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1 THE COURT: What?

2 MR. FRANCOLLA: That's a poorly phrased question.
3 I'll withdraw it or try and clarify it. My linguistic
4 skills --

5 A. I think I understood what you were getting at.

6 THE COURT: You may have, but I didn't, and if I
7 didn't, I'm going to assume they didn't. Now, I can be wrong.
8 They could have understood perfectly. But my rule in my
9 courtroom is if I don't understand it, I assume the jurors
10 didn't understand it either. And I didn't understand that.

11 Q. Well, I guess let me ask it this way. Simply the fact that
12 a police officer is sued in a civil lawsuit doesn't necessarily
13 mean you can ask questions about that?

14 A. Not just the fact of being sued. But again, if you've been
15 sued, very, very high probability that there is some allegation
16 against the particular officer. Maybe in a group with other
17 officers, but if their name is on that lawsuit, there has to be
18 kind of a reason why their name is on the lawsuit.

19 Q. What page is on the top of that sheet that I gave you?

20 A. 105.

21 Q. Sorry about that.

22 Now, in that same exchange that we were discussing,
23 you referenced how when you received these lawsuits, you do
24 some follow up to determine -- to try and figure out whether
25 any particular officer may have committed certain acts, bad

N3F3FRA1

Stewart - Cross

1 acts, or other types of things, right?

2 A. You're referring to this colloquy that's on what I'm
3 looking at or --

4 Q. I am. On 106.

5 A. I'm still on 105. I don't have 106.

6 Q. Sorry about that.

7 A. That's okay.

8 (Pause)

9 A. Right.

10 So, what was your question again?

11 Q. Just whether or not, you know, isn't it true that you
12 indicated on the record that upon receiving however many
13 lawsuits you got, one of the things you like to do is follow
14 up, because it's hard to figure out whether any particular
15 officer may have committed certain acts, bad acts, or other
16 types of things?

17 A. Yes.

18 Q. Now, on direct, you said that the primary factor for you in
19 deciding whether to ask about lawsuits at all is the number?

20 A. I think what I said is it's kind of a mash up of the number
21 and specificity of the actual officer, officer's conduct, maybe
22 participation in a particular bad act scenario.

23 Q. Isn't it also true, one of the other things you factor in
24 is your understanding of the nature of the case you're
25 handling?

N3F3FRA1

Stewart - Cross

1 A. Yes.

2 Q. If, for example, a case involved allegations of police
3 corruption or excessive force, then that would add an incentive
4 for you to pursue this route, right?

5 A. If -- so if I'm representing a client who suffers what I
6 believed was excessive force, yes, then, if an officer has
7 prior bad acts alleging excessive force. If I'm dealing with a
8 case where it involves planting of evidence or something like
9 that, you know, I'm looking for that as well. So if there's
10 that sort of specificity, yes.

11 Q. And you didn't view Mr. Fraser's case as implicating police
12 corruption or excessive force?

13 MR. WHITE: Objection, your Honor.

14 THE COURT: Ground?

15 MR. WHITE: Can we have a side bar? It raises the
16 issue we discussed earlier.

17 THE COURT: Objection is overruled.

18 A. In my terminology, that's correct. I didn't think this
19 case involved excessive force or what I would consider
20 corruption.

21 Q. Now, as part of your representation of Mr. Fraser, you and
22 he, you and him appeared at a sentencing hearing, correct?

23 A. Yes.

24 Q. And at that time, you were still his attorney, right?

25 A. Yes.

N3F3FRA1

Stewart - Redirect

1 Q. And your appearance that day was on his behalf as his
2 attorney?

3 A. Yes.

4 Q. And the purpose of the sentencing hearing was --

5 THE COURT: I'm going to preclude this line of
6 questioning. You have your objection. Move on to something
7 else.

8 MR. FRANCOLLA: Your Honor, I may be nearing the
9 conclusion. I just want to look at my notes and confer with my
10 colleague, if that's okay.

11 THE COURT: Please. Look at your notes and confer
12 with your colleague. I'm sure there is a little redirect here.

13 MR. FRANCOLLA: Your Honor, I do not in fact have any
14 further questions.

15 Thank you for your time, Mr. Stewart.

16 THE WITNESS: You're welcome.

17 THE COURT: I'm sure there's redirect here.

18 MR. RUDIN: Your Honor, may we have a moment?

19 THE COURT: Of course.

20 REDIRECT EXAMINATION

21 BY MR. WHITE:

22 Q. Mr. Stewart, you were asked some questions on cross about
23 officers denying on the stand questions that derive from
24 allegations in civil lawsuits, right?

25 A. Yes.

N3F3FRA1

Stewart - Redirect

1 Q. You said that's pretty common; is that right?

2 A. Yes.

3 Q. In your experience, is it still an effective strategy to
4 question about the allegations in civil lawsuits, even if there
5 is a denial to the question?

6 A. Yes.

7 Q. Have you had experience where you specifically recall an
8 officer denying a question about civil allegations in a
9 lawsuit, but you felt was still effective strategy?

10 MR. FRANCOLLA: Objection.

11 THE COURT: The objection is sustained.

12 I'm just going to ask a question. Why? Why do you
13 think it's effective if the officer says no, and you are bound
14 by the answer?

15 THE WITNESS: Because when -- before you get to the
16 final question of whether an officer committed a bad act,
17 obviously there are lead-up questions, there is a little bit of
18 foundation, whether they were at a particular location with
19 fellow officers. And when, even when they deny it, if it's
20 denial, over denial, over denial of different incidents, what
21 the jury's job in terms of judging credibility, I've seen
22 officers get very flustered, they get angry, so, I think it
23 helps the jury judge their credibility in the way they handle
24 those types of questions. It goes to their credibility in that
25 regard, too.

N3F3FRA1

Stewart - Redirect

1 THE COURT: You mean judging their credibility about
2 what they're testifying to in the trial of your client?

3 THE WITNESS: Yes. Yes.

4 Q. Mr. Stewart, you were asked on cross whether or not you
5 introduced evidence into the record in Mr. Fraser's criminal
6 trial, right?

7 A. Correct.

8 Q. Can you remind the jury who has the burden in a criminal
9 trial?

10 A. The prosecution has the burden.

11 Q. Do you have a burden to put forward any evidence?

12 A. No.

13 Q. Mr. Stewart, did you make a strategy decision not to make
14 Mr. Fraser's case about public corruption?

15 A. I mean, my -- my strategy was essentially to try to
16 undermine the prosecution's case in any way possible. So, I
17 don't -- I can't say I didn't want to make it about -- I was --
18 willing to make it about anything that would make the jury
19 discredit the police officers' version of what happened. So,
20 you know, everything and anything is fair game.

21 Of course, it has to be based on the facts of the
22 case. So when I was asked the case was not about excessive
23 force, because in that particular instance, I didn't see any
24 evidence of excessive force in that case.

25 (Continued on next page)

N3FHFra2

Stewart - Redirect

1 MR. WHITE: If you had the lawsuits available to you
2 that were not produced to you, might you have made a different
3 choice?

4 MR. FRANCOLLA: Objection.

5 THE COURT: No, very much overruled.

6 A. I would have made a different decision about confronting
7 those officers with their prior bad acts, yes. I don't know if
8 I would stick it in a box and say it was about public -- it was
9 about corruption or not. Basically, those prior bad acts are
10 about challenging the credibility of the officers involved.

11 THE COURT: I'm sorry. As you sit here today, do you
12 know what was alleged in these lawsuits that weren't produced
13 to you?

14 THE WITNESS: No.

15 MR. WHITE: No further questions.

16 THE COURT: Therefore, I imagine it's kind of hard for
17 you to say what you would have done with them other than --
18 based on the number as you --

19 THE WITNESS: That's right, Judge. That's right.

20 THE COURT: I don't want to mischaracterize your
21 testimony.

22 MR. FRANCOLLA: I don't have anything further, your
23 Honor.

24 THE COURT: Mr. Stewart, thank you very much.

25 THE WITNESS: Thank you, Judge.

N3EHFra2

Del Toro - Direct

1 (Witness excused)

2 THE COURT: Call your next witness, please. Oh, I
3 thought Detective Del Toro was next.

4 MR. BLOCH: Yes, Judge.

5 THE COURT: Detective Del Toro.

6 By the way, retired detective Regina is not with us,
7 as you see. He has a job. Now that he's testified, he's going
8 back to work. Draw no inferences in any direction as a result
9 of the fact that he's not sitting here today. OK?

10 All right. Josie, would you please swear the witness.

11 JASON DEL TORO,

12 called as a witness by the Plaintiff,

13 having been duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. BLOCH:

16 Q. Good morning, detective.

17 A. Good morning.

18 Q. Detective, I want to talk first about the role you played
19 in Mr. Fraser's arrest and conviction. OK?

20 A. OK.

21 Q. You were part of the buy-and-bust team that went to the
22 Jacob Riis Houses on the night Mr. Fraser was arrested, right?

23 A. Correct.

24 Q. And at the Jacob Riis Houses, you were on foot observing
25 the undercover?

N3EHFra2

Del Toro - Direct

1 A. Correct.

2 Q. You were also the officer who vouchered some of the
3 evidence in this case, right?

4 A. Correct.

5 Q. And that means you're the person who preserved some of the
6 evidence in this case, right?

7 A. Yes.

8 Q. And in the process of preserving the evidence, you created
9 the property clerk invoice, right?

10 A. Yes.

11 Q. And the property clerk invoice is a police report that
12 documents some of the evidence in the case, right?

13 A. Yes.

14 Q. In addition to creating this, it's also known as an
15 evidence voucher?

16 A. Yes.

17 Q. And in addition to creating the evidence voucher, you
18 testified against Mr. Fraser at his trial, right?

19 A. I guess, yeah, correct.

20 Q. At trial, generally, you testified about some of the
21 observations you made of the interaction between Mr. Fraser and
22 UC 84, correct?

23 A. Yes.

24 Q. Generally, you testified about receiving the distress
25 signal?

N3EHFra2

Del Toro - Direct

1 A. Yes.

2 Q. And that was at his trial you testified about that?

3 A. I believe so, yes.

4 Q. You testified at --

5 THE COURT: I need you to speak up, detective, because
6 I'm having a hard time hearing you.

7 THE WITNESS: Sorry.

8 Q. At Mr. Fraser's trial, you testified about chasing
9 Mr. Fraser, right?

10 A. Yes.

11 Q. And some of the observations you made while chasing him?

12 A. Yes.

13 Q. I'd like to talk briefly about your relationship with your
14 teammates on the field team. OK?

15 A. OK.

16 Q. Now, at the time of this incident, you'd been an NYPD
17 officer for approximately 12 years?

18 A. 2014, yeah, correct.

19 Q. And you'd worked with Detective Regina for about nine
20 years?

21 A. Yeah, I'd say that.

22 Q. And you would socialize with Detective Regina on occasion
23 outside of work?

24 A. Yeah, work functions and such.

25 Q. You had worked with UC 84 for six years at that time?

N3EHFra2

Del Toro - Direct

1 A. Yes.

2 Q. Every day, right?

3 A. He was on my team, yes.

4 Q. And you'd also socialize with UC 84 outside of work?

5 A. Yeah, work functions and such.

6 Q. You and UC 84 were both union delegates, right?

7 A. Currently, yes.

8 Q. And by 2014, you had made approximately 100 arrests with
9 that particular team?

10 A. Yes.

11 Q. So fair to say that your teammates were both colleagues and
12 friends, correct?

13 A. Yeah, that's fair to say.

14 Q. Now I want to talk about what you did on October 21, 2014.
15 Okay?

16 A. OK.

17 Q. You were present at the tac meeting before going out into
18 the field, right?

19 A. Yes.

20 Q. And at some point you got to the location Avenue D
21 and East Eighth Street?

22 A. Yes.

23 Q. You agree with me that is something you'd consider a
24 drug-prone location?

25 A. Yes.

N3EHFra2

Del Toro - Direct

1 Q. And it's an area where people are hanging out, constantly
2 coming and going, right?

3 A. It has a lot of foot traffic, yes.

4 Q. And in fact, at the time it was -- it had a lot of foot
5 traffic when you got there, right?

6 A. Yeah, there were people.

7 Q. Sorry?

8 A. There were people there, yes.

9 Q. I think you would describe it -- you have described it as
10 congested with pedestrian foot traffic, right?

11 A. Yes.

12 Q. And when you arrived at the scene, you got out of the car?

13 A. Not immediately, but eventually, yes.

14 Q. The reason why you got out of the car was so you could keep
15 eyes on the undercover, correct?

16 A. Correct.

17 Q. And when you got there, you could see the undercover
18 clearly?

19 A. Not -- I didn't have eyes on him at all times, but yes.

20 Q. But when you saw him, you could see him clearly, right?

21 A. Yes.

22 Q. And you agree with me that generally the goal is that
23 somebody on the field team has eyes on the undercover at all
24 times?

25 A. That's what you want, yes.

N3EHFra2

Del Toro - Direct

1 Q. At some point you saw the undercover -- withdrawn. Excuse
2 me.

3 At some point you saw the undercover interacting with
4 a female?

5 A. Yes.

6 Q. They were sitting on a bench together?

7 A. Correct.

8 Q. But you couldn't hear what they were saying, right?

9 A. No, I could not.

10 Q. And at some point you saw Mr. Fraser interacting with the
11 undercover?

12 A. Yes.

13 Q. You couldn't see who approached who, right?

14 A. I didn't see that, no.

15 Q. And you couldn't hear anything that was said between
16 Mr. Fraser and the undercover?

17 A. No, I could not.

18 Q. At one point you observed Mr. Fraser using his phone to
19 take a picture of something?

20 A. Yes.

21 Q. You actually saw an object in one of his hands and his cell
22 phone in his other hand?

23 A. I saw him make the motion like he was taking a photo of
24 something.

25 Q. And not just the motion, but you actually saw an object in

N3EHFra2

Del Toro - Direct

1 one hand and his cell phone in the other hand?

2 A. I didn't see the object. I just saw like he was making the
3 motion like he was taking a photo or something.

4 Q. You could tell that he definitely had something in his
5 hand, right?

6 A. I could tell that he made the motion like he was taking a
7 picture of something in his hand, like he held -- he held the
8 phone up.

9 Q. You gave testimony in a deposition in this case, right?

10 A. I did.

11 Q. And you were under oath, correct?

12 A. Correct.

13 Q. And at the deposition you were asked this question and you
14 gave this answer, page 55, line 9:

15 "Q. So you said at some point you saw Mr. Fraser taking a
16 photograph of something, correct?

17 "A. Yes, he had his cell phone. I remember this specific
18 motion (indicating). He definitely had something in his hand
19 and was taking a photograph with a cell phone."

20 Did you give that testimony?

21 A. I did.

22 Q. And do you agree with me you never saw Mr. Fraser put an ID
23 in his pocket, right?

24 A. No, I did not.

25 Q. You never saw him put money in his pocket, right?

N3EHFra2

Del Toro - Direct

1 A. Correct.

2 Q. At some point you received the distress signal, correct?

3 A. I saw it.

4 Q. I'm sorry, I didn't hear it. Oh, you saw the signal? Got
5 it.

6 And you saw the undercover give whatever physical
7 gesture the signal is, correct? You observed that?

8 A. Correct.

9 Q. And once you heard the signal, you sprinted towards UC 84
10 and Mr. Fraser?

11 A. I saw the signal, and I also heard -- I also heard movement
12 over my radio.

13 Q. OK. Sorry. Apologies.

14 When you saw the signal, you sprinted towards UC 84
15 and Mr. Fraser?

16 A. Yes.

17 Q. And when you did that, you identified yourself as police?

18 A. Yes. Normally, I have my shield around my neck, and I'm
19 usually wearing a hoodie. So when I unzip the hoodie, my
20 shield will fall out, and I'll verbalize "police" also.

21 Q. You said "police" as you were showing your shield?

22 A. Correct.

23 Q. And Mr. Fraser ran northbound, correct?

24 A. I was able to -- I got there before Detective Regina. I
25 think I got a piece of his coat. He pulled away. He headed

N3EHFra2

Del Toro - Direct

1 east towards the FDR, then cut north.

2 MR. BLOCH: Trying to see where our demonstrative is.

3 Q. You chased Mr. Fraser, correct?

4 A. Correct.

5 Q. And you were running behind him through the courtyard,
6 right?

7 A. Yes.

8 Q. Detective Regina was running alongside you, right?

9 A. Yes, he was with -- next to me or a little behind me.

10 Q. And one of the things that you're trained to do as a police
11 officer is to keep an eye out for people discarding things as
12 they run from you, isn't that true?

13 A. That is correct.

14 Q. And during your chase, you didn't see Mr. Fraser drop or
15 throw anything?

16 A. I did not.

17 Q. You didn't see anything fall out of his pockets, right?

18 A. I did not.

19 Q. Now, by the time you caught up to Mr. Fraser, he had been
20 apprehended by others on the team, right?

21 A. Correct.

22 Q. And he was apprehended in that cul-de-sac area that we saw
23 on the demonstrative?

24 A. Yes.

25 Q. That sort of circle area.

N3EHFra2

Del Toro - Direct

1 And at one point all of the officers were there when
2 Mr. Fraser was in handcuffs, right?

3 A. At one point, yes.

4 Q. And Detective Regina searched him?

5 A. I didn't observe him searched.

6 Q. Well, my question is Detective Regina searched him, right;
7 you know that?

8 A. Yeah, he's the AO. He would do the search.

9 Q. Sorry?

10 A. He's the arresting officer. He would have searched.

11 Q. And you heard Detective Regina testify yesterday that you
12 were present when he searched Mr. Fraser, right?

13 A. Yes.

14 Q. And you heard Detective Regina testify that he understood
15 you could observe what was happening, right?

16 A. Yes.

17 Q. And isn't it true that you never saw him recover the ID
18 from Mr. Fraser?

19 A. I did not.

20 Q. Detective, you're familiar with the term "undercover
21 rescue"?

22 A. Yeah, I know what you're talking about.

23 Q. You actually testified in your deposition that this
24 incident was something that you referred to as an undercover
25 rescue, right?

N3EHFra2

Del Toro - Direct

1 A. Yes.

2 Q. And an undercover rescue is essentially when you have to
3 rescue the undercover from an unsafe situation, right?

4 A. Correct.

5 Q. And it's standard procedure when you have to do an
6 undercover rescue to return to the precinct rather than go to
7 the other locations you had planned for the night, right?

8 A. That's at the discretion of the supervisor.

9 Q. Well, it's standard procedure, isn't it --

10 A. It is.

11 Q. -- to go back to the precinct rather than go to another
12 location, right?

13 A. Correct.

14 Q. And you testified in your deposition that you called it for
15 the night and went back to the precinct after Mr. Fraser was
16 arrested, right?

17 A. To my recollection, yes.

18 Q. And that's not true, is it?

19 A. I don't have any -- I don't have any independent
20 recollection of doing anything else.

21 Q. Well, isn't it true that you actually went out to other
22 locations and conducted more buy-and-bust operations?

23 A. According to the testimony yesterday, we did.

24 Q. According to Detective Regina's testimony, right?

25 A. Yes.

N3EHFra2

Del Toro - Direct

1 Q. And according to Detective Regina's memo book, right?

2 A. Correct.

3 Q. And according to Detective Regina's memo book and testimony
4 yesterday, you actually arrested more people that night at
5 other locations in buy-and-bust operations, right?

6 A. Correct.

7 Q. Now, after Mr. Fraser was arrested, you discussed the
8 incident that night with members of the field team, correct?

9 A. We talked about what happened.

10 Q. And so is that a yes?

11 A. Yes.

12 Q. And you spoke to the undercovers that night, right?

13 A. I don't remember if I spoke to them personally.

14 Q. I'm sorry?

15 A. I don't remember if I spoke to them or not. I mean, I'm
16 sure at some point I did.

17 Q. You spoke to the undercovers that night, correct?

18 A. I'm sure at some point I did, but I don't remember it.

19 Q. OK. But to be clear, you're sure you spoke to them at some
20 point that night, correct?

21 A. Correct.

22 Q. And you also had a meeting with the team to discuss what
23 you all say happened that night, right?

24 A. Yeah. We call it a post-tac.

25 Q. Right. You had a -- it's a post-tac, as you call it, a

N3EHFra2

Del Toro - Direct

1 meeting back at the precinct?

2 A. Yes.

3 Q. And that happened about 10 p.m. that night?

4 A. I don't remember the exact time.

5 Q. Would looking at the tac plan refresh your recollection as
6 to what time that meeting happened?

7 A. Yes.

8 MR. BLOCH: Could we show the officer and members of
9 the jury PX 1, please.

10 A. Can you scroll to the bottom, please. Yes, 10 o'clock.

11 MR. BLOCH: And we could take that down. Thanks.

12 Q. The evidence voucher that you prepared in this case, you
13 prepared it after you had that meeting, right?

14 A. I would have to look at the voucher to see what time and
15 everything.

16 Q. OK.

17 THE COURT: Again, I need you to speak up.

18 THE WITNESS: Sorry, sorry. I thought I was talking
19 loud enough.

20 THE COURT: Thank you.

21 MR. BLOCH: Could we show the detective the voucher,
22 please. I believe it's PX 5.

23 Q. Detective, you agree with me that you created this evidence
24 voucher at approximately shortly after midnight?

25 A. Yes, approximately midnight 30.

N3EHFra2

Del Toro - Direct

1 Q. Thank you.

2 And you agree with me that before you ever generated
3 the evidence voucher in this case, you had spoken with the
4 entire team about what had supposedly happened that night?

5 A. Yes.

6 Q. And before you ever testified in this case, you had spoken
7 to the entire team about what supposedly had happened that
8 night, right?

9 A. Yes.

10 Q. I'd like to talk a little bit about police reports. One of
11 the things that you're trained on as a police officer is
12 filling out police reports, right?

13 A. Yes.

14 Q. And you know that your police reports can be reviewed by
15 prosecutors?

16 A. I do.

17 Q. And you know that it can be turned over to defense
18 attorneys?

19 A. Yes.

20 Q. And you can be cross-examined at trial with what you write
21 down in police reports?

22 A. Yes.

23 Q. And that one of the reasons you fill out police reports is
24 to help refresh your recollection if you need to testify,
25 right?

N3EHFra2

Del Toro - Direct

1 A. One of the reasons, yes.

2 Q. And you know that people can be charged with crimes in part
3 based on what you put in police reports, right?

4 A. Yes.

5 Q. Now, as an NYPD officer, you're required to keep what's
6 called an activity log?

7 A. Yes, I am.

8 Q. And that's also called a memo book?

9 A. Yes.

10 Q. A memo book is issued by the NYPD?

11 A. Yes.

12 Q. And you carry it with you at all times, right?

13 A. Yeah, you have it on you.

14 Q. You're trained specifically on filling out your memo book,
15 right?

16 A. Yes.

17 Q. And the memo book is a log of movements in the field,
18 right?

19 A. Movement, daily activity.

20 Q. Right. And you're supposed to fill it out daily?

21 A. Yes, unless you're assigned to administrative duties.

22 Q. Unless you're assigned to administrative duties?

23 A. Yes.

24 Q. And you were not assigned to administrative duties on
25 October 21, 2014?

N3EHFra2

Del Toro - Direct

- 1 A. I was not.
- 2 Q. Each place you go should be noted in your memo book, right?
- 3 A. Ideally, yes.
- 4 Q. The time that you get there should be noted in your memo
5 book?
- 6 A. Yes.
- 7 Q. If you make an arrest, you note it in your memo book?
- 8 A. Yes.
- 9 Q. The reason for an arrest could go in your memo book, right?
- 10 A. It could, yes.
- 11 Q. If you recover property, you note it in your memo book?
- 12 A. Ideally, yes.
- 13 Q. Your memo book gets reviewed by your supervisors, right?
- 14 A. Periodically, yes.
- 15 Q. And you know that that's one of the documents that you are
16 required to turn over to prosecutors after you make an arrest?
- 17 A. Yeah, you give them a photocopy of it.
- 18 Q. So you give them a photocopy of the relevant section that
19 pertains to the incident at issue in a given case, right?
- 20 A. Yes.
- 21 Q. And you had your memo book on October 21, 2014, isn't that
22 right?
- 23 A. I believe so, yes.
- 24 Q. In fact, other than the property voucher, that's the only
25 document you created in this case, right?

N3EHFra2

Del Toro - Direct

1 A. Yes.

2 Q. And you were required to produce that moment memo book in
3 this lawsuit, correct?

4 A. They asked for it, yes.

5 Q. And in fact, your lawyer specifically -- withdrawn.

6 At the point at which you were made aware that you
7 needed to produce your memo book in this case, isn't it true
8 that you lost it?

9 A. Yes. I told them I didn't have it.

10 Q. I'd like to talk, detective, about preserving and
11 documenting physical evidence. OK?

12 A. OK.

13 Q. That's another thing that you're trained on, right, is how
14 to properly preserve physical evidence of crimes?

15 A. Yes.

16 Q. And just to be clear, physical evidence is like a tangible
17 object that has information about whether or not a crime was
18 committed, right?

19 A. Yes.

20 Q. And properly preserving physical evidence is important?

21 A. Yes.

22 Q. You can test physical evidence for the presence of other
23 evidence, right?

24 A. Sometimes, yes.

25 Q. You could test it for DNA?

N3EHFra2

Del Toro - Direct

1 A. Some items, yes.

2 Q. You could test some items for fingerprints?

3 A. Correct.

4 Q. The NYPD has the ability to conduct all of those tests?

5 A. The crime lab does, yes.

6 Q. And all you have to do as a vouchering officer in a case is
7 fill out a form to request that those sorts of tests be
8 conducted, right?

9 A. Yes.

10 Q. One of the reasons preserving physical evidence is
11 important is because a defendant, somebody accused of a crime,
12 has a right to examine that evidence, right?

13 A. They do, yes.

14 Q. A defendant would have a right to have physical evidence
15 tested him or herself, right?

16 A. Yeah, they would do that, yes.

17 Q. There are specifically rules for handling allegedly stolen
18 property, right?

19 A. Depends on what it is.

20 Q. Well, there's a specific -- one of the things you're
21 trained on at the police academy is certain provisions of the
22 Penal Law, right?

23 A. Yes.

24 Q. And there's a Penal Law provision that requires police
25 officers to provide people accused of crimes the opportunity to

N3EHFra2

Del Toro - Direct

1 examine allegedly stolen property before you return it to the
2 alleged victim, right?

3 A. I don't remember reading that, but if you say so.

4 Q. Is it your testimony you're not familiar with that rule?

5 A. Excuse me?

6 Q. Are you not familiar with that rule?

7 A. I've heard it before, but I don't remember reading it
8 independently.

9 Q. OK. But you've heard that rule before, right?

10 A. Yes.

11 Q. And there are NYPD plastic security envelopes that are
12 specifically designed for preserving an item of physical
13 evidence, right?

14 A. Yes.

15 Q. And you're trained to put physical evidence in those
16 plastic security envelopes, right?

17 A. Depending on what type of evidence it is.

18 Q. When you say "depending on what type of evidence it is," if
19 it is small enough to fit in a plastic security envelope,
20 that's where you're trained to put it, right?

21 A. If it's not narcotics, yes.

22 Q. If it's not narcotics?

23 A. Yes.

24 Q. But if it's not narcotics, you can't just, like, put it in
25 a locker, right?

N3EHFra2

Del Toro - Direct

1 A. No, it goes in the envelope -- sorry. It goes in the
2 envelope, and it's put into storage.

3 Q. Right. And the reason why you put it in a plastic security
4 envelope is so that people can handle the evidence without
5 tampering with the item in some way, right?

6 A. Preserve it.

7 Q. To preserve it, right?

8 A. Yes.

9 Q. Because even if somebody touches a piece of evidence
10 itself, you could compromise its evidentiary value, right?

11 A. Again, depends on the evidence.

12 Q. Well, isn't that why you put evidence other than narcotics
13 in a plastic security envelope, because -- so that other people
14 don't touch the evidence itself?

15 A. No one touches it, plus it's got a barcode so we can track
16 it.

17 Q. Right. OK.

18 And then once you put it in the envelope, then you
19 voucher it, right?

20 A. Yeah, I do the form online. It gives me a PETS voucher,
21 and everything's got its own individual tracking number.

22 Q. And the process of vouchering basically means filling out
23 the voucher. That's what you're describing, right?

24 A. Yes.

25 Q. And as the vouchering officer, all of this was your

N3EHFra2

Del Toro - Direct

1 responsibility in this case, right?

2 A. I invoiced it. I vouchered it, yes.

3 Q. Now, the physical evidence in this case that was allegedly
4 stolen was UC 84's identification card, correct?

5 A. Yeah, basically his New York State fake ID.

6 Q. New York State fake ID?

7 A. Yeah. Real ID, but it's got false information on it.

8 Q. Right. But that was the physical evidence that was
9 allegedly stolen in this case, right?

10 A. Correct.

11 Q. The ID itself?

12 A. And money, allegedly.

13 Q. Well, you never actually preserved the identification
14 itself in this case, did you?

15 A. It was given back to UC 84.

16 Q. My question is you never preserved the identification
17 itself, right?

18 A. No. Depending on the evidence, you know, sometimes you
19 have to voucher a photo of it.

20 MR. BLOCH: One moment, Judge.

21 Q. You agree with me, detective, you were never given the ID
22 itself at all at any time?

23 A. Correct.

24 Q. At some point someone just handed you a Xerox copy of the
25 ID, right?

N3EHFra2

Del Toro - Direct

1 A. Yes.

2 Q. And you don't know who made the photocopy, right?

3 A. I do not.

4 Q. You don't know when you were given the photocopy, right?

5 A. I'm assuming a little after 10:00.

6 Q. Well, you don't know when you were given the photocopy,
7 right?

8 A. I don't know the exact time, no.

9 Q. You don't know even an approximate time?

10 A. I'm assuming it's after 10:00, after the post-tac.

11 Q. Well, I'm not asking you to assume.

12 You don't know in any way when you were given the
13 photocopy of that ID, right?

14 A. I do not.

15 Q. Then you just took the photocopy of the ID, and you put the
16 photocopy in a plastic security envelope, right?

17 A. And vouchered it.

18 Q. I'm sorry. I'm also having a little trouble hearing.

19 A. I put it in a plastic security envelope, and I vouchered
20 it.

21 Q. And you vouchered it, yes.

22 You put a photocopy in a plastic security envelope
23 even though there's no significance to anybody touching that
24 Xerox copy, right? It doesn't matter if somebody touches that
25 Xerox copy, right?

N3EHFra2

Del Toro - Direct

1 MS. McGUIRE: Objection. Argumentative.

2 THE COURT: Overruled.

3 Q. Correct?

4 A. I mean, it matters. It's evidence. You don't want
5 everyone touching it, obviously.

6 Q. Then after you put the photocopy in a plastic security
7 envelope, that's when you filled out the voucher?

8 A. Correct.

9 Q. And the voucher is one particular document that you know
10 that DAs, district attorneys, may look at when deciding whether
11 to charge somebody, right?

12 A. It's evidence, yes.

13 Q. It itself could become evidence in a criminal case, right?

14 A. The voucher?

15 Q. Yes.

16 A. Yes.

17 Q. And you have the choice as to how to label what kind of
18 evidence it is, correct?

19 A. Yeah, there are options on top.

20 Q. Right. The options include, for example, you could call it
21 safekeeping evidence, right?

22 A. Correct.

23 Q. And that would imply that it's not evidence of a crime,
24 right?

25 A. Correct.

N3EHFra2

Del Toro - Direct

1 Q. And then it would get returned to the person who's accused
2 of the crime, right?

3 A. Yes.

4 Q. Or you could call it arrest evidence, right?

5 A. Yes.

6 Q. Which does imply that it is evidence of a crime, correct?

7 A. Yes.

8 Q. And you chose to call this arrest evidence?

9 A. Yes.

10 Q. You're aware, detective, that the location where an item is
11 recovered can be important evidence in a criminal case,
12 correct?

13 A. Yes.

14 Q. And there's a section on the property voucher for remarks,
15 right?

16 A. Yes.

17 Q. And in that section for remarks, you can write down
18 whatever you want, isn't that true?

19 A. Yeah, within reason, yeah.

20 MR. BLOCH: Could we show the evidence voucher again.

21 I think it's PX 5.

22 Q. Do you see that on the screen, PX 5, detective?

23 A. Yes, I do.

24 Q. In the middle of the screen -- is that being shown to the
25 jury as well?

N3EHFra2

Del Toro - Direct

1 In the middle of the screen is a section where it says
2 "Remarks," right?

3 A. Yes.

4 Q. And when you know where an item is recovered from, you
5 usually write it in that remarks section, correct?

6 A. Sometimes, yes.

7 Q. Not just sometimes, detective, right? Usually when you
8 know an item -- where an item's recovered from, you write it in
9 that section, isn't that true?

10 A. If I'm aware, I write it.

11 Q. You didn't indicate anywhere on this form where the item
12 was recovered from, correct?

13 A. Correct.

14 MR. BLOCH: Thanks, Cristina.

15 Q. I'd like to talk to you, detective, about the investigation
16 that was done in this case. OK?

17 A. OK.

18 Q. You were also trained on how to look for evidence, right?

19 A. In certain circumstances, yes.

20 Q. Well, to be clear, you are trained on investigation
21 techniques, isn't that true?

22 A. Correct.

23 Q. And you know that evidence can corroborate what somebody
24 says happened, right?

25 A. Yes.

N3EHFra2

Del Toro - Direct

1 Q. Evidence could also undermine what someone says happened,
2 isn't that true?

3 A. Yes.

4 Q. You have had experience on cases where your team has gone
5 back to a so-called crime scene to pull surveillance, right?

6 A. Yes.

7 Q. And you have conducted buy-and-bust operations in the Jacob
8 Riis Houses before this incident, right?

9 A. Yes.

10 Q. And so you're aware that there are surveillance cameras
11 around the Jacob Riis Houses, right?

12 A. Yes, there are cameras there.

13 Q. And you never went back to pull any surveillance after this
14 incident, right?

15 A. I did not.

16 Q. In fact, nobody from the NYPD went back to pull
17 surveillance of this incident, right?

18 A. I don't know if no one did. I know I didn't.

19 Q. You're not aware of anybody from the NYPD going back to
20 pull surveillance from this incident?

21 A. I am not aware.

22 Q. You observed a number of people out at the location of this
23 incident when it occurred, right?

24 A. Like pedestrians?

25 Q. Right, among others, yes.

N3EHFra2

Del Toro - Direct

1 A. Yes.

2 Q. People.

3 A. Yes.

4 Q. You never spoke to any of them about what happened in this
5 case, right?

6 A. I did not.

7 Q. As far as you're aware, nobody from the NYPD ever spoke to
8 any of the witnesses to this, right?

9 A. I am unaware if anyone did.

10 Q. Mr. Fraser was actually charged with robbery for acting in
11 concert with six other people, right?

12 A. If that's what the affidavit says.

13 Q. You're aware that he was charged with having been aided by
14 six other people, right?

15 A. I'm -- yeah. I don't know the exact number of people, but
16 yes.

17 Q. No one from the NYPD ever -- withdrawn.

18 Nobody from the NYPD ever spoke to any of those people
19 about what happened, right?

20 A. Not that I'm aware of.

21 Q. And nobody from that group of people was ever arrested in
22 this incident, right?

23 A. Not that I'm aware of, no.

24 Q. Now, you receive annual evaluations as a police officer,
25 right?

N3EHFra2

Del Toro - Direct

1 A. Yes.

2 Q. And part of the purpose of evaluations is to consider
3 whether you should be promoted, isn't that true?

4 A. One of the things, yes.

5 Q. Do you agree that one of the things that's discussed in
6 your evaluations is the number of arrests you make in any given
7 year, correct?

8 MS. McGUIRE: Objection. Relevance.

9 THE COURT: The objection's sustained.

10 Q. Detective, I'd like to talk to you about civil lawsuits.

11 A. OK.

12 Q. Prior to Mr. Fraser's trial in November of 2015, you had
13 been sued on four separate occasions, correct?

14 A. Yes, yeah.

15 THE COURT: Hang on a second.

16 Ms. Krajick, did you want to come up for a second.

17 I'm sorry. The Clerk of the Court is here. I need to
18 know what she wants.

19 (Recess)

20 THE COURT: Let's keep going. Still under oath.

21 BY MR. BLOCH:

22 Q. Detective, when a lawsuit is filed against a police
23 officer -- withdrawn.

24 When a lawsuit is filed against a police officer, the
25 suit, the lawsuit, is then served on the NYPD, right?

N3EHFra2

Del Toro - Direct

1 A. Yes.

2 Q. And when you are served, you are then served by someone
3 within the NYPD, right?

4 A. Yes.

5 Q. And you have been served with complaints before, right?

6 A. Lawsuits?

7 Q. Yes.

8 A. Yes.

9 Q. And you have been served with complaints before
10 Mr. Fraser's trial, right?

11 A. Yes.

12 Q. And when you received the complaint, you read through it,
13 right?

14 A. Yes.

15 Q. And you are then required to fill out a request for legal
16 representation, right?

17 A. Yes, it's your option.

18 Q. It's your option?

19 A. Yes.

20 Q. Well, if you want counsel, you fill out that form, right?

21 A. Yes, if you want counsel provided by the City.

22 Q. Right. You could hire your own counsel, right?

23 A. You could in theory, yes.

24 Q. You have filled out requests for legal representation,
25 right?

N3EHFra2

Del Toro - Direct

1 A. Yes.

2 Q. And you filled out requests for legal representation before
3 Mr. Fraser's trial, correct?

4 A. Yes.

5 Q. And when you fill out those requests for legal
6 representation, you are then provided a lawyer from
7 Mr. Francolla's office, right?

8 A. Yes.

9 Q. Now, in 2009 you were sued by a man named Donnell Murray,
10 correct?

11 A. Yes.

12 Q. And you remember this case, right?

13 A. That one I remember, yes.

14 Q. You were represented by a lawyer in this case, right?

15 A. I was.

16 Q. You read the complaint in that case, right?

17 A. Yes.

18 Q. You read that complaint sometime around the time that you
19 received the complaint, right?

20 A. Yes.

21 Q. In 2009, right?

22 A. Yes.

23 Q. And in that case you received a call from a fellow officer
24 named Sergeant McGill, correct?

25 A. Yes.

N3EHFra2

Del Toro - Direct

1 Q. And Sergeant McGill was getting food at a place called the
2 Royal Coach Diner?

3 A. Yes.

4 Q. And you received a call that Sergeant McGill was in
5 distress, right?

6 A. Over division radio, yes.

7 Q. And you responded to that distress call from your fellow
8 officer, right?

9 A. Yes.

10 Q. And then Mr. Murray alleged in his lawsuit that he was
11 subjected to excessive force?

12 A. I don't remember the allegations.

13 Q. Do you remember that he alleged you provided false
14 information to the District Attorney's Office to have him
15 charged with crimes he didn't commit?

16 A. I don't remember the exact allegations. That lawsuit was a
17 long time ago.

18 MR. BLOCH: Could we pull up PX 14, please.

19 Q. And if I could just direct you to paragraph 14 -- 13 and
20 14.

21 Detective, is it correct that Mr. Murray alleged that
22 you and your colleagues deliberately and maliciously prosecuted
23 plaintiff, an innocent man, without any probable cause
24 whatsoever?

25 A. I just need a minute to read it.

N3EHFra2

Del Toro - Direct

1 Q. OK.

2 THE COURT: I'm sorry, I can't --

3 THE WITNESS: I just need a minute to read it. Sorry.

4 THE COURT: He needs a minute to read it.

5 A. That was the allegation, yes.

6 Q. And the allegations are also that you and your colleagues
7 deliberately provided false and/or incomplete information to
8 the District Attorney's Office to induce prosecution of
9 Mr. Murray, right?

10 A. Yes.

11 Q. Mr. Murray also alleged that he was subjected to a
12 warrantless strip search and cavity inspection, right?

13 A. Where is that?

14 Q. Paragraph 22.

15 A. That's the allegation, yes.

16 Q. He sued you for false arrest and malicious prosecution,
17 right?

18 A. Yes.

19 Q. And generally, his allegations were that in order to help a
20 fellow officer in distress, you beat him up and then falsely
21 accused him of a crime, isn't that true?

22 MS. MCGUIRE: Objection. Relevance.

23 THE COURT: The objection's overruled.

24 A. That's the allegation.

25 MR. BLOCH: You can take that down, Cristina. Thanks.

N3EHFra2

Del Toro - Direct

1 Q. In June of 2009, you were sued by a man named Joseph
2 Loglisci, right?

3 A. That name does not ring a bell.

4 MR. BLOCH: Could we show PX 13.

5 Q. Does that refresh your recollection -- well, withdrawn.

6 Do you agree with me that Mr. Loglisci sued you and
7 your colleagues in June of 2009, right?

8 A. According to this document, yes.

9 Q. And in this case -- withdrawn.

10 Mr. Loglisci also sued John Patane, right?

11 A. He's named in it, yes.

12 Q. And that's the same Lieutenant Patane that was involved in
13 the buy-and-bust team in Mr. Fraser's case, right?

14 A. Correct.

15 Q. And you were represented by counsel in this case?

16 A. I'm sure I filled out a form, request for legal aid. I
17 don't remember having any -- I have no independent knowledge of
18 the discussions. Not really ringing a bell.

19 MR. BLOCH: OK. Can we show PX 85, please.

20 Q. Detective, this is an answer that was filed to the
21 complaint by Mr. Loglisci, right?

22 A. Yes.

23 Q. And the answer was filed by a lawyer on your behalf, right?

24 A. Correct.

25 Q. And if you go to paragraphs 29 through 31, this lawyer on

N3EHFra2

Del Toro - Direct

1 your behalf admits certain facts that were alleged that are
2 personal to you, right?

3 A. Admits or denies?

4 Q. Well, he denies the allegations and then admits your shield
5 number, your rank, etc., right?

6 A. Yes.

7 Q. And this lawsuit concerns your conduct as part of an
8 undercover buy-and-bust team, right?

9 A. I would assume so. I just -- I don't know what this is in
10 reference. Could be a search warrant. It could be anything.

11 Q. Well, Mr. Loglisci alleged that you and your team arrested
12 him without any lawful basis to do so. We can look at
13 paragraph 48. Correct?

14 A. Yeah, says buy-and-bust operation on top, yes.

15 Q. Then paragraph 48 says: At that time and place, and
16 without any probable cause to do so, one of the defendant
17 officers came up from behind Mr. Loglisci and handcuffed him?

18 A. That's what it says, yes.

19 Q. And he alleges that after he was arrested, he was subjected
20 to an invasive strip search?

21 A. What paragraph is that?

22 MS. MCGUIRE: Objection. Relevance.

23 THE COURT: The objection's sustained.

24 Q. Mr. Loglisci sued you for false arrest and malicious
25 prosecution, right?

N3EHFra2

Del Toro - Direct

1 A. Yeah.

2 THE COURT: So let's limit it to that and move on.

3 MR. BLOCH: We can take that down. Thanks, Cristina.

4 Q. In October of 2009, you were sued by Miriam Nunez and
5 Meagan Rivera, correct?

6 A. I don't remember those names.

7 MR. BLOCH: OK. Let's show PX 15.

8 Q. Is that correct that you were sued in October of 2009 by
9 Miriam Nunez and Meagan Rivera?

10 A. Yes.

11 Q. They contended that -- if we could go to 2129.

12 They alleged certain conduct that took place on
13 April 2008 in premises known as 10 Avenue D, Apartment 8A, in
14 New York, right?

15 A. Yes.

16 Q. And that is within your jurisdiction, right?

17 A. Yes.

18 Q. And they contended that you and your team broke their door
19 down without a warrant, right?

20 A. What paragraph?

21 Q. 15 and 16.

22 A. That's the allegation, yes.

23 MR. BLOCH: One moment. I apologize.

24 Q. Ms. Nunez and Ms. Rivera ultimately sued you for false
25 arrest and malicious abuse of process, correct?

N3EHFra2

Del Toro - Direct

1 A. What paragraph is that?

2 Q. It's 2131 and 2132, yeah.

3 So there's false arrest, right?

4 A. Yes.

5 Q. And malicious abuse of process, right?

6 A. Yes, that's the allegations.

7 Q. They also sued you for other claims, including unlawful
8 search and entry?

9 THE COURT: Excuse me. Enough. Let's move on.

10 Q. You were represented by a lawyer in that case?

11 A. Yes.

12 Q. And that lawyer filed an answer on your behalf on -- well,
13 let's show the answer, PX 90.

14 The answer was filed on your behalf on January 11,
15 2010, right?

16 THE COURT: No reason to show it. Just ask the
17 question.

18 Was an answer filed on your behalf, sir?

19 THE WITNESS: I'm sure there was, yes.

20 THE COURT: OK. Fine. Let's move on.

21 Q. In approximately January of 2010, right?

22 A. That's what it says, yes.

23 Q. In 2012 you were sued by a 15-year-old girl who went by the
24 initials A.T., right?

25 A. I have no recollection of that.

N3EHFra2

Del Toro - Direct

1 MR. BLOCH: Could we show PX 17.

2 Q. Do you agree, detective, that you were sued by a minor who
3 went by the initials A.T.?

4 A. That's what this complaint says, yes.

5 Q. And is it your testimony you have no recollection of this
6 complaint?

7 A. I do not.

8 Q. And this complaint was brought in --

9 THE COURT: The complaint is in evidence. He has no
10 recollection of it. Let's move on.

11 Q. Do you recall the allegations, detective, that police
12 officers broke down her door, barged into her bedroom, pinned
13 her facedown --

14 THE COURT: OK. Enough. He says he has no
15 recollection. It's in evidence. To the extent that it's
16 relevant, you can discuss it in closing. Let's move on.

17 MR. BLOCH: Understood, Judge.

18 Q. You were served in that case, right?

19 A. I would assume so, yes.

20 Q. Well, I don't want you to assume.

21 Can we show PX 92.

22 Do you agree with me, detective, that you were served
23 in the A.T. case?

24 A. The department was served.

25 Q. Well, right. The affidavit says it's received by the

N3EHFra2

Del Toro - Direct

1 department to be served on Detective Jason Del Toro, One Police
2 Plaza, right?

3 A. Yes.

4 MR. BLOCH: Thanks, Cristina.

5 Q. Detective, you've testified in somewhere between 75 and 100
6 trials, right?

7 A. Like trials like this?

8 THE COURT: Well, trials.

9 A. That's a lot.

10 THE COURT: Criminal, whatever.

11 A. I'm comfortable saying 15 to 20.

12 Q. In your deposition you testified that -- you testified
13 between 75 and 100 trials, right?

14 A. I must be including grand juries and stuff like that also.

15 Q. OK. Fair enough.

16 Would you agree that prior to Mr. Fraser's trial, you
17 had testified in more than 20 trials?

18 A. That's a fair number, yes.

19 Q. And you understand that police officers who testify in
20 criminal trials have certain disclosure obligations, right?

21 A. Yes.

22 Q. You have an obligation to disclose to the prosecutor any
23 information that may be favorable to the defendant in a
24 criminal case?

25 A. Anything I'm aware of, yes.

N3EHFra2

Del Toro - Direct

1 Q. And you were specifically aware prior to 2015 that you had
2 an obligation to disclose lawsuits against you to the
3 prosecutor, right?

4 A. Any lawsuits I'm aware of, yes.

5 Q. You know that you could be cross-examined by a defense
6 attorney about the lawsuits filed against you, right?

7 A. Yes.

8 Q. And you have actually had conversations with prosecutors
9 before trials about your lawsuits, right?

10 A. Yes.

11 Q. To be clear, although you are aware of that obligation, you
12 don't recall any specific training on this by the NYPD,
13 correct?

14 A. I'm aware of it, and I do remember getting maybe a Legal
15 Bureau bulletin.

16 Q. OK. The Legal Bureau bulletin that you recall happened
17 sometime in 2017, right?

18 A. I believe so, yes.

19 Q. Prior to Mr. Fraser's trial, you had not received any
20 training from the NYPD as to whether you're required to
21 disclose lawsuits to the prosecutor, right?

22 A. Not that I remember.

23 Q. And you agree with me that before you testify at trial,
24 it's standard practice to meet with the prosecutor to prepare
25 for your testimony, right?

N3EHFra2

Del Toro - Direct

1 A. Correct.

2 Q. And you did that in this case, right?

3 A. Yes.

4 Q. And you agree with me you had been sued four times prior to
5 Mr. Fraser's trial, right?

6 A. What you showed me, yes.

7 Q. And you have no recollection of ever disclosing to the
8 prosecutor in Mr. Fraser's case any lawsuits that had been
9 filed against you, correct?

10 A. I don't have any independent recollection, no.

11 Q. You haven't seen any evidence that you ever disclosed to
12 the prosecutor in Mr. Fraser's case the fact that you had been
13 sued, right?

14 MS. McGUIRE: Objection.

15 THE COURT: Overruled.

16 A. I have not seen any evidence, no.

17 Q. And you weren't asked a single question about any of those
18 lawsuits at Mr. Fraser's trial, right?

19 A. Not that I remember, no.

20 MR. BLOCH: Nothing further at this time, Judge.

21 THE COURT: OK. So we're going to take our lunch
22 break now. I have a criminal matter I have to do.

23 You can step down.

24 THE WITNESS: Thank you.

25 THE COURT: I'll see you at 2 o'clock. Keep an open

1 mind.

2 JUROR: I'm sorry, what time?

3 THE COURT: 2 o'clock.

4 (Jury excused)

5 (Continued on next page)

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N3EHFra2

1 (Jury not present)

2 THE COURT: OK. I think you can leave your stuff, but
3 I do have a criminal matter I have to do now.

4 MR. BLOCH: Judge, may I just ask one point of
5 clarification on one of your rulings? Doesn't have to be now.
6 I just --

7 THE COURT: What do you want to know?

8 MR. BLOCH: On the -- I had a series of --

9 THE COURT: Yes.

10 MR. BLOCH: I had a series of questions about
11 evaluations and arrests, that they were part of the evaluation.
12 There was an objection to that. It was sustained. I had more
13 questions on that topic. I assumed by your ruling that that
14 whole topic was off limits.

15 THE COURT: That topic is not this case.

16 MR. BLOCH: OK.

17 THE COURT: OK. You have your objection.

18 MR. BLOCH: OK.

19 THE COURT: Move on.

20 MR. RUDIN: You mean move out.

21 THE COURT: Move out, move in, move over, move
22 something.

23 (Lunch recess)

24

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N3F3FRA3

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AFTERNOON SESSION

2:00 p.m.

(In open court; jury not present)

LAW CLERK: Case on trial continued. Lawyers present, judge is present, jurors are not present.

THE COURT: Okay. So let's deal with this transcript issue. It should be quick. You said you wanted to say something else that's not in your letter.

MR. RUDIN: Yes, your Honor. First of all, the reason we opened on it was because we acknowledged that the defense has the right to cross-examine Mr. Fraser about what happened at the parole hearing.

Our concern is cross-examining him with the deposition transcript, where he was asked whether the court reporter got it right, whether the transcript was accurate, and to us there is also a hearsay, a Rule 802 issue here.

THE COURT: No Rule 802 issue. This is a New York State official proceeding, which was taken down, you produced the document, your client said something that can be argued -- first of all, this should have been raised in an in limine motion. You waived the argument, as far as I'm concerned. The deadline for in limine motions passed a long time ago. This is not something new that came up during trial. This is something you all knew about. Only I didn't know about it until this morning.

N3F3FRA3

1 I set a deadline for in limine motions so I can think
2 about this, and that deadline passed a long time ago.

3 You produced the document. You have the burden of
4 proof. You know that it contains an arguably inconsistent
5 statement by your client. You were familiar with whatever
6 Mr. Francolla or Ms. McGuire asked your client at deposition.
7 It's your job to challenge, if you can, the authenticity of the
8 document that you yourselves produced that purports to be an
9 official record of a state proceeding.

10 Sorry.

11 MR. RUDIN: We produced the document because we
12 thought we had a discovery obligation since we received it. It
13 is clearly a part of an agency record. But we didn't produce
14 it in order to vouch for its accuracy that the court
15 reporter --

16 THE COURT: If you were going to challenge the
17 accuracy of that document, of what the court reporter took
18 down, it was your burden to do that. Not his burden. It is an
19 agency record. It comes into evidence.

20 It is not hearsay, and it contains an admission by
21 your client, which apparently is arguably inconsistent with the
22 position that he's taking here at trial. I don't know whether
23 it is or it isn't because I haven't seen the transcript,
24 because nobody made a motion in limine, and nobody gave it to
25 me. But, okay.

N3F3FRA3

1 I think you're trying to, you know, kick the burden
2 away to the wrong party. It's your burden to say that the
3 transcript is not accurate, which is what you are saying. You
4 are not saying it's not authentic. You are not saying it is
5 not actually the record of the parole board proceeding, which
6 is what it purports to be. You're saying it's not accurate.
7 If you are saying it is not accurate, that's your problem to
8 prove.

9 MR. RUDIN: Your Honor --

10 THE COURT: Not Mr. Francolla's.

11 MR. RUDIN: Your Honor, we objected throughout the
12 deposition as to the questions as a matter of form.

13 THE COURT: Mr. Rudin, all of this could have been
14 raised with me prior to trial. Okay? I have ruled. Okay.
15 Let's get the witness back on the stand and the jury.

16 MR. RUDIN: There is one other issue having to do with
17 Mr. Fraser's potential cross-examination. During the
18 deposition, Mr. Francolla made references to other alleged bad
19 acts of Mr. Fraser that, as I understand it, are ruled out of
20 the case, and there was never any motion by the other side to
21 be able to get into these bad acts, including he made a
22 reference to prior arrests that involved drugs, there is
23 reference to a prior record, there is a reference to something
24 that came out at sentencing where the prosecutor spoke about
25 alleged gang involvement, because they wanted Mr. Fraser to

N3F3FRA3

1 cooperate because of their belief he had information about
2 other crimes, and he declined to cooperate. There were
3 references about text messages.

4 THE COURT: Are you suggesting this is all irrelevant?
5 Sounds irrelevant to me.

6 MR. RUDIN: Very well.

7 MR. FRANCOLLA: I had no intention of asking any of
8 those.

9 MR. RUDIN: I wanted to be cautious.

10 THE COURT: You could have asked him before you asked
11 me.

12 Back up, Detective. Let's bring the jury in.

13 MR. RUDIN: They're also the parole transcripts. I
14 assume Mr. Francolla will not get into that. They're also in
15 the parole transcripts. I assume your Honor's ruling pertains.

16 THE COURT: The issues cannot be gotten into. That's
17 not what this case is about.

18 It's also not about police brutality. Why those words
19 showed up in this courtroom I have no idea. Okay.

20 (Continued on next page)

21

22

23

24

25

N3F3FRA3

Del Toro - Cross

1 (Jury present)

2 THE COURT: Hi, folks. I had a little law discussion
3 before we let you back in. Have a seat, everybody. But we did
4 that. So now we're ready to go.

5 You are still under oath, Detective.

6 THE WITNESS: Yes, your Honor.

7 THE COURT: Who will be examining?

8 MS. McGUIRE: Me, your Honor.

9 THE COURT: Ah, Ms. McGuire. Okay.

10 CROSS-EXAMINATION

11 BY MS. McGUIRE:

12 Q. Good afternoon, Detective.

13 A. Good afternoon.

14 Q. What is your current command?

15 A. Manhattan South Narcotics.

16 Q. Was that your command on the date of this incident?

17 A. Yes, it was.

18 Q. On October 21, 2014, did you encounter the plaintiff?

19 A. Yes.

20 Q. Around what time of day did that happen?

21 A. I believe the operation started around 2100 hours.

22 Q. For the jury --

23 THE COURT: So we're not in military time, 2100 hours,
24 8 p.m.

25 THE WITNESS: 8 p.m., sorry.

N3F3FRA3

Del Toro - Cross

1 Q. What was the lighting like outside?

2 A. Artificial.

3 Q. So it was dark?

4 A. Yes.

5 Q. I would like to have my co-counsel republish what's been
6 marked as Plaintiff's Exhibit 159.

7 Detective, what is this?

8 A. That's the little walkway at Jacob Riis Houses, and in the
9 background looks like Avenue D.

10 Q. And how did your view of the incident match or not match
11 this photo?

12 A. I was on the street side.

13 Q. So about how far away were you from UC 84?

14 A. I would say about 50, 60 feet about.

15 Q. Describe what you saw from your position.

16 A. At one point I saw him interacting with a female. He sat
17 on a bench. And then I was -- I didn't have constant sight of
18 him because I had to walk back and forth, kind of blend in with
19 pedestrian traffic. At one point I did see him interacting
20 with Mr. Fraser.

21 Q. And what happened next?

22 A. After that, at one point I did see them, they had ahold of
23 each other's sleeves. It looked like having a little tug of
24 war. And at some point I saw the distress and I ran in.

25 Q. Could you hear what was being said?

N3F3FRA3

Del Toro - Cross

1 A. No.

2 Q. Could you hear anything?

3 A. I could hear voices, I knew they were conversing, but I
4 couldn't make out what they were saying.

5 Q. There was a lot of testimony about kel devices. Is that
6 something the NYPD still uses today?

7 A. They're around, but we've upgraded substantially from that.

8 Q. So, what happened after you saw --

9 MR. BLOCH: Objection. Move to strike that last --

10 THE COURT: The objection is overruled.

11 Q. What happened after you saw plaintiff and UC 84 tussling
12 with each other?

13 A. I ran in, I identified myself as police, then I gave chase
14 of Mr. Fraser.

15 Q. From your vantage point of the incident, could you see
16 every single thing that was happening?

17 A. No.

18 Q. Why not?

19 A. Because I kept constantly moving to blend with traffic and
20 there was pedestrians.

21 Q. What happened after the plaintiff starts bolting away?

22 A. We gave chase. And by the time we caught up to him, he was
23 already in custody in that cul de sac.

24 Q. During the chase of plaintiff, could you see him the whole
25 time?

N3F3FRA3

Del Toro - Cross

1 A. For the most part. I mean, certain spots of the area are
2 better lit than others, so yeah, there are dark patches as
3 we're running.

4 Q. So the answer is no?

5 A. No.

6 MR. BLOCH: Objection. Leading.

7 THE COURT: Overruled.

8 Q. When plaintiff was apprehended, did you recover anything
9 from his person?

10 A. I did not.

11 Q. Do you know whether or not anything was recovered from his
12 person?

13 MR. BLOCH: Objection.

14 THE COURT: The objection is overruled.

15 A. To my knowledge, an ID card was recovered, money and two
16 cell phones.

17 Q. Now, you were asked questions --

18 THE COURT: How did you find that out?

19 THE WITNESS: When they put it up on my computer
20 screen and I was sitting over there.

21 THE COURT: I can't hear you.

22 THE WITNESS: When they introduced it into evidence,
23 the vouchers.

24 Q. You were asked questions about Detective Regina recovering
25 the ID and about Detective Regina's testimony about you being

N3F3FRA3

Del Toro - Cross

1 in the vicinity of the search. Do you remember that?

2 A. Yes.

3 Q. What is a search in the field?

4 A. A field search is basically what it implies. In the field,
5 you do a frame search for your safety, checking for weapons,
6 and then once the subject is under arrest, you seize their
7 property for safekeeping and/or evidence.

8 Q. Did you actually see Detective Regina reach into
9 plaintiff's pockets and remove anything?

10 A. No.

11 Q. To your knowledge, was the marked money ever recovered?

12 A. No.

13 Q. Based on your experience, why might that be?

14 A. During the chase --

15 MR. BLOCH: Objection.

16 THE COURT: Wait. I'm sorry, what?

17 MR. BLOCH: Calls for speculation as to why marked
18 money might not have been recovered.

19 MS. MCGUIRE: Based on his experience.

20 THE COURT: The objection is overruled.

21 A. At some point it might have been discarded, it might have
22 been dropped at the scene.

23 THE COURT: You don't know if any of those things
24 happened, right?

25 THE WITNESS: No, I don't.

N3F3FRA3

Del Toro - Cross

1 THE COURT: Correct.

2 Next.

3 Q. Now, there was also some questioning by opposing counsel
4 about your memo book.

5 A. Yes.

6 Q. About how many memo books do you go through per year?

7 A. Four, maybe five.

8 Q. Okay. In this case, were you the arresting officer?

9 A. I was not.

10 Q. In this case, did you personally recover anything?

11 A. I did not.

12 Q. In this case, did you take any witness statements?

13 A. I did not.

14 Q. Considering all of that, what, if anything, would you have
15 written down in your memo book about this incident?

16 A. Very general notes of, like, maybe when we arrived at the
17 location, and maybe make a note someone was arrested. But no
18 details.

19 Q. In terms of losing your memo book, did you just lose the
20 entries for this case?

21 A. No, I lost the entire memo book.

22 Q. How long ago was this incident?

23 A. Nine years.

24 Q. Do you still work with Lieutenant Patane?

25 A. No.

N3F3FRA3

Del Toro - Cross

1 Q. Why not?

2 A. He's retired.

3 Q. Do you still work with Detective Lee?

4 A. Detective Lee is still on medical leave.

5 Q. Okay. And do you still work with UC 17?

6 A. UC 17 retired also.

7 Q. Detective, how long have you been with the NYPD?

8 A. Since July 1st of '02.

9 Q. How many times have you testified ever?

10 A. Numerous time. Grand juries, trials, hearings, everything.

11 Q. Approximately how many times have you met with prosecutors
12 in your capacity as a detective?

13 A. Oh my God. That's -- over 50, 60 times, easily.

14 Q. You were asked by opposing counsel if you have an
15 independent recollection of disclosing lawsuits to the
16 prosecutor in plaintiff's criminal case. Do you remember that?

17 A. Yes.

18 MR. BLOCH: Objection. Mischaracterizes.

19 THE COURT: He can say if it mischaracterizes.

20 Q. Do you have an independent recollection --

21 THE COURT: Do you want him to answer the question or
22 no? The objection is overruled.

23 Q. Please answer, Detective.

24 A. What was the question again? I'm sorry.

25 Q. You were asked by opposing counsel if you have an

N3F3FRA3

Del Toro - Cross

1 independent recollection of disclosing lawsuits to the
2 prosecutor in plaintiff's criminal case. Do you remember that?

3 A. Yes, I remember that.

4 Q. And your answer was that you did not have an independent
5 recollection?

6 A. Correct.

7 Q. Do you have an independent recollection of anything you
8 spoke with the prosecutor about in plaintiff's criminal case?

9 A. No.

10 Q. I'd like to have my co-counsel -- before I do that.

11 Do you recall -- yeah, I would like to have my
12 co-counsel publish what's marked as Plaintiff's 13. This is
13 the *Loglisci* complaint.

14 Detective, you testified when opposing counsel was
15 inquiring that you don't remember this lawsuit, correct?

16 A. Correct.

17 Q. How many defendants are listed in the caption?

18 A. Nine and then John Does 1 through 10.

19 Q. So that would make about 20?

20 A. Yes.

21 Q. I would like to have my co-counsel publish what has been
22 marked as Plaintiff's 15, this is the *Nuñez* complaint.

23 Detective, opposing counsel asked you about this
24 lawsuit and you stated you didn't remember it. Is that
25 correct?

N3F3FRA3

Del Toro - Cross

1 A. Correct.

2 Q. How many defendants are listed in the caption here?

3 A. Looks like four, and John Does 1 through 10, so
4 approximately 14.

5 Q. Approximately 14.

6 Finally, I'll have my co-counsel publish what's been
7 marked as Plaintiff's 17. This is the A.T. complaint. And you
8 also stated you didn't remember this lawsuit either, correct?

9 A. Correct.

10 Q. How many defendants are in this caption?

11 A. Nine.

12 Q. And just generally speaking, if a lawsuit is about a search
13 warrant, why might that impact your memory of it?

14 A. Well, if the search warrant, it doesn't mean I entered the
15 dwelling because we have a lot of positions. For example, I
16 could be window security.

17 THE COURT: I am really sorry. Not your fault.

18 THE WITNESS: No, I apologize.

19 A. With a search warrant there are many different positions.
20 I may not be on the breaching team. I could be doing window
21 security making sure nothing gets thrown out of the apartment.

22 Q. Can you explain what a breaching team is?

23 A. The entry team. That will be the team that's actually
24 tasked with forcing the door open, gaining entry into the
25 apartment.

N3F3FRA3

Del Toro - Cross

1 Q. By window security, does that mean you would be outside or
2 somewhere else?

3 A. I would be outside.

4 Q. Now, you were asked about the *Murray* lawsuit. Correct?

5 A. Yes.

6 Q. And you remember that lawsuit?

7 A. That one I remember, yes.

8 Q. Can you explain your involvement?

9 A. My involvement was I was the arresting officer. Over
10 division radio, Sergeant McGill called for help. He was
11 getting food, a fight ensued. By the time I got there,
12 Mr. Murray was already on the ground. I handcuffed him with
13 Sergeant McGill, and I took him into custody.

14 The only thing I remember that one is because it was a
15 call for help, and I remember getting actually deposed on that
16 one.

17 Q. You remember being deposed in that lawsuit?

18 A. Yes.

19 Q. Do you remember if you were deposed in *Loglisci*, *Nuñez* or
20 *A.T.*?

21 A. I don't remember that at all.

22 Q. You don't remember those lawsuits?

23 A. No.

24 Q. Now, in plaintiff's criminal case, did you meet with the
25 ADA?

N3F3FRA3

Del Toro - Cross

1 A. Yes.

2 Q. Generally speaking, what is discussed when you meet with
3 the ADA?

4 A. What happened in general as well as your role in the
5 arrest.

6 Q. And do you provide any other information to the ADA?

7 A. Yeah. On the *Brady*, anything I'm aware of, I have to
8 disclose to the district attorney.

9 MR. BLOCH: Can we clarify if this is general practice
10 or in this case.

11 THE COURT: Would you mind clarifying that,
12 Ms. McGuire.

13 Q. Detective, this is your general practice, correct?

14 A. Yes.

15 Q. Even though you don't have an independent recollection of
16 what was discussed with the ADA in this case, would this
17 general practice also apply to this case?

18 A. Yes.

19 Q. So, why is it important to disclose your lawsuits to the
20 prosecutor?

21 A. I'm obligated to, and also, the prosecutors don't know
22 about them. The prosecutor can't --

23 MR. BLOCH: Objection.

24 THE COURT: Let him finish answering the question.

25 A. The district attorney can't motion to strike them or

N3F3FRA3

Del Toro - Cross

1 prepare for them.

2 Q. How did you disclose that material to the prosecutor?

3 A. Whatever I am aware of, I tell them.

4 Q. How do you tell them that information?

5 A. Verbally. You just tell them I remember this lawsuit, I
6 remember that.

7 Q. Understood. So for a case like *Murray*, would you give them
8 the lawsuit name?

9 A. Yes. Because I remember that one.

10 Q. Understood. And if you don't remember the name, how would
11 you communicate that information?

12 A. I wouldn't. Like after this trial, I now know I've been
13 sued four times, and I know that now.

14 Q. So you don't, generally speaking, you don't provide docket
15 numbers, correct?

16 MR. BLOCH: Objection, leading.

17 THE COURT: Overruled.

18 A. No. I don't.

19 Q. Do you give them a number of lawsuits?

20 A. A generalized number.

21 Q. What is your understanding about what the district attorney
22 does with that information?

23 MR. BLOCH: Objection.

24 THE COURT: Overruled.

25 A. I was under the assumption that there was a database.

1 THE COURT: No assumptions. If you are just assuming,
2 then let's move on to the next question.

3 Q. Why do you provide the district attorney a ballpark number
4 of lawsuits?

5 A. Because I don't know the exact number.

6 Q. How do you know to -- before that.

7 Why don't you remember every time you're sued?

8 A. Because sometimes I may get served and nothing comes of it.

9 Q. How do you know to disclose this information to the
10 prosecutor?

11 A. I've been told to do so.

12 Q. What is the purpose -- you were asked some questions by
13 opposing counsel about a post tac meeting.

14 A. Yes.

15 Q. What was the purpose of that?

16 A. Just to go over the day's events, possibly talk about what
17 we could have done better, what we could have done worse.
18 Almost like a debriefing.

19 Q. In this case, did you intentionally withhold information
20 about your lawsuits from the prosecutor?

21 A. No.

22 Q. Just generally speaking, did you frame the plaintiff for
23 robbery?

24 A. No.

25 Q. Detective, during this incident, you did not -- did you

N3F3FRA3

Del Toro - Redirect

1 collect any witness statements?

2 A. No, I did not.

3 Q. When you moved in, in response to the distress signal,
4 what, if anything, did the crowd do?

5 A. They scattered.

6 MS. McGUIRE: No further questions.

7 THE COURT: Any recross?

8 MR. BLOCH: Yes, Judge. Briefly.

9 THE COURT: Thank you.

10 REDIRECT EXAMINATION

11 BY MR. BLOCH:

12 Q. Good afternoon, Detective.

13 A. Good afternoon.

14 Q. Detective, you just testified that regarding your
15 observations of UC 84 and Mr. Fraser, that you saw them shoving
16 and then you saw the distress signal, right?

17 A. Yes.

18 Q. And to be clear, the distress signal that you saw is a
19 physical gesture that UC 84 makes, and you saw him make that
20 gesture, right?

21 A. Correct.

22 Q. In your deposition testimony, were you asked these
23 questions and did you give these answers. Page 58, line 23:

24 "Q. Did you observe the distress signal?

25 "A. As I believe I did as I came -- as my memory serves when I

N3F3FRA3

Del Toro - Redirect

1 came running around the corner, no. Because when I came
2 running around the corner, they were already in the back and
3 forth.

4 "Q. So you did not see the undercover give a distress signal?

5 "A. No. I don't remember seeing it. I just remember getting
6 the radio transmission."

7 Did you give that testimony?

8 A. I did.

9 Q. You also just testified that you saw the shoving you claim,
10 and then you saw the distress signal, right?

11 A. Yes.

12 Q. So, according to you, now, you saw Mr. Fraser take a photo,
13 then you saw the shoving match, and then you saw the distress
14 signal, right?

15 MS. McGUIRE: Objection. Mischaracterizes his
16 testimony.

17 THE COURT: Now, this is the third time I've said it.
18 You are not a witness, so, your statement is not an objection.
19 Okay? If it mischaracterizes what he says, what he said, then
20 he has to say it without getting a cue from you. All right?
21 So the next lawyer who objects on the ground that it
22 mischaracterizes testimony is going to be in really deep
23 doo-doo with me, okay, because that is not a correct objection.

24 Ask a different question.

25 Q. Detective, your testimony is you saw Mr. Fraser take a

N3F3FRA3

Del Toro - Redirect

1 photo, right?

2 A. Yes.

3 Q. Then you say you saw them shoving each other, right?

4 A. Yes.

5 Q. And then you say you saw the distress signal, right?

6 A. Yes.

7 Q. Were you asked these questions and did you give these
8 answers in your deposition. Page 57, line 22:

9 "Q. And then what did you observe after Mr. Fraser took the
10 photo of the object in his hand?

11 "A. I don't remember anything after that. The next thing I
12 remember getting eyes on the undercover after I got the radio
13 transmission."

14 Did you give that testimony?

15 A. Yes.

16 Q. And the radio transmission that you are testifying about in
17 that portion of the testimony is the distress signal that you
18 heard over the radio; isn't that right?

19 A. Yes, someone put it over.

20 Q. You were just asked on cross about the lighting conditions,
21 right?

22 A. Yes.

23 Q. And you said it was artificial lighting conditions, right?

24 A. Yes.

25 Q. And you just said it was dark, right?

N3F3FRA3

Del Toro - Redirect

1 A. Yes.

2 Q. Were you asked these questions and did you give these
3 answers, page 40, line 10:

4 "Q. Do you remember if it was light enough out that you could
5 see the undercover clearly?

6 "A. Oh yes, I could see the undercover clearly. Yes."

7 Did you give that testimony?

8 A. Yes.

9 MR. BLOCH: Nothing further, Judge.

10 THE COURT: Anything else?

11 MS. MCGUIRE: One moment, your Honor.

12 Your Honor, I would like to read in a portion of
13 Detective Del Toro's deposition for completeness based on what
14 opposing counsel read in on impeachment.

15 THE COURT: Page, line?

16 MS. MCGUIRE: 56, line 9.

17 "Q. Did you observe anything prior to you seeing him taking
18 the picture?

19 "A. I remembered them conversing, and I guess at some point I
20 lost sight. I ducked behind a building, because the next time
21 I popped my head out, he was taking a picture of something, and
22 the next time I popped my head out was when I got the radio
23 transmission that the undercover is showing his distress."

24 MS. MCGUIRE: Nothing further, your Honor.

25 THE COURT: Okay. Thank you, Detective. You may step

N3F3FRA3

1 down.

2 THE WITNESS: Thank you.

3 (Witness excused)

4 THE COURT: Call your next witness.

5 MR. RUDIN: Your Honor, we call Janice Robinson.

6 She's outside.

7 THE COURT: Let's get her.

8 Ma'am, you want to come up here. Thank you so much.
9 And step into this box. I'm sorry they haven't removed this
10 plastic thing yet. And just stand in front of the chair. You
11 can put your coat down. Put your stuff down. Stand in front
12 of the chair.

13 And would you swear the witness. Raise your right
14 hand.

15 (Witness sworn)

16 THE COURT: Now, have a seat. The reason we invented
17 this thing was so that a witness could safely remove her mask
18 and testify. So you -- great.

19 Now, what I need to you do is use the microphone. And
20 tell us your name.

21 THE WITNESS: My name is Janice Robinson.

22 THE COURT: Thank you, Ms. Robinson.

23 You may inquire.

24 JANICE ROBINSON,

25 called as a witness by the Plaintiff,

N3F3FRA3

Robinson - Direct

1 having been duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MS. ALVAREZ:

4 Q. Good afternoon, Ms. Robinson. What is your relationship to
5 Mr. Jawaun Fraser?

6 A. I am Jawaun Fraser's mom.

7 Q. Where do you live now?

8 A. 749 FDR Drive, Apartment 2F.

9 Q. Where did you live on October 21, 2014?

10 A. 911 FDR Drive, Apartment 4D.

11 Q. Can you describe your work history.

12 A. Yes. I work for the Board of Education. I work now
13 presently work at Citizens Care Daycare under the DOE.

14 Q. Can you describe your educational background.

15 A. Yes. I have my master's in early childhood education. I
16 have my baccalaureate in liberal arts, and I have my high
17 school diploma also.

18 Q. Have you ever testified in court before?

19 A. No.

20 Q. How many children do you have?

21 A. Three.

22 Q. Can you give us their names and ages.

23 A. Lateisha Robinson, she's 38, she'll be 39. Schaddie
24 Wallace, she's 32. And Jawaun Fraser, he's 26.

25 Q. Did Mr. Fraser live with you while he was growing up?

N3F3FRA3

Robinson - Direct

1 A. Yes.

2 Q. Now I'd like to talk to you about October 21, 2014. Do you
3 remember that day?

4 A. Yes.

5 Q. Can you describe what you remember about that day.

6 A. I got in from work and I had a migraine headache about
7 maybe 4, 4:30 the most. After my son came in from his program
8 which is the -- apprenticeship program, the Nicholson Galloway.
9 He got home from there, I asked him can he go to the store and
10 get me some aspirins, because I had a migraine headache when I
11 got in from work.

12 Q. Can you describe what happened next.

13 A. I sent Jawaun to get the aspirins for me. He never came
14 back quick enough. So a lot of residents and children that
15 lived in the neighborhood was knocking on my door and calling
16 me from the window saying the police had my son.

17 Q. Can you describe what you did after you found this out?

18 A. I put some things and got myself together and I walked to
19 P.S.A. 4, which is down the block from my house, and they said
20 they didn't have him at that precinct.

21 Q. What did you do next?

22 A. I proceeded to go to the precinct on Pitt Street.

23 THE COURT: On what street?

24 THE WITNESS: On Pitt Street.

25 THE COURT: Okay.

N3F3FRA3

Robinson - Direct

1 Q. Can you describe what you did after that.

2 A. He wasn't at that precinct either, so I proceeded to the
3 precinct on Fifth Street.

4 Q. What did you do next?

5 A. I went back to P.S.A. 4, because none of the precincts said
6 they had him at that time. Went back to P.S.A. 4, and I could
7 hear my son raising his voice from the back of the facility
8 saying just give my mother my stuff.

9 Q. What did you receive when you arrived at the precinct?

10 A. I received a receipt I had to sign for release \$100 from
11 Jawaun.

12 Q. When was the next time you saw him?

13 A. Central bookings.

14 Q. Do you know where Mr. Fraser was where he went after?

15 A. To Rikers Island.

16 Q. Were you present for any of Mr. Fraser's court appearances
17 in his criminal proceedings?

18 A. Yes.

19 Q. Can you describe which ones you attended?

20 A. The majority of them.

21 Q. So, for example, did you attend his trial?

22 A. Yes.

23 Q. Did you also attend his sentencing?

24 A. Yes.

25 Q. Did you also assist Mr. Fraser in helping him post his bail

1 after he was arrested?

2 A. Yes.

3 Q. Do you know how long it took for you to help him post his
4 bail?

5 A. It was like four to five days.

6 Q. Did you visit Mr. Fraser while he served his sentence?

7 A. Yes.

8 Q. Do you recall where you visited him first?

9 A. Not right now. Not off the top of my head.

10 Q. Did you visit him after he was convicted?

11 A. Yes.

12 Q. What, if anything, did you tell Mr. Fraser about your
13 visits to see him?

14 A. That it was horrible to visit. That they did a lot of
15 extensive searching and they wanted us to take off our shoes.

16 MR. FRANCOLLA: Objection.

17 THE COURT: Overruled.

18 Q. How did Mr. Fraser respond to this?

19 A. He didn't want me to come back anymore.

20 Q. Did you continue to visit him?

21 A. Yes, I continued to visit him.

22 Q. Can you describe what a typical visit was like?

23 A. It was a long day. You had to leave at 1 o'clock in the
24 morning to catch a bus on Eighth Avenue to get to the facility
25 by 6 o'clock in the morning. And then get searched three times

N3F3FRA3

Robinson - Direct

1 while you are in the facility. Basically from one door to the
2 next with the children. And you had to lift up your clothes,
3 take off your shoes, search, search you down, put your pants
4 down to your knees, search you. Horribly.

5 Q. You mentioned children. Can you explain whose children
6 these were?

7 A. They were Jawaun's children.

8 Q. How long were your visits with Mr. Fraser?

9 A. Six hours.

10 Q. Can you describe the ages of the children at this time?

11 A. Well, I think one was two, close to three, and the baby.

12 Q. What, if anything, happened at the end of your visits?

13 A. The kids would have a fit. We would try to put them to
14 sleep before the visit was over, so they didn't have a hard
15 time, like, letting Jawaun leave the visiting floor.

16 Q. Do you know where Mr. Fraser lives now?

17 A. Yes, I know he lives in Jersey.

18 Q. How long after he was released from prison did he move
19 away?

20 A. Immediately. Maybe five, six months. Not even that long.

21 Q. What, if anything, has he told you about his reasons for
22 moving away?

23 A. He wasn't comfortable in the area we live in anymore at
24 all.

25 MS. ALVAREZ: Thank you. I have no further questions.

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1 THE COURT: Any cross?

2 MR. FRANCOLLA: We have nothing, your Honor. Thank
3 you, Ms. Robinson.

4 THE COURT: Thank you, ma'am. You may step down.

5 (Witness excused)

6 THE COURT: Call your next witness.

7 MR. RUDIN: Your Honor, we thought we would read into
8 the record some of the deposition excerpts.

9 THE COURT: Okay. So folks, as you've heard, prior to
10 the trial in this case, some of the people who were involved
11 gave testimony in front of a court reporter. That's called a
12 deposition or an examination before trial. I wasn't there.
13 The judge wasn't there. Just the lawyers and the witness. But
14 the court reporter swore the individual to tell the truth, the
15 whole truth, and nothing but the truth, so it is sworn
16 testimony.

17 Now depositions, can be used for a variety of reasons.
18 For example, you've heard lawyers confront a witness with
19 deposition testimony, which the lawyer is going to suggest to
20 you is not consistent with what the witness said to you here on
21 the witness stand. That's one common use of deposition
22 testimony.

23 A party's deposition, not a non-party to a case, but a
24 party's deposition, a plaintiff's deposition, the defendant's
25 deposition, can be introduced into evidence. The plaintiff

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1 can't introduce the plaintiff's deposition into evidence and
2 the defendants can't introduce the defendants' depositions into
3 evidence. But the plaintiffs can introduce the defendants'
4 depositions, and the defendant can introduce the plaintiff's
5 depositions or parts of them.

6 So what we're going to hear now, as I understand it,
7 is a reading from some of the defendants' depositions. Okay?
8 And they are, because they are statements by a party to the
9 case, made under oath, they are evidence in the case. Okay.

10 The way I like to do this is I like to put somebody in
11 the witness box to read the answers and to have somebody who is
12 reading the questions stand back there at the microphone. It's
13 easiest for the court reporter, and it allows us to distinguish
14 between asking a question and giving an answer. Okay?

15 So, who will be reading?

16 Mr. Francolla, do you have a problem?

17 MR. FRANCOLLA: No, I was going to just mention
18 something to counsel on his way up. Not for your Honor.

19 THE COURT: Okay. Who is going to be reading?

20 MR. RUDIN: David Rudin will read and I will answer.

21 THE COURT: Why don't you step back to the podium.
22 And Mr. Rudin, you are going to read the questions; is that
23 correct?

24 MR. D. RUDIN: Correct.

25 THE COURT: And Joel Rudin will read the answers. So

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1 he's going to get up here.

2 MR. RUDIN: Your Honor, would you like to us read the
3 page number and the line number or just read the sections that
4 the parties have agreed?

5 THE COURT: Page and line, please.

6 MR. RUDIN: Also the parties have stipulated that when
7 we get to the part of the transcript where the witness refers
8 to the deposition notice, the topics that the witness was going
9 to testify about, although those topics are not spelled out in
10 the deposition, the parties have agreed that we can read to the
11 jury what the topics were.

12 THE COURT: Would you please get up here and let's
13 start reading.

14 MR. RUDIN: Yes, your Honor.

15 THE COURT: So many explanations.

16 MR. RUDIN: This is a very different perspective.

17 MR. D. RUDIN: The first deposition is that of Gregory
18 McNally. It occurred on July 7, 2021.

19 THE COURT: Now, some of these people are parties in
20 that the City of New York is a party to this case. Okay. So
21 I'm guessing we are going to find out that some of these people
22 are employed by the City of New York. Right?

23 MR. D. RUDIN: Yes.

24 THE COURT: Right. Okay.

25 MR. RUDIN: These were representative witnesses.

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"McNally"

1 THE COURT: Okay.

2 MR. D. RUDIN: The first excerpt is page 8, beginning
3 line 23, to page 9, line 19. I'll begin.

4 "Q. Did you review any documents to prepare for today's
5 deposition?

6 "A. I did.

7 "Q. What did you review?

8 "A. I reviewed a patrol guide procedures, I reviewed the
9 chapter for courtroom testimony, as well as a PowerPoint
10 presentation for courtroom testimony given to police officers
11 in the police academy.

12 "Q. There were a number of years for the courtroom testimony
13 that we received in discovery. Did you review a particular
14 year?

15 "A. I tried to review several years going back I believe to
16 2012, based upon what we had available in our academy. The
17 material appears to have been the same the entire time. I
18 don't believe there are any overtly differently worded things.
19 They are basically the same. All that I used."

20 MR. D. RUDIN: Then we continue from page 12, line 20
21 to page 13, line 15:

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

24 "A. I do.

25 "Q. Do you understand that the testimony you are giving today

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"McNally"

1 is on behalf of the City of New York?

2 "A. Yes.

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

4 "A. I did, yes.

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

7 "A. The subjects one and three if I recall correctly from the
8 bullet points."

9 MR. D. RUDIN: The parties have agreed that we'll read
10 to the jury those topics.

11 Subject one is policies, practices, procedures, rules,
12 standards, customs, supervision and training of the New York
13 City Police Department, relating to *Brady v. Maryland*, and the
14 duty of members of service to document and disclose exculpatory
15 and impeachment evidence to the prosecution.

16 Subject three is policies, practices, procedures,
17 rules, standards, customs, supervision, and training of the
18 NYPD concerning the duty of members of service to internally
19 report civil lawsuits filed against them.

20 "Q. Will your testimony today be based on personal knowledge,
21 preparation for this deposition, or something else?

22 "A. Based upon personal knowledge as well as preparation, I
23 apologize."

24 MR. D. RUDIN: The next excerpt is page 14, line 22,
25 to page 15, line 19.

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"McNally"

1 "Q. At the police academy, do you teach exclusively cadets or
2 do you also teach officers who are coming back for refresher
3 training or some other training?

4 "A. I have only taught recruits.

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

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

12 "Q. Understood. Who decides the subject area of training for
13 police officers at the academy?

14 "A. We have a curriculum unit that will break out and create
15 the actual chapters for the student guide, as well as the
16 PowerPoints that are presented."

17 MR. D. RUDIN: The next excerpt is page 16, line 16,
18 to page 19, line 2.

19 "Q. Do you know if the police commissioner or the chief of
20 training are involved?

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

24 "Q. Who decides when or how to update the training materials?

25 "A. That is something that will be more in the area of the

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"McNally"

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

6 "Q. Have you heard of the U.S. Supreme Court case *Brady v.*
7 *Maryland*?

8 "A. Yes.

9 "Q. When did you first hear of *Brady v. Maryland*?

10 "A. I vaguely remember, to be honest, when I was a recruit
11 officer. But I became more acquainted with it and had more
12 clear knowledge of it when I first started teaching at the
13 academy.

14 "Q. Are new recruits trained on *Brady* at the academy?

15 "A. Yes, they are.

16 "Q. Are you the instructor who has taught them since 2015?

17 "A. I'm one of the instructors who have taught them, yes.

18 "Q. Are there multiple instructors who teach the subject of
19 court appearances?

20 "A. Well, court appearances, originally when I first came on,
21 fell under the heading of the law department, under the law
22 department, and then about two years ago it switched to be a
23 police science subject that is now taught by police science
24 instructors. So each class has several instructors who teach
25 both law and police science.

N3F3FRA3

"McNally"

1 "Q. Okay. And you primarily teach law, that is correct?

2 "A. Primarily yes, that would be my area.

3 "Q. Is the training given at the academy on *Brady* disclosures
4 supposed to be consistent with NYPD policies on *Brady*
5 disclosures?

6 "A. How do you mean?

7 "Q. So I mean does that training reflect official NYPD policy
8 as to the duties of police officers with regard to their *Brady*
9 obligations?

10 "A. Yes, I believe so."

11 MR. D. RUDIN: The next excerpt is page 20, line 1 --
12 sorry. Page 20, line 2 to 3.

13 "Q. Lesson plan from 2006 was marked 114 for identification."

14 MR. D. RUDIN: Then we continue from page 21, line 5,
15 to line 19.

16 "Q. Okay. So you would agree that, to the best of your
17 knowledge, this document doesn't mention *Brady*.

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

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

21 "A. I would not be able to testify to that specifically, as I
22 was not working there in 2006. But if this is what it says,
23 then I presume so.

24 "Q. Okay. Let's move on to the next document, Exhibit 115.
25 Student guide was marked Exhibit 115 for identification."

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"McNally"

1 MR. D. RUDIN: The next excerpt is page 22, line 4.,
2 to page 23, line 14.

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

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

6 THE COURT: Are the documents on the screen? Are the
7 documents being shown? Okay. They're not. They're not.

8 MR. RUDIN: The documents are in the record, your
9 Honor.

10 THE COURT: They are in the record, I understand that.
11 I just wondered if they were being shown during the testimony.
12 But they're not. So let's move on.

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

14 "A. I think -- it is given to the recruit officers who attend
15 the New York City police academy. This is generally what they
16 will get for each trimester.

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

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

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

22 "A. Yes.

23 "Q. This guide appears to be about court appearances, yes?

24 "A. Yes.

25 "Q. To the best of your knowledge, does it make any mention of

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"McNally"

1 *Brady?*

2 "A. After quickly looking at it, I don't see it mentioned, no.

3 "Q. You mentioned police student guides are given to police
4 officers. Who approves their content?

5 "A. Again, this is the same material that is developed by the
6 curriculum department. They write the student guide as well as
7 the --"

8 MR. D. RUDIN: The next excerpt is page 25, line 23,
9 to page 27 line 22.

10 "Q. Let's move on to Exhibit 121. Student guide copy of court
11 appearances dated July 2014 was marked Exhibit 121 for
12 identification. This does this document look familiar to you
13 at all?

14 "A. It does look familiar to me.

15 "Q. What does this document look like to you?

16 "A. It appears to be, again, another student guide copy of
17 court appearances.

18 "Q. It is dated July 2014. Is that right?

19 "A. Correct.

20 "Q. Again, take a second to review it. Do a control F search
21 if you need to. Let me know whether you would agree that it
22 doesn't mention *Brady*.

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

24 "Q. Is it correct that in the NYPD training materials on court
25 appearances, up until the date of July 2014, there is no

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"McNally"

1 mention of *Brady*?

2 "A. Given the material I have been shown here, I don't believe
3 I see it mentioned here, no.

4 "Q. Okay. So that would be a yes?

5 "A. Yes, again, based upon what I have seen.

6 "Q. Understood. So let's move on to Exhibit 122. Student
7 guide copy of court appearances dated January 2015 was marked
8 Exhibit 122 for identification. Does this look familiar to
9 you?

10 "A. It appears again to be a perhaps student guide copy. It
11 appears to be a student guide copy of court appearances dated
12 from January 2015.

13 "Q. I'm going to direct your attention to page 19. There will
14 be a subsection entitled *Brady* material on the bottom right.
15 It should be Bates stamped defendant's 9869.

16 "A. Just a moment please."

17 MR. D. RUDIN: The next excerpt is page 28, line 10,
18 to page 29, line 19.

19 "Q. This subsection says that "an important area of law that a
20 police officer should be familiar with is exculpatory evidence
21 commonly referred to as *Brady* material." Is that correct?

22 "A. Correct.

23 "Q. It defines "exculpatory evidence" as "evidence that tends
24 to clear someone's guilt." Is that right as well?

25 "A. That is correct as well.

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"McNally"

1 "Q. Would you agree that this is the only section of this
2 document that refers to *Brady* material?

3 "A. Yes.

4 "Q. I am going to move on to the next document. It is Exhibit
5 123. Lesson plan for instructors for court appearances was
6 marked 123 for identification. Take a second to look at it and
7 tell me what it looks like?

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

10 "Q. Okay. I am going to direct your attention to page 26. It
11 should be Bates stamped at the bottom defendant 9812. I
12 apologize. It is page 26 in the PDF. It is actually page 25
13 at the bottom.

14 "A. 25, okay.

15 "Q. Do you see a slide entitled "*Brady* material."

16 "A. Yes, I see it."

17 MR. D. RUDIN: The next section is page 29, line 23,
18 to page 30, line 15.

19 "Q. This section defines "exculpatory evidence" as "evidence
20 that tends to clear someone's guilt." Is that right?

21 "A. That is correct.

22 "Q. It says that *Brady* material is the same thing as
23 exculpatory evidence. Is that correct?

24 "A. Yes.

25 "Q. In sum and substance, it is the same training as the

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"McNally"

1 previous document that you reviewed, is that right?

2 "A. I would almost say it is word for word, yes.

3 "Q. Would you agree that this is the only section in this
4 document that deals with *Brady* material?

5 "A. Yes."

6 MR. D. RUDIN: Page 38, line 22, to page 40, line 5.

7 "Q. Okay. So let's move on to Exhibit 116. Lesson plan for
8 collecting and processing evidence from August 2003 revised
9 2014 was marked Exhibit 116 for identification. Does this look
10 familiar to you?

11 "A. It appears to be a lesson plan for collecting and
12 processing evidence from August 2003, revised 2014.

13 "Q. Directing your attention to the bottom of the page 33.
14 Defendant 10377.

15 "A. What page again, sir?

16 "Q. Page 33.

17 "A. 33, okay.

18 "Q. You see at the bottom section G, *Brady* material?

19 "A. Yes.

20 "Q. Just take a second to look over that section G.

21 "A. Okay.

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

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

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"McNally"

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

3 "A. Yes."

4 MR. D. RUDIN: The next excerpt is page 42, line 11,
5 to page 43, line 14.

6 "Q. Okay. So let's go to Exhibit 118. Student guide copy of
7 collecting and processing evidence of the police academy of
8 July 2014 was marked Exhibit 118 for identification. Tell me
9 whether this is familiar to you and if so, what it looks like?

10 "A. That appears to be a student guide copy of collecting and
11 processing evidence of the police academy.

12 "Q. This one is dated 2014, is that right?

13 "A. Yes, it is.

14 "Q. Okay. So I am going to direct your attention to page 55.
15 It is defendant 10205.

16 "A. Okay.

17 "Q. Again this is a subsection entitled *Brady* material on this
18 page. Take a second to read it over.

19 "A. Okay. I finished.

20 "Q. Would you agree that this section on *Brady* material is in
21 sum and substance identical to the previous training you
22 reviewed on *Brady* material in the police student's guide?

23 "A. Yes, I would say so."

24 MR. D. RUDIN: The next excerpt is page 45, line 12 to
25 line 18.

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"McNally"

1 "Q. Other than the legal settings materials on court
2 appearance and collecting and processing evidence that I just
3 showed you, are you aware of any written NYPD training
4 materials on *Brady*?

5 "A. As far as recruit training goes, no."

6 MR. D. RUDIN: Next excerpt is page 46, lines 10 to
7 16.

8 "Q. Is it correct that for the period from January 2005 to
9 July 2019, police department training materials consistently
10 defined *Brady* material as exculpatory evidence?

11 "A. As defined in the evidence I have seen here then, yes."

12 MR. D. RUDIN: Next excerpt is page 55, line 7 through
13 line 22.

14 "Q. Other than the training materials we have previously
15 discussed and the PALS materials you mentioned, are you aware
16 of any document that sets forth NYPD policy as to *Brady*
17 materials?

18 "A. There is a legal bureau bulletin mentioned, volume 47
19 number 1. Subject cross-examination of police witnesses that
20 mentions that you must reveal, again, accusations against
21 yourself to the prosecutor, you must release that information
22 later. That is a brief summary of it.

23 "Q. That is the legal bureau bulletin dated December of 2017.
24 Is that right?

25 "A. No. January 25 of 2017."

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"McNally"

1 MR. D. RUDIN: The next excerpt is page 60, lines 3 to
2 7.

3 "Q. Okay. So I would like to turn your attention to document
4 136, instructor manual on court appearances of October 2019,
5 was marked Exhibit 136 for identification."

6 MR. D. RUDIN: Then continuing from page 60 line 13 to
7 line 24.

8 "Q. Does this look familiar to you?

9 "A. It appears to be an instructor manual on court
10 appearances.

11 "Q. Okay. It appears to be dated October 2019, is that
12 correct?

13 "A. Yes.

14 "Q. I am going to direct your attention to page 47. It should
15 be a slide on -- it is 47 in the PDF, but it is 46 on the
16 bottom-right-hand corner. There will be a slide "adverse
17 credibility."

18 "A. Okay."

19 MR. D. RUDIN: The next excerpt is page 61, line 4.,
20 to page 64, line 13.

21 "Q. The slide up top refers to adverse credibility information
22 as *Giglio* material, G-I-G-L-I-O. Is that correct?

23 "A. Correct.

24 "Q. It says that "adverse credibility is a term often
25 associated with any information or material that tends to

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"McNally"

1 impeach the character or testimony of the prosecution witness
2 at a criminal trial in the context of police witnesses, this
3 impeachment material can be an officer's disciplinary history
4 and civil lawsuit history." Is that right?

5 "A. Yes.

6 "Q. It says that one of the most common reasons that wrongful
7 convictions are overturned involves the suppression of material
8 that is favorable to the defendant known as *Brady*. Is that
9 right?

10 "A. Right.

11 "Q. It also says "the issue of police officer's credibility at
12 criminal prosecution is often the paramount issue at trial."
13 Is that right?

14 "A. Yes.

15 "Q. Okay. And this information was -- okay. And this
16 information wasn't in the training materials that we reviewed
17 prior to October 2019, is that correct?

18 "A. Not the previous ones, no.

19 "Q. Okay. Are you aware of any training materials prior to
20 October 2019?

21 "A. Basically from what I have seen here, no, I really can't
22 say.

23 "Q. Okay. This training was just given to recruits at the
24 police academy, is that right? It wasn't in-service training?

25 "A. I really can't speak to in-service training, but this

N3F3FRA3

"McNally"

1 particular slide is from recruit training it appears.

2 "Q. Understood. Okay. So let's go on to Exhibit 138.

3 Student guide copy for court appearances for police science of
4 October 2019 was marked Exhibit 138 for identification. Take a
5 look at that and see whether it looks familiar to you.

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

8 "Q. This is also dated October of 2019.

9 "A. Yes.

10 "Q. I direct your attention to page 36. There should be a
11 subheading entitled "adverse credibility"?

12 "A. You said page 36?

13 "Q. Page 36, that's right.

14 "A. Okay, I see it.

15 "Q. Okay. Take a second to read that subsection. It goes on
16 to the next page, page 37.

17 "A. Okay.

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

22 "A. Yes.

23 "Q. This section on adverse credibility wasn't in the prior
24 versions of the police student guides that we reviewed, is that
25 correct?

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"McNally"

1 "A. No, it was not.

2 "Q. Prior to October of 2019, there is nothing in the NYPD
3 training materials used at the police academy about adverse
4 credibility information or about *Giglio*, G-I-G-L-I-O,
5 information, is that correct?

6 "A. Not from what I have seen here, no."

7 MR. D. RUDIN: The next excerpt is page 64, line 22,
8 to page 65, line 17.

9 "Q. Is it correct that prior to October 2019, there were no
10 written NYPD training materials dealing with the duty of police
11 officers to disclose impeachment evidence more generally to the
12 prosecution?

13 "A. Not in the recruit training. Again, I can't speak to the
14 in-service.

15 "Q. Okay. Prior to October 2019, there is nothing in the NYPD
16 training materials about the fact that civil lawsuits against
17 police officers can constitute impeachment material, is that
18 right?

19 "A. Again, not in the recruit material.

20 "Q. Okay. Why was information about impeachment material and
21 adverse credibility information added to the training
22 materials?

23 "A. To be honest, I am not sure. I don't write the material.
24 I'm not with the group of -- so I don't know what changed."

25 MR. D. RUDIN: The next excerpt is page 66, line 19 to

N3F3FRA3

"McNally"

1 line 23.

2 "Q. Okay. The training materials mentioned that failure to
3 disclose impeachment material was a leading cause of
4 convictions being vacated, is that correct?

5 "A. In the 2019 issue, yes."

6 MR. D. RUDIN: The next excerpt is page 72, line 20,
7 to page 73, line 5.

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

12 "A. No, it mentions, it does go into say that a defense
13 attorney will attempt to impeach your character, but doesn't go
14 into that what material may be, correct."

15 MR. D. RUDIN: We're now going to move on to the next
16 witness. That's Katie Flaherty, F-L-A-H-E-R-T-Y.

17 THE COURT: We're now changing witnesses?

18 MR. D. RUDIN: Yes.

19 THE COURT: Okay. I have to respond to something for
20 one minute.

21 (Pause)

22 THE COURT: Sorry. Now, Katie Flaherty.

23 MR. D. RUDIN: Yes. The first name is spelled
24 K-A-T-I-E. This deposition was taken on July 28, 2021. The
25 first excerpt is page 14, line 9, to page 15, line 4.

N3F3FRA3

"Flaherty"

1 "Q. Understood. Do you understand that you are here today to
2 testify as a representative of the NYPD?

3 "A. Yes.

4 "Q. You understand that the testimony you are giving is on
5 behalf of the City of New York?

6 "A. Yes.

7 "Q. You mentioned you had reviewed a copy of the 30(b)(6)
8 notice, is that right?

9 "A. Yes.

10 "Q. What topics are you planning to testify about today?

11 "A. I am just looking at it one more time.

12 "Q. Of course.

13 "A. Topic 2, Subsection B of number 4.

14 "Q. I'm sorry. You said 2 and 4B?

15 "A. Yes."

16 MR. D. RUDIN: I'm now going to read those two topics.

17 Topic 2 is policies, practices, procedures, rules,
18 standards, customs, supervision, and training of the NYPD to
19 disclose information tending to impeach the credibility of
20 members of service, prosecution witnesses, including, but not
21 limited to, civil lawsuits filed against members of service to
22 the prosecution.

23 Topic 4B is policies, practices, customs, and
24 procedures of the NYPD, including through the use of any
25 internal database or tracking system, to collect and maintain

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"Flaherty"

1 information about alleged misconduct committed by members of
2 service, such as civil lawsuits filed against a member of
3 service.

4 The next excerpt is page 15, line 10 to line 15.

5 "Q. Sure. I was asking about the basis for your testimony on
6 those topics. Is it your preexisting knowledge, your
7 preparation of the deposition, or some combination thereof?

8 "A. Combination of both."

9 MR. D. RUDIN: The next excerpt is page 31, line 4 to
10 line 14.

11 "Q. Who sets the NYPD's policy in the general area of
12 disclosing impeachment evidence to the prosecution?

13 "A. Ultimately the police commissioner sets all NYPD policies.

14 "Q. Would that also fall within the purview of the deputy
15 commissioner for legal matters?

16 "A. Interpreting laws and making sure that the department
17 follows the relevant laws, yes."

18 MR. D. RUDIN: The next excerpt is page 33, line 5 to
19 line 9.

20 "Q. Are you aware of any officers being disciplined
21 specifically for failure to disclose civil lawsuit information
22 to the prosecution?

23 "A. I do not believe so."

24 MR. D. RUDIN: The next excerpt is page 34, line 8.,
25 to page 36, line 15.

N3F3FRA3

"Flaherty"

1 "Q. Does the DAO or the department advocate's office keep any
2 database tracking the discipline given to officers for failing
3 to disclose impeachment evidence to the prosecution?

4 "A. They have a database they use as case management system.
5 I'm not sure that database can be searched for specifically
6 what you just asked about.

7 "Q. So it's a question as to how the allegation, the charges
8 would be categorized?

9 "A. I believe so, yes.

10 "Q. So for the period from January 2005 to January 2020, are
11 you aware of any NYPD policy, practice, or procedure to
12 actively collect information about civil lawsuits against
13 police officers?

14 "A. Yes. In 2013, again, when we created the risk assessment
15 unit, part of that unit's mission was to ascertain an accurate
16 reflection of NYPD related lawsuits and how many officers had
17 been sued, what they had been sued for, and we began trying to
18 keep track of that. The mechanism through which we tried to
19 keep track of that was the civil lawsuit monitoring program,
20 and I can go into a little bit of overview of how we received
21 the information, if that's helpful, or if that's already been
22 covered, I don't want to --

23 "Q. That would be helpful, if you don't mind doing that.

24 "A. Sure. In 2013, and I believe for a few years prior to
25 that, we had been receiving and continued to receive

N3F3FRA3

"Flaherty"

1 spreadsheets from the New York City Law Department about
2 actions on lawsuits that had been commenced, meaning filed in
3 the prior month period, as well as lawsuits that had been
4 disposed or closed out in the prior month period. We receive
5 those spreadsheets monthly. Those spreadsheets are reviewed by
6 members of the legal bureau, as well as members of the risk
7 management bureau, to determine whether or not the civil
8 lawsuit monitoring criteria are met.

9 "Q. Go ahead. I'm sorry. I didn't realize you were still
10 going.

11 "A. It's okay. I was going to say if they were already met,
12 if their criteria are met, then the officers need to be
13 reviewed by the lawsuit monitoring committee."

14 MR. D. RUDIN: The next excerpt is page 39, lines 4 to
15 12.

16 "Q. If an officer is named defendant in, for example, three or
17 more lawsuits commenced in the past 12 months, would they
18 automatically be placed in level two monitoring or would that
19 be a discretionary decision?

20 "A. No, that would be a decision made by majority vote of the
21 civil lawsuit monitoring committee."

22 MR. D. RUDIN: The next excerpt is page 46, line 19,
23 to page 47, line 2.

24 "Q. Is an officer that an officer has been sued is that on an
25 officer's CPI or somewhere else in their personnel file?

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"Flaherty"

1 "A. It was placed on a CPI. I believe the dates it was placed
2 on the CPI were from 2008 through 2016. During that time
3 frame, when an officer requested legal assistance, and
4 submitted that form to the legal bureau, there was a notation
5 made on their CPI. Since 2016 that notation has not been made
6 on an officer's CPI."

7 MR. D. RUDIN: The next excerpt is page 48, lines 12
8 to 16.

9 "Q. Other than being on their CPI from 2008 to 2016, was the
10 fact that officers had been sued civilly considered in
11 promotion or transfer decisions?

12 "A. Yes."

13 MR. D. RUDIN: The next excerpt is page 50, line 15,
14 to page 53, line 3.

15 "Q. You mentioned that when officers are personally served
16 with a complaint, they are supposed to notify someone at the
17 NYPD. Can you elaborate on that procedure?

18 "A. When an officer is served at his or her command, or
19 however they might be served the summons and complaint. The
20 next step that they should take is to fill out a request for
21 legal assistance. It is a form. It used to be a carbon
22 triplicate copy form, they would have to use a typewriter to
23 fill in, and now it is a department internet portal that I
24 mentioned before. It is available to just type in and fill out
25 the information. A copy of the RLA, as we refer to it, is

N3F3FRA3

"Flaherty"

1 actually a Plaintiff's Exhibit 138 on the slide, Bates stamped
2 defendant's 15616. So it is a department form that has two
3 sections. The officer fills out all of the information about
4 the incident, about the lawsuit itself, their commanding
5 officer signs off on it, and it gets sent to the legal bureau.
6 The legal bureau processes it. We put it in what we call the
7 civil litigation database, which was a very fundamental
8 database that was created, so we know we received one from this
9 officer and we sent it to the law department. After it's
10 processed by the NYPD law department, and they take over from
11 there.

12 "Q. 138 is the training for lieutenants which you were
13 involved with. Were you also involved with training detectives
14 or regular police officers on what to do when they're sued?

15 "A. Yes.

16 "Q. It is the same procedure, regardless of someone's rank?

17 "A. Exactly.

18 "Q. Other than filling out that request for legal assistance,
19 and presumably cooperating with the law department, were there
20 any duties of officers when they were sued?

21 "A. Do you mean other than following the rules of court? Yes.

22 "Q. Yes. Were there any, like, procedure or any specific kind
23 of directives for what officers should do, other than request
24 assistance and to comply with the law department and I guess
25 comply with the rules of court?

N3F3FRA3

"Flaherty"

1 "A. No. So there is a patrol guide procedure about filling
2 out the request for legal assistance. That patrol guide
3 procedure I believe was 211-21, but that's -- but that's the
4 procedure that they have to follow when they get sued."

5 MR. D. RUDIN: The next excerpt is page 60, line 9.,
6 to page 61, line 25.

7 "Q. Director Flaherty, you mentioned that the NYPD started
8 receiving lawsuits spreadsheets from the law department
9 sometime prior to 2013. Is that right?

10 "A. I believe so, yes.

11 "Q. Prior to 2013, and the formation of the civil lawsuit
12 monitoring committee, what, if anything, was done with those
13 spreadsheets and that information?

14 "A. That would have been reviewed by the executives from the
15 legal bureau that receive them. But those spreadsheets don't
16 contain much information about the underlying allegations
17 themselves.

18 "Q. What type of information is in the spreadsheets?

19 "A. The spreadsheets contain the name of the case, the docket
20 number I believe, the names of plaintiffs, the names of
21 defendants, the venue. I believe that they include the date of
22 filing, potentially the date and location of the incident,
23 although many times that's not completed. And it may contain a
24 brief description of the lawsuit, but again, that's usually not
25 completed. It is just the basic facts of the filing itself.

N3F3FRA3

"Flaherty"

1 "Q. You mentioned that before anyone was placed in front of
2 the civil lawsuit monitoring committee, legal bureau would
3 screen to make sure, for example, they were personally involved
4 in allegations and properly named and so on. Does legal bureau
5 do further research on the case beyond what was in the
6 spreadsheet?

7 "A. Yes. We would actually read the complaint. So we
8 understand the allegations being made against the officers."

9 MR. D. RUDIN: And the next excerpt is page 65, line
10 21, to page 68, line 3. These are questions by the lawyer for
11 the City, Mr. Francolla.

12 "Q. Good afternoon, Director Flaherty. You mentioned how as
13 part of the civil lawsuit monitoring committee, before it gets
14 to that stage, the legal bureau was provided with a spreadsheet
15 from the law department containing lawsuits of either suits
16 commenced or disposed of in the prior months. Is that correct?

17 "A. Correct.

18 "Q. What's done with that spreadsheet?

19 A. There's two spreadsheets. One for actions commenced and
20 one for actions disposed. Both of those spreadsheets are
21 imported into a very simple database that we created called the
22 civil lawsuit monitoring database that combines the information
23 that we received from the law department, with the civil
24 litigation database that I mentioned before that the legal
25 bureau maintains for when an officer files a request for legal

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"Flaherty"

1 assistance. The civil lawsuit monitoring database then can be
2 searched for the civil lawsuit monitoring criteria that we
3 mentioned. So you can run a report in that database that tells
4 me every officer that has been named in three or more lawsuits
5 filed in the previous 12 months or the other criteria as well.
6 From that report that's run, it contains officers' names and
7 tax ID numbers, and then we would still have to go into every
8 single officer individually to look at the cases that they were
9 named in to ensure that they actually meet the civil lawsuit
10 monitoring triggers, as well as, again, like I said, reviewing
11 the complaints, and additional information, to make sure that
12 they were personally involved, not incorrectly named as a
13 defendant, and things like that, before they actually get to
14 the stage they are reviewed by the committee.

15 "Q. Just to be clear, the database used would consist of what
16 the law department gives you, as well as your own records of
17 every officer who is served with a complaint and files a
18 request for legal assistance as directed by the patrol guide?

19 "A. Correct."

20 MR. D. RUDIN: The next excerpt is page 69, line 4 to
21 line 11.

22 "Q. Are undercovers dealt with any differently than
23 non-undercover officers in the internal database?

24 "A. No.

25 "Q. If you are aware, are undercover officers also included in

N3F3FRA3

"Urban"

1 the spreadsheet sent over from the law department?

2 "A. I believe that they are, yes."

3 MR. D. RUDIN: I apologize. That last set of
4 questions was by the lawyer for the plaintiff.

5 The next deposition is of that Stella Urban. It was
6 taken on July 28, 2021. The first excerpt is page 13, line 9
7 to line 25.

8 "Q. Do you understand that you're here today to testify as a
9 representative of the NYPD?

10 "A. Yes.

11 "Q. Do you understand that the testimony you are giving today
12 is on behalf of the City of New York?

13 "A. Yes.

14 "Q. And you mentioned you had reviewed a copy of the 30(b)(6)
15 notice and you are prepared to testify about topic number five,
16 is that correct?

17 "A. Yes."

18 MR. D. RUDIN: I'll now read in topic number five.
19 NYPD investigation and discipline, if any, of members of
20 service for violating rules relating to disclosure of *Brady*
21 material to the prosecution, including, but not limited to, any
22 case where a member of service failed to disclose information
23 about civil lawsuits to the prosecution.

24 "Q. Will your testimony today be based on your personal
25 knowledge or preparation for this deposition or both?

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"Urban"

1 "A. Both."

2 MR. D. RUDIN: The next excerpt is page 23, line 17 to
3 line 25.

4 "Q. Lieutenant, for the period from January 2005 to
5 January 2020, did the NYPD track cases for an officer who
6 allegedly failed to disclose information about civil lawsuits
7 against them to the prosecution?

8 "A. Not to my knowledge.

9 "Q. If I say a *Brady* violation or a *Giglio* violation, do you
10 know what I mean?

11 "A. Yes."

12 (Continued on next page)

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N3FHFra2

"Urban"

1 MR. D. RUDIN: The next excerpt is page 29, lines 5 to
2 line 19.

3 "Q. Are you personally aware of any officers who have been
4 disciplined for failing to provide exculpatory or impeachment
5 evidence to the prosecution?

6 "A. No.

7 "Q. Are you personally aware of any officers who have been
8 disciplined for failing to tell prosecutors about civil
9 lawsuits against them?

10 "A. No.

11 "Q. Are you aware of whether the NYPD has any policies for
12 supervisors to make sure that officers provide exculpatory or
13 impeachment evidence to the prosecution?

14 "A. No."

15 MR. D. RUDIN: The next excerpt is page 37, lines 8 to
16 line 22, and this question is by Mr. Francolla:

17 "Q. Lieutenant Urban, is there a specific allegation in the
18 allegation tree that we looked at during this deposition that
19 either uses the word 'Brady' or the definition of *Brady* in the
20 allegation?

21 "A. So the allegation tree is based on the most frequently
22 occurring allegation. It's not a common occurrence of an
23 allegation, so it's not open. But in the instance that
24 something becomes more of an issue, then we've been known to
25 expand the allegation tree. We just recently expanded racial

N3EHFra2

1 profiling to kind of separate out the different types of races
2 and religions, and so on and so forth."

3 MR. D. RUDIN: We've reached the end.

4 THE COURT: OK. Then let's take a short break.

5 Don't discuss the case. Keep an open mind. I'll see
6 you in about ten minutes.

7 (Jury excused)

8 THE COURT: Nothing as scintillating as an hour of
9 deposition testimony.

10 OK. I'll see you in ten minutes.

11 (Recess)

12 THE COURT: All right. I assume we've now reached the
13 moment when we're going to hear from Mr. Fraser?

14 MR. RUDIN: Yes, your Honor.

15 THE COURT: Good. OK. Let's do it.

16 (Jury present)

17 THE COURT: OK. Let's have a seat. Call your next
18 witness, please.

19 MR. BLOCH: Judge, we call Jawaun Fraser.

20 THE COURT: Mr. Fraser, come on up, take the stand.

21 OK. Will you raise your right hand.

22 JAWAUN FRASER,

23 The plaintiff, called as a witness in his own behalf,
24 having been duly sworn, testified as follows:

25 THE COURT: You need to sit down. You've been

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Fraser - Direct

1 watching long enough that you need to know you have to speak
2 into that microphone so the jurors can hear you.

3 Could you please state your full name for the record.

4 THE WITNESS: Full name is Jawaun -- is that good?

5 THE COURT: That's good.

6 THE WITNESS: Jawaun Fraser, J-a-w-a-u-n, F-r-a-s-e-r.

7 THE COURT: All right. You may inquire.

8 MR. BLOCH: Thank you, Judge.

9 DIRECT EXAMINATION

10 BY MR. BLOCH:

11 Q. Good afternoon, Mr. Fraser.

12 A. Good afternoon.

13 Q. Mr. Fraser, how old are you?

14 A. Today I'm actually 27.

15 Q. And how old were you when you were arrested in this case?

16 A. I was approximately 18.

17 Q. Where were you born?

18 A. I was born in Brooklyn, New York, at Woodhull Hospital.

19 Q. Where did you grow up?

20 A. First three years of my life, I grew up in Fort Greene in
21 Brooklyn, and I moved to Lower Manhattan until then -- after
22 that.

23 Q. Where in Lower Manhattan did you move?

24 A. To the Jacob Riis Houses.

25 Q. And what address in particular?

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Fraser - Direct

1 A. 911 FDR Drive, Apartment 4D, in David, New York, New York
2 10009.

3 Q. Who did you live with at 911 FDR Drive?

4 A. My mom, my two sisters, and at one point my stepdad.

5 Q. Can you describe your relationship with your mother.

6 A. Before being incarcerated, my relationship with my mother
7 was amazing. Growing up, my mom was actually my mom and my
8 dad.

9 Q. And you said you lived with your two sisters. What do they
10 do?

11 A. One of my sister's a pharmacist. Actually, she's a
12 government contractor now. She does, like, specific contracts
13 for the government now. And my other sister, she's actually a
14 teacher like my mom.

15 Q. What does your dad do for a living?

16 A. My dad is actually no longer in the United States, but when
17 he was here, he was like a jack of all trades. He kind of
18 worked in the construction field. He worked at glass companies
19 and, like, lumberyards, stuff of that nature.

20 Q. Are you still in contact with him?

21 A. Yes.

22 Q. Do you have children?

23 A. Yes.

24 Q. What are their names?

25 A. My oldest is Winter Fraser. She's ten. My middle child is

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Fraser - Direct

1 Jawaun Fraser Jr. He's seven. And I have my youngest, her
2 name's Aurora Fraser. She'll be three on April 30.

3 Q. Mr. Fraser, can you tell us about your educational
4 background.

5 A. Yes. When I was in high school -- actually, in my senior
6 year, I signed out of school, and I obtained my -- actually had
7 a kid. So I signed out of school, and I obtained my GED.
8 After that I actually enrolled into a City Tech, and my major
9 was electrical engineering.

10 Q. How long did you attend City Tech for?

11 A. Just one semester.

12 Q. When was that?

13 A. I would like to say approximately 2014, January of 2014.

14 Q. And you said you went for one semester. Why did you stop
15 going to college?

16 A. I stopped going to college because I obtained an
17 opportunity to join Local 28, the sheet metal union.

18 Q. Was there a particular career that you were interested in
19 pursuing?

20 A. At Local 28 or in -- in college?

21 Q. Well, in general.

22 A. I kind of wanted to be like my dad. Growing up, my dad was
23 like a jack of all trades, and my stepdad was also a
24 construction worker. So I kind of wanted to go in that field.
25 Overall, I wanted to be an electrical engineer or -- excuse

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Fraser - Direct

1 me -- or I wanted to work in telecommunications. So the Local
2 28 kind of fell in the realm of construction.

3 Q. So when did you generally hear about the opportunity to
4 join Local 28?

5 A. While I was in -- while I was in college and during that
6 first semester, I want to say one month -- one or two months
7 into college, a close friend of mine, he actually joined Local
8 28 before me. So I heard it from him maybe two months into
9 college.

10 Q. Why did you want to join the union?

11 A. Where I come from, that's like an extreme big thing to have
12 a union job. That's kind of like skipping college and kind of
13 getting the same salary. So, you know, being part of a union,
14 that was big for me, for my family, and I felt it would make
15 my -- it would make my mom and my dad and my grandmother, and
16 stuff like that, proud of me to actually be getting something
17 done, because I signed out of school.

18 Q. Is there -- how do you get into the union? Is there an
19 application process?

20 A. Yes. It's a bit extensive. There is an application
21 process.

22 Q. Can you describe that?

23 A. Well, before you even get into the -- it's something called
24 an apprenticeship program. Before you get into that program,
25 you kind of have to take like, I want to say, an entry-level

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Fraser - Direct

1 test. It's kind of like the test you take when you're in
2 college, and they put you in your remedial classes and stuff of
3 that nature. But you take that test. It's like a placement
4 test. That's actually what it's called. You have to score a
5 certain amount. I believe it's like 80 or above. And that's
6 what kind of gets you placed into an apprentice class.
7 Actually, it's called a pre-apprentice class, excuse me.

8 Q. And did you pass that test?

9 A. Yes, fortunately.

10 Q. Approximately when did you pass it?

11 A. You take it -- I would like to say I took that test June --
12 either June or July I took my test, of 2014.

13 Q. And when did you find out that you had been approved for
14 the pre-apprenticeship program?

15 A. Well, you go to a facility. There was a program called the
16 Members' Assistance Program. So you go to that facility. It's
17 on Park Avenue. And you take the test there with three to four
18 other individuals. And you kind of find out right then and
19 there whether you passed or not because they give you a -- you
20 get like a voucher, basically, to go to Quest Diagnostics
21 because you have to take a urine test after, before anything
22 else.

23 Q. How did you feel when you found out you had been approved
24 to be in the pre-apprenticeship program?

25 A. I was ecstatic for the first part. I knew that was just

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Fraser - Direct

1 the beginning due to conversing with my peers and stuff.

2 Q. What did you do when you were approved for the
3 apprenticeship program?

4 A. The first thing I did -- at the time I was conversing with
5 my dad a lot more. The first thing I did, I send my dad a
6 picture of the -- because they give you like a -- they give you
7 a voucher and then they give you like a completion certificate,
8 you're going to be in the next class, you know, being that you
9 passed the urine test. The first thing I did, I forwarded
10 those pictures to my mom and my dad.

11 Q. And how did they react?

12 A. My mom -- my mom was extremely happy about it, and my dad,
13 he was ecstatic because he felt as if I was following the
14 things he used to do.

15 Q. Can you describe what the apprenticeship program entails?

16 A. I'm sorry. Can you be a little more specific with that
17 question when you're saying what does it entail?

18 Q. Yeah. What do you have to do for the apprenticeship
19 program?

20 A. OK. Once you're enrolled in your class, let's say they
21 give you a class number -- myself, my class number was pre-75.
22 That means that's the 75th pre-apprenticeship class from I
23 don't know which date specifically. You go into the class.
24 Before you become -- you get inducted into the union, you have
25 to do 20 business days in the class. So you go there Monday

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1 through Friday for four weeks from 7 a.m. to 4 p.m., and they
2 give you -- you get a weekly stipend of \$120 and a weekly
3 MetroCard.

4 And you take a quiz every single day. You take a quiz
5 on the materials that you guys went over, and it can also be a
6 hands-on quiz. So some days it's a written quiz on the
7 material; some days it's hands-on. On the 21st day, you take a
8 test that they call a comp test.

9 The comp test basically consists of everything you
10 guys did throughout that 20 days. On the 22nd day, you take
11 the second part to the test. And that night by 6 p.m. the
12 instructors, they have like a portal. They upload your results
13 or your test results to that portal, and you go in the
14 following day, pass or fail. If you failed, you have to --
15 they give you one retake. If you pass, you get a job placement
16 the next day to be sent out into the field, you know, to work.

17 Q. Did you get a job placement?

18 A. Yes.

19 Q. Where were you placed?

20 A. Initially, my first company I was placed with in Local 28
21 is United Sheet Metal.

22 Q. And when were you placed to work for United Sheet Metal?

23 A. My first -- my first day working there was, I believe,
24 October 14. It was approximately -- exactly one week before
25 this incident.

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Fraser - Direct

1 Q. So was that 2014?

2 A. Yes.

3 Q. How much were you getting paid when you worked for United
4 Sheet Metal?

5 A. After taxes, I was bringing -- I brought home a little -- I
6 think it was between four and \$500. Between four and 500.

7 Are you talking about hourly or what I was getting
8 after taxes?

9 Q. No, that's fine.

10 Four or \$500 how often?

11 A. That was weekly. That was my weekly pay after a 40-hour
12 workweek.

13 Q. How did you feel about making that amount of money as an
14 18-year-old?

15 A. Oh, that was great. Unfortunately, at the time my stepdad
16 was unemployed, so I was making more money than him at that
17 time. So I was more than happy about that.

18 Q. I'd like to show you and the jury PX 153.

19 Jawaun, do you recognize this?

20 A. Yes.

21 Q. What is this?

22 A. That's a picture of myself and -- he was my first mechanic
23 in Local 28. A mechanic is basically like your superior
24 partner at work. They basically teach you step by step what
25 you do when you're an apprenticeship.

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Fraser - Direct

1 Q. And where is this photograph posted?

2 A. That is in front of -- that is -- I'm sorry. That is in
3 back of the fabrication shop of United Sheet Metal.

4 Q. And what social media application is it posted on?

5 A. This one is, I believe, Instagram.

6 Q. Who posted that?

7 A. That was my Instagram at the time. I posted it.

8 Q. And on what date?

9 A. October 17, 2014.

10 Q. So was this your third day of work?

11 A. Yes. That was my third actual workday, yeah.

12 Q. And why did you post this on Instagram?

13 A. I was happy to have -- I was happy to have the job, and I
14 wanted everybody to know. And Instagram, you know, it still is
15 a big platform, so I posted it on there so everybody can know I
16 had a good job. That I felt was a good job at the time.

17 Q. Jawaun, I want to talk to you about the Jacob Riis Houses.
18 OK?

19 A. Yes.

20 Q. When did you -- well, how long did you live in the Jacob
21 Riis Houses?

22 A. I lived there from when I was three up until I was
23 incarcerated, and then when I was released, I stayed there for
24 six to eight months.

25 Q. And just to be clear, is 911 FDR Drive in the Jacob Riis

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1 Houses?

2 A. Yes.

3 Q. And approximately how many buildings make up Jacob Riis
4 Houses?

5 A. It's between -- I want to say between 20 and 30 buildings,
6 approximately.

7 Q. What type of housing complex is it?

8 A. It's a NYCHA low income. It's like a -- it's just NYCHA.
9 It's New York City House Authority.

10 Q. Can you describe the demographics of the neighborhood,
11 generally the racial make up.

12 A. Oh, for the most part, you know, it's -- it's a minority
13 neighborhood. It's Hispanics, African Americans. We do get
14 Caucasians every now and then because it's very close to the
15 East River where everyone goes and works out, jogs, stuff of
16 that nature. But the actual community is majority African
17 Americans and Hispanics.

18 Q. And where in the neighborhood do people in the community
19 typically hang out?

20 A. Well, Jacob Riis is split into three sectors, basically.
21 It runs from, like, Twelfth to Tenth Street, you know. That's
22 like one sector, and from Tenth to Eighth and Eighth to Sixth
23 it kind of splits up to three different parts. But each of
24 them have a courtyard of their own. So usually, depending on
25 what part of the neighborhood you from, that's the courtyard

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Fraser - Direct

1 people usually hang in.

2 Q. Was crime a concern in the neighborhood?

3 A. Can you be a little more specific. Like was I concerned
4 about injured or something like that, or was it just crime
5 going on?

6 Q. Yeah, was crime going on generally?

7 A. Yeah, absolutely. As I said, it's a NYCHA complex. You
8 know, growing up, it was very dangerous, and, you know, it was
9 crime. It was drug dealing, you know, shootings, and stuff of
10 that nature. It wasn't a concern of mine's because I wasn't,
11 you know, indulging, but yes.

12 Q. Did you ever see police officers in the community?

13 A. Yes.

14 Q. How often would you see police officers?

15 A. The police are always there. There's always some police
16 throughout the complex somewhere. Almost maybe every day, you
17 know. You see them before you go to work or when you get home
18 or before you go to school. When you just walking around, you
19 see police all day long.

20 Q. Did you ever see the police officers interact with other
21 members of the community?

22 A. I'm sorry, I didn't hear.

23 Q. Did you have occasion to observe police officers
24 interacting with community members?

25 A. Yes.

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1 Q. Jawaun, did there come a point in time in your life when
2 you sold drugs?

3 A. Yes.

4 Q. How old were you when you did that?

5 A. I want to say -- I want to say the first time I indulged
6 or I was around, you know, drug dealing, I was maybe 15,
7 turning 16, 16 years old, and then --

8 Q. And why did you get involved in selling drugs?

9 A. Unfortunately, you know, the people I grew up around, you
10 know, my friends, my associates at the time, that was kind of a
11 cool thing to do in the neighborhood. Like, everybody that I
12 looked up to at that time in my life was a -- you know, was a
13 drug dealer and stuff, and I basically indulged in it following
14 them.

15 Q. What kind of drugs did you sell?

16 A. During that time, I sold crack cocaine, and I've sold
17 marijuana.

18 Q. And how long did you do that for?

19 A. A very short time. Like, it wasn't like an everyday thing
20 for me kind of like. I don't want to downplay. I did do it,
21 but it wasn't an everyday thing. I want to say maybe -- we
22 could say months or a year or so out of my life.

23 Q. When did you stop selling drugs?

24 A. I completely, you know -- I want to say I completely
25 stopped when I enrolled in college. I was -- I was completely

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Fraser - Direct

1 done when I enrolled in college.

2 Q. And why did you stop?

3 A. You know, I had -- at that time I had -- I had already
4 signed out of school. I had a child. You know, I really
5 have -- I wasn't getting much out of it. It was kind of a
6 waste. And at that time, my mom was still actually doing for
7 me. She bought me sneakers and clothes, so there was no need
8 for me to do it.

9 Q. And were you still selling drugs by October 2014 when you
10 got arrested in this case?

11 A. No.

12 Q. Let's talk about October 21, 2014. OK?

13 A. Yes.

14 Q. What did you do that morning?

15 A. That morning I got up. I got prepared for work. At the
16 time I had a dog. I walked my dog and took him back upstairs,
17 and I headed to work.

18 Q. And what time did you get home from work?

19 A. I can't recall exactly because my schedule -- some days I
20 used to work from, I think it was, 7:00 to 3:00, and then some
21 days I worked 8:00 to 4:00. That was my first week there,
22 though, so I believe I was working the 8:00 to 4:00 schedule.
23 I approximately got home, I want to say it was, probably
24 6 o'clock. It was approximately 6 o'clock. Maybe a little
25 after that.

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1 Q. And what did you do when you got home?

2 A. When I first got in the door, the first thing -- the first
3 thing I did when I walked in my apartment, the way my
4 apartment's set up, my mom's room used to be right there when
5 you walk in. I started to converse with my mom a little bit.
6 Actually, I had my first pay stub. They actually paid me for
7 my first week of work. I went and asked my mom a few questions
8 about that, and in the process of that conversation, my mom
9 told that she had a migraine, which she usually -- you know, my
10 mom gets them on and off. She said is she had a migraine, and
11 she asked me if I could go to the store for her.

12 From what I can recall, that day I was working in the
13 lining department that's like -- it's a fiberglass that's
14 basically put into the HVAC. So I told my mom I was going to
15 rinse off real fast before I went back out. I felt real dirty
16 from work. I rinsed off, and then I went back to the room and
17 asked my mom if she needed me to still go to the store for her
18 once I got all dressed and stuff.

19 Q. And what happened after that?

20 A. She said -- she said, yeah, whatever, and she's like, yeah,
21 she had a bad headache. She was -- she was drinking a glass of
22 water. She was like, yes, if you want, or if you don't mind.
23 I know you're tired. And I was like, yeah, no problem.

24 I walked to the back to get the money, or whatever,
25 and I put the money in my pocket. When I got my mom, back to

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1 her room door, she handed me three singles and told me to bring
2 her back, I believe it was, an aspirin or Advil, something to
3 that effect. It was for her headache.

4 Q. And where were you going to get the medicine?

5 A. I was going to a Rite Aid. Rite Aid was on, at the time,
6 Avenue D between Sixth and Seventh Street.

7 MR. BLOCH: Could we show Jawaun and the jury the
8 overhead.

9 Q. Jawaun, do you see this photograph in front of you?

10 A. Yes.

11 Q. And what is this photograph?

12 A. That's an overhead of Jacob Riis and a little bit of --

13 THE COURT: Can you use that microphone. Thank you so
14 much, sir.

15 A. I'm sorry. That's an overhead of Jacob Riis and a little
16 bit of the next housing complex called Lillian Wald.

17 Q. And can you mark on your screen?

18 A. Uh-oh. Sorry.

19 Q. Are you able to make a mark on the screen, Jawaun?

20 A. Hold on. No. Is this touch screen?

21 THE LAW CLERK: Yeah, it would be touch screen.

22 A. It's not allowing me.

23 MR. BLOCH: Is it possible -- we can come back to
24 this, too.

25 THE COURT: Yes, we can because this just doesn't work

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1 for me. If you want somebody to make marks, he has to make
2 marks on something that can be preserved for the record. This
3 screen is not preserved for the record, so this just doesn't
4 work.

5 MR. BLOCH: Understood, Judge. We'll come back to it.

6 BY MR. BLOCH:

7 Q. Jawaun, can you describe where approximately on this
8 photograph your apartment and your mom's apartment was, 911 FDR
9 Drive?

10 A. OK. Can everyone see it?

11 Q. Yes.

12 A. All right. If you go -- you have -- if you're on Tenth
13 Street and Avenue D, you walk straight back to where you see
14 that first -- where it says "FDR Drive" on the left-hand side.
15 If you walk straight back from -- if you on Tenth Street and
16 Avenue D and you make a half round around that circle and you
17 continue to walk straight back to the FDR Drive, right there on
18 the -- closer to the left-hand side of the screen, that first
19 FDR Drive where it says right there, Tenth Street and FDR
20 Drive, basically.

21 Q. Right.

22 A. I'm sorry. That building -- it's actually two buildings,
23 but that is exactly where my mom's building was at at the time,
24 where I resided.

25 Q. Is it essentially that building that looks like a number

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1 sign at the corner of Tenth Street and FDR Drive?

2 A. Yes.

3 Q. And approximately where is the Rite Aid?

4 A. It disappeared. Oh, OK. I got it.

5 All right. So if you go in between -- if you go in
6 between Eighth Street where it says Eighth Street and Sixth
7 Street, if you go in between on Avenue D, closer to where it
8 says Avenue D in between Eighth Street and Sixth Street, the
9 Rite Aid at the time was right there.

10 Q. And generally speaking, how do you get from -- well, how
11 did you go on October 21 from your mom's house to the Rite Aid,
12 the path that you walked?

13 A. Is there -- it's kind of hard for me to explain that whole
14 route to them.

15 Q. Is it generally through the neighborhood?

16 A. Well, there's a -- I'll try my best to explain it. There's
17 a path behind the building that I kind -- it's kind of like a
18 shortcut that takes you right past -- it's a playground there
19 on the courtyard of Eighth -- you see where it
20 says "East Eighth Street"? That's pretty much where the
21 courtyard's at. That's the playground. It's kind of a red
22 brick floor right in front of that.

23 So if you move a little to the right and you go
24 straight down that path, you'll see that's -- that's kind of
25 the entrance in between where my building is at and the

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1 building that's to the right of it. So there's a pathway
2 there. I walked through that pathway, and then I walk down
3 that alleyway. And there's a statue right there to the -- to
4 the right of where the hand is on the screen.

5 Q. So at some point you were walking down where it says Eighth
6 Street -- East Eighth Street near where the hand is on the
7 screen. The hand being almost the dead center of the map, is
8 that right?

9 A. Yes.

10 Q. What happened as you were walking to the store?

11 A. As I approached the back -- as I approached the back of the
12 complex or the back of East Eighth Street, there's actually --
13 there's two statues, the one I just brought up. So I bumped
14 into -- I didn't bump into it, but as I approached the first
15 statue, I made the right turn walking towards Avenue D. As I
16 walked towards the front of the complex, I noticed a woman that
17 I knew in the neighborhood named Diane sitting on the bench
18 with a Caucasian man.

19 Q. You said you knew Diane?

20 A. Yeah, I knew Diane from the neighborhood.

21 Q. How did you know her?

22 A. I did sell Diane drugs in the past, and she was kind of
23 like the -- she was -- she was around since I was a kid. She
24 was always around.

25 Q. How long before this date, October 21, had you sold Diane

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1 drugs?

2 A. It was months. It was months prior to this incident the
3 last time I sold her drugs. Probably like -- yeah, it was
4 months.

5 Q. Can you approximate how many months?

6 A. I want to say eight to ten. It possibly could have been a
7 whole year from then. I'm not really sure exactly, but it was
8 like eight months, or something like that, approximately.

9 Q. And what happened when you saw Diane?

10 A. So as I -- as I was walking towards -- as I walked towards
11 Eighth Street and Avenue D, Diane and, as I know today, UC 84,
12 they both got off the bench. They were sitting next to each
13 other on the bench. Diane got off of the bench first. UC 84,
14 he then got up right behind her within seconds. He was kind
15 of, I want to say, approximately eight to ten feet behind her.

16 As I said before, there's two -- it's two statues.
17 It's one -- like where that hand is at on the screen right now,
18 there's one statue to the right of it that we can't really see,
19 and there's another one to the left of it. It's kind of like
20 pillars to the park. They like pillars to that park, that
21 playground that's there.

22 As I approached the second statue closer to Avenue D,
23 myself and Diane kind of intersected with one another.

24 Q. And how long had you been outside when you intersected with
25 Diane?

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1 A. I want to say about a minute and a half, if that.

2 Q. Describe what happened when you encountered Diane?

3 A. So as I approached -- as I approached, you know, Diane was
4 walking towards me. She always referred to me as nephew or,
5 you know, her son. She refers to everyone in the neighborhood
6 like that. So she walks up and she's like -- she starts
7 saying, Nephew, as if she -- I can't recall the exact words she
8 used. I do recall, excuse my language, I just told her, like,
9 get the fuck out of here, and I kind of tried to walk around
10 her.

11 Q. And why did you say that to Diane?

12 A. 'Cause initially I speculated -- I wasn't sure, and you
13 know, it didn't hold too much significance to me, but I
14 speculated UC 84, I speculated initially that he was a cop.
15 And, you know, I didn't want to indulge in nothing with Diane
16 and I didn't have nothing for Diane. So it was -- I didn't
17 want to get caught up in any situation with him.

18 Q. Why did you think UC 84 was a cop?

19 A. As I stated before, you know, this is a predominantly --
20 when I say "predominantly," 98 percent Hispanic and African
21 American neighborhood. We rarely see, you know, Caucasian men
22 sitting in the neighborhood, you know, especially with Diane.

23 Q. And what happened after you told Diane to get out of here?

24 A. After I -- after I told Diane to get out of here, I -- you
25 know, I made an attempt to step around her. She proceeded, you

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1 know, towards the statue because I was kind of past the statue.

2 I'm sorry. Do we need the image still? I got it.

3 I'm sorry.

4 As I stepped around Diane, like I said, UC 84 was
5 eight to ten feet behind her, ten feet max. As I stepped
6 around her, he was basically right there in my line of walking.
7 And, you know, he immediately went into, you know, he was
8 looking for a fix, do I have this or do I have that? He was
9 asking me for drugs, basically. And, you know, as I proceeded
10 to walk towards the Rite Aid, UC 84 backed up with me, you
11 know. He was in my line of walking. It was either -- it was
12 either I physically move him out of my way or I basically run
13 away from him. And at that time, at that time I had no reason
14 to run away from him. I just was trying to get away from him.

15 Q. What were you saying in response to UC 84 when he was
16 asking you for drugs?

17 A. I told him I don't got any -- I told him I don't have
18 anything for him. Like, you need to step off. I ask him can
19 he get out of my way three or four times. And UC 84 was
20 extremely persistent. Like everything I said to him kind of
21 went in one ear and out the other. He was persistent and stuck
22 to the fact that, you know, he was looking for a fix.

23 Q. What happened then?

24 A. We basically -- from the first statue we -- from that
25 second statue, excuse me, from the second statue up until --

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1 there's a fence there. I really can't explain it on this
2 screen. But we stepped -- for about 30 to 40 feet he stepped
3 in my way. You know, as he's still asking me, I'm telling him
4 I don't have anything for him. And eventually UC 84 bumped
5 into one of the NYCHA fences. When he did so, I kind of
6 stepped around him, and that was like my only time to, you
7 know, possibly get away from him. But I was not fully around
8 him still, and in the process of me making that attempt to step
9 around him, he called my actual name. He called me Jawaun.

10 MR. BLOCH: With the Court's indulgence, Judge, could
11 Mr. Fraser step down and just demonstrate how he was walking?

12 THE COURT: Sure.

13 Q. Jawaun, you were describing you were walking, and I think
14 you said he was stepping with you. Can you just --

15 A. Yes.

16 Q. -- step down and show the members of the jury what you
17 mean.

18 THE COURT: Just walk past the jury box the way you
19 were walking.

20 THE WITNESS: OK. So as we step --

21 THE COURT: No, no, just walk past the jury. Don't
22 talk.

23 THE WITNESS: OK.

24 THE COURT: Just walk past the jury box the way you
25 were walking.

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1 (Witness demonstrates)

2 MR. BLOCH: Stepping forward. And Jawaun was --

3 THE WITNESS: That was my steps. UC 84, it was more
4 of an angle like so.

5 THE COURT: OK. The first thing Mr. Fraser did was he
6 stepped forward with one foot like toward the right and then
7 caught his left up with it, and then stepped with the left foot
8 toward the left and caught his foot up with it. Kind of like a
9 bride walk on an angle. And then he said something about the
10 undercover. I'd like him to come back on the stand and explain
11 that, what walking backward looked like.

12 MR. BLOCH: Thank you, Judge.

13 BY MR. BLOCH:

14 Q. Yes, Jawaun, can you explain what you just demonstrated,
15 you walking in zigzag fashion forward and Undercover 84 walking
16 backward.

17 A. Yes. Basically, you know, I was trying to step around him.
18 And as I stepped forward, he stepped backwards in the same
19 motion.

20 Q. You mentioned earlier -- well, you mentioned earlier that
21 he bumped into a fence?

22 A. Yes.

23 MR. BLOCH: Could I show PX 156.

24 Q. Jawaun, do you recognize this picture?

25 A. Yes.

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1 Q. Can you describe what's in this picture?

2 A. That's the front of 108 Avenue D. There's two red benches,
3 and that is the NYCHA fence that UC 84 backed up into.

4 Q. OK. So as he's walking, was he walking backwards or
5 forwards when he bumped into that fence?

6 A. Throughout the whole duration of his walk -- excuse me,
7 throughout the whole duration of his walk, he was walking
8 backwards.

9 Q. And so he backed into that fence?

10 A. Yes.

11 Q. And then -- one moment. Sorry, Judge.

12 Jawaun, what was going through your mind while you're
13 walking forward and UC 84 is walking backwards with you and
14 being persistent?

15 A. I just wanted to get to the store. In my mind, I was like
16 I need to get away from this dude. I don't really know exactly
17 what's going on, but throughout the whole duration, I did
18 speculate initially, with just seeing him in the circumstances
19 I was seeing him, like maybe this was a cop. But overall it
20 was I got to get away from this dude.

21 Q. And what happened when he backed into that fence?

22 A. I want to say -- I want to say he nipped the fence. He
23 backed into the fence, but he nipped it more so with his right
24 leg. And as he backed into the fence, when I stepped -- when I
25 made an attempt to, you know, fully step by him, that's when he

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1 called my name, Jawaun.

2 Q. And what did he say when, as best you recall, he called
3 your name?

4 A. Initially he said, Jawaun. Like, he just said my name.
5 And then that's what called my attention. I turned around, and
6 we looked each other in the eye. Once he seen that he had my
7 attention, he went on to say -- he's like, Jawaun, I know you.
8 Man, you live right there. You live in 911 on the fourth
9 floor. Then I was like, I said to him, What? And then after
10 the "what," he's like, I know you. You live right there on the
11 fourth floor. Your mom is Janice.

12 Q. And how did you feel when he said that?

13 A. I was -- I was more so surprised because my mom doesn't,
14 you know, affiliate herself with too many people in the
15 neighborhood, and it did cause a little concern. Like, I was
16 just like where's this guy from? How does he even know that I
17 live -- basically, the information he provided in that
18 statement was all accurate, so it did cause a little concern
19 for me.

20 Q. Did you ever ask him if he was a police officer? You said
21 you suspected he was a police officer. Did you ever ask him?

22 A. He -- he told me in the process of him backing up, like,
23 I'm not a cop. I just want to get high. I just need my fix.
24 I'm sick. Please, and stuff of that nature. And, you know,
25 like I said, I only speculated whether he was a cop.

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1 During that short time of conversing, I said it in a
2 regular manner, You a cop? And he was like, No.

3 Q. You heard UC 84's testimony about what happened with the
4 identification, right?

5 A. Yes.

6 Q. Can you describe what happened with the identification?

7 A. Yes. So as we indulge in that very, very short
8 conversation, UC 84, he initially offered that -- like when I
9 said, like, You a cop? I ain't no cop, man. He said he had
10 identification card like a regular individual and stuff of that
11 nature. And he initially offered to let me see his ID.

12 And as we went on in our short conversation, I said --
13 I asked him -- when he said he lived in my building -- he said
14 he lived in my building on the sixth floor. I told him, Let me
15 see ID, in a regular tone, in a regular manner. And UC 84, he
16 then started, like, digging in his pockets. He had on a long
17 green, like, Army jacket. He lift his jacket up, and he began
18 digging in his pockets, as he was digging for whatever he was
19 looking for, and he pulled his identification card out.

20 Q. And what did he do with the identification card?

21 A. He handed it over to me. He was like, Here, man, like
22 everything was cordial. He just handed it right to me.

23 Q. Why did you ask him for his ID?

24 A. As I said, I was curious. I was curious, concerned, and I
25 also was aware, like, a police officer -- you know, I was

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1 speculating he was a cop, but I was also aware a police
2 officer, they're not going to give you their ID. But, you
3 know, I was more so concerned that he claimed he knew my mom
4 and stuff of that nature.

5 Q. Did you snatch it from him?

6 A. No.

7 Q. Did you look at it?

8 A. Yes.

9 Q. What kind of ID was it?

10 A. It was a -- it was a -- an old -- the old New York State
11 identification card.

12 Q. And did you look at the address?

13 A. Yes, I did.

14 Q. And did it confirm what he had been saying to you?

15 A. No.

16 Q. When he handed you the ID, did you take off running with
17 it?

18 A. No.

19 Q. Why not?

20 A. I didn't have no reason to run with the identification
21 card. It just served -- it served no purpose to me at all, and
22 I just wanted to, you know, see if he lived in my building. I
23 wanted to confirm with my mother that she knew him, and that
24 was kind of the only way of me doing that.

25 Q. What did you do with the ID?

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1 A. I took a picture of it on my -- on my iPhone.

2 Q. And can you just describe how you took a picture of it.

3 A. Yeah. I held it in my left hand, just like so. And I was
4 actually standing up, though. I held it in my left hand, and I
5 just start -- snapped a quick picture of it.

6 Q. Indicating holding his left hand up and in his right hand
7 with --

8 A. With the iPhone.

9 Q. -- the cell phone.

10 Where were you in relation to UC 84 when you took the
11 photograph of the ID?

12 A. He was like -- we were in arm's reach of each other.

13 Q. And why did you take a picture of it?

14 A. Like I said, I was concerned, I was curious, and I kind of
15 was, like, calling his bluff, basically, knowing, like, a cop's
16 not going to give me his ID. I want to send to my mom to
17 confirm she actually knew him, because the address didn't
18 confirm, but just because the address wasn't there didn't mean
19 he didn't live in my building.

20 Q. What, if anything, did you say to him about money?

21 A. I'm sorry, can you say that again?

22 Q. What, if anything, did you say to UC 84 about money?

23 A. I didn't say anything to him about money. He initially was
24 telling me that he had money for his fix and stuff like that.
25 I never asked him about money. I never, you know, said

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1 anything to him about money.

2 Q. Did you ever see him with any money?

3 A. No. That was in his process of digging. I never
4 personally seen him with money. I do know that when Diane was
5 walking towards me, she had money in her hand, but I never seen
6 him with any money.

7 Q. Did you take any money from UC 84?

8 A. No.

9 Q. What happened after you took the picture of the ID?

10 A. OK. So once -- once the flash went off -- I had the ID in
11 my left hand. My phone was in my right hand. Once the flash
12 went off on the camera, like before it even went whoosh and
13 took the picture, UC 84 immediately grabbed my wrist that the
14 ID card was in.

15 Q. And how did he grab you? Can you describe that?

16 A. As I held it up, as I held the ID in my hand like so and I
17 was taking the picture with my right hand, once the flash hit,
18 it was like a vice grip. He kind of just grabbed me
19 immediately, like, once the flash went off.

20 Q. And did he say anything when he grabbed your wrist?

21 A. So I'm actually pretty small now, but I was even smaller
22 then. He pulled me close to him. He said something to
23 effect -- I don't know if he said, Are you trying to blow my
24 cover? He said something about his face, am I trying to show
25 his face, something of that nature.

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1 Q. Can you describe his demeanor when he grabbed your wrist
2 and he said what he said to you?

3 A. He turned into a whole other person because our
4 conversation, like all of the tension and agitation that was in
5 the conversation from initially, like just me asking him to get
6 out of my way and stuff, all of that died down. So at that
7 point he turned into a whole entire other person. He got
8 aggressive. His voice got a lot deeper. He kind of whispered
9 it to me. He didn't say it for the -- I guess the neighborhood
10 or the pedestrians that were around to hear. He kind of
11 whispered it to me.

12 Q. What happened when he grabbed your wrist?

13 A. So in the -- at the same time, you know, UC 84 grabs my
14 wrist. Once he grabs my wrist, the identification card falls
15 out of my hand, and I still have my phone, my iPhone, in my
16 right hand. As I started like -- I started to tug away from
17 UC 84. The people that were in the neighborhood, the ladies
18 that were outside and stuff, I think was maybe four ladies and
19 however people males was outside, they immediately started
20 screaming: The police, the police, the police, the police. So
21 in the process of me -- I'm tugging away from UC 84, my phone
22 is still in my right hand. I place my phone in my pocket. I
23 put my phone in my right pocket, and I'm still tug -- he's
24 holding my wrist very, very, very tight, like very close. But
25 he's holding my wrist tight, and he's kind of like manhandling

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1 me.

2 In the process, everyone is screaming: The police,
3 the police, the police. I look -- when I'm pulling away from
4 him, as I'm looking left and I'm looking right, I see the -- as
5 I know today is Detective Del Toro and Regina. They rushing
6 in. It was them two; they was rushing in. And by the grace of
7 God I was able -- I got away from UC 84, like right when --
8 right when Regina -- I think it was Regina. One of the two of
9 them -- right when one of them got next to me, I got, like, out
10 of UC 84's hold, and then that's when I took off running
11 initially.

12 Q. Why did you -- excuse me. Why did you run?

13 A. I was a hundred percent sure because of this encounter the
14 police were going to beat me up. You know, I've never been
15 brutalized by the police, but from what I've seen in my
16 neighborhood and knowing how the encounters go with the police,
17 I was a hundred percent sure they was going to beat me up.

18 MR. FRANCOLLA: Objection as to --

19 THE COURT: Overruled.

20 MR. FRANCOLLA: -- in the neighborhood.

21 Q. Where were you running, Jawaun?

22 A. I was making an attempt to get in the vicinity of my -- of
23 my building, or at least somewhere nearby my building, you
24 know, so my neighbors or somebody could notify my mom. Because
25 I know the police, they were going to do but so much in front

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1 of my mom.

2 Q. I'd like for you to show it on the demonstrative, but why
3 don't we just put it up.

4 Could we?

5 A. Could we use the demonstrative, or no?

6 Q. I just want you to -- with the demonstrative up, can you
7 just generally describe -- well, can we put the hand where the
8 incident happened.

9 So, Jawaun, is the hand on the screen approximately
10 where the encounter with UC 84 took place?

11 A. Yes, that's in the vicinity, yes, sir.

12 MR. BLOCH: And the hand on the screen, just for the
13 record, is on -- in front of a building that is basically at
14 the corner of East Eighth Street and Avenue D.

15 Q. From that point, Jawaun, which direction did you run?

16 A. OK. So I'm not aware if everyone can see, but there's two
17 paths. There's one on the left side of the red brick park, and
18 there's one on the right side. The one on the right side is
19 the one that I told you I initially walked through to get to
20 the Rite Aid. So if you move the hand a little to the right
21 and move it forward now, that path right there, that's the path
22 that I ran down.

23 So I continued to run down that path along that path
24 right there. At this time there was no police officers behind
25 me. It's just a -- it's a Dodge Caravan. It's a black Dodge

N3EHFra2

Fraser - Direct

1 Caravan, which is a minivan. As I approached right where that
2 hand is at, the caravan was maybe 20 feet, 30 feet behind me
3 now. My building, I would have to run to the right in order to
4 get to my building. I ran --

5 Q. Let me just -- sorry to interrupt.

6 A. Yes.

7 Q. Let me note for the record --

8 A. Sorry.

9 Q. -- what you are describing.

10 The path that Jawaun just described goes
11 up East Eighth Street toward FDR Drive, takes a left on the
12 path that is running parallel to Avenue D and ran until the
13 circle that's depicted on East Tenth Street. And this is on
14 PX 5.

15 Jawaun, what happened at that point?

16 A. OK. So we can't see on this image here, but there's
17 usually cars -- I'm sorry. There's usually cars parked around
18 this, like, circle/cul-de-sac thing. So the police officer, as
19 I -- as we approached that same area there, where that hand is
20 at is where the cars would be parked.

21 I kind of -- instead of running towards my building, I
22 ran across that circle. Because if I would have ran towards my
23 building, he would have possibly, you know, caught me with the
24 car. So I was, you know, now at this time -- I'm in the
25 vicinity of my building at this time, and I got apprehended

N3EHFra2

Fraser - Direct

1 right there. You can't see, but it's pathways in between that
2 circle. It's split into four -- split into four quarters,
3 basically.

4 Q. Can you describe how you got apprehended.

5 A. OK. As -- as I crossed the circle, the minivan, they rode
6 on the sidewalk there, on the right-hand side, not where
7 it says East Tenth Street, the opposite that. They drove on
8 the sidewalk, and then they jumped onto the street right there.
9 So I was right where the hand was at crossing the flag pole,
10 basically still, like, running. The minivan approached. They
11 slid the back door back. The minivan was still moving. It
12 stops. Like, it halts right there, and the officer in the back
13 drew his firearm. And he was -- you know, he screamed, Get
14 down, get the -- down, whatever. I immediately put my hands
15 up, and I stopped in my tracks.

16 Q. And what happened after that?

17 A. The officers approached me, you know. They immediately --
18 immediately -- actually, they still had they guns out. Before
19 they even approached me, they're telling me to stop, get out.
20 I put -- so as I crossed, I put my hands up. The officer still
21 had his firearm pointing towards me, telling me to get down.
22 As I went to get down, you know, now another officer's there.
23 He grabs me. They cuff me immediately and stand me up.

24 Q. Can you describe briefly what happened after they stood you
25 up.

N3EHFra2

Fraser - Direct

1 A. After they stood me up, they did like, I guess, a basic
2 search on me. They checked my waistband. They pat-frisk me.
3 You know, they roughed me up a little bit, pat-frisk me,
4 checked everything thoroughly. Checked my pockets, around my
5 socks, and stuff of that nature. And then they -- we stood
6 there for about a few minutes. They said they was waiting for
7 somebody to come identify something, or something of that
8 nature. The next thing I know, like, a black -- it wasn't a
9 minivan. It's like a bigger van, like a construction van, I
10 would say. That van pulled up, and they then placed me in the
11 back of that van.

12 Q. Before you were put in the van, just going back to the
13 search, do you recall which officers searched you?

14 A. I can't recall exactly what officers searched me, but I do
15 recall, Detective Regina, he just had -- he kept hold of me the
16 whole time. Like, he stood there with me the whole time. I
17 don't recall exactly which one of them searched me because they
18 also searched me numerous times.

19 Q. And how many officers were present while you were being
20 searched?

21 A. It was the -- the Manhattan South Narcotics and then, like,
22 the -- the -- like, not the plainclothes, the uniform, a few
23 more uniform officers, they approached the scene, but when they
24 were doing the search, it was just the few narcotics.

25 Q. Can you approximate how many officers were around when

N3EHFra2

Fraser - Direct

1 you --

2 A. It was between four and six of them that was on the scene,
3 including the ones in the cars, and stuff like that.

4 Q. And what did they find when they searched you?

5 A. I had my -- I had my New York State ID, my -- my phone. I
6 was issued a work phone. My phone, my work phone, and cash. I
7 think I had approximately \$128, something like that. And my
8 keys, I had my house keys.

9 Q. Did they find UC 84's identification in your pocket?

10 A. No.

11 Q. Jawaun, did you hear testimony this week that you balled up
12 your fist at someone that you believed to be a police officer?

13 A. Yeah, I heard that several times, yes.

14 Q. What do you think of that allegation?

15 A. It's simply not true.

16 Q. Did you hear testimony that you reached into your waistband
17 as if you were reaching for a gun while a group of police
18 officers were running at you?

19 A. Yes.

20 Q. And what do you think of those allegations?

21 A. It's false as well.

22 Q. Why wouldn't you do that?

23 A. I had no reason to. I had a job of a lifetime, and that's
24 just simply -- that doesn't make sense. And to rob you for \$20
25 and I have 120-something dollars in my pocket, that didn't make

N3EHFra2

Fraser - Direct

1 sense at all.

2 Q. You mentioned that you were -- a van pulled up?

3 A. Yeah. It was like -- they refer to them in the
4 neighborhood, or police even, it's called, like, a wagon, like
5 a paddy wagon. Usually you see it's numerous traffic cops and
6 stuff in them before they do they drops, and stuff like that.
7 It was something like that, but it was all black. It had no
8 windows in the back at all. When you went in, it was kind of
9 like a cage inside of the back of the van.

10 Q. And how were you positioned in the van?

11 A. There's like a -- I can't recall if it's wooden or it's
12 steel. It's kind of two benches. It's one like if I'm looking
13 into the van, it's one set on the left and there's one set on
14 the right. And they're like, I want to say, six to
15 eight inches wide, and it stands on -- it stands on two legs.
16 So you're kind of placed on the bench, and they cuff your hands
17 behind your back, and then they put a handcuff on that -- on,
18 like, the chain in between the cuff. They put a handcuff on
19 that and cuff you to the fence, basically, that's in the van.

20 Q. And where did the van take you?

21 A. We drove -- we drove around for a while. I don't recall
22 exactly how long we drove around, but we drove around for a
23 while. And we went to the -- I believe it's the Ninth Precinct
24 or Fifth Precinct. It's on Fifth Street between First and
25 Second Avenue. I believe that's the Ninth Precinct. I'm

N3EHFra2

Fraser - Direct

1 not -- I can't recall right now.

2 Q. Can you describe what happened at the precinct?

3 A. So when I got -- when we first got to the precinct, you
4 know, they did their regular intake. We went to the back.
5 They did, like, a basic search. They did a basic strip search
6 quickly, and they took my shoelaces. I had, like, a string to
7 my sweatpants. They took that string, and they took the string
8 out of my -- my hoodie, actually. And they placed me in a
9 holding cell.

10 Q. Did you have any communications with the officers in the
11 precinct?

12 A. I was making an attempt to communicate with them, you know,
13 as they -- they fraternize with one another. I was trying to
14 figure out what I was here for, why was I still be detained
15 hours later.

16 Q. And how did they respond to your asking why you were being
17 detained?

18 A. I was told numerous times, they said: Oh, somebody going
19 to be with you. Lieutenant's coming; sergeant's coming. Give
20 it a few minutes. Calm down. Somebody's coming to talk to
21 you. Somebody's coming to talk to you. And eventually, I
22 don't recall exactly which officer it was, I just remember that
23 he had spiky hair and -- kind of like spiky hair. He finally
24 came to the holding cell. I'm like, Why y'all still holding
25 me?

N3EHFra2

Fraser - Direct

1 Now, at this point I was there for, I want to say,
2 five or six hours, and I'm like, why am I still being held?
3 And he kind of told me, like, Oh, why you being held? You're
4 being held because you're not going home. You're charged with
5 robbery on an officer. You're not going home today, buddy.

6 Before I could even respond, he stepped away from me
7 and giggled, and that was kind of the last of the conversing
8 with the officers.

9 Q. And how did you feel when he told you for the first time,
10 five hours after you were arrested, that you were being charged
11 with robbery?

12 A. Knowing the severity of robbery and stuff of that nature,
13 anything to do with the police, I was like it's no way. I was
14 like, robbery of what? I didn't understand where they got this
15 concept of I robbed. My main thing was I got to get to work
16 tomorrow. I thought maybe this dude -- I don't know if this
17 dude is playing and they're trying to play mind games, but it's
18 like I got to get out of here as soon as possible.

19 Q. Jawaun, I'd like to talk about the legal process that you
20 went through after you left the precinct. OK?

21 A. Yes.

22 Q. Were you released from the precinct?

23 A. No.

24 Q. Where did you go?

25 A. Initially, I went to central bookings. That's at

N3EHFra2

Fraser - Direct

1 approximately 100 Centre Street.

2 Q. And what happened at 100 Centre Street?

3 A. I had to go through the central booking process. You know,
4 that's where they book you, they take your pictures, and stuff
5 of that nature. And I had to wait to -- I had to wait. You
6 know, I think it was a day or two I had to wait to be arraigned
7 my first court day.

8 Q. When you say "arraigned," what's being arraigned?

9 A. That's kind of your -- you know, to my knowledge, that's
10 like your first court date when you're charged with a crime,
11 and that's kind of like you find out whether you're going to
12 have a bail set or you're going to be released and challenge
13 the case from the outside.

14 Q. And at arraignment you're given the option to plead guilty
15 or not guilty?

16 A. Yes.

17 Q. And how did you plead?

18 A. Not guilty.

19 Q. And what happened at that arraignment hearing?

20 A. A bail was set.

21 Q. And can you describe what it means for bail to be set?

22 A. So -- so when a bail is set, basically, you know, the judge
23 or the prosecutor, they come up with -- I don't know how they
24 come up with the numbers exactly, but they'll say you have to
25 pay this amount of money to be released to challenge the -- you

N3EHFra2

Fraser - Direct

1 know, the case from outside. And you could either go through a
2 bails bond or you could -- I used -- when I bailed out that
3 time, I went through a bails bond, and -- or you can, I guess,
4 pay the whole bail.

5 Q. And so once bail was set, could you pay it right away?

6 A. Are you saying did I have the funds to pay it, or can you
7 go and pay it immediately?

8 Q. Thank you.

9 Were you personally able to pay the bail immediately?

10 A. No. As I said, you know, that was my first week actually
11 working. So I had to call my mom, and, you know, my mom
12 assisted me with getting out.

13 Q. So where did you go after your arraignment?

14 A. After arraignment, I was remanded and held with the bail,
15 with the set bail. At first they placed me in Manhattan. It's
16 called, I think, MDC. Manhattan holding facility, basically.
17 And then the next morning I was transferred to Rikers Island.

18 Q. How long were you in Rikers Island at that stage of this
19 proceeding?

20 A. I want to say three days maybe. Three to five days, in
21 between there.

22 Q. Ultimately, were you able to bail out?

23 A. Yes. My mom -- my mom and my family assisted me with
24 bailing out. And over time, with my job and stuff, I paid
25 everyone back that assisted me with that.

N3EHFra2

Fraser - Direct

1 Q. Can you describe what Rikers Island is like?

2 A. Rikers Island is like -- for someone that's never been
3 there, Rikers Island is like gladiator school, especially for
4 the younger crowd. You know, when you go in there, you
5 basically placed with a whole bunch of, you know, people
6 that's -- you know, they're going through the same thing you're
7 through or they're in worst predicaments.

8 So, overall, the best way to say what Rikers Island or
9 jail is like, you know, it's hell on earth. It's basically
10 what people explain hell to be or what we all know, like this
11 is hell or go to hell and stuff like that. When you're on
12 Rikers Island, the main thing you're thinking is this got to be
13 hell on earth, you know. It's one of the worst places you
14 could ever be placed in New York State.

15 THE COURT: Is this a good time to break for the day,
16 because I think you're about to start another topic?

17 MR. BLOCH: Thank you, Judge. Sure.

18 THE COURT: Why did I guess that?

19 MR. BLOCH: Good eye.

20 THE COURT: All right. So we're going to stop for the
21 day. We're going to resume Mr. Fraser's testimony first thing
22 in the morning, which is 9:30 tomorrow morning. We're back to
23 our normal schedule. Thank you for indulging me this morning.
24 I really appreciate it.

25 Don't discuss the case tonight. Keep an open mind.

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Fraser - Direct

1 We're marching right along. I'll see you in the morning.

2 (Jury excused)

3 (Continued on next page)

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1 (Jury not present)

2 THE COURT: OK. You can step down, sir.

3 What do the plaintiffs have left to do after
4 Mr. Fraser testifies? Can we use a microphone to answer that
5 question.

6 MR. RUDIN: Sure. Dr. Kucsma, the economist.

7 THE COURT: Dr. Kucsma, the economist.

8 MR. RUDIN: And --

9 THE COURT: And then you're going to rest?

10 MR. RUDIN: Then we're going to rest.

11 THE COURT: OK. Mr. Francolla, what happens next?

12 MR. FRANCOLLA: We will be calling three witnesses:
13 ADA Sangermano, pursuant to the parties' agreement. Katie
14 Flaherty will testify just in addition to what's come in. And
15 Diane Smith was also subpoenaed to be here tomorrow, and we
16 expect that she will be.

17 THE COURT: So I emailed to all of you -- I didn't do
18 anything. Josie emailed to all of you and gave -- handed out
19 copies, I think, I'm not sure, of where I am with the charge.
20 So we can start talking about that at some point tomorrow, but
21 I'd like to get through the testimony. OK?

22 MR. RUDIN: Does your Honor anticipate that we'll sum
23 up on Monday or Friday?

24 THE COURT: Well, that's an interesting question. Ask
25 me that question at 2 o'clock tomorrow afternoon. I'm always

N3EHFra2

1 loath to extend things. On the other hand, and I should tell
2 you this, because we're a week late, because we're a week late,
3 I had to not be in session on Tuesday afternoon because I had
4 to do all the criminal stuff I'd put off from the week before.
5 Because we're a week late, I have to teach a class at Columbia
6 Law School on Monday afternoon. It's been arranged for seven
7 months. So whether they're deliberating or what, we're going
8 to quit at 3:15 on Monday afternoon so I can go to Columbia.
9 There's no way around that.

10 I'd like to go quickly, I really would. I appreciate
11 there's a lot to sum up, but let's talk about it at the end of
12 the morning tomorrow when we have a better idea of where we
13 are. OK?

14 MR. FRANCOLLA: Your Honor, just one logistical
15 question, and I promise it's not because they are not enjoying
16 this process, but due to the push back of the trial that we
17 had, Detective Del Toro actually has a scheduled out-of-state
18 vacation. Since he's now done, would it be a problem if he's
19 excused?

20 THE COURT: And I'm not going to tell the jury why.

21 MR. FRANCOLLA: Yeah, of course, if that -- you know.

22 THE COURT: OK.

23 MR. FRANCOLLA: Thank you, your Honor. Much
24 appreciated.

25 THE COURT: Not a problem.

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1 Okeydokey. All right. I'll see you in the morning.

2 MR. FRANCOLLA: Thank you. Have a good night, your

3 Honor.

4 (Adjourned)

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N3GHFral

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 JAWAUN FRASER,

4 Plaintiff,

5 v.

20 Civ. 4926 (CM)

6 CITY OF NEW YORK, et al.,

7 Defendants.

Trial

New York, N.Y.
March 16, 2023
9:50 a.m.

10 Before:

11 HON. COLLEEN McMAHON,

12 District Judge

13 APPEARANCES

14 JOEL B. RUDIN
Attorneys for Plaintiff
15 -and-

BLOCH & WHITE LLP
16 BY: MICHAEL L. BLOCH
BENJAMIN D. WHITE
17 CRISTINA ALVAREZ

18 SYLVIA HINDS-RADIX
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19 Attorney for Defendants
20 BY: BRIAN C. FRANCOLLA
CAROLINE McGUIRE

N3GHFral

1 (Trial resumed; jury not present)

2 THE COURT: OK. You ready to keep going?

3 THE WITNESS: Yes, your Honor.

4 THE COURT: Come on back up.

5 MR. BLOCH: Judge, I just want --

6 THE COURT: He can still come back up.

7 MR. BLOCH: Oh, yeah.

8 THE COURT: Any reason why he can't come back up?

9 MR. BLOCH: No, no, no.

10 Good morning, Judge. There's one issue that
11 Mr. Francolla and I were discussing related to some of the
12 cross-examination of Mr. Fraser on the parole transcript, and
13 all I'm asking for at this point is for a -- well, we can
14 either iron out now or a five-minute break after direct. The
15 issue is Mr. Francolla indicated to me that he plans to ask
16 some questions about --

17 THE COURT: Hang on.

18 OK. Keep going.

19 MR. BLOCH: There are some passages in the parole
20 transcript that make reference to either Mr. Fraser's record,
21 criminal record, or gang activity, guns, things like that. And
22 Mr. Francolla just indicated to me that there are some
23 potential cross-examination questions he may have.

24 THE COURT: Well, folks, we've got to do that question
25 by question. All right? So that's how we're going to spend

N3GHFral

1 our lunch hour. We're going to get him off the stand when his
2 direct is done, we're going to put the next witness on the
3 stand, and during lunch we're not eating. We're going to go
4 question by question what he wants to say and whether I'll
5 allow it. I've already made a ruling *in limine*.

6 MR. FRANCOLLA: Your Honor, I can just -- it's not I
7 think -- Mr. Bloch doesn't know the specifics because,
8 obviously, he hasn't finished.

9 THE COURT: He doesn't, but you do.

10 MR. FRANCOLLA: So I only envision -- basically, I'm
11 not going to elicit any of that information. I think the
12 concern we discussed yesterday was there were passages that
13 were direct impeachment of the version of the incident --

14 THE COURT: Yes.

15 MR. FRANCOLLA: -- that has, like, his prior record,
16 then goes into the facts. I would strike that.

17 THE COURT: His prior record can't be read.

18 MR. FRANCOLLA: Exactly. I would edit it accordingly,
19 show him before I read it, and then do it with just without
20 that being there.

21 THE COURT: I can't believe it hasn't been done
22 already.

23 MR. FRANCOLLA: Well, it's cross, so I didn't know it
24 would be relevant impeachment until I heard Mr. Fraser testify.
25 So, you know, it's not -- again, it's not complicated.

N3GHFral

1 THE COURT: You have heard him testify. You took his
2 deposition. You knew exactly what he was going to say.

3 MR. FRANCOLLA: I mean, well, I expected it.

4 THE COURT: Duh. It's a trial.

5 MR. FRANCOLLA: It's a trial.

6 THE COURT: We don't do trial by combat anymore. OK.

7 (Continued on next page)

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N3GHFra2

Fraser - Direct

1 (Jury present)

2 THE COURT: Hi. Have a seat. Get comfortable.

3 Can we maybe open those blinds? It's so dark in here.
4 It's not like the sun's shining.

5 Why don't you get set up.

6 All right. You have a seat. Good morning,
7 Mr. Fraser. You're still under oath.

8 MR. BLOCH: May I inquire, Judge?

9 THE COURT: You may inquire.

10 JAWAUN FRASER, resumed.

11 DIRECT EXAMINATION CONTINUED

12 BY MR. BLOCH:

13 Q. Good morning, Mr. Fraser.

14 A. Good morning.

15 Q. We left off yesterday talking about the period between when
16 you went to Rikers Island right after arraignment and trial.
17 That's the period I want to focus on. OK?

18 A. I'm sorry. You said from when I went to arraignment for my
19 first court date up until I went to trial?

20 Q. Correct. So you went to Rikers Island, right?

21 A. Yes.

22 Q. And then you were released from Rikers Island a few days
23 later, correct?

24 A. Yes.

25 Q. And then --

N3GHFra2

Fraser - Direct

1 A. I was released after my bail was posted.

2 Q. Correct. Thank you.

3 And how did you spend -- well, how long did it take
4 from that time until you had a trial?

5 A. It was approximately 13 months.

6 Q. And what did you do during that 13 months?

7 A. During that 13 months, I continued to go to work and
8 participate in my apprenticeship program, and I went back and
9 forth to court and challenged the case from outside.

10 Q. And where were you working during that time?

11 A. I was still a Local 28 employee. I worked at United Sheet
12 Metal up until, I believe it was, February of that year, of the
13 following year of 2015.

14 Q. And you said you worked at United Sheet Metal up until
15 February of 2015. What did you do after that?

16 A. I was laid off from United Sheet Metal, and I then went to
17 work for Nicholson and Galloway Roofing Inc.

18 Q. Why were you laid off from United Sheet Metal?

19 A. Because -- because I had a pending -- pending case. And
20 United Sheet Metal, they had job sites in certain buildings,
21 such as Empire State, the World Trade, Bloomberg's place. When
22 you have a pending case or you have a conviction, a felony of
23 any sort, you're not allowed to work in those locations. So I
24 was laid off because I basically couldn't go to the job sites
25 they had available.

N3GHFra2

Fraser - Direct

1 Q. And what is Nicholson and Galloway?

2 A. Nicholson and Galloway is also a subcontractor for Local
3 28. It's basically another sector of Local 28. It's like a
4 roofing sector and finish work.

5 Q. You mentioned that one of the things you did during that
6 period is you went back to court, right?

7 A. Yes.

8 Q. Approximately how many times did you go back to court to
9 fight your case?

10 A. Are we including trial or just regular court dates?

11 Q. Let's do both.

12 THE COURT: Start with regular court dates and then
13 the trial.

14 A. I believe I went to 12 to 14 regular court days.

15 Q. And how many for trial?

16 A. I believe my trial was eight to ten days in total, between
17 there.

18 Q. So would it be fair to say that you came back to court to
19 fight this case somewhere in the neighborhood of 20-plus days?

20 A. Yes.

21 Q. Did you retain a lawyer?

22 A. Yes.

23 Q. And what was his name?

24 A. Geoffrey Stewart.

25 Q. And what did you pay Mr. Stewart?

N3GHFra2

Fraser - Direct

1 A. Before trial the fee was \$6,500, and when I went to trial,
2 I had to pay \$6,500 again.

3 Q. And how did you come up with that money?

4 A. Initially, after my -- after I bailed, my mom and my family
5 helped me post bail, I paid them back for that, and my mom also
6 helped me retain Geoffrey as my attorney.

7 Q. Still focusing on that period between the time you bailed
8 out and trial, what, if anything, was happening in your
9 personal life?

10 A. As I said, I still was participating in my -- I was going
11 to school at the apprenticeship school for one week out of the
12 month and one day each week, and I also had a kid, actually,
13 that year, in June of 2015.

14 Q. And what was that child's name?

15 A. Jawaun Fraser Jr.

16 Q. During the period of time between bailing out and trial,
17 while you're waiting for trial, can you describe what's
18 generally going through your mind regarding this case.

19 A. Overall, it was a stressful, you know, period of my life.
20 You know, I was thinking, like, you know, having that burden
21 over my head, you know, not knowing whether or not I'm going to
22 prison basically was like -- I was in shock for, you know,
23 majority of the time just thinking that I was actually
24 challenging, you know, a robbery charge and me not
25 understanding, you know, where this robbery charge even came

N3GHFra2

Fraser - Direct

1 from, how it even came about.

2 Overall, it was just a big stress, a big burden. Kind
3 of like my connections -- losing my connections with my family
4 and my relationships with them, it kind of started then because
5 I was so frustrated. And now I would like -- I guess I had
6 some kind of guard up and, you know, pushed certain people
7 away.

8 Q. By the way, Jawaun, you heard your mom testify, obviously,
9 right?

10 A. Yes.

11 Q. And you mentioned yesterday that you had somewhere in the
12 neighborhood of \$120 in your pocket on the day that you were
13 arrested?

14 A. Yeah. It was like -- it was, like, 120, \$128, something
15 like that, yes.

16 Q. Did you hear your mom testify that she picked up \$100?

17 A. Yes.

18 Q. And what happened to the difference?

19 A. The police officers, they allowed me to go through the
20 system with the remainder of the money that was left.

21 Q. So you mentioned that you had a trial about 13 months after
22 you bailed out, correct?

23 A. Yes, my trial was November of the following year, yes.

24 Q. How long was your trial?

25 A. From start to finish, it was eight to ten days, I believe.

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Fraser - Direct

1 Q. And generally speaking, who testified at your trial?

2 A. The police officers.

3 Q. And what was going through your mind during the trial as
4 you listened to the police officers testify?

5 A. My shock. Me being in shock, actually. I became, like,
6 more so devastated and, like, frustrated. I couldn't believe
7 that, you know, they were actually fabricating this story, you
8 know, about I stole an identification card and stuff of that
9 nature. And I was just in disbelief that it was actually, you
10 know, going on right before my eyes.

11 Q. Can you describe the moment that the jury came back and
12 found you guilty of robbery in the third degree?

13 A. Would you like me to say detail for detail how the whole
14 process went or just how I was feeling?

15 Q. Yeah, I guess let me break it down.

16 Just before we get to how you were feeling about it,
17 can you just describe what happened in court?

18 A. When the verdict was reached?

19 Q. Yeah.

20 A. Well, I remember, you know, the jurors coming -- from what
21 I can remember the jurors came back. Mr. Stewart -- I was
22 standing outside the courtroom, I believe, right after lunch.
23 And Mr. Stewart, he shot me a text, he said, you know, they've
24 reached a verdict. I remember coming back in the courtroom.
25 You know, I sat down. My palms were sweating, and I just kept

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1 taking deep breaths, deep breaths, and deep breaths. And then
2 the jury came in. I don't recall exactly what they read. I
3 think the clerk told the jury to read the verdict or one of
4 them stood up. I can't recall exactly who read it. It was
5 something like the people have reached a verdict, and they
6 read, like, the docket number and stuff of that nature.

7 And the first charge, the main charge, the robbery in
8 the -- robbery in the second degree was found not guilty for.
9 They read that verdict first. You know, when that verdict was
10 read, you know, I had a sigh of relief. I looked over to
11 Geoffrey with positive thoughts. I was still very optimistic
12 about the situation knowing the circumstances. And, you know,
13 within seconds they read the second charge right behind it,
14 the -- I think they refer to it as the lesser charge. And
15 within seconds they read that verdict, which was robbery in the
16 third degree, and I was found guilty for that.

17 Q. And how did that feel, what whole experience?

18 A. When it was going onto me, when it was actually going on,
19 it was like an out-of-body experience. As everything was being
20 read and stuff, I felt as if -- like I had a bird's-eye view on
21 the situation of what was going on. And it was just
22 devastating, like, after the fact, you know. I was, you
23 know -- it was just so much going on, the court officers and
24 everything. It was just -- it was a lot.

25 Q. Do you recall what was going through your mind the moment

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1 that they read those verdicts?

2 A. I -- I remember I started thinking about my kids. You
3 know, this is impossible. I didn't do this. I'm innocent. I
4 can't believe this is happening. And oddly enough, I began to
5 think about my job and how I was going to explain it to my
6 employers. And, you know, I just -- I immediately was took
7 into the -- like, to the back to a holding cell, and I -- I
8 just sat there and cried.

9 Q. This was sometime in November of 2015, is that right?

10 A. When the verdict was reached?

11 Q. Yeah.

12 A. It was -- it was two days before Thanksgiving that year.

13 Q. The year is 2015, right?

14 A. Yes.

15 Q. Were you sentenced right away?

16 A. No.

17 Q. What happens procedurally between the time you're convicted
18 and the sentencing? What do you experience?

19 A. When you're -- when you're challenging a trial case, you
20 know, from outside, if you're going to trial -- I challenged my
21 case from -- from outside, and I went back and forth, you know,
22 each day. I believe it was eight to ten days I went back and
23 forth to court. And so I was remanded when I was found guilty.
24 They remanded me right then and there.

25 So what happens then, you get placed in, like, a

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1 reception housing unit temporarily, and you also -- I'm sorry,
2 you receive a sentencing date. I believe I received my
3 sentencing date at my -- when I got remanded, to come back
4 basically for sentencing. And you get placed in a -- like a
5 temporary housing unit, and then you'll be transferred from
6 there to Rikers Island until your sentencing date.

7 Q. And during the time between your conviction and your
8 sentencing date, are you also interviewed by probation?

9 A. Yes. I don't know if it's after the sentencing date or
10 before, but you do get a probation interview, yes.

11 Q. And did they ask you about this offense?

12 A. Yes.

13 Q. And what did you tell them after you were convicted? What
14 did you tell probation?

15 A. I believe when I initially spoke to probation and I was
16 asked about this incident, I believe I told them that I was
17 innocent -- innocent, excuse me.

18 Q. Approximately when were you sentenced?

19 A. I was sentenced on January 13 of 2016.

20 Q. And what were you sentenced to?

21 A. To two years minimum and six years maximum.

22 Q. Can you describe what that means, to be sentenced to two to
23 six?

24 A. In the system, it's something called the indeterminate, and
25 if you have a determinate sentence, you get flat time. If they

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1 say you have two years, you he'll get two years, and also
2 you'll get post-release, which is a form of parole. If you
3 have an indeterminate sentence, like myself, they'll give a
4 minimum number, which mine was two years, and a maximum number,
5 which mine was six years, and you get a few parole dates in
6 between or, like, days that you could possibly be paroled if
7 your program's satisfied you've reached the requirements and if
8 you're basically granted parole.

9 Q. So if you get two to six, you serve a minimum of two?

10 A. Yes, you have to serve -- before you receive any dates or
11 before you ever go on final parole and stuff like that, you
12 have to serve your minimum time.

13 Q. And who decides whether you get out at two or whether you
14 will then go on to serve the remainder of that indeterminate
15 sentence?

16 A. Overall, it's a mixture of things. You have to, you know,
17 not have a disciplinary record; you have to be program
18 satisfied. And overall, though, the parole division has the
19 final say with whether you're released or not.

20 Q. So it's up to parole?

21 A. Yes.

22 Q. Can you describe what was going through your mind when you
23 were sentenced to two to six years?

24 A. You know, the first thing that went through my mind was the
25 amount of time that I was going to, you know, miss with my --

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1 because Mr. Stewart explained it to me that I would have to
2 serve that minimum of two years regardless. So first thing I
3 thought was I was losing two years with my children. My son
4 was, I believe, five months -- four or five months, if that,
5 when this took place. And like I said, I was still in
6 disbelief, you know, that I was actually going through this,
7 you know, knowing that I -- I didn't do this, and I had to
8 serve at least a minimum of two years in prison.

9 Q. I want to talk about serving the sentence itself, OK?

10 A. Yes, sir.

11 Q. Where did you begin your sentence?

12 A. Well, my sentence began once I was remanded. So it started
13 in Rikers Island, and then I was -- when I went to state
14 corrections, I went to -- initially, I went to Ulster
15 corrections facility, which is like a reception, a reception
16 jail. And from there I was transferred to Lakeview Shock
17 Incarceration Correctional Facility, and that's actually a
18 program for early release. And then from there I was
19 transferred to Greene Correctional Facility.

20 Q. So you start in the reception facility?

21 A. Yes.

22 Q. And then you said you went to Lakeview Shock?

23 A. Yes, Lakeview Shock Incarceration Correctional Facility.

24 Q. And what is Shock?

25 A. Shock is military base early release program. The program

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1 usually runs from six to eight months, depending on when you're
2 placed in a platoon. A platoon is basically like your housing
3 unit, and they refer to that because the program is military
4 based. And it's pretty much -- it's a program that the state
5 offers you to be released early, and you basically program and
6 run on a military schedule for that six to eight months.

7 Q. And what is the goal of the Shock program as it was
8 explained to you?

9 A. Well, you know, as the program was explained to me, the
10 goal is to rehabilitate and -- rehabilitate you and, you know,
11 prepare you to return back to the society. But as I -- as I
12 went to the program and seen for myself, the program is
13 basically, you know, to knock you down to your lowest level and
14 build you up throughout the process of that six to eight
15 months, you know, and to get you to understand that, you know,
16 you're there because you -- the drill instructions always refer
17 to it as you earned your crime and, you know, you're here
18 because it's your fault. So that was the main thing going on
19 there.

20 Q. When you say that the program is to knock you down, can you
21 describe some of the -- can you describe what you mean by that,
22 what sorts of things you went through.

23 A. In Shock, you know, unfortunately, you're treated like an
24 animal from when they -- when you get there on the bus. I
25 would say it's actually, in my opinion -- I haven't been to the

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1 military, so I'm not sure, but it's a little more intense than
2 the military. The minute you get there, they're forcing into
3 your head: You're a criminal, this is what you did, you
4 deserve to be here, and they kind of making an attempt to force
5 you to believe those things. And -- and they force you to
6 believe you're -- like you earned your time there. You know,
7 the way that they speak to you, the way that you actually have
8 to speak to them to be allowed to speak to them is extremely
9 degrading. And, you know, down to the visits with your family,
10 it's just -- it's overall the program is degrading.

11 Q. How do they try to sort of drill into you that you
12 earned -- that you earned your time, you earned your crime?
13 What specifically do they actually say to you to sort of drill
14 that concept into you?

15 A. Well, every day in Shock, on Shock schedule, every single
16 day in Shock you get up between 4:35 a.m. and 4:47. It's an
17 odd number, but that's just the way they run things. You go to
18 the PT. You go to PT, which is physical training. You do that
19 for about an hour, then you run for 30 minutes. And the
20 remainder of your day you either are a -- you're an employee in
21 the facility or an outside work crew and you do programming.

22 Throughout the programming that you do, which is like
23 group meetings such as -- everyone's probably a little more
24 familiar with, like, AA meetings. It's kind of like that, but
25 it's called ASAT when you're incarcerated. It's Alcohol and

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1 Substance Abuse Treatment. So it's kind of a combined group
2 because you guys speak about everything.

3 But we have to introduce ourselves every day, and as
4 such it's basically like it's a -- if you don't mind, it's
5 basically you introduce yourself, you say: I, Inmate Fraser,
6 16R0176, I earned the crime of robbery in the third degree and
7 that is what brought me here, and I am here to rehabilitate
8 myself. And that's basically your introduction in every group,
9 and if you don't -- if you're not inclined to use that
10 terminology during group meetings and throughout the program,
11 you basically will be -- you get something called a "learning
12 experience," which is where they'll give you a log, and that
13 log will be your best friend for however long -- sorry, for
14 however long or indefinitely, until they're ready for you to
15 put it down. And -- excuse me. Like I said, they'll give you,
16 like, a log or learning experience and -- or you'll be
17 punished, basically, with physical training.

18 Q. Were you able to see your family in the period, the six to
19 eight months you were in Shock?

20 A. Yes, but Shock visitation schedule and -- Shock's
21 visitation schedule and their phone schedule is, excuse me,
22 completely different from any other facility in the New York
23 State corrections. You get one ten-minute phone call every
24 Sunday and then you get one visit. So, basically, you'll get a
25 visit this Sunday, and then the next -- the next Sunday, you'll

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1 get a phone call. But, you know, you don't always get your
2 visits because the facility is approximately ten hours away
3 from New York City.

4 Q. You mentioned that -- I think you described Shock as an
5 early release program, right?

6 A. Yes.

7 Q. Do you automatically get released when you complete Shock
8 successfully?

9 A. No. If you have a determinate sentence, yes. If you
10 complete it successfully and you have a determinate -- when I
11 say "determinate," if you have, basically, a set number, if you
12 have a two-year sentence and you complete Shock successfully,
13 you'll be released, but if you have an indeterminate sentence,
14 like myself, they send, like, a COMPAS plan, paperwork on you
15 to the parole division.

16 Q. And then it's up to the parole division at that point to
17 let you out?

18 A. Yes.

19 Q. Did you complete the Shock program successfully?

20 A. I did.

21 Q. Were you released after you completed the Shock program
22 successfully?

23 A. No.

24 Q. Did you get an interview with the parole board when you
25 finished Shock successfully?

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Fraser - Direct

1 A. No. They actually -- before you finish, they send your
2 paperwork approximately two to three months before you're
3 released. It goes to the parole board, and they let you know
4 whether you're going home or not two weeks prior to your
5 platoon's graduation date.

6 Q. And what was your understanding as to why you had been
7 denied parole even though you'd completed Shock successfully?

8 A. If I could recall, my decision was I didn't -- I didn't
9 show remorse to the crime and that they didn't feel I was
10 rehabilitated enough for -- to return back to society just yet.

11 Q. So where did you go after you were denied parole after
12 completing Shock?

13 A. They placed me -- Shock also has, like, a reception dorm
14 for inmates that don't complete the program or they decide to
15 sign out. So I stayed there for -- for three more weeks, and I
16 helped the other -- like, the inmates. They had me as, like, a
17 model Shock inmate. I stayed there for three more weeks
18 helping the other -- everybody that was coming in for the new
19 platoons and stuff, and then I was transferred to Greene
20 Correctional Facility.

21 Q. Where is Greene Correctional Facility?

22 A. Greene Correctional Facility is, I want to say,
23 approximately two and a half hours away. I don't know exactly
24 what part of New York it's in, but it's still in New York
25 State. It's two and a half hours or so away from New York

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1 City.

2 Q. And I just want to talk to you about your experience at
3 Greene Correctional. OK?

4 A. Yes.

5 Q. Where did you -- well, can you describe what sort of room
6 you lived in.

7 A. Greene Correctional Facility, that is a -- it's a medium --
8 medium classification jail -- correctional facility, excuse me.
9 When you're in a medium classification, it's usually something
10 they refer to as dorms. It's an open area, just like this
11 courtroom, but the only thing is -- sorry, the only thing is
12 there's 60 beds and 60 inmates.

13 Q. And what, if you know, generally speaking, what sorts of
14 crimes are -- were the other inmates there for?

15 A. You can be housed with -- with all kind of inmates, you
16 know, people that committed rape, people that committed murder,
17 assault, robberies, you know, grand larcenies, burglaries.
18 People of all sorts are there because the correction systems
19 are ran on classifications. So if you do well enough for long
20 enough, your classification drops. And, you know, you can be
21 someone that's there for no reason and be housed or bunked up
22 with somebody that has life and he was an alleged murderer. So
23 you're with all different kind of people.

24 Q. You mentioned that there were 60 beds and 60 inmates in
25 your particular dorm. Do you have a personal space of your own

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Fraser - Direct

1 in that dorm?

2 A. Well, approximately, I want to say, 20 of the 60 beds are,
3 like, doubled or cubicles. They have bunk beds. There's,
4 like, a top and a bottom.

5 Q. And you mentioned "cubicles." How big are the cubicles?

6 A. About either -- I want to say eight by six or ten by six.
7 They're definitely not wider than six feet, though.

8 Q. And 20 of the 60 beds, you said, were bunk beds?

9 A. Yes.

10 Q. Did you get a bunk bed?

11 A. Initially when I was placed in the housing unit, I was
12 placed with another inmate.

13 Q. And in that eight-by-six or ten-by-six space, what fits in
14 that space? Objects, what else is in there?

15 A. Well, if you have a bunk, like a bunk bed, it will be the
16 bunk bed, top and bottom, and there's a locker. Each inmate is
17 given two lockers. There's a small one basically for, like,
18 your deodorant and other necessities, stuff like that, soap;
19 then you have a bigger locker where you would store your food
20 and clothing.

21 Q. And so the bed, big locker, and little locker, they're all
22 within your cubicle, is that right?

23 A. Yes. And if you're bunked up with somebody, there's two of
24 each. So it will be two big lockers and two small lockers, and
25 then it will be you guys' bunk bed.

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1 Q. Can you describe the bed.

2 A. If you take two thin sheets and lay it on a metal slab,
3 pretty much that's how the beds are.

4 Q. Is that where you slept the entire time you were in Greene
5 Correctional?

6 A. Are you saying did I sleep on the bed, or did I sleep with
7 a bunky the entire time?

8 Q. Thank you. That was unclear.

9 I guess my question is during the whole time you were
10 in Greene, did you sleep on one of those metal beds with the
11 two sheets?

12 A. Yes.

13 Q. Also, were you in a bunk bed that whole time?

14 A. No. Eventually, I want to say, a month and a half into my
15 stay at Greene Correctional Facility, I became a -- an IPA, and
16 then I was awarded my own cubicle.

17 Q. What's an IPA?

18 A. An IPA is an inmate peer assistant.

19 Q. And how do you get to become an inmate peer assistant?

20 A. Well, you have to be -- you have to be program satisfied.
21 And that includes whatever programs you were stipulated to
22 take, whether that's anger management, alcohol and substance
23 abuse, or vocational, you basically have to satisfy all of
24 those and pretty much -- and not have no disciplinary record or
25 a very small disciplinary record. You kind of got to be like a

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1 model inmate, or unusually the correctional officer in the
2 housing unit -- or the correctional officers, excuse me, in the
3 housing unit would, you know, refer to you or they'll bring it
4 up to you, because you have to go and sign up for it yourself.

5 Q. You mentioned that you have to have a -- no disciplinary
6 record or very small disciplinary record. Did you have a
7 disciplinary record?

8 A. No.

9 Q. None at all?

10 A. I've never caught a ticket while incarcerated.

11 Q. How many -- are the inmate peer assistants, are there one
12 per dorm -- I'm sorry. Well, yeah, I'll ask you that.

13 How many inmate peer assistants are there per dorm?

14 A. There's two. The dorm is usually -- there's 60 beds, but
15 there's, like, a kind of walkway that splits the dorms. So
16 they'll have -- the correctional officer will split it up like
17 side one or two or side A and B, and then he or she will have
18 he or she's "A" IPA and he or she's "B" IPA. So if your main
19 correction officer isn't on one day or so or, like, they go
20 wherever they go, they'll come back and speak to the IPA. If
21 anything happened in the housing unit, they come and speak to
22 you first. And that all depends on who involved with the
23 incident or what exactly happened. So if it happened on the
24 "A" side of the dorm, if I was the IPA, they would speak to me.
25 If it happened on the "B" side, they would speak with whichever

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1 IPA worked on that side.

2 Q. So the corrections officers trust the IPAs to report on
3 other incidents in the dorm, is that right?

4 A. Well, it's not necessarily -- I wouldn't say that you're
5 reporting on the incident. They don't ever ask you, you know,
6 specifics because they don't -- I don't know exactly why, but
7 they'll never ask you specifics, you know, like who slashed who
8 or stuff of that incident. They'll just come to you: Hey,
9 Fraser, shaping up your guys. It's basically so -- it's so you
10 can help the new inmates that's coming in, and it's pretty much
11 so the inmates could police each other, you know, without
12 having altercation in the housing unit.

13 Q. And you were one of two out of the 60 in your dorm?

14 A. Yes.

15 Q. Does the dorm have a bathroom?

16 A. Yes.

17 Q. Can you describe the bathroom.

18 A. The bathroom is kind of -- that's kind of like the party
19 room for all of the inmates. That's like New York City in
20 jail. It never sleeps. The bathroom is always open. It's
21 approximately five to six stalls, and there's eight showers.
22 It's just like showerheads, like overhead showerheads, and
23 they're, like, placed right next to each other. And there's
24 no -- there's no dividers or nothing in the showers. The
25 showers is just an open -- like an open area.

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1 And there is -- there's, like, dividers where the
2 bathroom stalls are, where the five or six stalls are. And
3 there's eight -- approximately eight sinks, and the sinks are
4 right in front of the stalls. And it's kind of like a
5 little -- like a vestibule area where you walk through to go
6 right into the shower area. But it's all connected; it's all
7 in one. And the bathroom is kind of where everything that's
8 not supposed to happen in the housing unit happens.

9 Q. And all 60 incarcerated people in that dorm use one
10 bathroom?

11 A. Yes.

12 Q. And you said that everything that's not supposed to happen
13 in the housing unit happens in the bathroom. Like what?

14 MR. FRANCOLLA: Objection, your Honor.

15 THE COURT: Overruled.

16 A. I'm sorry. Can you ask your question again? That threw me
17 off a bit.

18 Q. Can you describe the sorts of things that go on in the
19 bathrooms?

20 A. As I said, everything that's -- that shouldn't be happening
21 happens in the bathroom, whether it's a slashing or, you know,
22 a fight, someone getting stabbed, the drug dealing, the drug
23 using, smoking -- everything. It's just disgusting. It's like
24 you would think that a bathroom is some kind of sanctuary where
25 you can brush your teeth, shower, go about your business.

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Fraser - Direct

1 It's always you go in the bathroom in the morning,
2 5:00, 6:00 in the morning, somebody's possibly in there smoking
3 a cigarette or some other substance. You go in the bathroom in
4 the evening, there's probably guys in there fighting. You go
5 in there in the middle of the day, somebody's probably in there
6 slash. You never know what to expect when you go to the
7 bathroom.

8 Q. You mentioned violence that goes on. Can you just describe
9 the violence that you observed during the course of your time
10 in prison.

11 MR. FRANCOLLA: Objection, your Honor.

12 THE COURT: Overruled.

13 A. Like I said, I believe I testified about that yesterday,
14 Rikers Island -- or you want me to tell you about Greene or
15 overall?

16 Q. Let's talk about Greene.

17 A. In Greene, like I said, state correctional facilities are
18 extremely different. It's more so policed by inmates. So the
19 slashings, you see an outrageous amount of slashings. The
20 slashings happen everywhere and anywhere as well. So it could
21 happen in the bathroom, inside the housing unit. It can happen
22 on the walkway, you know, when guys are walking to chow. It
23 can happen in the recreation yard, the mess hall, the library,
24 the gym -- wherever, you know, even when you go in the
25 commissary or you're on your way back from commissary, even if

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1 you're walking to your visit or walking back. The amount of
2 slashings, the stabbings, even the fights, you know, people
3 getting jumped in the housing unit is at an all-time high.
4 Greene -- Greene Correctional Facility actually had one week
5 where there was 57 slashings.

6 Q. And you had distinguished between the violence at Greene
7 and the violence at Rikers.

8 A. Yes.

9 Q. Can you describe what you meant?

10 A. State correctional facility -- Rikers Island, there's
11 something happening almost every single hour every single day.
12 You know, there's always some kind of commotion. I would say a
13 state correctional facility a bit more crucial. I would like
14 to say it clearly.

15 Guys basically in state correctional facility are a
16 lot more violent and straight to the point. So you see a lot
17 more slashings, stabbings, and I would say brutal attacks
18 rather than, you know, on Rikers Island. Rikers Island, it
19 still happens, but it happens a little more -- it happens
20 occasionally and -- it happens on Rikers Island, but it happens
21 a lot more upstate and a lot more viciously.

22 Q. Did you personally experience any violence?

23 A. I been in minor altercation, maybe like a little scuffle,
24 but I've never been, you know, brutally beaten or slashed or
25 anything of that nature.

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Fraser - Direct

1 Q. What were the effects of -- well, withdrawn.

2 What was -- can you describe the relationship between
3 you and corrections officers?

4 A. Well, are we still talking about Greene or talking about
5 overall?

6 In Greene, for the most part, I didn't never really
7 have a problem with corrections officers. I'm a real to myself
8 person anyway. I didn't really talk to them often unless I had
9 to speak to them because I was an IPA. But if need be, you
10 know, when things happen in the housing unit, even if you're
11 not involved, you know, like, there's times they come and they
12 sweep the whole housing unit. And, you know, I've been roughed
13 up before, but I've like -- once again, even the corrections,
14 you know, they use force when they feel it needs to be used,
15 but I've never been, you know, abused and stuff of that nature.

16 Q. What was -- can you describe the effects that observing all
17 this violence had on you?

18 A. It's traumatizing. It's not -- it can't be explained, you
19 know, the exact effect because it's very traumatizing seeing it
20 over and over and over and over because it's happening every
21 day, sometimes multiple times a day. So it becomes like a
22 mental thing. You become more of an alert person. And that
23 happens, you know, no matter the environment you're in. You
24 become more alert. You feel like you need to respond to things
25 a certain way, and it kind of alters you as the character you

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1 are.

2 Q. Can you describe more specifically what do you mean that
3 you have to stay alert? What are you staying alert for?

4 A. Well, usually when someone gets slashed, stabbed, or
5 attacked in prison, there's a 99 percent chance they don't know
6 it's about to happen. And you know, viewing that, you see
7 things. You could just be standing in the recreation yard
8 working out or doing your jog. You turn, this guy's getting
9 slashed from behind. He didn't know. So when you start to see
10 these things more often and more often and more often, now your
11 natural instinct now is you're always watching your back. You
12 don't want nobody in your personal space. You don't want
13 nobody to open doors for you and let you walk through because
14 you -- all because you don't know when, you know, your time may
15 come. You can get attacked at any given time. So, you know,
16 people get attacked in their sleep. So it's all -- you're even
17 alert when you sleep.

18 Q. What do you mean people get attacked in their sleep? Did
19 you observe that?

20 A. Yes. As I said, it's an open dorm. It's an open dorm, and
21 so you can kind of just walk -- I can walk into your cubicle,
22 you can walk into mine's freely. I've seen people be slashed
23 in their sleep. Like I said, you have a small locker and a big
24 locker. Your small locker is approximately two feet tall by
25 one foot wide. I've seen dudes, a team of dudes, slam lockers

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1 on dudes' head while they're sleeping and then slash them
2 numerous times.

3 So that -- everybody in the dorm now, the dorms I've
4 been in, housing, people are sleeping with they -- their skully
5 cap pulled over their face, and before the state corrections
6 system took away hoodies, people sleep with their hat and their
7 hoodie on just in case someone attempts to slash them in their
8 sleep.

9 Q. What effect does experiencing that have on your ability to
10 sleep in the prison?

11 A. It's -- it's -- you know, you get sleep, of course, but any
12 little movement or -- you know, the cubicles are extremely
13 close. So this guy just could be opening his locker. It's
14 maybe 2:00, 3:00 in the morning. He's opening his locker for
15 whatever he needs, but you instantly jump up because you don't
16 know what's going on or what's the response. Everyone in the
17 housing unit wants to be the last person to sleep and the first
18 person up. So it's kind of like nobody's going to sleep.
19 Everybody's on alert, watching until that one guy says, I
20 guess, he's willing to take the gamble and goes to sleep or,
21 you know, lays down at least.

22 Q. Does that experience affect your sleep -- withdrawn.

23 Did that effect on your ability to sleep continue even
24 after you were released from prison?

25 A. Yes. A lot of things from prison followed me home,

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1 unfortunately. When I was first released, I didn't have a
2 significant other, and it was -- and obvious as it may sound,
3 at that time it was extremely hard for me to even sleep in the
4 bed. When I did get a significant other, it was hard for me to
5 do that because, like, if that person moves, or something to
6 that effect -- I was actually staying in my mom's house when I
7 was first released, and my mom had a lock on the door, but I
8 went and got a lock that I felt someone could not open from
9 outside to basically secure myself. And, you know, it -- I
10 still -- till this day I still, like, with my sleep and, you
11 know, stuff of that nature, I'm very, very secure with, and
12 I'm -- you know, oddly enough, I still don't feel too
13 comfortable with just sleeping in the house with certain people
14 or just, you know, I don't feel comfortable around everyone.

15 Q. Can you describe what it's like to shower in the prison?

16 A. Showering -- well, basically, when you're able to get in
17 the shower, because usually, you know, in these housing units,
18 everyone is segregated. So you may be able to take a shower,
19 whoever's gang affiliated, they may be taking a shower at that
20 time, or people with their religious beliefs, they -- you know,
21 if they're Muslim or they're Christian or Jewish, they all take
22 showers together. So when you do finally, you know, get in
23 that shower now, it may be everybody smoking in there,
24 drinking -- excuse me, not drinking -- well, guys do drink as
25 well, oddly enough. But fighting, you might be in the shower

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1 and it can be a fight right behind you, and, you know, you may
2 not have absolutely nothing to do with it. You may get caught
3 in the crossfire. Now you're going to solitary because you
4 were taking a shower and a fight occurs.

5 Q. Did you stay in contact with your family during the time
6 that you were in prison?

7 A. As I said, in Shock, contact with my family was -- it was
8 difficult because you get the one phone call and the one visit,
9 and your letters and stuff like that is extremely difficult.

10 When I got to Greene, you know, communication with my
11 family got a little bit better because I was able to -- you
12 know, when I was able to get on the phone, I was able to call
13 my family a little more often. And fortunately enough, the
14 jail was actually a lot closer, so my family did come and visit
15 a little more often.

16 Q. Can you describe what the visits are like in Greene with
17 your family?

18 A. They're very, very, very secured, basically. You're
19 just -- it's a six-hour visit in total from when the visits
20 start and I believe it's like 9:00 to 3:00. So if your family
21 gets there at 11:00, you get a four-hour visit. It's a no --
22 it's a contact visit, I guess. When you get there, initially,
23 you guys can, you know, have a temporary hug, and you sit on
24 one side of the table. It's a four-by-four table with four
25 chairs. You sit on one side and your family would sit on the

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1 opposite side, or if four of your family members come, they
2 would basically set the tables up accordingly for that.

3 Q. You heard your mom testify about her experience visiting
4 you, right?

5 A. Yes.

6 Q. Did you observe -- or did you talk to her about that
7 experience while you were in prison?

8 A. What happened with that was my mom, she came to see me.
9 She began to explain to me, like, you know, the search process,
10 because they didn't allow my sister that day to come on the
11 visit. I was like, all right. Cool. I spoke with my mom, and
12 then when I -- that night I called. I called home, and I spoke
13 to my mom. And she was telling me -- she got into a little
14 more detail, and I just told my mom when she said they told her
15 to take her pants down and checked her bra --

16 MR. FRANCOLLA: Objection, your Honor, as to what his
17 mom --

18 THE COURT: Overruled.

19 A. They told her to take her bra off and stuff of that nature.
20 I just -- I told my mom, I said, you know, don't -- don't
21 bother coming back here.

22 Q. Why did you tell her that?

23 A. Because my -- my mom wasn't arrested and was, like, why --
24 why did my mom have to go through that? I was arrested, and I
25 was already dealing with it, so it was kind of like I didn't

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1 want -- I already put her through court dates and stuff like
2 that. I don't want her to come there no more.

3 Q. Jawaun, were your kids present for your visits?

4 A. My kids, my kids came to see me four times in total.

5 Q. Can you -- I'm sorry to walk you through this. Can you
6 describe what it's like to see your kids in prison?

7 A. That's -- that's a terrible feeling. I always had a
8 relationship with my oldest daughter especially. I didn't
9 really know my son, and I really got to know my son via
10 letters, pictures. I seen my son walk the first time I was
11 incarcerated at Greene Correctional Facility.

12 Q. And how did that feel?

13 A. Kind of felt like I failed my kids already, you know,
14 because, like -- especially my son. My daughter was more --
15 she understood more so what was going on, and -- and overall I
16 just felt like I failed my kids already because I didn't know
17 when I was going to get back home to them.

18 Q. What's your relationship with your son like now?

19 A. I'm still -- years later I'm still rebuilding that
20 relationship with him. I spend a lot of time with my kids now.
21 My son is actually the complete opposite of me, but I spend a
22 lot of time with him. And I try to do individual things with
23 him because I got two girls and one boy. So we go and do
24 things together, and it's kind of aiming more towards the
25 girls. So I got a pretty decent relationship with him.

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1 Q. Jawaun, did there come a time when you were able to leave
2 the prison during the day before your sentence was over?

3 A. I'm sorry, I don't understand exactly what you're saying.
4 As a working inmate or work release, something like that?

5 Q. Yeah, I'm talking about work release. Did you get work
6 release?

7 A. After I was housed in Greene Correctional Facility for
8 several months, I was then -- I then earned a spot at the work
9 release facility as well.

10 Q. And what is work release?

11 A. Work release is still a state correctional facility, but
12 they allow you to go out during the day and seek employment.
13 Until you find employment, you get a four -- you get
14 approximately four hours to go and search for employment a day,
15 and you have to return to the facility at a set time. They
16 give you a schedule, and you leave at that time and you have to
17 return at that time.

18 Q. And approximately when did you get to go on work release?

19 A. I would like to say that was May of 2017, or maybe later
20 than that, but I believe it was May, the month of May.

21 Q. Approximately around that time?

22 A. Yes, May or April, something like that.

23 Q. And how do you get work release?

24 A. Work release is another program that you -- you have to be
25 program satisfied, you have to have no disciplinary record, and

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1 you had to have met at least your minimum requirement of jail
2 time served, and I can also include merit time in order for you
3 to be eligible for work release.

4 Q. Can you describe -- how does work release work? Are you --
5 when do you get to leave? When do you have to come back? Can
6 you just describe the whole process of work release.

7 A. OK. When you get to work release, initially, you have --
8 you come with approximately 20 to 25 people. You guys are all
9 placed in -- like all in dorms, reception dorms. They
10 basically make two reception dorms every two weeks because you
11 get new inmates every two weeks. You then are allowed to go
12 outside -- after the two weeks and you've cleared that, you are
13 then allowed to go outside for four hours, approximately four
14 hours a day to seek employment, and you have to return to the
15 facility after you do your -- you go and seek employment.

16 When you do finally obtain a job, you give them your
17 work schedule. You return, like, your work schedule from your
18 boss, and they create you a schedule based on that. And they
19 give you two hours -- they give you an hour before, basically,
20 your start time to get to work, and they give you two hours
21 after work to return back to the facility.

22 After you work for, I think it's, 30 to 45 days, they
23 allow you to stay home for -- you start off at four and three.
24 So you'll stay home for four days going to work still, and
25 you'll go back to the facility -- you'll still be going to work

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1 throughout your workdays, and then you go to the facility the
2 remaining of the days. And you have to turn in a 40-hour
3 paycheck or you have to have written excuse from your employer
4 why you didn't get the 40 hours, and you need to have reason
5 for that and where you were, basically, during that time.
6 Whether you have the four and three status or whatever status
7 you have, you have to have that documentation.

8 And you also have to give the facility your check, and
9 they give you a -- you get a MetroCard, and I think it's like a
10 \$40 cash stipend, and they take 20 percent of your -- whatever
11 your check is. So if your check is \$500, they take \$100, and
12 they keep that for -- they say it's for room and board.

13 Q. So for the first phase of work release, you go out during
14 the day, and every day you come back to the facility, right?

15 A. Yes.

16 Q. And then the next phase you go -- if you sort of graduate
17 to the next phase, you go out for four days, you can stay home,
18 but then you come back to the facility for three full days, is
19 that right?

20 A. No, not three full -- like, the steps is, right, you get
21 your job. They send you out initially. You obtain a job.
22 When you obtain a job, for 30 to 45 days you still have to
23 return to the facility every day after work. After you do that
24 30 to 45 days, they then -- you basically earn that
25 four-and-three status. They call that furlough. So you stay

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1 home for four days, still going to work.

2 So if you have a work schedule Monday through Friday
3 and your furlough status is four and three, so Monday through
4 Thursday, you would go to work and home; Friday after work, you
5 will return to the facility. If you don't work on Saturdays
6 and Sundays, you'll stay in the facility. But if you do have
7 to go to work, they'll allow you to go out to go to work, but
8 you still have to return to work -- I mean return to the
9 facility on those three days.

10 Q. And when you're on work release, are there still rules that
11 you need to follow?

12 A. Yes. The rules on work release are -- they're more strict
13 than regular parole. They're more strict than the rules in
14 being incarcerated in a regular jail. They're very tight.

15 Q. What happens if you break one of those rules?

16 A. Well, if you break any of the rules, you're put on -- they
17 call it hold, basically. You're not allowed to leave the
18 facility, and you'll basically have, like, a hearing with the
19 sergeant there because you'll receive a ticket. Depending on
20 the tier of your ticket, you'll have, like, a hearing, and you
21 could possibly go back to a -- to jail.

22 Q. What's an example of the kinds of things that could get you
23 sent back to jail?

24 A. Basically anything that -- any little thing. If you're
25 late -- well, they give you a 15-minute grace period. So if

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1 you have too many lates and there's no excuse, you can't blame
2 it on the train, the bus, or anything of that. If you come in
3 there late, if you refuse, like, a strip search, this facility
4 is placed in the middle of East -- it's like between East and
5 West Harlem. So if there's marijuana, let's say you open the
6 door to go in the facility, someone's walking by smoking. You
7 go into the facility; they smell marijuana. If they say, hey,
8 we want to strip search you and they don't -- you feel they
9 don't have any probable cause, so, you know, you may say I
10 don't -- I refuse, so now because you refuse, they'll issue you
11 a ticket. Now you're placed on hold and you have to, you know,
12 challenge the ticket. And with all that going on, it's a
13 possibility you can lose your employment because you're placed
14 on hold.

15 Q. So you're still getting strip searched while you're out on
16 work release?

17 A. Absolutely, yes.

18 Q. And where did you work during that time?

19 A. Fortunately enough, I returned right back to Nicholson and
20 Galloway, my employer that I was with, which is a Local 28
21 subcontractor, my employer I was with before being
22 incarcerated.

23 Q. Jawaun, after you were denied parole the first time after
24 your experience in Shock, were you given another opportunity to
25 be considered for parole?

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1 A. Yes.

2 Q. And when was that?

3 A. It was June -- June of 2017.

4 Q. That second time that you were up for parole in June of
5 2017, can you describe the process that you had to go through
6 then.

7 A. They -- I was at the work release facility when this went
8 on. They put you on a hold, and they notify you that you have
9 a hearing with the parole division.

10 Q. And was that hearing in June?

11 A. Yes. I don't recall the exact date, but I believe it was
12 June of 2017.

13 Q. What do you do to prepare for this hearing?

14 A. You can't really do much. You know, throughout the
15 duration of my stay while I was incarcerated, I only -- you
16 know, I spoke with fellow inmates, peers, and people that went
17 in front of the parole -- parole division before.

18 Q. And what did those people that had been before the parole
19 division before tell you about how to be successful in the
20 hearing?

21 A. Almost a hundred percent of them, the inmates you're going
22 to speak to, they're going to say do not challenge anything the
23 parole division says. Don't -- you know, show remorse. You do
24 show remorse, you take responsibility for your crime, and don't
25 go in there arguing with them. You'll get that from, like, the

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1 younger crowd or the mid-age crowd inmates, and if you go and
2 speak to an older inmate, someone that's served more time or
3 are more seasoned inmate, they'll usually tell you: Listen,
4 when you go there, you better be sorry, or when you come back
5 here, you're going to be sorry that you wasn't sorry while you
6 were at the parole board.

7 So it's kind of like, you know, make sure that you,
8 you know, convey that you are sorry for being involved in this
9 incident or the crime or whatever you're accused of.

10 Q. And so what was your plan in approaching this parole
11 hearing?

12 A. Well, overall my plan going into parole was basically to
13 follow all of the steps that I got from my fellow peers, which
14 was to not -- don't challenge anything that the parole division
15 says, to show remorse, and to take responsibility for, you
16 know, my past life dealings and for things that I was involved
17 in.

18 Q. I'd like to talk about the parole hearing itself. Where
19 does the hearing take place?

20 A. Your parole hearing is held in whichever facility you're
21 housed in at that time. So they -- they have like a -- I'm not
22 sure if it's a specific parole room at every facility, but they
23 set up a room for the parole hearings on that date in that
24 facility.

25 Q. For you what facility was that?

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1 A. Lincoln, Lincoln Correctional Facility.

2 Q. So the hearing itself -- even though you're on work
3 release, the hearing itself take place takes place inside the
4 prison?

5 A. Yes.

6 Q. Can you describe the room where the hearing takes place?

7 A. I want to say that actually the room is about like this
8 big, this little space over here. I want to say that's about
9 eight by seven or eight by eight. It's real dim. It's very --
10 like, it's dim lighting. There's a -- I want to say a screen
11 or a television. There's a camera on top of the television,
12 and it kind of stands, like, on a TV stand. There's a -- like
13 a cookout table, like a four-foot cookout table, one of those
14 plastic tables, and you sit on, like, a metal chair.

15 Q. And you mentioned that there's a TV -- I think you said a
16 TV stand. Is the hearing in person?

17 A. No.

18 Q. How is the actual questioning conducted?

19 A. The hearing is -- it's like a telecall. It's like a video
20 call.

21 Q. And who else is in the room with you?

22 A. No one. You're brought there by a transport officer and
23 then -- sorry about that.

24 You're brought there by a transport officer. They
25 direct you to go in the room to sit on -- sit on the chair and

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1 face the camera, and after they unshackle you, they lock the
2 door and stand outside.

3 Q. Did you have a lawyer in the room with you?

4 A. No.

5 Q. Did you have a lawyer helping you prepare for this hearing?

6 A. No. I only -- I only spoke with, like, my peers and fellow
7 inmates.

8 Q. How long had you been in jail by the time you got to that
9 second -- that hearing?

10 A. About -- about a year and a half.

11 Q. How old were you at that time?

12 A. Twenty-one, I believe. I believe I was 21.

13 Q. So, by the way, are you under oath in that hearing?

14 A. No.

15 Q. Can you describe what happens? You sit in the room and
16 then?

17 A. Well, you sit in the room. They -- once -- as you sit in
18 the room, the camera is not on yet. The camera comes on
19 eventually, you know, within a few minutes, maybe five to ten
20 minutes. Once the camera does come on, they -- the parole
21 commissioners, they introduce themselves. And before you know
22 it, they're -- after you introduce yourself or they confirm
23 that you are you, they're just -- they start firing their
24 questions at you, you know, not -- well, they are firing them
25 one at a time, but they're coming out at rapid speed.

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1 Q. And during that five to ten minutes that you're waiting for
2 the hearing to begin, how are you feeling?

3 A. Well, I'm extremely -- I'm extremely nervous, you know.
4 I'm kind of sitting in this little room. I'm looking back and
5 forth because the -- the environment itself is intimidating,
6 the way it's set up. It's a dull lighting. It's a metal
7 stool. The room is extremely small. It's only you, and
8 with -- with knowing that these -- these three individuals,
9 these three parole commissioners, they -- they hold your
10 freedom in they hands, overall you feel intimidated, nervous,
11 and overchallenged, I should say.

12 Q. Do you remember what you said in the hearing?

13 A. I wouldn't say that I remember what I said verbatim, you
14 know. I just could recall what was my plan and what was going
15 through my mind and, you know, what I was trying to convey
16 throughout the hearing.

17 Q. And I understand that you don't remember the exact words.
18 What were you trying to convey throughout the hearing?

19 A. You know, I was trying to convey that I was -- that -- you
20 know, to show remorse, to take responsibility for my past life
21 dealings, and overall not challenge what the parole
22 commissioners are saying. And I tried my best to be granted
23 parole.

24 Q. When you say you didn't want to challenge the parole
25 commissioners, what do you mean?

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1 A. Well, you know, if they use certain terminology, if they --
2 I was told whatever, whatever they say, basically, that kind of
3 is what it is. So if they refer to the incident as a crime and
4 that's the terminology they using, you don't argue that. If
5 they -- you know, they're saying that you did this or you did
6 that, you try your best not to argue it. So, you know, when
7 they -- when such things like that happen, that's kind of what
8 I did.

9 Q. You also mentioned that you wanted to take responsibility
10 for your past dealings. What do you mean by that?

11 A. Well, overall I felt like my past life dealings, you know,
12 me selling drugs or having a history of being around drugs or
13 any involvement with it, I felt like that was what, you know,
14 led me to being involved in this actual incident that brings us
15 here today. So, you know, that's basically it.

16 Q. Can you explain why do you believe that your past
17 involvement in drugs led you to this incident?

18 A. Well, overall, if I never sold drugs to start with, the
19 other individual involved in this incident would never have
20 been able to approach me.

21 Q. You mean Diane Smith?

22 A. Yes.

23 Q. And were you as you -- withdrawn.

24 Were you generally asked questions about this alleged
25 robbery?

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1 A. When?

2 Q. In the parole hearing.

3 A. Generally, yes.

4 Q. And what was your general approach to those questions?

5 A. To not -- you know, to not challenge it to the best of my
6 ability.

7 Q. And were you asked questions about the specific acts that
8 you were accused of in the parole hearing?

9 A. Yes.

10 MR. FRANCOLLA: Objection.

11 THE COURT: Ground?

12 Thank you. The objection's overruled, if you have to
13 think about it that long. OK.

14 Keep going. Answer the question.

15 A. Can you ask the question again, sir?

16 Q. Were you asked questions about the specific acts you were
17 accused of in the parole hearing?

18 A. Yes. When I was asked about the specifics of, you know,
19 the acts of this incident, I denied that. I challenged that.
20 That was just something that I couldn't go through with.

21 Q. Meaning when you were specifically asked about the specific
22 allegations in this case?

23 A. Yes.

24 Q. Do you recall being asked questions about selling drugs?

25 A. Yes.

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1 Q. And what was your plan as to how to address those
2 questions?

3 A. Well, in my mind going into parole, my plan with, you know,
4 speaking about drug dealing was, you know, to take
5 responsibility for my past life dealings and things that I did
6 in the past, which was I selling drugs.

7 Q. Were there times, as best you can recall, in the parole
8 hearing that you indicated that you were selling drugs on
9 October 21, 2014?

10 A. Yes. After reviewing the transcripts and understanding,
11 you know, what my plan was and the circumstances of the
12 situation, yes.

13 Q. And why did you say those things that indicated you were
14 selling drugs on -- well, let me ask this: Were you selling
15 drugs on October 21, 2014?

16 A. I'm sorry. Can you ask again.

17 Q. Were you selling drugs on October 21, 2014?

18 A. No.

19 Q. So why did you indicate to the parole board that you were?

20 A. As I stated, overall I didn't want to challenge, you know.
21 And throughout us conversing, I got the -- you know, my
22 assumption was that they thought I was a drug dealer. They
23 thought that I was involved in this incident already. And with
24 my knowledge on how to deal with the parole hearing, I tried
25 the best of my ability to not challenge, and I kind of,

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1 unfortunately, went along with it and elaborated a little more
2 than need be in some areas.

3 Q. What was the demeanor of the parole officers?

4 A. Oh, they -- they're intense. They're pretty
5 straightforward. They were -- it was intense, you know. Like,
6 they were -- it was just questioning, questioning, questioning,
7 questioning. And the interview was extremely fast. It was six
8 to eight minutes, tops, and that's including the introducing to
9 when we ended the parole hearing.

10 Q. What was the result of the first interview you had for
11 parole?

12 A. Well, the first interview, I was denied parole again.

13 Q. And why, as it was explained to you, were you denied parole
14 after that June 7, 2017, hearing?

15 A. Once again they said I didn't -- if I recall exactly, that
16 I didn't show enough remorse to the crime. I didn't show
17 enough remorse and that I -- I minimized my involvement in the
18 crime.

19 Q. And so after you were denied parole, what happened next?

20 A. Well, due to the fact that I was in a work release
21 facility, fortunately, I actually went out -- I went back out
22 to work the following day.

23 Q. After you were denied parole -- well, let me just be clear.

24 At that point you had been denied parole twice, is
25 that right?

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1 A. Yes. Yeah, I was denied parole in Shock, and then this was
2 my first actual in-person interview. When I received that
3 decision, I was also denied there as well.

4 Q. You were denied parole first after Shock without an
5 interview, right?

6 A. Yes, I believe they went off of something -- COMPAS plan
7 and sentencing minutes, something to that effect. And then
8 this was my first in-person interview. It was June of 2017.

9 Q. OK. And did you get an opportunity to have
10 another opportunity at getting parole?

11 A. I believe I went back to the parole board three months
12 after. I believe I went in September of that same year,
13 September of 2017.

14 Q. And what was your plan going into that hearing?

15 A. I had the same approach, you know. I had the same exact
16 approach, not to challenge them, you know, for the most part.
17 And I kind of went in there with the same mindset.

18 Q. Were you asked questions again about whether you did the
19 specific things that you were accused of in this case,
20 threatening an officer, etc.?

21 A. Yes.

22 Q. How did you answer those questions?

23 A. I denied the allegations. I didn't agree with that.

24 Q. And what happened after the second hearing?

25 A. Fortunately, I was granted parole.

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1 Q. When was -- when were you released?

2 A. From -- from parole or from work release? I'm sorry. I
3 just want to make it clear to -- while I was in the work
4 release facility, I was still a parolee as well. You are
5 issued a parole officer there.

6 So are you asking when I was released from work
7 release or released off of -- all in all?

8 Q. I'm asking -- well, you were granted -- you had the parole
9 hearing in -- the second parole hearing in September 2017,
10 right?

11 A. Yes.

12 Q. And then -- and that was granted?

13 A. Yes, the second one.

14 Q. So when do you actually get released from incarceration?

15 A. Oh, OK. I believe it was November -- November 20, 2017, I
16 was released onto a regular community supervision.

17 Q. And so from the time that you were convicted -- excuse me,
18 the time that you were convicted until the time that you were
19 released to regular community supervision, how long were you
20 incarcerated?

21 A. I want to say two years, approximately two years.

22 Q. When you say "community supervision," is that being out on
23 parole?

24 A. Yeah, yeah, yeah. That's what DOCCS is, Department of
25 Corrections community supervision. Community supervision is

N3GHFra2

Fraser - Direct

1 the -- like the parole side of things.

2 Q. Can you describe what being on parole is like?

3 A. When you're out on parole, you still under heavy
4 restriction. You're given a curfew. Even when you're on work
5 release and you're allowed to go out, you're given a curfew.
6 And your curfew usually ranges from 7 p.m. and 9 p.m., and that
7 also depends on your job. Because if you have a night job, you
8 basically would be allowed to work, you know, throughout the
9 night. But they also find a time that you are restricted to
10 your house or your parole -- wherever you're paroled to. They
11 find some kind of time during that 24 hours where you can't
12 leave the premises.

13 Q. And did you work during that time?

14 A. What time is that, sir?

15 Q. While you're on parole.

16 A. Oh, yes, yes, yes. I continued to work my whole time.

17 Q. What sort of restrictions do you have to abide by on
18 parole?

19 A. Well, when you go -- everybody's stipulations is different,
20 but the basic stipulations that everyone receive is you cannot
21 drive without permission. You cannot travel outside the five
22 boroughs. You can't smoke any substance, marijuana, stuff of
23 that nature. You can't use any drugs. They don't want you
24 drinking alcohol. I don't know if I mentioned curfew already.
25 You have to abide by the curfew, whatever that may be. You

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Fraser - Direct

1 have to seek employment. And any programs that are in your
2 stipulations from when you were incarcerated, if you didn't
3 complete them, you are basically instructed to go complete your
4 programs. And you also have to be enrolled in a program at all
5 times, you know, whatever that may be, if you're not employed.

6 Q. And were you allowed -- were you allowed to drive a car?

7 A. You have to have -- you have -- no, you're not allowed to
8 drive, but you have to have reason to basically need to drive
9 as a parolee. So that can be as if -- the main shop for the
10 company I worked for is in Glen Head, New York. So my reason
11 for needing to drive was because I worked in the shop. So
12 sometimes I would have to drive to Long Island, which my parole
13 officer did permit me to drive.

14 Q. How long were you on parole?

15 A. I actually got early release off parole the following year.
16 I was on parole for approximately one year exactly. I was
17 released off parole, excuse me, November 20 of 2018.

18 Q. At some point after you were released, what, if anything,
19 did you learn about your case?

20 A. I'm sorry. Can you ask that question again?

21 Q. What did you learn about your case after, your criminal
22 case, after you were released on parole?

23 A. Are you speaking on, like, the terms of my appeal and stuff
24 of that nature? I found out about my appeal. I spoke with --
25 I believe her name is Jacqueline Meese, if I'm not mistaken. I

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1 spoke with her first. And I -- you know, she enlightened me on
2 what was going on and that I had -- it was a high possibility
3 that my conviction would be overturned.

4 And then they spoke about, you know, in law terms,
5 like 440 motions and stuff of that nature. And I believe
6 either mid or early 2019 I was contacted and told that my 440
7 motion was granted.

8 Q. And just generally speaking, do you know what a 440 motion
9 is?

10 A. As of right now, I can't tell you the specifics of it. I
11 basically knew my conviction -- it had something to do with my
12 conviction and it would be overturned and I would have to -- I
13 was just told by my attorney at the time that was dealing with
14 my appeal that I would have to return to court at a later date
15 to figure things out.

16 Q. How did you feel when you learned that your conviction had
17 been overturned?

18 A. I was extremely happy, but I was also upset at the same
19 time because, you know, we talking about years later, you know,
20 four years later. And I thought to myself, I could have still
21 been in prison, and I would be finally getting this decision.
22 But overall, I was happy with it.

23 Q. So you mentioned that you'd have to return to court at a
24 later date?

25 A. According to my -- my attorney at the time, yes.

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Fraser - Direct

1 Q. Why did you have to go back to court?

2 A. I had to go back to court for -- to -- they wanted me to
3 take a disorderly conduct, like a -- basically to -- to
4 finalize the motion and the -- what do they call it?

5 Basically, like, my conviction being overturned, to finalize
6 that, basically, I had to show up at the criminal court,
7 100 Centre Street.

8 Q. Did you have an opportunity, if you wanted to, to go to
9 trial a second time?

10 A. Yes. That was the options. It was, like, to either try
11 the case again with a full panel jury or -- to try the case
12 again with a full panel jury or to, basically, cop out to,
13 like, a ticket. Well, to cop out to disorderly conduct, which
14 is basically equivalent to a ticket, which is -- it's not a
15 crime. It serves no jail time or nothing of that nature.

16 (Continued on next page)

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Fraser - Direct

1 Q. So, why did you choose to take the ticket rather than go to
2 trial a second time?

3 A. I'm sorry. Ask that question again?

4 Q. Why did you choose to cop out to the ticket as opposed to
5 electing to go to trial again to the robbery charge?

6 A. You know, logically, I just didn't think it made any sense
7 to me. I lost all faith, every little bit of faith in trials
8 after I lost at trial, knowing that I was innocent. So I lost
9 every bit of fate in trials.

10 And that's kind of like an oxy, because basically if I
11 went to trial I also would be facing this time around I believe
12 a maximum of seven years, if they would have went to the top
13 charge of rob 3. So that was kind off an oxy to me. Why I
14 would chance that and lose everything I have going on right
15 now. Rather than taking the ticket and get this all over with
16 and just close this chapter in my life.

17 Q. I would like to talk about how this experience has impacted
18 you, okay?

19 A. Yes.

20 Q. Now, before your conviction was vacated, but after you were
21 released, you lived for a period of time with a felony
22 conviction. Right?

23 A. Yes.

24 Q. How did having a felony conviction impact you?

25 A. Well, having a felony conviction, you know, when you don't

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Fraser - Direct

1 have it, it doesn't seem as severe. But, overall it's a big
2 impact. You can't work certain places, you can't -- you can't
3 even travel certain places without permission. You can't go to
4 Canada with a felony. I lost employment I want to say twice
5 behind me having this conviction on my record and not being
6 able to go to certain buildings due to that.

7 And it's just embarrassing when you can't get an
8 apartment, you know, it's like you become ashamed of yourself.
9 You can't get an apartment because of something that happened
10 years ago in your life on your record. Certain things you just
11 can't participate in if you want to. You know, that having a
12 felony is just overall a burden.

13 Q. How did this experience of being incarcerated impact you
14 emotionally?

15 A. Emotionally, the most part that hurt me was losing time,
16 the time I lost with my children. And it hurt more so knowing
17 I was incarcerated for something that I didn't do. I felt I
18 was innocent and I didn't commit this crime. So, you know,
19 overall emotionally I was hurt that I couldn't support my kids,
20 I couldn't teach my kids certain things, I couldn't see certain
21 things that went on with them.

22 And it was kind of overall an emotional roller coaster
23 for me. Sometimes I would speak to my family and things would
24 be swift, and sometimes I would speak to them and it would hurt
25 me to speak to them and they would tell me what was going on

N3g3fra2

Fraser - Direct

1 with them and I couldn't assist them in any way.

2 And overall, I feel like prison tarnished a lot of
3 relationships that I had in my past with my family, close
4 friends. Even family that I created.

5 Q. Where do you live now?

6 A. Now I live in Lyndhurst, New Jersey.

7 Q. Why do you live in New Jersey?

8 A. I want absolutely nothing to do with New York State,
9 unfortunately. I'm just -- nothing here serves a purpose for
10 me. And I felt I needed a change of environment. People,
11 places, and things. And I felt that was the best decision for
12 me. I been living in New Jersey for a few years now actually.

13 Q. Does your mother still live in the Jacob Riis Houses?

14 A. Yes.

15 Q. Do you visit her there?

16 A. Not very often. I bring my children to see her from time
17 to time. But, when I see my mom, I would prefer she comes on
18 my end.

19 Q. Why don't you go back to the Jacob Riis Houses very often?

20 A. Jacob Riis, it's a real troubled area for me. Kind of like
21 a dark cloud once I get over there. It's like, like I said, it
22 serves absolutely no purpose for me there. The only thing
23 that's there is my mom. Now, and that's about it. Which she
24 serves a great purpose in my life, but she also has no problem
25 coming to see me where I reside.

N3g3fra2

Fraser - Direct

1 Q. Did this experience impact you in day-to-day things, like
2 taking public transportation?

3 A. Yes. I just started really taking public transportation
4 again this December that just passed. Actually, I really
5 started taking it a lot more often now. I have a problem
6 with -- I'm actually in this booth right now, but I have a
7 problem being in closed-in areas or areas with a lot of people.
8 I would say that came from, you know, me being incarcerated.
9 Because at one point I was a people person, but now I don't
10 feel comfortable with too many people around me or in my
11 vicinity, I should say.

12 Q. How do you feel when you see police officers?

13 A. Unfortunately, when I see police officers, you know, even
14 though I know that every police officer isn't bad, or has bad
15 intentions, I kind of get like this gut feeling, because, you
16 know, due to the fact that I went through what I went through,
17 and knowing how powerful a police officer's pen is, that it is
18 hard for me to digest seeing a police officer. Like I don't
19 know what to expect from them. Sometimes I get a little
20 nervous. But I usually keep it pushing, I try not to make any
21 eye contact with them, and I go about my business.

22 MR. BLOCH: I have nothing further at this time,
23 Judge.

24 THE COURT: Okay. We're going to take about five
25 minutes and we'll take a break now.

N3g3fra2

Fraser - Direct

1 Don't discuss the case, keep an open mind.

2 (Jury excused)

3 THE COURT: So do we have to do anything before
4 Mr. Francolla starts his cross, other than let him set up?

5 MR. FRANCOLLA: I think I can take a minute with
6 Mr. Bloch. There is only, I don't think there will be a
7 problem.

8 THE COURT: Well, why don't you take the minute.

9 MR. FRANCOLLA: Okay.

10 THE COURT: And there if there is a problem, I'll be
11 back in five minutes and then we'll worry about it.

12 THE WITNESS: Your Honor, do you want me to stay here?
13 Your Honor, do you want me to stay in the box?

14 THE COURT: No, you don't have to do that.

15 (Recess)

16 THE COURT: How are we doing, folks?

17 MR. BLOCH: Almost there, Judge.

18 THE COURT: Great.

19 (Pause)

20 MR. FRANCOLLA: Your Honor, I think we're good.

21 THE COURT: Case on trial continued, the parties are
22 present, the jurors are not present.

23 MR. FRANCOLLA: I think Mr. Bloch had he indicated he
24 had five more questions he meant to ask before he rested. I am
25 allowing him to do that before I start.

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Fraser - Direct

1 THE COURT: I'm glad you are allowing him to do that.
2 I would allow him to do it, too.

3 MR. FRANCOLLA: With my consent, and your Honor's
4 approval, based on one resolution, to avoid anything that
5 shouldn't be involved, he said he is going to discuss with his
6 client the issue so it is smooth, and I have no problem with
7 that.

8 THE COURT: I'm bringing the jury in. We are going to
9 start asking questions. We're not going to stop. We are not
10 going to send them back out. We're not going to have
11 discussions then. Everything gets resolved now. And the jury
12 has already been out for 20 minutes. So you got about two.

13 MR. BLOCH: Thank you, Judge.

14 MR. FRANCOLLA: We managed to work it out at least,
15 your Honor.

16 THE COURT: That's great.

17 (Pause)

18 MR. RUDIN: Your Honor, may I put one other thing on
19 the record before you call the jury out. Apparently, the
20 defendant's first witness Diane Smith was in the audience and
21 watching Mr. Fraser's testimony for much of it.

22 THE COURT: Fortunately she's testifying about police
23 practice and procedure, not about the kind of things that were
24 testified to this morning.

25 Yes, she shouldn't have been here. Nobody made a

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Fraser - Direct

1 formal request to ask that witnesses be excluded. Nobody ever
2 made a -- you'll look in vain in the record for such a request.
3 But no, she shouldn't have been here and somebody should have
4 noticed at the back table. Okay?

5 But I'm not granting a mistrial because she was here.
6 I'm not going to punish anybody because she was here. She just
7 better stay out of the courtroom from now on.

8 MR. RUDIN: Very well.

9 THE COURT: It would be a much bigger -- it wouldn't
10 be a huge issue, it is a civil case. But it would be a much
11 bigger issue here if she was here yesterday when you were
12 reading the deposition testimony. This morning he was talking
13 about the emotional injury he has suffered, which has nothing
14 to do --

15 MR. FRANCOLLA: The non-party is Diane Smith.

16 THE COURT: I know. She's the lady on the bench.

17 MR. FRANCOLLA: She's the -- yes, I am sorry.

18 THE COURT: She's the lady on the bench. She is the
19 one who got the 50 bucks from UC 84. I know who Diane Smith is
20 ask. I shouldn't have said police procedure.

21 MR. FRANCOLLA: I told her to leave. I told her that
22 initially, but she is a non-party that was subpoenaed, so I
23 apologize. As soon as I noticed, I asked her to go outside.
24 And I told her to wait outside in the initial part.

25 THE COURT: We have a witness room where she can sit,

N3g3fra2

Fraser - Direct

1 you know.

2 MR. FRANCOLLA: I think I had her come while we were
3 in session, so I didn't know when she was here.

4 THE COURT: Fine. I wouldn't recognize the lady so I
5 couldn't have possibly said anything. Members of the
6 plaintiff's family are here. And I have no way of knowing who
7 is who in the courtroom.

8 And by the way, I just want it on the record,
9 Mr. Francolla, the reason I overruled all of those objections
10 is that everything to which Mr. Fraser testified, including the
11 fact that he asked his mother not to come and visit him, which
12 was the only thing in the world he had to look forward to, had
13 to do with his emotional distress damages, every single bit of
14 it.

15 MR. FRANCOLLA: That's fair. I was focused more on
16 him talking about what she experienced, just for the record.

17 THE COURT: Well, it's admissible that she told him
18 what she experienced, because that explains why he asked her to
19 do what he asked her to do, thereby taking it out from under
20 the hearsay rule. Of course, she's already testified to it as
21 well. But, every bit of this testimony has been about his
22 emotional distress damages.

23 MR. FRANCOLLA: That's fair. I objected. I
24 understand the ruling.

25 THE COURT: Okay. Can we get started? All right.

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Fraser - Direct

1 You back in the seat.

2 THE WITNESS: Yes, ma'am.

3 Judge, do you want me to remain standing until the
4 jury comes?

5 THE COURT: It is the polite thing to do, Mr. Fraser.

6 THE WITNESS: All right. Yes, ma'am.

7 (Continued on next page)

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N3g3fra2

Fraser - Direct

1 (Jury present)

2 THE COURT: Okay. Sorry it took so long. We had to
3 deal with some issues that should expedite matters going
4 forward.

5 Mr. Fraser, won't you sit down. Remember you're still
6 under oath.

7 Turns out that Mr. Bloch has a few more questions for
8 his client before we turn to the cross-examination.

9 MR. BLOCH: Thank you, Judge. My apologies, Jawaun.
10 I forgot to ask you a few questions.

11 THE WITNESS: No problem.

12 BY MR. BLOCH:

13 Q. After you were released, did you continue to work?

14 A. Yes.

15 Q. Where did you continue to work?

16 A. I continued to work for Local 28 at Nicholson & Galloway
17 Roofing Incorporated.

18 Q. And how long did you continue to work there?

19 A. I worked for Nicholson & Galloway up until June of 2022.

20 Q. How much were you earning during that time?

21 A. I reached my journeyman status I was making approximately,
22 including with my full package, \$105 an hour.

23 Q. What is journeyman status?

24 A. You reach -- journeyman is I can take my union card and
25 travel state to state and work as a sheet metal worker. You

N3g3fra2

Fraser - Cross

1 reach journeyman status after you finish your five-and-a-half
2 years of apprenticeship.

3 MR. BLOCH: I have nothing further. Thank you.

4 THE COURT: Okay. Mr. Francolla.

5 MR. FRANCOLLA: Thank you, your Honor.

6 CROSS-EXAMINATION

7 BY MR. FRANCOLLA:

8 Q. Good morning, Mr. Fraser.

9 A. Good morning, Mr. Francolla.

10 Q. Now, referring to the incident in question on October 21,
11 2014. Your testimony is that you were living with your mom at
12 the time?

13 A. Yes.

14 Q. And that you were outside at the moment you encountered who
15 you learned to be Undercover Officer 84 because you were
16 walking to Rite Aid to get her medicine. Is that correct?

17 A. Yes.

18 Q. And your testimony on direct was that you were not involved
19 in dealing drugs on the date of this incident, October 21,
20 2014, correct?

21 A. I'm sorry. Can you state that question one more time a
22 little bit slower?

23 Q. Sure. You deny that you were selling drugs on October 21,
24 2014, right?

25 A. Yes.

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Fraser - Cross

1 Q. And I think on your direct yesterday, you indicated that
2 your involvement in drug sales had ended some time prior to
3 that?

4 A. I believe I testified that it ended months prior to this
5 occasion, and I believe it was when I enrolled in City Tech.

6 Q. Okay. So, for months prior, you had no more involvement in
7 selling drugs?

8 A. No. I was enrolled in school and working on the sheet
9 metal program.

10 Q. And you never, according to you, you never demanded the
11 identification from Undercover Officer 84, correct?

12 A. Can you ask the question one more time? I apologize.

13 Q. Did you demand UC 84's identification from him?

14 A. No.

15 Q. Of course, you deny that you committed a crime on
16 October 21, 2014, right?

17 A. Yes.

18 Q. You also deny that UC 84, obviously, was the victim of any
19 crime committed by you that night, right?

20 A. Yes.

21 Q. Now, you were asked a lot of questions towards the end of
22 your examination today about two parole hearings that you
23 participated in. Do you recall that?

24 A. Yes.

25 Q. And I imagine you've read those transcripts?

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Fraser - Cross

1 A. Yes, I reviewed them, sir.

2 Q. Are in fact, when you testified at a deposition as part of
3 this lawsuit, I showed you portions of those transcripts and
4 you answered questions about them, right?

5 A. Yes.

6 Q. So now I just want to focus on a few specific portions.

7 I'm directing counsel specifically to the June 6,
8 2017, hearing, specifically page 4, line 1, through page 5,
9 line 17.

10 MR. BLOCH: Can you give me a minute?

11 MR. FRANCOLLA: Yes, sure.

12 MR. BLOCH: Okay.

13 MR. FRANCOLLA: Thank you.

14 Q. Mr. Fraser, were you asked these questions and did you give
15 these answers:

16 "Q. This is your first time in state prison. Instant offense
17 involved you approaching the victim who was an undercover
18 officer. You asked him for identification, you then proceeded
19 to call six other individuals over to where the undercover
20 officer was standing, and stated give me your money and ID. At
21 that point, the undercover officer handed you his
22 identification and a sum of U.S. currency. What identification
23 did he give you?

24 "A. A New York State driver's license.

25 "Q. Who were the six other individuals?

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Fraser - Cross

1 "A. Ma'am, this crime was committed alone. I was alone, there
2 were six others they claim was on the premises, but I did this
3 by myself.

4 "Q. And why?

5 "A. Well, as it says, this was a buy and bust. I was dealing
6 with drugs at the time, and that's how the whole incident
7 actually started. It started from a drug sale which it was
8 supposed to be. At the time I was being selfish to my family
9 and myself, and it was a bad decision overall.

10 "Q. But it seems that you thought that this individual was
11 an undercover police officer. Were you trying to sell him
12 drugs or was he trying to buy drugs? Is that how it started?

13 "A. Yes, ma'am. He was trying to buy drugs.

14 "Q. Okay. Why not walk away at that point if you thought he
15 was a police officer? Why demand his money?

16 "A. It was identification that was demanded. I just wanted to
17 see that he wasn't a police officer, and at the time, I was
18 selling drugs, making a bad decision, and I wanted the money at
19 that time.

20 "Q. All right. Were you also using drugs at the time, sir?

21 "A. No, ma'am.

22 "Q. What did you do after the undercover officer handed you
23 his identification and a sum of U.S. currency? Did you
24 complete the transaction?

25 "A. We didn't get to make the money transaction because his

N3g3fra2

Fraser - Cross

1 whole unit came in. When I saw the rest of the narcotics
2 division was then there, I ran and was apprehended three blocks
3 away from where we originally spoke."

4 Mr. Fraser, were you asked those questions and did you
5 give those answers?

6 A. Yes, I may have, yes.

7 Q. Okay. And I think your explanation on direct was that, to
8 the extent you said things about that night, you were trying to
9 get favorable treatment from the parole board.

10 A. I'm sorry, sir. I don't understand exactly what you are
11 insinuating.

12 Q. I'm asking, was what I just read in true? That's what you
13 said?

14 A. I'm sorry, you said am I trying to get a favor or is it
15 true?

16 THE COURT: I think what he asked you was, is it your
17 testimony that you said those things in order to try to get a
18 favorable resolution from the parole board?

19 THE WITNESS: Well --

20 THE COURT: It is a yes or no question, sir.

21 THE WITNESS: Okay.

22 A. I'm sorry. Can you ask the question again?

23 Q. Well, I'll ask a different one. Is what the portion I just
24 read in, what you said, was it true?

25 A. I wasn't challenging them.

N3g3fra2

Fraser - Cross

1 THE COURT: No, no, no. Is the things you said to the
2 parole board that he just read you, were those things true?

3 Yes or no?

4 A. Can you read them again, sir?

5 Q. The entire passage of it?

6 THE COURT: Read the entire passage again.

7 Q. Okay.

8 "Q. This is your first time in state prison. Instant offense
9 involve you approaching the victim who was an undercover
10 officer. You asked him for identification. You then proceeded
11 to call six other individuals over to where the undercover
12 officer was standing, and stated give me your money and ID. At
13 that point, the undercover officer handed you his
14 identification and a sum of U.S. currency. What identification
15 did he give you?

16 "A. A New York State driver's license.

17 "Q. Who were the six other individuals?

18 "A. Ma'am, this crime was committed alone. I was alone.
19 There was six others they claim was on the premises, but I did
20 this by myself.

21 "Q. And why?

22 "A. Well, as it says, this was a buy and bust. I was dealing
23 with drugs at the time, and that's how the whole incident
24 actually started. Started from a drug sale, which it was
25 supposed to be. At the time, I was being selfish to my family

N3g3fra2

Fraser - Cross

1 and myself, and it was a bad decision overall.

2 "Q. But it seems that you thought that this individual was
3 an undercover police officer. Were you trying to sell him
4 drugs or was he trying to buy drugs? Is that how it started?

5 "A. Yes, ma'am. He was trying to buy drugs.

6 "Q. Why not walk away at that point if you thought he was a
7 police officer? Why demand his money?

8 "A. It was identification that was demanded. I just wanted to
9 see that he wasn't a police officer, and at the time, I was
10 selling drugs, making a bad decision, and I wanted the money at
11 that time.

12 "Q. All right. Were you also using drugs at that time, sir?

13 "A. No, ma'am.

14 "Q. What did you do after the undercover officer handed you
15 his identification and a sum of U.S. currency? Did you
16 complete the transaction?

17 "A. We didn't get to make the money transaction because his
18 whole unit came in. When I saw the rest of the narcotics
19 division was then there, I ran, and was apprehended three
20 blocks away from where we originally spoke."

21 THE COURT: So the question is, was that entirely
22 true, was that entirely false, or are there parts of it that
23 were true and parts of it that were false?

24 THE WITNESS: That statement is partially true.

25 Q. By definition, partially false?

N3g3fra2

Fraser - Cross

1 A. It was partially true, sir.

2 Q. Okay. What about the other part?

3 A. I was basically in agreeance and not challenging them, but
4 it was partially true the statement.

5 Q. Okay. Now, when we went through that portion in your
6 deposition, your explanation was not that you weren't trying to
7 challenge them though, was it?

8 A. I'm not sure.

9 Q. Well, I'll read it to you. Referring to the deposition of
10 Mr. Fraser, May 14 of 2021, specifically pages 38, line 3, to
11 40, line 5.

12 MR. BLOCH: Give me a minute to get there.

13 MR. RUDIN: Mr. Francolla, where does the passage end?

14 MR. FRANCOLLA: 40, line 5.

15 MR. BLOCH: Okay.

16 Q. Mr. Fraser were you asked these questions and did you give
17 these answers at your deposition:

18 "Q. I'm going to direct you to the next page, page 5, lines 2
19 through 7. Read them to yourself.

20 "A. Okay.

21 "Q. Did you say that?

22 "A. Sir, I don't recall saying this exactly like this. And I
23 also believe that this is referring to my past dealings.

24 "Q. What do you mean by that it's referring to your past
25 dealings?

N3g3fra2

Fraser - Cross

1 "A. During this, I was basically making an attempt to express
2 that my past dealings, you know, being involved with drug
3 dealings in the past, which led me to be involved in this
4 incident.

5 "Q. Can we agree that the question on the transcript is asking
6 you why you didn't walk away if you thought he was a cop, why
7 you would demand his money. And your answer was that you were
8 selling drugs at that time, and that you wanted money at that
9 time. Can we agree that's what the transcript says?

10 "A. Sir, that's what the transcript says, but I don't recall
11 answering this question exactly like this.

12 "Q. The answers 2 through 7, the way it's written doesn't
13 refer to prior incidents, does it?

14 "A. The way it's written it's not referring to. But what I
15 can recall from the parole hearing is I was making an attempt
16 to let the commissioners know that my past dealings is what led
17 me to being involved in this incident. I'm not sure if that
18 was misinterpreted in any way.

19 "Q. To the extent it's written that way, the court reporter
20 may have gotten it wrong; is what you are saying?

21 "A. I'm not sure, sir.

22 "Q. We'll go down a little further on the same page. Can you
23 read lines 10 through 17 to yourself still on page 5, lines 13
24 through 17. Did you say that?

25 "A. Sir, I don't recall saying this exactly like this. I

N3g3fra2

Fraser - Cross

1 don't recall saying this exactly like this. And there is two
2 words in there that changes the context of the statement
3 completely.

4 "Q. Which are those?

5 "A. We didn't get to make the money transaction because --
6 because changes the context of this statement. I don't recall
7 answering this question like this, sir.

8 "Q. Again, are you indicating that as you sit here today you
9 think those two words were mistakenly written by the court
10 reporter?

11 "A. I'm not sure, but it's very possible.

12 "Q. What's your basis for saying it's very possible?

13 "A. Because she also said she did this to the best of her
14 ability."

15 Were you asked those questions and did you give those
16 answers?

17 A. Yes.

18 Q. And the last portion about the best of her ability, what
19 you were referring to is the certification she included at the
20 end of the transcript we were talking to, right?

21 MR. BLOCH: Objection.

22 THE COURT: I'm sorry? Ground?

23 MR. BLOCH: The certification is hearsay.

24 THE COURT: Overruled.

25 A. What was your question, sir?

N3g3fra2

Fraser - Cross

1 Q. The last portion that I read in, you said, well, she said
2 she did it to the best of her ability. And what you were
3 referencing was the certification at the back of the transcript
4 that the court reporter included, right?

5 A. I believe so.

6 Q. Now, I want to turn now on the same topic to the second
7 hearing you participated in now in September 5 of 2017.

8 And I want to refer counsel to page 6, specifically
9 lines 11 through 21.

10 Mr. Fraser, were you asked this question and did you
11 give this answer in a September hearing:

12 "Q. All right. So, but what was going on, why did you
13 approach this officer, clearly you figured he was an undercover
14 officer, right?

15 "A. Well, at the time, at that time in my life, I wasn't
16 staying with my parents, and I thought I was selling drugs,
17 that's what I thought. It would give me some money. I didn't
18 have any funds. This is actually in the middle my projects
19 where I used to reside, and, you know, this guy came in to
20 purchase drugs, that was his intention, I was there selling
21 drugs, and the transaction didn't go well at all."

22 Were you asked that question and did you give that
23 answer?

24 A. Yes, sir, I may have.

25 Q. Did you say "may have"?

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Fraser - Cross

1 A. Yes, it's possible. I don't remember if that's my exact
2 words, but I possibly did answer the question like that.

3 Q. Was your answer that I just read true?

4 A. Can you read the answer again to me, sir?

5 Q. Sure. I'll read from 14 to 21 at Mr. Fraser's request.

6 "A. Well, at the time, at that time in my life, I wasn't
7 staying with my parents and I thought I was selling drugs,
8 that's what I thought. It would give me some money. I didn't
9 have any funds. This is actually in the middle of my projects
10 where I used to reside and, you know, this guy came in to
11 purchase drugs, that was his intention, and I was there selling
12 drugs and the transaction didn't go well at all."

13 Was that true?

14 A. No, sir.

15 Q. Now, you mentioned yesterday that you were in fact working
16 on the date of this incident, right? You had just started a
17 new job?

18 A. Yes.

19 Q. Isn't it true that even though you had started this new
20 job, you were still involved in selling drugs?

21 A. No.

22 Q. I'm going to refer to the June 6, 2017, parole hearing,
23 specifically page 7, lines 3 to 20.

24 Mr. Fraser, were you asked these questions and did you
25 give these answers? Again, this is the June 6, 2017 hearing.

N3g3fra2

Fraser - Cross

1 "Q. The judge before sentencing says you threatened an
2 undercover officer by threatening to assault him. You stole
3 his identification. But since you been in, again, this is your
4 first time in state prison, you've been working, employed by
5 Nicholas & Galloway Roofing.

6 "A. Yes, ma'am.

7 "Q. What are you doing there?

8 "A. It's actually a union job. I do roofing, architectural
9 sheet metal work. I was working there before I was
10 incarcerated and I returned back to work there when I got to
11 this program.

12 Q. That's a good job. While you were out there involved in
13 selling drugs or in possession of drugs?

14 "A. I was being selfish at that time. Greedy I should say. I
15 was just being selfish and greedy to myself and my family.
16 Because I was making decent money at the job. It wasn't worth
17 this."

18 Were you asked those questions and did you give those
19 answers?

20 A. Yes. Possibly.

21 Q. Okay. The answers that you gave, true, false, mix?

22 A. Partially.

23 Q. Partially true, partially false?

24 A. It was partially true.

25 Q. What was the false part?

N3g3fra2

Fraser - Cross

1 A. It was partially true, sir.

2 THE COURT: I'm sorry. I can't hear you, sir.

3 THE WITNESS: Me? It was partially true.

4 THE COURT: Yes. He asked you what part was not true.
5 Tell him what part of that was not true.

6 A. Okay. I'm sorry. Can you read it again, Mr. Francolla?

7 THE COURT: I want you to stop him the minute he says
8 something that you say today is not true.

9 THE WITNESS: Yes, ma'am.

10 MR. FRANCOLLA: Thank you, your Honor.

11 THE COURT: Say "stop there, Mr. Francolla."

12 "Q. The judge before sentencing says you threatened an
13 undercover officer by threatening to assault him. You stole
14 his identification. But since you've been in, again, this is
15 your first time in state prison, you've been working, employed
16 by Nicholas & Galloway Roofing?

17 "A. Yes, ma'am.

18 "Q. What are you doing there?

19 "A. It's actually a union job. I do roofing, architectural
20 sheet metal work. I was working there before I was
21 incarcerated there, and I returned back to work there when I
22 got to this program.

23 "Q. That's a good job. Why were you out there involved in
24 selling drugs or in possession of drugs?

25 "A. I was being selfish at the time."

N3g3fra2

Fraser - Cross

1 A. Stop right there, Mr. Francolla.

2 Q. Okay. You were being selfish at the time?

3 A. Yes. That was a false. That's false.

4 Q. Okay. Then it goes on to say "greedy, I should say."

5 A. That's false as well.

6 Q. "I was just being selfish and greedy to myself and my
7 family."

8 A. That statement, that whole statement is false.

9 Q. Then the last one, "Because I was making decent money at
10 the job, it wasn't worth this."

11 A. I'm sorry. Can you just read that last part again?

12 Q. "Because I was making decent money at the job, it wasn't
13 worth this."

14 A. It wasn't worth this or it? I didn't hear the last word.

15 Q. "This."

16 A. Well, you know, that's partially true, too.

17 THE COURT: Let's move on.

18 Q. Sure. I'm going to refer in the same transcript to page
19 10, lines 3 to 10.

20 Mr. Fraser, were you asked this question and did you
21 give this answer:

22 "Q. You were making a public sale. I mean, it was public, it
23 was outside. But there were people around you. That's not
24 usually the way you handle business; is that right?

25 "A. You say that, sir, but we were in the projects, we were

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Fraser - Cross

1 sitting on the bench when the incident started, me and the
2 victim, and these people were at a distance. Nobody was next
3 to us."

4 Were you asked that question and did you give that
5 answer?

6 A. Sir, I don't recall giving that answer ever about me and a
7 victim sitting on a bench. I don't recall that. It's
8 possible. But I don't recall that.

9 Q. Okay. Well, I assume then from that -- I'll ask it. Was
10 the answer I just read, I assume it wasn't true.

11 A. Nothing about that is true. Me and the victim never sat
12 anywhere together. No.

13 Q. Do you have an explanation for why it's in the transcript
14 if it's not what you said?

15 A. Sir, I'm not really sure. It possibly was said. I'm not
16 sure.

17 Q. Okay. It wasn't somebody made a mistake when they were
18 writing it down?

19 A. No, absolutely not.

20 Q. Now, during your prosecution, prior to your trial, you were
21 offered plea bargains, correct?

22 A. Yes.

23 Q. And you refused to take any of them, right?

24 A. Absolutely.

25 Q. And as you sit here today, is that because you believed you

N3g3fra2

Fraser - Cross

1 were innocent?

2 A. I was innocent. I didn't commit this crime. Yes.

3 Q. I'm going to refer same transcript, June 6, 2017. Page 2,
4 line 25, to page 3, line 15.

5 Mr. Fraser, were you asked these questions and did you
6 give these answers:

7 "Q. I want to bring your attention -- I want to bring to your
8 attention we have a stenographer present on this end, and
9 what's being said here today is being put into a permanent
10 record which can be used at any future proceedings. Saying
11 that, do you have any appeals pending at this time?

12 "A. No, ma'am.

13 "Q. And were you offered a plea, if you recall?

14 "A. Yes, ma'am.

15 "Q. What was that?

16 "A. Two and a half years.

17 "Q. And were you involved in this crime?

18 "A. Yes, ma'am.

19 "Q. Why didn't you take the plea?

20 "A. At the time, I didn't feel as if I was guilty for the
21 crime because I didn't understand what robbery was at the
22 time."

23 Were you asked those questions and did you give those
24 answers?

25 A. Yes, sir, I believe so.

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Fraser - Cross

1 Q. Same point. Same transcript. Page 11, line 4, to page 12,
2 line 3.

3 Mr. Fraser, were you asked these questions and give
4 these answers:

5 "Q. I thought I heard you say in the interview that you
6 didn't know it was a crime?

7 "A. No. What I said was, I didn't know what robbery consisted
8 of. I read robbery consists of forcibly taking someone's
9 property. It was explained to me robbery is forcibly taking
10 someone's property, can simply be raising your voice or just
11 being aggressive. Asking someone to turn over his property,
12 which then I began to understand the way the situation took
13 place, would be what is considered a robbery.

14 "Q. Yeah, you threatened him. You seem to appear so naive to
15 what you were doing. I would think it's not the first time you
16 ever told somebody what you told that officer, what you said to
17 that officer?

18 "A. Sir, what are you referring to?

19 "Q. When you told him give me your ID or I'll fuck you up,
20 when you said that. That's what the record says.

21 "A. All right. We actually spoke more normally than that.
22 That's not exactly what was stated. But I spoke aggressively
23 to a lot of individuals, like you said. We were in a public
24 area. I was trying to get in, and get out, and that didn't
25 work out well."

N3g3fra2

Fraser - Cross

1 Were you asked those questions and did you give those
2 answers?

3 A. Yes, sir, I believe so, yes.

4 Q. Now, you indicated earlier that you were staying with your
5 mom at the time, right?

6 A. I'm sorry. At the time of this offense?

7 Q. Yes.

8 A. Yes.

9 Q. Okay. And obviously, whether or not you were staying with
10 your mom at the time or not wouldn't have any impact on the
11 extent to which you might be entitled to parole, right?

12 A. I don't understand your question.

13 Q. Well, I'll ask it better. That's fair.

14 I think you were suggesting on direct that you were
15 admitting more things about what happened in an effort to get
16 leniency, not because they actually happened.

17 A. What exactly are you insinuating, sir? You just said two
18 different things in those statements that you made.

19 Q. Okay. To the extent we've read portions of the transcript
20 thus far where you admit to doing, in sum and substance, what
21 was alleged against you, why --

22 THE COURT: I think that's his problem with your
23 question, Mr. Francolla.

24 MR. FRANCOLLA: Okay.

25 THE COURT: Is your characterization of what he said.

N3g3fra2

Fraser - Cross

1 That's an argumentative question. You've read the transcript,
2 he's responded to questions. You can make your argument to the
3 jury.

4 MR. FRANCOLLA: That's fair.

5 THE COURT: Mr. Francolla always tells me when I'm
6 fair.

7 MR. FRANCOLLA: Which happens to be always, your
8 Honor.

9 Q. So on the point of where you were living, I'm just going to
10 reference page 9 of the June 6 transcript. Specifically lines
11 3 to 5.

12 Actually, give me one moment. Sorry. I'm going to,
13 for counsel, just for clarity for context, I would start on
14 line 8 at 25 and then go up until 5, just so the context is
15 clear.

16 Mr. Fraser, were you asked these questions and did you
17 give these answers:

18 "Q. Upon release, you plan to reside with your mother. Is
19 that still the case?

20 "A. Yes.

21 "Q. Were you residing with her when you committed the instant
22 offense?

23 "A. No, not at that time."

24 Were you asked those questions and did you give those
25 answers?

N3g3fra2

Fraser - Cross

1 A. Yes, I believe so.

2 Q. Why did you say you weren't living with your mother at the
3 time of this incident, if your testimony today is that you
4 were?

5 A. Sir, I'm not exactly sure. If I made -- this interview was
6 approximately six to eight minutes, it went extremely fast. I
7 possibly did give that answer, and I'm not really sure why I
8 said that.

9 Q. Now, I want to focus your claims as to how things went down
10 on October 21, 2014.

11 Your testimony on direct was that Undercover Officer
12 84, when he came up to you, knew you by name. Right?

13 A. No, sir. That was not my testimony.

14 Q. Well, you testified, am I correct, and correct me if I'm
15 wrong, that he said to you, you know, hey, Jawaun, or something
16 like that?

17 A. Yes.

18 Q. Right? And you admit you have no idea how he would have
19 known your first name, right?

20 A. Yes.

21 Q. Okay. And he also, according to you, happened to know
22 which building and floor you lived on?

23 A. Yes.

24 Q. I imagine you have no idea how he would have known that
25 either?

N3g3fra2

Fraser - Cross

1 A. He's a police officer. I'm not sure. He had the
2 information which was extremely accurate, but I'm not sure
3 exactly where he got it from.

4 Q. Okay. And then you also indicated that he actually knew
5 your mother's name?

6 A. Yes.

7 Q. Any explanation for how he would have known your mother's
8 name?

9 A. The only thing I can tell you is he's a police officer, and
10 they have access to things that we don't. I'm not sure where
11 he, you know, got this information from.

12 Q. Well, you never seen him before to your knowledge, right?

13 A. No, sir.

14 Q. And you know from having been through the criminal
15 prosecution, it wasn't like you were some target of
16 investigation or something, right?

17 A. What was your question, sir?

18 Q. Well, you obviously participated in your own -- in the
19 prosecution of you. Heard the evidence. There was never any
20 indication that UC 84 was investigating you prior to the
21 interaction of the two of you, was there?

22 A. It was never disclosed, but that is a possibility. I'm not
23 sure where he got my name, my mother's name, my address. I'm
24 not really sure.

25 Q. Now, there was some questions asked I think of the

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Fraser - Cross

1 individual defendants about whether DNA testing was done.

2 You admit that you had your actual hands on Undercover
3 Officer 84's ID, right?

4 A. My hand, my left hand.

5 Q. Yes?

6 A. Yes.

7 Q. And when the two of you encountered each other, there were
8 other people that were in the courtyard, right?

9 A. There were pedestrians, there were -- like, older
10 individuals that sit on the benches across from where our --
11 this incident took place, and a few individuals came out of the
12 building we was in front of during the incident.

13 Q. One of your friends happened to be outside that night,
14 right?

15 A. I wouldn't say a friend. An associate. Not a friend. It
16 was -- there were several individuals that came out of the
17 building, I want to say four to six individuals.

18 Q. One of them was Eddie Sanchez?

19 A. No. Eddie Sanchez actually lived there at the time in the
20 building behind us where the incident took place.

21 Q. So he wasn't in the courtyard that night, according to you?

22 A. I believe he was, I believe he was behind us, though not,
23 you know, right next to where those five or six -- four to six
24 individuals were.

25 Q. Now, your testimony is that you decided to take a picture

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Fraser - Cross

1 of UC 84's ID so that you could text it to your mother. Is
2 that accurate?

3 A. Yes. To confirm that she knew him. I had no other way of
4 confirming this information, so yes.

5 Q. Before you endeavored in that, did you text her his name
6 when you saw it?

7 A. You said did I text her his name?

8 Q. Yeah.

9 A. What was I texting her his name for. He never told me his
10 name.

11 Q. You looked at his ID?

12 A. And I took a picture of it. There's no point in me, like,
13 texting her the name if the name is on the ID.

14 Q. Have you ever taken a picture of a stranger's ID before or
15 after October 21, 2014?

16 A. After the fact I've done that. But before that, I was
17 never in a position to do so. Yes, I have after the fact.

18 Q. Okay. I'm going to refer to your deposition, May 14, 2021,
19 16, line 17 through 24. Were you asked these questions and did
20 you give these answers:

21 "Q. Is that something you can remember doing prior to
22 October 21, 2014, taking a picture of someone's ID you were
23 talking to?

24 "A. No. Never been in a situation like that.

25 "Q. What about since that time, do you recall any other

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Fraser - Cross

1 situations where you took a picture of someone's ID you were
2 speaking with?

3 "A. No."

4 Were you asked those questions and did you give those
5 answers?

6 A. Yes.

7 Q. So, did you start taking pictures of people's IDs after
8 2021?

9 A. Well, sir, now I own a trucking company that we do tows, so
10 I take pictures of people's identification cards all the time
11 now. So, yes.

12 Q. Okay. But as of 2021, in your everyday life, we can agree
13 that what you claim you did on October 21, 2014, was the first
14 time you'd ever done it?

15 A. Yes. Now I do it on a daily basis because of my company.

16 Q. Because of your job?

17 A. Yes.

18 Q. Not something you do when you encounter strangers on the
19 street?

20 A. No.

21 Q. Now, at the time you did this, it was your suspicion that
22 he was a police officer, right?

23 A. I speculated that initially, but it was more so my concern
24 and curiosity that the information he provided to me, my
25 address, my name, my mother's name, and him saying he lived in

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Fraser - Cross

1 my building. You know, that's what led to that.

2 Q. Okay. And prior to that point, he had asked you
3 repeatedly, I think, he insisted in buying drugs from you,
4 according to you, right?

5 A. Yes.

6 Q. So, you wanted to make sure, you wanted to find out if your
7 mom knew someone you suspected might be a cop, who was trying
8 to buy drugs from you?

9 A. I wanted to find out if my mom knew this guy who claimed he
10 lived in my building and knew me since I was a kid. I didn't
11 have any drugs for him or anything he was requesting, so that
12 wasn't a factor in the equation.

13 Q. Now, you didn't say anything to him before you took the
14 picture of the ID, right?

15 A. I can't really recall. That kind of transpired in seconds.
16 Like, he handed the ID, the phone was in my hand. As we all
17 know, the iPhone has an option to take a picture from your lock
18 screen.

19 Q. I am going to refer to your deposition. Page 16, lines 9
20 through 16.

21 "Q. Did you tell undercover officer 84 "Hey, I'm going to snap
22 a pic so I can send it to my mom" or did you just do it?

23 "A. I just did it.

24 "Q. Is there any reason why you didn't tell him you were going
25 to take a picture of it?

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Fraser - Cross

1 "A. I didn't see any harm in my simply taking a picture of
2 it."

3 Were you asked those questions and did you give those
4 answers?

5 A. Yes, I believe so.

6 Q. Now, you testified on direct examination of the emotional
7 impact of what you allege happened to you, correct?

8 A. Are you talking about my emotional impact from being
9 incarcerated?

10 Q. Yes.

11 A. Yes.

12 Q. So now, I just want to refer you to a prior proceeding on
13 October 10, 2019, that you testified in. Specifically, page
14 16, lines 20-24 and then 17, 5-8.

15 Were you asked these questions and did you give these
16 answers?

17 "Q. Did you suffer any emotional problems from being
18 incarcerated for the years that you were?

19 "A. Yes.

20 "Q. What emotional issues did you face from being arrested and
21 incarcerated?

22 "A. Stress."

23 Were you asked those questions and did you give those
24 answers?

25 A. Yes, I believe so.

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Fraser - Cross

1 Q. Now, you mentioned on direct that the parole hearings you
2 were involved in you were not under oath; is that accurate?

3 A. Yes.

4 Q. Are you certain of that?

5 A. Yes.

6 Q. I am going to refer you to your deposition. Specifically
7 page 28, line 12, through 29, line 4.

8 MR. BLOCH: What lines?

9 MR. FRANCOLLA: 28:12 to 29:4.

10 Q. Mr. Fraser --

11 MR. RUDIN: Your Honor, we object. There is a
12 historical record that establishes this as a matter of fact.

13 THE COURT: Excuse me. I have absolutely no idea what
14 you're talking about.

15 MR. RUDIN: All right.

16 THE COURT: How could I possibly know what you are
17 talking about?

18 Go on to something else. When we send the jury out
19 for lunch, we can discuss this.

20 MR. FRANCOLLA: I can make it --

21 THE COURT: Just, go on to something else.

22 MR. FRANCOLLA: Well, it's one of the last things I
23 have, your Honor.

24 THE COURT: Okay.

25 Q. Isn't it true, Mr. Fraser, at least as of May 2021, when

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Fraser - Redirect

1 you testified, you believed that you were under oath?

2 A. I'm sorry, under oath where? What was your question, sir?

3 THE COURT: What are you talking about?

4 MR. FRANCOLLA: I can read it in, your Honor.

5 THE COURT: No. Your question is unclear.

6 MR. FRANCOLLA: Fair. As usual.

7 THE COURT: You keep saying that.

8 Q. The parole hearings we've read through a bit. Am I correct
9 that as of your deposition, you believed you may have been
10 under oath?

11 A. Yes. I wasn't sure.

12 MR. FRANCOLLA: Your Honor, I may be finished. I want
13 to take one moment to confer with my colleague if I can.

14 THE COURT: Take a minute.

15 MR. FRANCOLLA: I am in fact finished, your Honor.

16 Thank you, Mr. Fraser.

17 THE WITNESS: No problem.

18 THE COURT: Redirect?

19 MR. BLOCH: Briefly, Judge. Thank you.

20 REDIRECT EXAMINATION

21 BY MR. BLOCH:

22 Q. Mr. Fraser, you were asked some questions about what you
23 said in the parole hearing, right?

24 A. Yes.

25 Q. In the September parole hearing, were you asked this

N3g3fra2

Fraser - Redirect

1 question and did you give this answer:

2 "Q. But did you state "give me your money and ID"?

3 "A. No, ma'am. This was actually a buy and bust operation.

4 The undercover actually was trying to purchase drugs from me at
5 the time."

6 Did you give that testimony in your parole hearing?

7 A. Yes, sir, I believe so.

8 Q. You were just asked questions about whether you were under
9 oath in the parole hearing. Right?

10 A. Yes.

11 Q. You understand now whether you were under oath or not?

12 A. Yes.

13 Q. Were you under oath?

14 A. During my parole hearings?

15 Q. Yes.

16 A. No, sir.

17 Q. You were also asked questions about when you were asked in
18 the parole hearing why didn't you take the plea, and you
19 answered I didn't feel as if I was guilty for the crime because
20 I didn't understand what robbery was at the time.

21 Do you remember those questions?

22 A. Yes.

23 Q. Why didn't you say to the parole officers, I didn't take
24 that plea because I was innocent?

25 A. Mr. Bloch, as I told you earlier, you know, what I was

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1 taught from my peers and fellow inmates is to not challenge,
2 you know, anything. Any terminology or whatever they are
3 referred to, if they use the word "crime," you know, you
4 have -- your best bet is to stay in agreeance with their
5 terminology.

6 So when they referred to me committing that crime or
7 why didn't I take a plea on that crime, I used the same
8 terminology as them, and I didn't want to challenge the fact
9 that, you know, they felt I was supposed to take that plea, you
10 know, that was on the table.

11 Q. You were just asked questions about a prior proceeding
12 where you described the emotional effects from being
13 incarcerated you gave a one-word answer, "stress," right?

14 Do you recall those questions?

15 A. Yes.

16 Q. Was your lawyer allowed to ask any questions to explain
17 what you meant by "stress" in that hearing?

18 A. No.

19 MR. BLOCH: Nothing further, Judge.

20 MR. FRANCOLLA: I have nothing as well, your Honor.

21 THE COURT: Okay. You can step down, Mr. Fraser.

22 THE WITNESS: Thank you.

23 (Witness excused)

24 THE COURT: Let's take lunch now. Let's be back
25 2 o'clock. And we've got some more witnesses to go. I'm going

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1 to talk to the lawyers about timing, and I'll have some
2 information for you on that when you get back from lunch, okay?

3 Don't discuss the case, keep an open mind.

4 (Jury excused)

5 THE COURT: Okay. So you've got your economist and
6 was there one or witness that you had? No, you've got your
7 economist. Who will be on for about an hour?

8 MR. WHITE: 20, 30 minutes.

9 THE COURT: Okay. Then you're going to rest and we're
10 going to have motions.

11 Then you are going to call whoever is sitting in the
12 back, Diane.

13 MR. FRANCOLLA: Smith, yes. Ms. Smith.

14 THE COURT: How about ADA Sangermano, is he also here
15 today?

16 MR. FRANCOLLA: He was here and then because he's
17 right nearby, he's accessible. He'll be here when he needs to
18 testify. I wanted to give him a little flexibility.

19 THE COURT: We've got to get both of them in today,
20 right?

21 MR. FRANCOLLA: Yeah.

22 THE COURT: Okay. So then tomorrow, that leaves you
23 with?

24 MR. FRANCOLLA: Ms. Flaherty.

25 THE COURT: How long is Ms. Flaherty going to be on

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1 the stand?

2 MR. FRANCOLLA: From us, probably like 30, 35 minutes.

3 MR. RUDIN: I think I'll have about an hour for her.

4 THE COURT: I would think so. Okay. So she's going
5 to take up the morning.

6 So here's what I'm going to tell them. That it looks
7 like we'll get done with the testimony shortly before or at
8 lunchtime tomorrow. We'll start at 10 tomorrow morning. And
9 then I am going to excuse them for the day, because we have to
10 have a charge conference. They can't be present for that. And
11 I want both sides to close in the same either morning or
12 afternoon, so you will close on Monday morning.

13 I just got a reprieve from Columbia. I don't have to
14 be there until 4:45, which means I really have to leave here at
15 3:45. Takes an hour to get up there. But I can charge when
16 the summations are over.

17 It will be back table first, front table last. You
18 got a one-hour time limit, folks. And they'll deliberate. I
19 don't think they could possibly get done deliberating with four
20 different defendants and a bunch of different charges. Who
21 knows, I don't know. Could take them five minutes, but I tend
22 to doubt it.

23 So does that sound okay for a schedule?

24 MR. RUDIN: That's fine with us. I just wanted to
25 bring one thing to your Honor's attention. We were planning to

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1 divide up our summation, Mr. Bloch would do --

2 THE COURT: As long as it's a total of one hour.

3 MR. RUDIN: Okay.

4 MR. FRANCOLLA: Works for us, your Honor.

5 THE COURT: Okay. All right. Go get some lunch. And
6 okay. And let's start right at 2 o'clock.

7 (Recess)

8 (Continued on next page)

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AFTERNOON SESSION

2:05 p.m.

(In open court; jury present)

THE COURT: Hello. I just told the lawyers, and I'm going to tell you, I'm a little teary today. I just lost my sister a few weeks ago, and today would have been her birthday, and I find that I'm getting really emotional for no apparent reason at odd times, like ever since 6 o'clock this morning. So pay no attention to me. OK?

All right. And I thank you for your indulgence.

OK. Call your next witness.

MR. WHITE: Plaintiff calls Kristin Kucsma to the stand.

THE COURT: Dr. Kucsma, won't you please come up. I'm sorry you have to come into the cage here.

THE WITNESS: That's all right, your Honor. Thank you.

THE COURT: We're trying to get rid of it. If you'd stand and raise your right hand.

KRISTIN KUCSMA,

called as a witness by the Plaintiff,

having been duly sworn, testified as follows:

THE COURT: OK. Dr. Kucsma, if you wouldn't mind using that microphone. Because you're behind a piece of Plexiglas, it's hard for us to hear you.

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Kucsma - Direct

1 THE WITNESS: Sure.

2 THE COURT: Thank you. You may inquire.

3 DIRECT EXAMINATION

4 BY MR. WHITE:

5 Q. Good afternoon, Ms. Kucsma.

6 A. Good afternoon.

7 Q. Could you tell us your current employment.

8 A. Yes, I am currently the managing director and chief
9 economist of the Sobel Tinari Economics Group.

10 Q. What is the Sobel Tinari Economics Group?

11 A. We are an economics consulting group. Most of the work
12 that we do involves working with attorneys, both plaintiffs'
13 attorneys and defense attorneys, to evaluate economic damages
14 in a wide variety of litigated matters.

15 Q. Can you please tell us your educational background.

16 A. I have a Bachelor of Arts degree in economics that I
17 received from Seton Hall University where I was graduated with
18 highest honors. I have a Master of Arts degree in economics
19 that I received from Rutgers University. And in addition to my
20 Master of Arts degree in economics, I was enrolled in the Ph.D.
21 program in economics, completed all of my course work in that
22 program, passed my qualifying examinations, but did not have a
23 chance to complete my dissertation.

24 Q. When did you join the Sobel Tinari Economics Group?

25 A. I joined --

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Kucsma - Direct

1 THE COURT: Counsel, can you speak up?

2 MR. WHITE: Yes, your Honor.

3 Q. When did you join the Sobel Tinari Economics Group?

4 A. I joined the group on January 2 of 2008.

5 Q. And what did you do previous to that professionally?

6 A. Before that I enjoyed what I like to refer to as my first
7 career, which was as a college professor. I was a member of
8 the full-time faculty at Seton Hall University and Drew
9 University. I was an adjunct professor at Rutgers University
10 in what was Saint Peter's College at the time, now Saint
11 Peter's University. I taught primarily in the department of
12 economics at the graduate and undergraduate level. On occasion
13 I taught finance and statistics, and I did that at the
14 university level for about 14 years.

15 Q. Ms. Kucsma, do you belong to any professional societies?

16 A. I do. I am an active contributing member of the National
17 Association of Forensic Economics. I'm also an active
18 contributing member of the Eastern Economics Association. And
19 I'm also an active contributing member of the American Academy
20 of Economic and Financial Experts.

21 Q. Are you published in the field of economics?

22 A. Yes, I am.

23 Q. Can you briefly highlight your publication history?

24 A. Sure. I have an article published in the *Journal of*
25 *Forensic Economics* which discusses how economists calculate

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Kucsma - Direct

1 economic damages in litigated matters. I also have an article
2 published in a book called *Determining Economic Damages*, which
3 is considered to be a leading reference guide in the field.

4 And I also have several other publications that have appeared
5 in journals and newsletters of the National Association of
6 Forensic Economics.

7 Q. Do you continue to be involved in education?

8 A. I do, yes. I regularly teach continuing legal education
9 courses to members of the legal community, I work with law
10 schools on mock trials, and I also continue to work with Seton
11 Hall University where I serve as a mentor for the Women's
12 Leadership Studies program.

13 Q. Have you taken any professional courses beyond your
14 degrees?

15 A. I have not, no.

16 Q. How long have you been doing economic consulting?

17 A. I've been doing economic consulting work for a little over
18 15 years now, since 2008.

19 Q. Have you calculated economic losses before?

20 A. Yes. To date, I've prepared probably about 5,000
21 appraisals of economic damages, give or take, over my career.

22 Q. Have you been qualified as an expert in federal and/or
23 state courts?

24 A. Yes, I have.

25 Q. Both federal and state courts?

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1 A. Yes. I've testified approximately 400 times in federal and
2 state courts around the country.

3 Q. And in which fields have you generally been qualified as an
4 expert?

5 A. Typically, I'm qualified in the field of economics.
6 Sometimes I'm qualified in the field of forensic economics or
7 the calculation of economic damages, but those are the fields
8 in which I'm most commonly qualified.

9 MR. WHITE: Your Honor, at this point we'd like to
10 proffer Ms. Kucsma as an expert in the field of economics,
11 specifically the calculation of economic losses.

12 THE COURT: Any objection?

13 MS. MCGUIRE: No objection, your Honor.

14 THE COURT: OK. So, folks, Ms. Kucsma is being
15 qualified as an expert, and I've got to explain something to
16 you about what we mean by "expert." Expert sounds like
17 somebody you have to believe, and that's not true. I'm the
18 only expert in this courtroom that you have to believe. You
19 have to believe that I tell you what the law is.

20 An expert witness is someone who, by virtue of
21 training or experience, is able to tell us about things that
22 aren't within our ordinary knowledge. And we allow -- we call
23 those people experts, but what they really are is designated
24 opinion-givers. We let them testify to opinions that they have
25 reached after looking at evidence. Generally in a lawsuit,

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1 that's how they do it. And normally, you don't get opinion
2 testimony like that from witnesses. Witnesses are here to tell
3 you facts. But she's allowed to offer her opinions, and I
4 believe she's going to be offering her opinions on damages that
5 were suffered, economic damages that were suffered by the
6 plaintiff, assuming he were to prove his case.

7 You don't have to agree with what she says. If she
8 doesn't seem sufficiently educated or qualified to you, if what
9 she says doesn't make sense to you, if what she says doesn't
10 accord with other facts that you find in this case, you have no
11 obligation to accept her testimony just because she is an
12 expert. OK? That's the important thing to tell you. But if
13 you find her testimony helpful, you're absolutely free to
14 incorporate it into your deliberations. OK.

15 BY MR. WHITE:

16 Q. Ms. Kucsma, were you retained to conduct an analysis in
17 this case?

18 A. Yes, I was.

19 Q. And who retained you?

20 A. I was retained by the offices of Joel Rudin.

21 Q. You understand that to be counsel for the plaintiff in this
22 case?

23 A. Yes.

24 Q. And what were you retained to do in this case?

25 A. In this case, very specifically, I was retained to

1 calculate the additional compensation that the plaintiff would
2 have earned had he not been incarcerated and had he really been
3 able to continue on the career path he was on in November of
4 2015, had he been able to complete the apprenticeship program
5 on time as he started.

6 So that was really my main focus was just taking a
7 look at how much money he would have earned had he not spent
8 time in jail, and then also how much additional money he would
9 have earned, as I said, if he had not had to start over with
10 the apprenticeship program.

11 Q. Did you review documents in preparing your opinion?

12 A. I did, yes.

13 Q. And what were those documents?

14 A. I reviewed a copy of the complaint in this case. I also
15 reviewed a variety of employment records and earnings records
16 for the plaintiff, specifically, pay stubs, W-2 wage and tax
17 statements, employment records. I also reviewed a variety of
18 union documents as well. As I mentioned a moment ago, in
19 November of 2015, the plaintiff had been enrolled in an
20 apprenticeship program, in a training program, with the union.
21 So in order for me to calculate how much he would have earned
22 as he went through that program, I needed to review a variety
23 of union documents that included what we call wage and benefit
24 schedules so I could see what his hourly rate would have been
25 as he moved through that training program. And then I also had

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1 been provided with some union documents very specific to the
2 plaintiff that allowed me to examine how many hours he had
3 worked each year, and so on.

4 Q. Ms. Kucsma, were you provided everything you needed to
5 offer your opinion to a reasonable degree of economic
6 certainty?

7 A. Yes, I was.

8 Q. And are the sources you relied upon considered to be
9 professionally reliable by experts in your field?

10 A. Yes, they are.

11 Q. And is the methodology one that is considered to be
12 professionally reliable by experts in your field?

13 A. Yes, it is.

14 Q. Ms. Kucsma, did you prepare a demonstrative aid to assist
15 the jury in understanding your analysis?

16 A. I did.

17 MR. WHITE: Cristina, could we please publish
18 Ms. Kucsma's demonstrative aid just to her now.

19 Q. Ms. Kucsma, are you able to see a document on your screen?

20 A. Yes.

21 Q. Is this the demonstrative aid that you prepared for your
22 testimony today?

23 A. This is the first page, yes, of the demonstrative aid that
24 I prepared, yes.

25 Q. And does this demonstrative aid contain a summary of your

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1 findings?

2 A. Yes, it does.

3 Q. Did you prepare it?

4 A. I did.

5 Q. Did you prepare this document based on -- or did you
6 prepare this demonstrative based on your review of documents
7 and your analysis in this case?

8 A. Yes, I did.

9 MR. WHITE: With your Honor's permission, I would like
10 to publish this demonstrative aid to the jury.

11 THE COURT: Any objection?

12 MS. McGUIRE: No objection, your Honor.

13 THE COURT: Thank you.

14 Q. Ms. Kucsma, the first slide here looks to be a statement of
15 principal facts. Can you please --

16 THE COURT: Hang on one second. I'm now asking
17 questions. Are witnesses coming into the room? That's all I
18 care about.

19 MR. FRANCOLLA: No.

20 THE COURT: No. Fine. Thank you.

21 Q. Ms. Kucsma, could you just explain what is on slide 1.

22 A. Yes. What we're looking at here, just some really
23 principal facts that underlie the calculations that I'm going
24 to discuss in just a few moments.

25 Number one, as we know, in November of 2015, as I

1 mentioned before, Mr. Fraser was already enrolled in an
2 apprenticeship program, or a training program. An
3 apprenticeship program with a union, as I said, is really like
4 a training program. Someone can enter a union, they can begin
5 the training process, and then work towards the ultimate goal
6 of becoming a journeyman once they've mastered all of the
7 skills that the union has determined that they need to perform
8 their job.

9 In this case, Mr. Fraser's progress, of course,
10 though, in that apprenticeship program was interrupted when he
11 was convicted. In November of 2015, his job was terminated,
12 and then he ultimately also was expelled from the union and
13 from the apprenticeship program there.

14 Now, as part of the apprenticeship program, an
15 individual earns money while they're in training, but they
16 don't earn what we would call a full journeyman pay rate. You
17 start out earning maybe 25 percent of what you'll eventually
18 earn as a journeyman, and then as you move up, as you go
19 through your second year of training, you earn 35 percent of
20 what you'll earn. And when you enter your third year of
21 program, a little bit more. But with, again, the ultimate goal
22 to become, at the end of the fifth year, a journeyman and earn
23 full wages and full benefits that journeymen are entitled to.

24 Mr. Fraser in this particular case, as I said, was in
25 the program in November of 2015 when he was incarcerated, or

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1 when he was convicted. He then was ejected from the program.
2 He then reentered the program in May of 2017. So he began a
3 work release program, and he was allowed to reenter the union
4 there and reenter the apprenticeship program. The only problem
5 was he had to start back at square one. So in May of 2017, he
6 was allowed to start the training program over again. So he
7 had to start again as a first-year apprentice. If he hadn't
8 been convicted and incarcerated, by this time, May of 2017,
9 Mr. Fraser actually would have been in the third year of the
10 program.

11 And then, ultimately, I learned that Mr. Fraser did
12 complete the program and ultimately attained the status of
13 journeyman in February of 2022. So this information, as you'll
14 see in a moment, was important for me because it provided me
15 with a timeline of what Mr. Fraser's career path would have
16 been had he not been convicted, and it also allowed me to
17 examine what his career path ultimately was after he was
18 released.

19 MR. WHITE: Could we please turn to the second slide.

20 Q. Ms. Kucsma, does this slide contain a summary of your
21 findings?

22 A. It does, yes.

23 Q. Can you please explain those for the jury.

24 A. Sure. Once I had reviewed all of the information provided
25 to me, I was able to determine that there were two sort of root

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1 causes, if you will, of the economic damages here. One was
2 that while Mr. Fraser was incarcerated, he wasn't working and
3 he wasn't earning any money. So from November 25 of 2015
4 through May 3 of 2017 -- that's the time period where
5 Mr. Fraser was not in that training program, not working at
6 all -- he would have earned \$48,607 during that period. So if
7 he had been able to continue through the apprenticeship program
8 from November 25, 2015, through May 3 of 2017, he would have
9 earned as a trainee, as an apprentice, \$48,607 during that time
10 period.

11 Now, the other sort of root cause, if you will, of the
12 economic damages is the fact that once Mr. Fraser was released,
13 once he was out on work release, he was able to reenter the
14 program, but he had to start back at square one. So in May of
15 2017, Mr. Fraser entered the program back as a first-year
16 apprentice.

17 So from May 10 of 2017 through February of 2022 --
18 February is when Mr. Fraser ultimately completes the program
19 and becomes a journeyman -- during that roughly five-year
20 period, he is behind. He's not earning as much as he would
21 have earned if he had never been incarcerated because in 2017,
22 instead of earning the wages of a third-year apprentice, he's
23 only earning the wages of a first-year apprentice. In 2018,
24 instead of earning the wages of a fourth-year apprentice, he's
25 only earning the wages of a second-year apprentice. And in

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1 fact, if he had not been convicted and incarcerated, he
2 ultimately would have achieved journeyman status in late 2019.
3 Now, as a result of his incarceration, he doesn't reach
4 journeyman status, which gives him full pay and full benefits,
5 until February of 2022.

6 So I was able to calculate that had Mr. Fraser been
7 able to stay on track with the training program, he would have
8 earned \$151,434 more than he actually earned. He did earn
9 money from May 10 of 2017 through February 2 of 2022, but he
10 didn't earn as much money as he would have if he had been able
11 to stay on track in that training program.

12 So I was able to then determine that in total
13 Mr. Fraser had lost \$200,041 in wages from November of 2015
14 through February of 2022. If he had stayed on track, he would
15 have earned an additional \$200,041 in earnings during that
16 time.

17 And I also took into account interest. I took into
18 account the fact that if Mr. Fraser had earned this money in
19 the past, in 2015, '16, '17, and so on, he could have earned at
20 least a little bit of interest on that money. And I calculated
21 how much interest would have accrued or accumulated on that
22 money each year from 2015 through the present time. And when I
23 included that interest, I calculated the total economic damages
24 for the period at \$224,656.

25 MR. WHITE: Could we go to slide 3, please.

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1 Q. Can you explain to the jury what slide 3 presents.

2 A. Yes. This is a summary based on some of the union
3 documents that I reviewed that just shows you how much an
4 apprentice earns as he is making his way through this training
5 program.

6 So there is a six-month, what we call, pre-apprentice
7 period, and then in this case Mr. Fraser had entered the
8 apprenticeship program. And as I mentioned before, in the
9 first year, an apprentice is paid roughly 35 percent of what he
10 will ultimately be paid when he finishes the program and
11 becomes a journeyman. As a second-year apprentice, he will
12 earn 45 percent of what he will eventually earn as a
13 journeyman. Third-year apprentice, you earn a little over half
14 of what you'll ultimately earn when you complete the program as
15 a journeyman. Fourth-year apprentice, when you're getting
16 close to completing the program, you're paid 70 percent of the
17 wage that journeymen receive. And then the last part of the
18 program, the fifth-year apprentice, you'll be earning
19 80 percent of what you'll ultimately receive when you achieve
20 the journeyman status there.

21 So as you move through the program and gain more
22 experience, you're working your way towards the ultimate goal
23 of receiving full wages and full benefits of a journeyman.

24 MR. WHITE: Could we move on to slide 4, please.

25 Q. Could you please explain what's presented on this slide.

1 A. Yes. Here you see some of the wage rates that I ultimately
2 used to calculate how much money Mr. Fraser would have earned
3 either had he not been incarcerated in the first place and/or
4 if he had kind of stayed on track with that training program.
5 And all of the wage rates that we see here came directly from
6 union documents, union wage and benefit schedules that had been
7 provided to me.

8 And probably the two most significant things that you
9 may notice when you look at this is, number one, if you go
10 across any one row horizontally, you will see that the
11 pre-apprentice earns a fraction of the journeyman wages. A
12 first-year apprentice earns a little but more but still less
13 than the journeyman wages. A second-year apprentice earns a
14 little bit more but still less than the journeyman wages, and
15 so on. So as you go across those rows, you see the
16 progression. You see how Mr. Fraser's hourly rate would have
17 increased and did increase as he completed each additional
18 phase of the apprenticeship program.

19 The other thing that is important to notice is if you
20 go down any singular column there, you also see the rates
21 increasing, and that's because as a journeyman, your wage rate
22 goes up year over year, which means as an apprentice. So we're
23 looking at, loosely speaking, wage growth or the effect of
24 inflation over time.

25 MR. WHITE: Could we turn to slide 5.

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Kucsma - Direct

1 Q. Ms. Kucsma, I'll ask you to walk us through that slide as
2 well.

3 A. Sure. In addition to an hourly rate of pay, a wage,
4 according to my review of the wage and benefit schedules, I
5 learned that union members also get some additional money in
6 their paycheck, additional money that's referred to as vacation
7 pay.

8 So for every hour that a union worker works in this
9 case, they get an hourly regular rate, and then they also get
10 some additional money here in the form of vacation pay. So if
11 I take the wage rate that we just saw on the previous screen
12 and add the vacation rate to it, that's really the dollar per
13 hour that a union worker is going to get paid. This is what's
14 going to show up in the union worker's paycheck for every hour
15 that he worked.

16 And, again, we see that this is increasing over time.
17 If we go down each row and we go across horizontally, we see
18 that, as a trainee, the vacation pay is a fraction of the
19 journeyman pay, but it does increase with each additional year
20 of experience as an apprentice.

21 MR. WHITE: Could we turn to slide 6.

22 Q. Ms. Kucsma, could you please explain what's presented on
23 that slide as well.

24 A. Yes. Here are the two timelines that I alluded to before.
25 The middle column that we see there is what I've called the

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Kucsma - Direct

1 "Projected Date of Achievement," and that's -- that's really
2 the sort of the but-for scenario. If Mr. Fraser had not been
3 convicted, if he had stayed in the program -- he was in the
4 apprenticeship program in 2015 -- if he had stayed in that
5 program, when would he have hit these milestones here? I know
6 that he, in fact, became a first-year apprentice April 21 of
7 2015. I know that from my review of union records specifically
8 for him.

9 November of 2015, of course, he's convicted, so he's
10 no longer in the program after that. But if he hadn't been
11 convicted, I determined that he likely would have reached
12 second-year apprentice status in April of 2016. A year later
13 he would have become a third-year apprentice. A year later he
14 would have become a fourth-year apprentice. A year later he
15 would have become a fifth-year apprentice, in April of 2019.
16 And then six months thereafter, in October of 2019, if he
17 hadn't been convicted, he would have been a journeyman at that
18 point, and that's the point at which he would have begun to
19 receive full pay, full wages, and full benefits of journeymen.

20 The column on the far right hand is the actual
21 timeline. This is what actually happened in this case. So in
22 this case once Mr. Fraser went -- was provided with work
23 release, he reenters the program as a first-year apprentice.
24 He reenters the program as a first-year apprentice in May of
25 2017. So we see he's now -- now he's behind. In August of

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1 2018, he becomes a second-year apprentice. All of these dates
2 in the far right-hand column are based on documents provided to
3 me by the union specifically for Mr. Fraser.

4 By August of 2019, he's now a third-year apprentice.
5 Keep in mind that if you look at the middle column, by 2019, he
6 should have almost been a journeyman, but now, in fact, he was
7 only a third-year apprentice in 2019. August of 2020, he
8 becomes a fourth-year apprentice. July of 2021, he becomes a
9 fifth-year apprentice, and then he does ultimately complete the
10 program and become a journeyman in February of 2022.

11 MR. WHITE: Could we please turn to slide 7.

12 Q. Ms. Kucsma, if you could explain that slide.

13 A. Yes. This is a summary of the hourly rates that I used to
14 calculate the additional money that Mr. Fraser would have
15 earned through February of 2022. And what you see here is you
16 see a couple of things. Number one, you see that I'm adding
17 together the wage and the vacation rates. So that last column,
18 that's -- that represents the dollar amount that would have
19 been paid to Mr. Fraser. That's what would have showed up in
20 his paycheck there, a sum of the wage and vacation rates.

21 Now, if you look at sort of the events in the titles,
22 what's happening here is when we go down each row, we're just
23 following that timeline that I mentioned before. So if
24 Mr. Fraser had not been incarcerated, we know -- for example,
25 in April of 2015 we know he had become a first-year apprentice,

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1 and we know that his paycheck would have reflected a total of
2 \$17.83 for every hour he worked based on the wage rate for a
3 first-year apprentice in 2015 plus vacation pay.

4 If he had not been incarcerated, just sort of skipping
5 down here, we see that by 2017, for example, he now would have
6 been a third-year apprentice, if he hadn't been incarcerated.
7 His pay, let's say, in August of 2017 would have been a total
8 of \$29.72 for every hour that he worked, and that's just the
9 sum of the wage rate that he would have gotten as a union
10 member plus the vacation pay.

11 Now, what we see happening here, though, if you look
12 at these wage rates, they're increasing year over year, and
13 they're increasing for two reasons. Sometimes they're
14 increasing because Mr. Fraser moves from one level to the next.
15 He goes from being a first-year apprentice to a second-year
16 apprentice to a third-year apprentice. But there are other
17 times in between where the rate continues to increase, and
18 that's because of those new wage and benefits schedules.
19 That's just because of the passage of time. So I'm really just
20 tracing how his wage rates and his vacation pay would have
21 increased at each point in time through October of 2021.

22 MR. CHAN: Could we please turn to slide 8.

23 Q. Ms. Kucsma, if you could please explain that slide.

24 A. Yes. In order to calculate what Mr. Fraser would have
25 earned in each year had he not been incarcerated, I used those

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Kucsma - Direct

1 wage and vacation rates that we looked at just a moment ago,
2 and I multiplied them by the number of hours that Mr. Fraser
3 would have worked in any given year. So, for example, if he
4 had worked 2,000 hours in any given year and been paid \$30 an
5 hour, he would have earned \$60,000 that year. So that's how
6 I'm going to calculate how much he would have earned in each
7 year.

8 For most years I know how many hours he actually
9 worked. So for most years through the present time. So when I
10 do know how many hours Mr. Fraser actually worked, for example,
11 in 2018, 2018 was a full year. Mr. Fraser was out of jail, and
12 he worked a full year there. I know how many hours he worked
13 in 2018. I'm going to take the number of hours he actually
14 worked in 2018 and multiply them by the rate that he would have
15 been getting if he hadn't been incarcerated in the first place.

16 I do have some years, though, for example, 2016, where
17 Mr. Fraser was incarcerated. So he didn't work any hours, of
18 course. In those years, I had to estimate the number of hours
19 that he likely would have worked. And in order to do that, I
20 did look, for example, at how many hours he worked in 2018
21 and '19, took an average of that, and I estimated that he would
22 have worked approximately the same number of hours in 2016.

23 Now, having said that, though, when I take the hourly
24 rate times the number of hours there, I do make several -- I'm
25 going to make several adjustments to those calculations, and

1 that's really what we're looking at here.

2 The first thing I'm going to do is for the period of
3 time where Mr. Fraser was incarcerated, since I don't know
4 specifically how many hours he would have worked, I'm going to
5 estimate it based on an average of what he worked in subsequent
6 years, but I am going to make two downward adjustments during
7 that period, only the period where Mr. Fraser was incarcerated.
8 And I'm going to make those two downward adjustments to take
9 into account the probability that if Mr. Fraser had not been
10 incarcerated, had he been out there working union jobs, he
11 likely would have missed work now and then. He may have missed
12 work because of injury or illness, and he may have missed work
13 because work simply wasn't available.

14 So I'm going to make one downward adjustment each
15 year, and I've called it work-life adjustment here. That
16 adjustment takes into account the likelihood that if Mr. Fraser
17 had not been incarcerated and he was out there working,
18 something may have happened. He may have twisted an ankle, he
19 may have gotten the flu, and he may have missed work. And if
20 he didn't work, he wouldn't have gotten paid. So I'm going to
21 make a downward adjustment each and every year in the amount of
22 21.6 percent, just that time period from November of 15 through
23 May of 2017, to take into account that probability.

24 And that 21.6 percent is based on U.S. government
25 data. It's based very specifically on the actual experience of

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Kucsma - Direct

1 19-, 20-year-old males who have as their highest level of
2 education a GED. So I looked at actual data for men like
3 Mr. Fraser.

4 But I'm also going to make a second downward
5 adjustment to my calculations during that period to reflect the
6 likelihood that there simply may not have been work available.
7 So I'm going to make a second adjustment that I've referred to
8 here as an unemployment adjustment. So I'm going to reduce
9 those earnings again by 4.8 percent to take into account the
10 probability that there simply may not have been work available
11 for Mr. Fraser. And that 4.8 percent is based on my review of
12 data published by the U.S. Department of Labor. Specifically,
13 I examined unemployment rates for males in the 19- to
14 25-year-old category.

15 Now, I'm going to make one other downward adjustment
16 here, and that's to take into account job maintenance expenses.
17 I'm going to take into account the fact that if Mr. Fraser had
18 continued to work if he hadn't been incarcerated, he likely
19 would have had some job-related expenses that he would have
20 incurred in that case. That could include a cup of coffee in
21 the morning, and so on.

22 Now, the last thing I have to do, though, is I do have
23 to make one upward adjustment. When I reviewed those wage and
24 benefits schedules, I learned that in addition to getting a
25 paycheck every week as a union member, Mr. Fraser also was

1 entitled to and is entitled to a variety of fringe benefits.
2 Those benefits include annuity benefits, pension benefits,
3 health insurance benefits. The only benefits that I
4 considered, though, for purposes of this analysis was the
5 annuity benefit.

6 For those of you that aren't familiar with annuities,
7 an annuity benefit is like a 401(k) plan. So in this
8 particular case, for every hour that a union member works, his
9 employer has to put money into an annuity fund, and it's just
10 like a 401(k) plan. That's basically a retirement plan.
11 That's money that will then be available for the union member
12 when they retire. So for every hour that Mr. Fraser didn't
13 work, that was less money going into that annuity fund, which
14 means when he retires, there will be less money in that pot, in
15 that savings plan, for him to use when he retires.

16 And based on my review of the wage and benefit
17 schedules, I learned that the contribution to the annuity fund
18 was equal to 20 percent of the regular wage rate. So for every
19 hour that Mr. Fraser works, he gets paid, and then his employer
20 puts 20 percent of that into this annuity fund, and that's
21 money that is then available for Mr. Fraser when he retires.

22 And then, lastly, as I mentioned a few moments ago, I
23 did also consider the interest that Mr. Fraser may have earned
24 on this money had he received this money in the past. In order
25 to calculate the interest on the money as he received it, I

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1 relied upon a safe fixed-income security. I looked at yields,
2 or interest rates, on U.S. Treasury securities. So I did not
3 assume Mr. Fraser would have taken the money and put it in the
4 stock market and hit it big. In this case, I chose to rely on
5 a safe fixed-income security, and that's what you see here, the
6 1.56 percent and the 3.71 percent. That's the range of the
7 interest rates on U.S. Treasury securities from 2015 through
8 the present time.

9 Q. Could we turn to your final slide and just have you explain
10 that, please.

11 A. Sure. Here's where I've combined everything that I just
12 mentioned to you a few moments ago. If we look at -- so
13 columns 2 and 3, that's where I'm calculating how much money
14 Mr. Fraser would have earned each year had he not been
15 incarcerated. So in each of these years, he would have
16 continued to progress through the apprenticeship program here.
17 And in each year, in order to calculate how much he would have
18 earned, I simply took the wage and vacation rate and I
19 multiplied it by the number of hours that Mr. Fraser actually
20 worked in each year.

21 For 2015, Mr. Fraser was not able to complete working
22 for the full year, but I did know how many hours he had worked
23 through November of that year. So I was able, then, to
24 determine on average how many hours he worked each week, and
25 that's how I determined how many hours he would have worked for

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1 the remainder of that year from November through the end of the
2 year. And then I took those hours and multiplied by the wage
3 rate.

4 2016, I mentioned to you before he didn't work at all.
5 So the number of hours I used when I calculated what he would
6 have earned in 2016, I simply took an average of the number of
7 hours he had worked in 2018 and 2019. Those were two full
8 years after he had been released from prison and before COVID
9 hit.

10 For 2017, he, of course, reentered the program, but he
11 didn't work a full year of 2017. Once again I know how many
12 hours he worked from April through December. I was able to
13 calculate on average how many hours he worked per week, and
14 that allowed me to determine how much he would have worked from
15 January to April of 2017.

16 2018, '19, '20, '21, and '22, I have documentation of
17 the number of hours that he, in fact, worked during those
18 years, and I simply used the actual number of hours he worked
19 in those years to calculate (a) what he would have earned had
20 he been paid the higher rates that he would have achieved and
21 compared that to what he actually did earn.

22 So when we look at column 2, that's where I'm
23 performing the calculation of the hourly rate times the number
24 of hours. When we look at column 3, that's where I'm making
25 those adjustments that I mentioned a moment ago to you.

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1 So the first three rows there represent the period of
2 time where Mr. Fraser was earning nothing because he was
3 incarcerated there. And then after May of 2017, he, of course,
4 is working on work release. So the figures in column 3 reflect
5 the downward adjustments that I mentioned a moment ago and
6 also, of course, include that 20 percent payment into the
7 annuity fund.

8 If you look at columns 4 and 5, columns 4 and 5,
9 that's where I'm considering what Mr. Fraser actually earned
10 from November of 2015 through February of 2022. And then the
11 economic damages in this case will simply be the difference
12 between what he would have earned had he been able to complete
13 the training program on time compared to what he did, in fact,
14 earn through February of 2022, and the damages will be the
15 difference.

16 So column 6, then, of course, that's where I'm simply
17 taking a look at the difference between what Mr. Fraser would
18 have earned and what he did, in fact, earn. Again, in those
19 first three rows, he earned nothing, so there really is no
20 difference to consider there. He's just entitled to the -- or
21 I've calculated the damages based on what he would have earned
22 had he been able to continue the apprenticeship program.

23 Thereafter, just as sort of a point of reference, if
24 we go to 2019, since I mentioned that before, 2019 is the year
25 in which, if you look at column 3, that's the year in which

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1 Mr. Fraser would have ultimately achieved journeyman status if
2 he hadn't been incarcerated. You see his earnings for 2019,
3 I've calculated, including the annuity benefits, at \$101,410.
4 If we go over to column 5, we see that, in fact, the total
5 amount of money he, in fact, earned, including the annuity
6 benefits, was \$62,268. And that's largely because he's only a
7 third-level apprentice in 2019 when, in fact, he would have
8 been finishing up the apprenticeship and achieving journeyman
9 status in that year but for the incarceration.

10 And then I performed that calculation each year
11 through February 2 of 2022. That's the point at which
12 Mr. Fraser, in fact, completes the program and reaches
13 journeyman status. And I determined, as I mentioned earlier
14 today, that the total amount of money, the additional money
15 Mr. Fraser would have earned from November of 2015 through
16 February of 2022, is \$200,041. If I include interest, I
17 calculate the total economic damages at \$224,656.

18 Q. Ms. Kucsma, can you testify with a reasonable degree of
19 economic certainty that had Mr. Fraser not been incarcerated,
20 he would have earned, with interest, 224,656 more dollars than
21 he did earn in the real world?

22 A. Yes.

23 Q. And, Ms. Kucsma, is it correct that you were only asked to
24 calculate economic damages?

25 A. That is correct.

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Kucsma - Cross

1 Q. You were not asked to calculate any other type of damage
2 that Mr. Fraser would have faced in light of his conviction,
3 correct?

4 A. That's correct.

5 MR. WHITE: No further questions, your Honor.

6 THE COURT: Thank you.

7 Cross, Ms. McGuire.

8 MS. McGUIRE: Thank you, your Honor.

9 CROSS-EXAMINATION

10 BY MS. McGUIRE:

11 Q. Good afternoon, Ms. Kucsma.

12 A. Good afternoon.

13 Q. Plaintiff's counsel is paying you to be here, right?

14 A. My firm has been paid, yes, for my time here today.

15 Q. But that -- your firm's been paid by plaintiff's counsel,
16 correct?

17 A. Yes.

18 Q. And can you just tell the jury how much you're being paid
19 to be here.

20 A. I believe my firm received a payment of \$5,100 for my
21 appearance here today, also my preparation of the demonstrative
22 aids, my review of the file, my updating of the calculations,
23 and so on.

24 Q. And how much did plaintiff's counsel pay you for your
25 report?

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Kucsma - Cross

1 A. I believe we were paid a total of \$5,500 for the report we
2 initially prepared in 2021.

3 Q. So, in total, plaintiff's counsel paid you \$10,600, is that
4 correct?

5 A. I believe that's the total that my firm has received, yes.

6 Q. And that's the total for your work on this case?

7 A. That's correct.

8 Q. Now, the report you wrote for this case was based on
9 documents that plaintiff's counsel provided you, correct?

10 A. That's correct.

11 Q. And these documents were provided to you exclusively by
12 plaintiff's counsel, is that correct?

13 A. I believe most of them were. I don't recall whether I had
14 some of the wage and benefit schedules already in my file. I
15 do work on hundreds of cases involving union workers, so I
16 probably had some of those wage and benefit schedules in my
17 file already.

18 Q. As part of your report, did you review any transcripts from
19 plaintiff's parole hearings?

20 A. No.

21 Q. So when you came to your calculations, it was premised on
22 the allegation that plaintiff was wrongfully incarcerated,
23 correct?

24 A. I suppose so. I say that simply because my calculations
25 really are pretty straightforward. I've simply performed an

1 analysis of what the plaintiff would have earned through
2 February of 2022 had he been able to continue working his way
3 through the apprenticeship program and had he not been
4 incarcerated, and then I compared that to what he has, in fact,
5 earned through that date.

6 Q. Right. But the reason that you're performing these
7 calculations is under the assumption that plaintiff is
8 wrongfully incarcerated, correct?

9 A. Well, that's -- I -- again, I suppose so, but that's really
10 not directly relevant for my analysis. Like I said, my
11 analysis is really much more straightforward. Simply examines
12 what Mr. Fraser would have earned had he not been incarcerated
13 and had he continued moving through the apprenticeship program
14 and compared that to what he, in fact, earned.

15 Q. I'd like to have my cocounsel publish page 9 of the summary
16 that you've prepared in preparation for this testimony today.

17 If you look under the word "projected," what does it
18 say there?

19 A. It says "but for wrongful incarceration."

20 Q. So these computations are based on an assumption that
21 plaintiff was wrongfully incarcerated, is that correct?

22 A. I have assumed liability. I assume that's why I was
23 retained in this case is because this was a litigated matter.
24 Having said that, though, my calculations would be no different
25 whether or not the plaintiff had been incarcerated for some

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Kucsma - Cross

1 other reason. My calculations would stay the same.

2 Q. So it's your testimony that if he was rightfully
3 incarcerated, that he would still be entitled to lost wages?

4 A. No, because that's actually not the opinion I'm offering
5 here today. I'm not offering a legal opinion. I'm not
6 offering an opinion about what the plaintiff may or may not be
7 entitled to, so to speak. But I have calculated how much more
8 money he would have earned if the jury determines that he was
9 wrongfully incarcerated and that he is entitled to lost wages.

10 Q. So if plaintiff actually committed the crime he was
11 convicted of, does that at all change your analysis?

12 A. That's completely irrelevant for me. I'm not a member of
13 the jury, so that has no impact on my analysis here. It really
14 has no impact on what he would have earned pursuant to the
15 collective bargaining agreement had he continued moving through
16 that training program and compared to what he actually did
17 earn.

18 MR. WHITE: OK. I have no further questions for you,
19 Ms. Kucsma. Thank you.

20 THE WITNESS: Thank you.

21 THE COURT: Anything else for Ms. Kucsma?

22 MR. WHITE: No, your Honor.

23 THE COURT: Thank you very much, ma'am.

24 THE WITNESS: Thank you, your Honor.

25 (Witness excused)

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Kucsma - Cross

1 THE COURT: Call your next witness.

2 MR. RUDIN: Your Honor, the plaintiff rests.

3 THE COURT: OK. Ladies and gentlemen, "the plaintiff
4 rests" are magic words. What we have just heard from Mr. Rudin
5 is a statement that the plaintiff has placed before you all of
6 the evidence from which it intends to argue to you that
7 Mr. Fraser has proved his cases for malicious prosecution and
8 denial of a right to a fair trial and his claim against the
9 City of New York for what we call *Monell* violations, all of
10 which I'll explain to you when we get to the jury charges.

11 I now have to excuse you for a moment because I have
12 to talk to the lawyers about a matter of law at this very
13 minute, and I have to do that out of your hearing.

14 Let me explain to you what things look like. We have
15 to get through two witnesses today, two more witnesses today,
16 and they're here and we're going to do that. And tomorrow
17 we're going to start at 10 o'clock in the morning, and I
18 believe we have one more witness at that time. That witness,
19 they estimate, will take the morning. And then at that time
20 either the plaintiff will put on some additional evidence or
21 everybody will rest.

22 So I think I will be excusing you tomorrow at
23 lunchtime because we then have to talk about the jury charge.
24 We have to go over it page by page. We have to do that when
25 all the evidence is in. And so that means that Monday morning

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Kucsma - Cross

1 you will at 9:30 start listening to the closing arguments, and
2 you'll get my charge, and you'll start deliberating.

3 OK. So we're right on schedule as far as I'm
4 concerned.

5 All right. So now having told you that, goodbye.

6 (Jury excused)

7 (Continued on next page)

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1 (Jury not present)

2 THE COURT: OK. Have a seat.

3 Anybody have anything they want to say to me?

4 MS. McGUIRE: Your Honor, defendants would like to
5 make a motion pursuant to Federal Rule of Civil Procedure 50.

6 Would you like to hear argument on the record or --

7 THE COURT: Well, I think that you're supposed to put
8 on the record the reasons that you're going to rely on so that
9 you can preserve them for appeal. I am going to deny the
10 motion, but --

11 MS. McGUIRE: Yes, your Honor.

12 Just to preserve the record, as for fabrication of
13 evidence, no reasonable juror can believe plaintiff's version
14 of events in light of his parole board admissions. And if the
15 Court construes an issue of fact between plaintiff and
16 defendants, there is no evidence in the record that Detective
17 Del Toro knew of this apparent fabrication, and therefore, he
18 should be dismissed for lack of personal involvement.

19 Moving on to the *Brady* violation, I will first touch
20 on intent. There is no evidence of intent on the record. The
21 Court is going to charge the jury with intentional or reckless
22 standard for intent. Therefore, the plaintiff has to prove the
23 officers affirmatively knew about the lawsuits and deliberately
24 or consciously withheld them from the prosecutors. Accidents
25 or negligence do not satisfy the standard. There is no

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1 evidence in the record that the officers knowingly withheld
2 evidence from the prosecutors or knew the lawsuits in such
3 detail that they would meet the intentional or reckless
4 standard.

5 Next I will move on to materiality. There's no
6 evidence in the record that this evidence was material to the
7 prosecution. By evidence --

8 THE COURT: Did you listen to Mr. Stewart?

9 MS. McGUIRE: Yes, your Honor.

10 THE COURT: He was a real good witness.

11 MS. McGUIRE: Just preserving the record, your Honor.

12 THE COURT: I know you are.

13 MS. McGUIRE: Or, in other words, that it would have
14 changed the outcome of plaintiff's criminal case.

15 Part of Mr. Stewart's testimony, while he testified
16 about a number of things, was that he did not believe the
17 lawsuits were important in part because he did not perceive
18 plaintiff's case to be one of excessive force or, in his words,
19 the "planting of evidence" or police corruption.

20 THE COURT: He only knew about -- what Mr. Stewart
21 said, and I heard him say it several times, he only knew about
22 two lawsuits. So he didn't think there was really much of
23 anything there to work with. OK?

24 And we have -- we're going to have some interesting
25 conversations. I have never seen *Monell* evidence like this.

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1 Never. I've been doing this for 22 years. The notion that
2 anybody could think I've been sued eight times satisfies his
3 *Brady* obligations, I don't think so.

4 MS. McGUIRE: Finally, your Honor --

5 THE COURT: I've been sued about a few times; don't
6 know anything about them. I'm pretty appalled by some of what
7 I've heard here out of the mouths of your clients.

8 The one thing I'll grant you, and I'll reserve on
9 Del Toro on the fabrication of evidence point, is I would have
10 to go back through the record and try to reconstruct whether
11 there's evidence from which you could conclude that he knew
12 when he was handed this thing and told to make a copy of it and
13 put it in a voucher that he -- that he knew everything that had
14 gone on theretofore. I'm not up that with it, so I'll reserve
15 on Del Toro on that claim.

16 MS. McGUIRE: Understood, your Honor.

17 One final point on Rule 50 for the *Monell* claim.
18 Plaintiff cannot satisfy a failure to train the officers on
19 disclos- --

20 THE COURT: You think?

21 MS. McGUIRE: -- on disclosing *Brady* material if he
22 cannot prove the underlying *Brady* allegation.

23 THE COURT: You know, that may or may not be true in
24 this circuit. I know that's in the jury instructions, but that
25 may or may not be true. As I said, I have never heard *Monell*

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1 evidence like the evidence I've heard in this case, on both the
2 constitutionality of the City's policy and failure to train.
3 Never, ever have I heard it. I am pretty appalled by what I
4 have heard.

5 I'll be very interested to hear Ms. Flaherty's
6 testimony tomorrow and how that information is communicated to
7 the officers, whether it's possible for the officers to obtain
8 information from that database that I heard something about
9 yesterday so that they can know that they can do what they have
10 to do. I've never understood why this was a no-pay case, and I
11 understand it less now.

12 Anything you want to say with respect to motions?

13 MR. RUDIN: Looking at plaintiff?

14 THE COURT: Yes, I'm looking at you specifically as to
15 Del Toro and the -- on the fabrication claim.

16 MR. RUDIN: Well, Del Toro testified that he was right
17 there at the time of the search for the -- Mr. Fraser. Before
18 that he testified that he did not see anything that Mr. Fraser
19 did that appeared to be forcible or to support UC 84's claim of
20 a robbery at all. At the scene of the search, he was right
21 there. Regina testified that he --

22 THE COURT: Regina, there's no question you're going
23 to the jury on Regina. The issue is Del Toro. Del Toro is not
24 the arresting officer. He didn't sign the complaint. He
25 vouchered the evidence. OK? So I'll be interested to hear

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1 what -- I've reserved on the motion, but I'll be very
2 interested to hear what your argument is that he fabricated
3 evidence.

4 MR. RUDIN: He vouchered evidence that he knew had not
5 been discovered at the arrest scene because he was right there.
6 According to Regina, he was in a position to see the search,
7 and he did not see Regina remove an ID from Mr. Fraser's
8 pockets. He was also there at the post-tac meeting before any
9 of the paperwork was prepared, where all the members of the
10 team, including UC 84, met to talk about what had happened.
11 And I think a jury could infer from all that evidence that he
12 understood that the claim that the ID was stolen and that it
13 was recovered from Mr. Fraser's pocket was false.

14 THE COURT: OK.

15 MR. RUDIN: As for the defendants' other arguments, I
16 assume since --

17 THE COURT: Since I'm rejecting them, I don't think
18 you need to do anything.

19 MR. RUDIN: To the extent that your Honor's reserving,
20 of course, we can address it --

21 THE COURT: Well, I've reserved on Del Toro on the one
22 claim.

23 MR. RUDIN: Yes. So I'm assuming that if there's a
24 verdict against Del Toro, that there will be post-verdict
25 discussion, and I would elaborate on our position at that time.

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1 THE COURT: All right. Who's -- so we've got to get
2 two people on and off the stand today.

3 MR. FRANCOLLA: Yes. Ms. Smith's outside. I believe
4 Mr. Sangermano is as well. I'm going to get her first because
5 she's quick, and then he'll follow.

6 THE COURT: OK. Then let's.

7 MR. FRANCOLLA: Your Honor, should Ms. Smith go up to
8 the witness stand or just wait for the jury?

9 THE COURT: She should go up to the witness stand.
10 Let's get the jury in.

11 (Continued on next page)

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Smith - Direct

1 (Jury present)

2 THE COURT: Thank you. We've had our chat.

3 And now I will turn to Mr. Francolla and say, do you
4 have a case you wish to put on?

5 MR. FRANCOLLA: We do, your Honor.

6 THE COURT: Call your first witness.

7 MR. FRANCOLLA: The defense calls Diane Smith.

8 THE COURT: Ms. Smith, would you mind standing and
9 raising your right hand. Thank you, ma'am.

10 DIANE SMITH,

11 called as a witness by the Defendants,

12 having been duly sworn, testified as follows:

13 THE COURT: All right. Now, Ms. Smith, if you could
14 use that microphone. I keep trying to get rid of this plastic
15 thing, but they won't take it down yet. So it's hard to hear
16 you unless you speak into that microphone.

17 Thank you.

18 DIRECT EXAMINATION

19 BY MR. FRANCOLLA:

20 Q. Good afternoon, Ms. Smith.

21 A. Good afternoon.

22 Q. You're here pursuant to a subpoena, correct?

23 A. Correct.

24 Q. And included with that subpoena was a \$40 witness fee,
25 appearance fee?

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Smith - Direct

1 A. Correct.

2 Q. And in addition to the subpoena, you were provided with a
3 transcript of your testimony from an earlier portion in this
4 case?

5 A. Yes.

6 Q. And that would be from June 28 of 2021?

7 A. Yes.

8 Q. Now I'm going to ask you some questions about October 21,
9 2014, and if at any point you want to refresh your transcript,
10 refresh your recollection, just let me know, and I can show it
11 to you. OK?

12 A. Yes.

13 Q. So turning to that evening, October 21, 2014, what was the
14 building address you were living in?

15 A. 108 Avenue D.

16 Q. And was that part of a -- what's called the Jacob Riis
17 Houses?

18 A. Exactly.

19 Q. Now, at some point on that evening did you encounter an
20 individual that you later learned to be an undercover police
21 officer?

22 A. Yes.

23 Q. And for purposes of our back-and-forth, I'm going to refer
24 to him as UC 84. OK?

25 A. OK.

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Smith - Direct

1 Q. Where were you when you encountered this person?

2 A. Sitting on the bench.

3 Q. Describe for the jury the encounter that you had.

4 A. Well, he walked up to me ask asked me did I know where to
5 get some drugs.

6 Q. And what'd you say to that?

7 A. And I said, yes, maybe I could find you something.

8 Q. OK. Did he provide you any money?

9 A. Yes, he did.

10 MR. BLOCH: Your Honor, I'm going to object to the
11 leading.

12 THE COURT: Please don't lead your witness.

13 MR. FRANCOLLA: Sure.

14 Q. How much money did he provide you?

15 A. \$50.

16 Q. What'd you do once you got that money?

17 A. I went looking for some drugs for him.

18 Q. OK.

19 A. Couldn't find any.

20 Q. OK. At some point did Mr. Fraser become --

21 MR. BLOCH: Objection to the leading.

22 A. No, I saw him.

23 Q. Where'd you see him?

24 A. Standing a little further down from where I was sitting.

25 Q. Was he by himself or with anyone else?

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Smith - Direct

1 A. Other people was around him.

2 Q. Did you speak to him that night?

3 A. Yeah.

4 Q. What was the conversation that you had?

5 A. I asked him did he have anything.

6 Q. By "anything," you mean what?

7 A. Drugs.

8 Q. Why'd you ask him that?

9 A. Because I know he normally do.

10 Q. OK. Did you discuss anything else?

11 A. No.

12 Q. At any point did -- when was this conversation in the chain
13 of events we're discussing?

14 A. When was it?

15 Q. Yeah.

16 A. I'm not quite sure. I don't remember.

17 Q. OK. At any point did he discuss with you the individual
18 you were sitting with initially?

19 MR. BLOCH: Objection to the leading, Judge.

20 THE COURT: Please don't lead.

21 Q. Ms. Smith, did Mr. Fraser -- strike that.

22 Did you observe any communication between Mr. Fraser
23 and --

24 MR. BLOCH: Objection, Judge.

25 THE COURT: No, I'll let him ask that question.

N3GHFra3

Smith - Direct

1 Q. Did you observe any communication between Mr. Fraser and
2 UC 84?

3 A. No, not really. He was talking to me.

4 Q. Was he saying anything to you other than what you
5 described?

6 A. No.

7 Q. All right. I'm just going to --

8 A. I want to get out of here, man.

9 Q. -- refer to Ms. Smith's transcript.

10 THE COURT: I don't know why. She hasn't indicated
11 any failure of recollection, which would entitle you to show
12 her her transcript, not read it.

13 MR. FRANCOLLA: That's fair.

14 THE COURT: Her testimony is her testimony, unless you
15 can impeach her.

16 MR. FRANCOLLA: That's what I was going to do.

17 BY MR. FRANCOLLA:

18 Q. OK. I'm going to refer to page 12 of Ms. Smith's
19 deposition transcript, specifically, lines 16 through page 13,
20 line 4. Actually, just for context, I'll go to line 7.

21 Ms. Smith, I'm just going to read from your
22 transcript.

23 MR. BLOCH: Objection.

24 THE COURT: Hang on. What is the objection?

25 MR. BLOCH: I don't think it's inconsistent with

N3GHFra3

Smith - Direct

1 what --

2 THE COURT: Well, that's for the jury to decide.

3 OK. Folks, this happens in every trial.

4 MR. FRANCOLLA: OK.

5 THE COURT: Ms. Smith here is not a party. I told you
6 the part yesterday that depositions of a party could be
7 admitted into evidence. Ms. Smith is not a party to this case.
8 She's just here as a witness. So her -- she did give a
9 deposition in this case. It's not evidence in this case. It's
10 not evidence in this case.

11 It can be used for two purposes. If she says she
12 doesn't remember something, it can be shown to her, not told to
13 you but shown to her, to see if it jogs her memory. We call
14 that refreshment of recollection. If she said something in her
15 deposition that's inconsistent with what she says here today --
16 because what she says here today, that's her testimony. It's
17 her only testimony. It's the only thing you can consider --
18 but if she said something different on a prior occasion than
19 she says today, she could be confronted with that statement,
20 and she can be asked if she did in fact so testify on a prior
21 occasion. And then if you see an inconsistency between what
22 she said then and what she's saying now, if you see an
23 inconsistency, you can use the fact that you see an
24 inconsistency as you evaluate whether she's being truthful here
25 today on this witness stand.

N3GHFra3

Smith - Direct

1 You can't substitute what she said on the prior
2 occasion as evidence for what she's saying today because that's
3 not evidence. She's not a party. OK? So we call that
4 impeachment by a prior inconsistent statement.

5 Now, the plaintiff has objected and said, but there's
6 nothing inconsistent here. Well, that's an argument for the
7 lawyers to make because you are the triers of the fact. So you
8 decide if there is any inconsistency. I will tell you, because
9 indeed it is my jury instructions to tell you, that lawyers
10 sometimes see inconsistencies where jurors do not. And if you
11 don't see any inconsistency, you just forget that this whole
12 thing ever happened. All right?

13 Go right ahead, Mr. Francolla.

14 MR. FRANCOLLA: Thank you, your Honor.

15 BY MR. FRANCOLLA:

16 Q. Reading from your transcript, Ms. Smith, were you asked
17 these questions and did you give these answers:

18 "Q. What did Mr. Fraser say at that time?

19 "A. He didn't say nothing to him. He told me, he said it to
20 me. He said, 'Diane, come here.' So I got up, and he said,
21 'You talking to a cop.' I said, 'What?' I didn't know I was
22 talking to a cop. He said, 'Yeah, that's a cop. Get him the
23 fuck out of here,' like that.

24 "Q. Once you heard that, how did you respond?

25 "A. I said I didn't know he was a cop. So I got up and I left

N3GHFra3

Smith - Direct

1 with the money, and they was still talking back and forth,
2 talking back and forth. And I was going to the store. I went
3 to the store.

4 "Q. Just so I understand, before Mr. Fraser came up to you,
5 had you already tried to find drugs for the cop?

6 "A. Yes."

7 Were you asked those questions and did you give those
8 answers?

9 A. Yes.

10 Q. Now, having heard that, do you recall any communication
11 between Mr. Fraser and UC 84 directly?

12 A. No.

13 Q. OK. Is it your testimony today that there was none?

14 A. Exactly.

15 Q. OK. I'm going to refer to page 15, line 6, and then go to
16 16, line 10.

17 Ms. Smith, were you asked these questions and did you
18 give these answers:

19 "Q. So once Mr. Fraser told you what you already testified to,
20 you didn't have any further interaction with the undercover
21 cop?

22 "A. No, because I left.

23 "Q. Did you observe any interaction between Mr. Fraser and the
24 undercover cop?

25 "A. No. I saw him talking to him, but he was talking far away

N3GHFra3

Smith - Direct

1 from him, saying, 'Get the fuck out of here. Get the fuck out
2 of here.'

3 "Q. Mr. Fraser was saying that to the undercover cop?

4 "A. Yes.

5 "Q. When in the chain of events did that occur?

6 "A. That occurred, like, when Jawaun called me over there.

7 "Q. So when he called you over, he was also yelling towards
8 the cop?

9 "A. Yeah.

10 "Q. What was he saying, as best as you can recall?

11 "A. He was saying, 'Get the fuck out of here. Get the fuck
12 out of here.'

13 "Q. Did the undercover say anything back that you heard?

14 "A. He said something back, but I don't remember exactly what
15 he said.

16 "Q. Do you remember, like, the tone of it?

17 "A. I think he was saying, 'I'm not a cop, I'm not a cop,'
18 something like that.

19 "Q. Other than that back-and-forth, did you observe any
20 conversation between Mr. Fraser and the undercover cop?

21 "A. No. I was gone. I had left."

22 Were you asked those questions and did you give those
23 answers?

24 A. Yes, I did.

25 Q. Was that testimony truthful when you provided it?

N3GHFra3

Smith - Direct

1 A. Yes.

2 Q. OK. When you left, where did you go?

3 A. I went to the store.

4 Q. What did you do at the store?

5 A. I bought some beer.

6 Q. With what money?

7 A. With the \$50 that the cop gave me.

8 Q. OK. After that point did you observe anything else that
9 night involving Mr. Fraser?

10 A. No.

11 MR. FRANCOLLA: Your Honor, just give me one moment.
12 I may be finished.

13 Your Honor, I have nothing further.

14 Thank you, Ms. Smith.

15 THE WITNESS: Thank you.

16 Thank you, your Honor.

17 MR. FRANCOLLA: Ms. Smith, I'm sorry, you're not --

18 THE COURT: You're not quite done yet.

19 THE WITNESS: Oh, OK. Sorry.

20 THE COURT: We're getting close, but you're not quite
21 done yet.

22 THE WITNESS: All right.

23 THE COURT: OK.

24 THE WITNESS: Sorry.

25 THE COURT: Sorry about that.

N3GHFra3

Smith - Cross

1 THE WITNESS: Sorry about it too. I thought I was
2 done.

3 THE COURT: It's OK. Not to worry.

4 THE WITNESS: All right.

5 CROSS-EXAMINATION

6 BY MR. BLOCH:

7 Q. Good afternoon, Ms. Smith.

8 A. Good afternoon.

9 Q. Ms. Smith, do you remember how long ago this incident
10 happened?

11 A. About ten years ago. Maybe more. I don't know. I'm 65.
12 I can't remember that far back.

13 Q. Is it fair to say it's hard to remember much about what
14 happened that night?

15 A. True.

16 Q. And that you don't remember a lot of details from that
17 night?

18 A. Exactly. Been so long.

19 Q. Now, after this incident occurred, the police never tried
20 to contact you, right?

21 A. No.

22 Q. And nobody interviewed you about what happened, right?

23 A. No.

24 Q. Nobody ever asked you to fill out a police report?

25 A. No.

N3GHFra3

Smith - Cross

1 Q. You didn't hear anything about this case for another seven
2 years, is that right?

3 A. Exactly.

4 Q. And the first time you heard about this case again was
5 about two years ago, right?

6 A. Maybe it was.

7 Q. And at that point you got a subpoena, right?

8 A. Right.

9 Q. And the subpoena was to testify in a deposition?

10 A. Right.

11 Q. And it was sent by the City, right?

12 A. Right.

13 Q. And the subpoena asked you to appear at 100 Church Street,
14 right?

15 A. Right.

16 Q. And that's Mr. Francolla's office, right?

17 A. Yes.

18 Q. And you were asked a bunch of questions that day?

19 A. Yes.

20 Q. And before you were asked a bunch of questions, you met in
21 Mr. Francolla's office, right?

22 A. Yes, I did.

23 Q. Then after that you testified in another room in his office
24 on video, right?

25 A. Yes, I did.

N3GHFra3

Smith - Cross

1 Q. And then he asked you a bunch of questions?

2 A. Yes, he did.

3 Q. And then you didn't hear about this case again for another
4 couple years, right?

5 A. Right.

6 Q. And a few weeks ago you got another subpoena, right?

7 A. Yes, I did.

8 Q. And that was sent by Mr. Francolla?

9 A. Yes.

10 Q. And he also sent you a copy of that transcript from that
11 deposition?

12 A. Yes, he did.

13 Q. And that was the first time you had gotten -- had seen that
14 transcript, right?

15 A. Right.

16 Q. And then he told you to bring it here today?

17 A. Yes.

18 Q. And then he told you to -- he just handed it to you up
19 there. It's sitting right next to you, right?

20 A. Right.

21 Q. I do have a few questions about October 21 as best you can
22 recall.

23 You were sitting on the bench, you said, right?

24 A. Yes.

25 Q. And you were using drugs at that time?

N3GHFra3

Smith - Cross

1 A. Yes.

2 Q. And UC 84 said that he wanted you to get something for him,
3 right?

4 A. Yes, he did.

5 Q. And he gave you \$50?

6 A. Yes, he did.

7 Q. And he told you that if you found a buyer for him, he would
8 give you half of that money, right?

9 A. Right.

10 Q. And that's why you helped him out?

11 A. Yes.

12 Q. You then walked around looking for a buyer, right?

13 A. Yes.

14 Q. You didn't call anyone on the phone, did you?

15 A. No.

16 Q. Did you even have a phone?

17 A. No, I didn't.

18 Q. And Mr. Francolla asked you -- when you saw Jawaun, you
19 asked Jawaun if he had some drugs, right?

20 A. Yeah.

21 Q. And what did -- Jawaun told you no, right?

22 A. Right.

23 Q. Now, Jawaun had sold drugs to you previously, right?

24 A. Right.

25 Q. But you agree that the last time Jawaun had sold drugs to

N3GHFra3

Smith - Cross

1 you was years before this incident?

2 A. Yes.

3 Q. And is it fair to say that you didn't have any reason to
4 believe that Jawaun was still actively selling drugs on that
5 day?

6 A. I don't know.

7 Q. You didn't have any reason to think he was selling drugs,
8 right?

9 A. No reason.

10 Q. You just knew that you had bought from him sometime before?

11 A. Yes.

12 Q. And you hadn't heard one way or the other since then,
13 right?

14 A. Right.

15 Q. You never bought drugs from him after this incident, right?

16 A. No.

17 Q. You had never seen him sell drugs to anybody after this
18 incident, right?

19 A. No, no.

20 Q. You had never seen him sell drugs to anybody?

21 A. No.

22 Q. Other than you?

23 A. Right.

24 Q. Just that time he sold to you a few years, I guess --

25 A. Yeah, earlier, uh-huh.

N3GHFra3

Smith - Cross

1 Q. -- years before the incident?

2 A. Right.

3 Q. And Mr. Francolla just had you read a passage from that
4 transcript a minute ago. Do you agree with me, Ms. Smith, that
5 what Jawaun actually said to you about UC 84 -- when Jawaun --
6 withdrawn.

7 When Jawaun came up to you, he said something to you,
8 right?

9 A. Yeah.

10 Q. And isn't it true that what he actually said to you was get
11 the fuck away from him?

12 A. Yes.

13 Q. Jawaun told you that he thought that the person you were
14 dealing with was a police officer, right?

15 A. Yes.

16 Q. And he told you that before Jawaun had any interaction with
17 the police officer, right?

18 A. Right.

19 Q. You recall Jawaun telling the police officer to get out of
20 here?

21 A. Right.

22 Q. Jawaun told the police officer to get out of here a number
23 of times, right?

24 A. Yes.

25 Q. And that the police officer responded, "I'm not a cop, I'm

N3GHFra3

Smith - Cross

1 not a cop," right?

2 A. Right.

3 Q. And isn't it also true, Ms. Smith, that the officer said to
4 Jawaun, "I know you"?

5 A. Yeah.

6 Q. And Jawaun was saying in response, "You don't know me"?

7 A. Right.

8 Q. And didn't the officer also at one point try to say to
9 Jawaun that the officer knew you?

10 A. Yeah.

11 Q. Did you know the officer?

12 A. Did I know the officer?

13 Q. Yeah.

14 A. No.

15 Q. But he was trying to convince you that he knew you, right?

16 A. Yeah.

17 Q. And that you knew him?

18 A. Right.

19 (Continued on next page)

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N3g3fra4

Smith - Redirect

1 Q. And that was the only interaction that you saw between
2 Jawaun and the police officer?

3 A. Exactly. Exactly.

4 Q. And then you saw them chase Jawaun, right?

5 A. Yes.

6 MR. BLOCH: I have nothing further, Judge.

7 THE COURT: Anything else?

8 MR. FRANCOLLA: Briefly, your Honor.

9 REDIRECT EXAMINATION

10 BY MR. FRANCOLLA:

11 Q. Ms. Smith, you were asked about when you gave this
12 testimony at my office. Do you recall that?

13 A. Yes.

14 Q. Isn't it true that you asked --

15 MR. BLOCH: Objection to the leading.

16 THE COURT: Yes. Don't lead.

17 MR. FRANCOLLA: I'm responding?

18 THE COURT: I don't care whether you're responding to
19 a direct question or not. You have to find a way to ask it
20 that's not leading. That's the problem.

21 Q. On the date of that incident, did you have the ability to
22 participate in a virtual deposition over a computer?

23 A. At your office?

24 Q. Well, on your own, outside of my office?

25 A. No.

N3g3fra4

Smith - Redirect

1 Q. Why was it then that you came to my office?

2 A. You sent me a letter to come.

3 Q. Okay. And how was it that you were able to testify as part
4 of the proceeding?

5 A. You asked me to, right?

6 Q. Well, let me ask this. Did you have the ability to
7 participate in a deposition using a computer from your home?

8 A. No.

9 Q. At my office, did you have the ability to participate in a
10 deposition using a computer?

11 A. No.

12 Q. Okay. When you were there, were you asked questions by
13 Mr. Fraser's lawyer as well?

14 A. I don't remember. I think so. It was like four -- four
15 images on the computer. Right?

16 Q. Yes.

17 A. And I think it was you, him, and two other females. I
18 think something like that.

19 THE COURT: So there was a computer, somebody was on a
20 computer at the time?

21 THE WITNESS: Yes.

22 THE COURT: Everybody wasn't in the room the way we're
23 all in the room today.

24 THE WITNESS: Exactly.

25 THE COURT: Okay.

N3g3fra4

Sangermano - Direct

1 THE WITNESS: Okay.

2 MR. FRANCOLLA: That's it. Nothing further.

3 THE WITNESS: All right. Thank you.

4 THE COURT: Okay. Now you can leave.

5 THE WITNESS: All right. Thank you, your Honor. I
6 have to have go home to my family. I had a death in the family
7 last night.

8 Thank you.

9 THE COURT: You're welcome, ma'am. Thank you for
10 coming.

11 (Witness excused)

12 THE COURT: Call your next witness.

13 MS. McGUIRE: Defendants call ADA Sangermano.

14 GREG SANGERMANO,

15 called as a witness by the Defendant,

16 having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MS. McGUIRE:

19 Q. Good afternoon, ADA Sangermano.

20 A. Good afternoon.

21 Q. Are you currently employed?

22 A. I am.

23 Q. Who is your employer?

24 A. I work for the Manhattan District Attorney's Office.

25 Q. What is your role?

N3g3fra4

Sangermano - Direct

1 THE COURT: So, since you are an assistant district
2 attorney, you know that we need to hear you.

3 THE WITNESS: Yes.

4 THE COURT: If you could use the microphone. I
5 apologize for the cage here. I'm trying to get rid of it.

6 THE WITNESS: I don't want to be too close or too far.

7 THE COURT: You are absolutely right. Too close is
8 bad, too far is bad. It's like the three bears in Goldilocks.
9 There is a just right in there somewhere.

10 Q. What is your educational background?

11 A. I went to SUNY Albany for college, I went to Fordham Law
12 School, and then I started in the Manhattan DA's Office after
13 that.

14 Q. What is your role in the district attorney's office?

15 A. I am an assistant district attorney. I am in the trial
16 division. I am assigned to one of the six trial bureaus
17 contained within the trial division. We deal at -- the trial
18 division deals almost exclusively with what you would consider
19 street crime. So anywhere from a petit larceny or a
20 misdemeanor assault, up to a burglary, robbery, shooting,
21 stabbing or murder.

22 Q. In your role, do you meet with police officers?

23 A. Yes, I do.

24 Q. For what purpose?

25 A. So, when I am, when I am initially assigned a case, I will

N3g3fra4

Sangermano - Direct

1 meet with police officers to learn about the facts of the case.
2 Depending on the nature of the case or the severity of it, I
3 may meet with them periodically as a part of investigating a
4 case. And if I need to gather documents or evidence, I may
5 speak with them or meet with them in person. And if I am
6 preparing for grand jury, hearings, or trials, inevitably will
7 would involve meeting with them or speaking with them as well.

8 Q. Do you have an understanding of certain information that
9 police officers are obligated to provide you?

10 A. Yes.

11 Q. What sorts of information is that?

12 A. So, we obtain for the purposes of providing discovery on
13 our cases all the materials that the officers created or
14 obtained themselves in connection with the case. So that can
15 be evidence, it can be documents, it can be documents that they
16 created, police paperwork, vouchers, and things like that.

17 And then my understanding of things that they are
18 obligated to turn over to us that are separate from case
19 related materials are what would be considered what is referred
20 to as *Brady* material. Which is anything that tends to
21 exonerate the defendant. And I believe that there are
22 departmental materials that they are generally required to
23 disclose, if I believe if they have it or if they know about
24 it.

25 Q. When you say departmental materials, what do you mean by

N3g3fra4

Sangermano - Direct

1 that?

2 A. Documents or things that are internal to the New York City
3 Police Department. Or if there are instances in which, if a
4 police officer is sued or something that they may know about
5 that, and those would be included in that.

6 Q. So, in your experience, how do police officers typically
7 disclose lawsuit information to you?

8 A. So --

9 MR. BLOCH: Objection to relevance to what police
10 officers typically do.

11 THE COURT: Yeah, I agree. It's not relevant. Let's
12 move on.

13 Q. In your experience -- withdrawn.

14 THE COURT: Can you guys come up here a second.

15 (Continued on next page)

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N3g3fra4

Sangermano - Direct

1 (At the sidebar)

2 THE COURT: Ms. McGuire, here's your problem. If
3 everybody does it wrong, that doesn't make it right. So, that
4 means they are all violating their *Brady* obligations. So, I
5 don't see how this is going to help you. I'm sure you have
6 questions to ask about this case.

7 MS. McGUIRE: Yeah.

8 THE COURT: But --

9 MS. McGUIRE: I can move on.

10 THE COURT: It's up to you. But you were struggling
11 to try to formulate a question.

12 MS. McGUIRE: I was thinking where to go next.

13 THE COURT: Okay. Fine. I didn't want you to
14 continue to struggle without knowing why I sustained the
15 objection.

16 MS. McGUIRE: I understand.

17 (Continued on next page)

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N3g3fra4

Sangermano - Direct

1 (In open court)

2 BY MS. McGUIRE:

3 Q. ADA Sangermano, were you involved in the plaintiff's
4 criminal trial?

5 A. Yes, I was.

6 Q. What was your involvement?

7 A. It was my case. I was the lead prosecutor.

8 Q. I am going to have my co-counsel publish Plaintiff's
9 Exhibit 6. The criminal court complaint.

10 ADA Sangermano, what is this?

11 A. This appears to be the criminal court complaint that would
12 have been drafted in ECAB, what we call ECAB, which is the
13 Early Case Assessment Bureau. It is effectively intake. When,
14 shortly after somebody is arrested, the police paperwork comes
15 to our office. And we review it, we speak to the officers, and
16 we draft documents, including the criminal court complaint.
17 This appears to be the criminal court complaint for Mr. Fraser.

18 Q. Who creates this document?

19 A. I created this document. The ADA who is handling the case
20 or writing up the case in ECAB is the one who creates the
21 document.

22 Q. According to this document, what is the plaintiff charged
23 with?

24 A. Robbery in the second degree, Penal Law 160.10(1).

25 Q. Who makes the decision to charge plaintiff with whatever is

N3g3fra4

Sangermano - Direct

1 on the charging document?

2 A. The district attorney's office makes the decision about
3 what to charge the defendant with on a criminal court
4 complaint. That decision can be made by the ADA who is
5 drafting the case, it can be made by the ADA in conjunction
6 with the supervising ADA who initially screens the case in
7 ECAB.

8 Q. During plaintiff's criminal trial, did you call anyone from
9 your office to testify?

10 A. Yes.

11 Q. Who did you call?

12 A. I don't remember the person's name. It was somebody from
13 our IT department. I called that person to discuss attempts to
14 crack the code to get into Mr. Fraser's phone.

15 MR. BLOCH: Objection.

16 Q. Why did you call this person to testify from IT?

17 A. So, the --

18 MR. BLOCH: Judge, I'm going to object if he gets into
19 the substance of what that person said.

20 THE COURT: I'm sorry? "I'm going to object if" is
21 not an objection.

22 MR. BLOCH: I'm not -- I object.

23 THE COURT: What's the objection?

24 MR. BLOCH: I believe he's about to offer hearsay.

25 MS. McGUIRE: The question was why.

N3g3fra4

Sangermano - Direct

1 THE COURT: Why did you call this person to testify.
2 Is it a decision you made to call the person to testify?

3 THE WITNESS: Yes.

4 THE COURT: So anything you answer is going to explain
5 why you did what you did?

6 THE WITNESS: I would hope so.

7 MR. BLOCH: That's fine.

8 THE COURT: Thank you. There is no hearsay involved
9 at all.

10 A. So, my -- the allegations in the case involved the
11 defendant -- I'm sorry -- Mr. Fraser robbing an undercover
12 officer during a buy and bust operation. Narcotics officer.
13 The allegations included that Mr. Fraser demanded the
14 undercover officer's identification and then photographed it.
15 Mr. Fraser's phone was recovered when he was arrested.

16 It seemed to me that we would have to explain to the
17 jury, that there would be an expectation on the jury's part to
18 know whether there was a photograph of the identification in
19 the phone. This was 2015, and our office's ability to get past
20 a locked phone was considerably limited compared to what it is
21 today.

22 So, the IT department or the people who tried to get
23 into these phones, we did a search warrant to attempt to get
24 into the phone, they were unable to crack the code and access
25 the phone.

N3g3fra4

Sangermano - Direct

1 So, I felt it was necessary to call somebody from that
2 unit to explain why we had not gotten into the phone.

3 Q. Ultimately, because you couldn't get into the phone, were
4 you able to produce a photo of the ID?

5 A. We were not able to access the phone, so anything that was
6 on the phone we couldn't get to, including the photograph.

7 Q. What was the outcome of plaintiff's criminal trial?

8 A. If I'm recalling correctly, he was convicted and it was
9 a -- I think it was robbery in the third degree.

10 Q. Did you meet with the officers during the plaintiff's
11 criminal case?

12 A. Yes.

13 Q. During these meetings, did you ask them about their
14 lawsuits?

15 A. I don't have a specific recollection of the substance, the
16 specific words and the substance of those meetings. I know
17 what my general practice was, and certainly was at the time.
18 And that included both checking -- conducting a search or
19 causing a search to be conducted for any civil cases, and then
20 also to some degree discussing that with them and asking each
21 of the officers about it.

22 Q. So, can you describe your general practice for the jury
23 during the time of plaintiff's criminal trial.

24 A. Sure. So, in 2015, the databases that contained records of
25 the civil cases, I believe that they were public, publicly

N3g3fra4

Sangermano - Direct

1 accessible, but they were pass coded in a sense you had to have
2 an account or something like that. And the district attorney's
3 office only had a certain number of passwords. And so, they
4 trained what they called *Garrett* searchers, at least one in
5 each trial bureau, to conduct those searches.

6 So, what I did, and what I believe was the general
7 practice in the office, was the assistant district attorney who
8 had a case would provide a list of officers who were expected
9 to testify to the *Garrett* searcher. The *Garrett* searcher would
10 conduct the search for civil cases, and return the results to
11 the ADA, to me, and then I would make a copy of the cases, and
12 turn them over to defense counsel.

13 I would speak to the officers about it. I would often
14 have that conversation with the officers by saying, I'm sure
15 you know, now, that there is a new rule that says civil cases
16 may become the subject of cross-examination. This is going to
17 be a subject to a ruling by the judge. If there is going to be
18 any cross-examination about this, after the judge makes a
19 ruling, I'll let you know what the ruling is so you have an
20 idea of what to expect.

21 And then I would ask officers, you know, generally if
22 they knew they had any civil lawsuits that had been filed
23 against them. And in my experience they generally didn't know,
24 because they were not notified about a civil case until they
25 are deposed. So they don't know that civil cases are

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Sangermano - Direct

1 necessarily filed against them. So, I would talk to them about
2 it.

3 Sometimes officers would know something, they
4 remembered that there was some case, they had to be deposed
5 about something. But they often weren't told the outcome
6 either. So I wouldn't rely on what they would say to me. But
7 I would bring it up with them.

8 Q. So during the time of plaintiff's criminal trial, under
9 what circumstances would you conduct a *Garrett* search?

10 A. I would conduct a *Garrett* search prior to -- prior to the
11 trial, shortly before the trial, and I would conduct it, I
12 would request that the search be conducted for any officer that
13 I intended to have testify.

14 Q. You just previously testified about a new rule. Can you
15 elaborate on what you meant by that?

16 A. Sure. There was a decision that I believe it was *People v.*
17 *Garrett*, but I don't necessarily --

18 THE COURT: It was what?

19 THE WITNESS: *People v. Garrett*.

20 A. New York State Court of Appeals decision that required
21 disclosure of information relating to officers' civil cases.
22 In other words, if somebody sues a police officer for
23 something, it's unrelated to my case, but, the Court of Appeals
24 held that, now, there was an affirmative duty to find that
25 information, and disclose it to the defense attorneys.

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1 So, following the *Garrett* decision, sort of
2 collectively that became a new policy that we had to carry out.

3 Q. You testified that you would conduct a *Garrett* search prior
4 to trial; is that correct?

5 A. So I couldn't conduct it because I didn't have access to
6 the databases. I actually don't even know at the time what the
7 databases were. But I would request that it be conducted. And
8 yes, it would be conducted prior to trial. And it should have
9 been relatively close to trial, because if you do it too early
10 and there is some case after that, then you would miss that.
11 So it was supposed to be relatively close to trial.

12 Q. In plaintiff's criminal case, how many lawsuits do you
13 believe that you disclosed?

14 A. I received 13 -- I had requested civil lawsuits associated
15 with the four officers who I called to testify. I received 13
16 cases back from the *Garrett* -- the paralegal who conducted the
17 *Garrett* search, and I disclosed those to the defense.

18 Q. How do you know that?

19 A. So, 2015 in our office was prior to a time that we had an
20 electronic filing system. So every document that we needed to
21 redact or disclose to the defense, had to be done in one form
22 or another manually, and that include -- so that meant Xerox
23 copying every piece of paper, taking a grease pencil and
24 manually going page by page and redacting everything that was
25 appropriate to redact. Xerox those items, and turning them

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1 over to the defense.

2 Somewhere along the way you learn that if you do that,
3 inevitably the defense loses something when you are doing a
4 trial, things get taken out of order.

5 MR. BLOCH: Objection.

6 THE COURT: Did you say something?

7 MR. BLOCH: I object.

8 THE COURT: On the ground that?

9 MR. BLOCH: I don't think there is a foundation for
10 him to say somewhere along the way you learn that if you do
11 that, inevitably the defense loses something.

12 THE COURT: The objection is sustained.

13 A. In my experience, I've had a number of defense attorneys
14 lose the discovery materials. I have had defense attorneys
15 then request a second copy, because their client would like
16 one. But they didn't want to make the copy themselves.

17 So, what I always do is everything I turn over, I make
18 three copies of. I make a copy for me, I make a copy for the
19 defense, and I make an extra copy to keep in my case file box.
20 Because I never want to have to take out another grease pencil
21 and go through the discovery and redact it all again. So I
22 always make three copies of everything. At least that was my
23 system then.

24 Thankfully since then we have an electronic system,
25 which makes all of this a lot easier. But at the time my way

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Sangermano - Direct

1 of doing it was to always make three copies of everything, turn
2 over one to the defense, keeping one for myself, and keeping an
3 extra copy in the trial box.

4 Q. Is that how you know, is that how you can recall the number
5 of lawsuits you turned over in plaintiff's criminal case?

6 A. I have reviewed materials associated with the *Garrett*
7 search since then, and that's how I'm able to recall the
8 number. But one of the things that I reviewed was the trial
9 box and it had two copies, everything separate and clipped
10 together, of the *Garrett* civil cases, and so that's how I know
11 I turned the third one over. That's one of the ways I know I
12 turned them over.

13 Q. How else do you know?

14 A. After the hearing, and before the trial, in this case there
15 is a just back and forth on the record between the defense
16 attorney and the ADA and the judge. And I had indicated that I
17 had turned over the cases to the defense, and that otherwise I,
18 you know, would make a motion on it, I believe when we were
19 making all of our other pretrial motions, and then we wound up
20 adjourning for the day.

21 Q. So, brings me to my next point. You provided *Garrett*
22 material on the record in plaintiff's criminal case?

23 A. Yes, I turned it over to the defense in court. I'm sorry.
24 The criminal defense in court. And made a record, told the
25 judge what I was doing.

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1 Q. What, if anything, did plaintiff's criminal defense
2 attorney do in response to receiving this information?

3 A. If I recall, he said he wanted to look it over and make a
4 decision if he wanted to make a motion to use any of those
5 materials.

6 Q. In plaintiff's criminal case, did you make a motion to
7 preclude this information?

8 A. I indicated to the judge, as I always do, that I was
9 turning over materials, that I would make a motion to preclude.
10 But the motion would be dependent on what the defense
11 attorney -- what, if anything, he wanted to use from those
12 materials. There can be a lot of materials, there can be a lot
13 of individual facts in those materials. So, either I say I'm
14 moving to preclude use of this material on cross-examination.
15 And your Honor, we can take up any individual issue if the
16 defense attorney wants to use any of these materials. Or, I
17 would have to go kind of fact by fact, case by case, through
18 every single one for every single witness, and I don't think a
19 judge would like me for doing that, and I think it would take a
20 lot of time. So the easier way to do it is just to say I am
21 turning this stuff over, I don't believe there is anything here
22 material to cross-examine on. If the defense believes --

23 MR. BLOCH: Objection. I think he's offering opinion
24 testimony now that he's not --

25 THE COURT: Just can you ask your next question,

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1 please.

2 MS. McGUIRE: Yes, your Honor.

3 Q. When you provided this material on the record, did you
4 disclose an exact amount or do you say something different?

5 A. I said I was turning over the cases. I should have
6 provided a list of the cases I was turning over.

7 THE COURT: Did you?

8 THE WITNESS: I didn't.

9 THE COURT: You did not.

10 THE WITNESS: No.

11 THE COURT: Do you know the names of the cases you
12 turned over?

13 THE WITNESS: If I --

14 THE COURT: No. In this case, do you know the names
15 of the cases you turned over?

16 THE WITNESS: Sitting here today, I don't remember the
17 names of the cases from 2015, no. There are lists of them in
18 my file, and in the 440 motion. But I don't have them off the
19 top of my head.

20 BY MS. McGUIRE:

21 Q. In your experience, once you give the lawsuits to the
22 criminal defense attorney, do they always come into play at
23 trial?

24 MR. BLOCH: Objection.

25 THE COURT: I'll let him answer that. Yes or no.

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Sangermano - Direct

1 A. They do not -- in my experience, they do not come in.

2 Q. In your experience, how many times have you seen --
3 actually.

4 ADA Sangermano, how many trials have you done?

5 A. In my career I probably conducted, as the lead ADA,
6 felonies, I would guess about 30.

7 Q. Have you conducted any as the non-lead ADA?

8 A. I have been involved in others as well, yes.

9 Q. So how many trials have you done total?

10 A. Probably 40 or so.

11 Q. In your experience, how many times have you seen a criminal
12 defense attorney cross-examine officers on lawsuits?

13 MR. BLOCH: Objection. Relevance.

14 MS. McGUIRE: Rebuttal evidence to Stewart's
15 testimony.

16 THE COURT: The objection is overruled.

17 A. I've never seen an attorney ask. In any of my cases, I've
18 never seen a defense attorney ask to use the material, and I've
19 never seen it used.

20 Q. In your experience, what is your practice in handling this
21 evidence once it's disclosed to the other side?

22 A. I'm not sure I understand the question.

23 Q. In your experience, how many times have you moved to keep
24 this evidence out?

25 A. As a matter of course --

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Sangermano - Direct

1 MR. BLOCH: Objection.

2 THE COURT: The objection is sustained. It's not
3 relevant.

4 Can we agree, ADA Sangermano, that your duty to
5 disclose the existence of this lawsuit, these lawsuits, is
6 absolute?

7 THE WITNESS: Yes.

8 THE COURT: Right. I mean, no excuses, no --

9 THE WITNESS: Correct.

10 THE COURT: No "I don't think this is really
11 relevant."

12 THE WITNESS: Materiality is not a decision I make.

13 THE COURT: Not a decision you can make. Okay.

14 Q. Now, looping back to when you disclosed the officers'
15 lawsuit information in plaintiff's criminal case. Did the
16 Court ever revisit whether or not they would come in?

17 A. No.

18 MR. BLOCH: Objection.

19 THE COURT: I'm sorry, I don't understand the
20 foundation for that question.

21 MS. McGUIRE: He testified that there was some
22 colloquy on the record about when he disclosed the lawsuits and
23 what the defense attorney's response was to it. And that he
24 did not move to preclude at that moment.

25 THE COURT: So, did you ever make a motion to

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Sangermano - Direct

1 preclude?

2 THE WITNESS: No. The defense never asked to get into
3 anything. I indicated I would make a motion to preclude if the
4 defendant wanted -- the defense wanted to use any of the
5 materials. The defense never made a motion seeking to admit
6 them. I never made a motion to preclude them.

7 Q. Once plaintiff's criminal case was vacated, what was your
8 understanding about what happened to the criminal case?

9 A. Oh.

10 THE COURT: Did you continue on as the ADA?

11 THE WITNESS: I did. Yes, it was returned to me.

12 A. By the time the plea or the conviction, excuse me, had been
13 vacated, the defendant, criminal defendant Mr. Fraser had
14 served his full prison sentence. So, we had to make a decision
15 whether to try him again, knowing that the outcome would be
16 that no matter what happened, he walks out of the courtroom,
17 whether he's convicted or acquitted.

18 MR. BLOCH: Objection. Objection. The internal
19 decision making about why --

20 THE COURT: I'm terribly sorry. The objection is
21 overruled.

22 A. So, for reasons of judicial resources, it is only so many
23 courtrooms, there is only so many ADAs, there is only so much
24 time, it didn't seem like a good reason to occupy a courtroom
25 and the judge's time and the courtroom staff with the case. At

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Sangermano - Direct

1 the same time -- to try it again. At the same time, I didn't
2 think that dismissing it was appropriate, given the fact that
3 dismissing a case carries with it a certain suggestion of
4 actual innocence. So, I negotiated with his attorney --

5 MR. BLOCH: Objection.

6 THE COURT: Overruled.

7 A. I negotiated with his attorney --

8 THE COURT: Another fly in your client's testimony,
9 okay. Overruled.

10 A. I negotiated with the defendant's defense attorney,
11 Mr. Fraser's defense attorney, a plea to a disorderly conduct.
12 Which is basically a low level crime.

13 THE COURT: It is a violation.

14 THE WITNESS: It is a violation.

15 THE COURT: It's not a crime at all. It is a
16 violation, right?

17 THE WITNESS: Yes.

18 THE COURT: Thank you.

19 Q. Now. Notwithstanding the considerations of judicial
20 resources, could plaintiff still have elected to go to trial
21 again?

22 A. Yeah, absolutely. I can't force somebody to plead guilty.

23 MS. McGUIRE: Your Honor, may I have one minute to
24 confer with my co-counsel.

25 THE COURT: Yes.

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Sangermano - Cross

1 MS. McGUIRE: No further questions.

2 THE COURT: Any cross?

3 MR. RUDIN: One moment, your Honor.

4 CROSS-EXAMINATION

5 BY MR. BLOCH:

6 Q. Good afternoon, ADA Sangermano.

7 A. Good afternoon.

8 Q. You joined the Manhattan District Attorney's Office in
9 2002, right?

10 A. September 2002.

11 Q. By the time Mr. Fraser's case went to trial, you had been a
12 prosecutor for about 12 years, right?

13 A. Sounds, yeah, that sounds right.

14 Q. You been a prosecutor your whole career, right?

15 A. Yes.

16 Q. You never been a defense attorney?

17 A. That's correct.

18 Q. You were assigned --

19 THE COURT: Do me a favor and use that mic. You're
20 too far away. You're mama bear, okay.

21 Q. You were assigned to the trial bureau I think you said?

22 A. I was assigned to trial bureau 40 within the trial division
23 of the DA's office.

24 Q. You are still in that same bureau?

25 A. I am.

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Sangermano - Cross

1 Q. In addition to having your own cases, you also supervised
2 assistants in other units?

3 A. There was a period of time when I was -- what was the title
4 was a domestic violence point person. Where I, there were
5 assistant district attorneys in the trial division who are also
6 cross designated with the domestic violence unit. There were
7 those would handle misdemeanor domestic violence cases and
8 felonies. The domestic violence point person supervised the
9 misdemeanor domestic violence cases of misdemeanor ADAs within
10 the trial bureaus. So, they had a caseload, some of which
11 included domestic violence cases, on the domestic violence
12 cases. For three years, I was the person within my trial
13 bureau who supervised them on those cases, answered their
14 questions, watched them on trials, things of that nature.

15 Q. Prior to Mr. Fraser's trial, you conducted about 20 felony
16 trials. Isn't that true?

17 A. I believe that's right. I don't have a list but I think
18 that's right.

19 Q. Would it be fair to say by the time Mr. Fraser went to
20 trial, you were pretty familiar with the office policies?

21 A. Yes.

22 Q. And would it be fair to say you followed the policies and
23 procedures of your office?

24 A. I -- yes. I just want to say there is a lot of policies
25 and some of them concern divisions and units I'm not in.

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Sangermano - Cross

1 Certainly the ones that pertain to the trial division and my
2 work, I would say I'm familiar with.

3 Q. You follow the policies that apply to you, right?

4 A. I follow the policies that apply to the trial division and
5 the trial bureaus and certainly that would include me, yes.

6 Q. You have, as we've talked about, *Brady* obligations, right?

7 A. Yes.

8 Q. And *Brady* requires you to turn over to the defense all
9 exculpatory information, correct?

10 A. Yes.

11 Q. That is evidence favorable to the defendant, right?

12 A. That goes to actual innocence, yes.

13 Q. One category of *Brady* violations is what's called *Giglio*,
14 *Brady* obligations is called *Giglio* obligations, right?

15 A. Yes. It is -- it -- you could say it's under the umbrella
16 of *Brady*. It's a little bit different than *Brady*.

17 Q. *Giglio* is another Supreme Court case, right?

18 A. Yes.

19 Q. That imposes obligations on you, right?

20 A. Yes.

21 Q. And it imposes the obligation that you disclose to the
22 defense any impeachment evidence, right?

23 A. Correct.

24 Q. And impeachment evidence includes prior bad acts of a
25 witness, right?

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Sangermano - Cross

1 MS. McGUIRE: Objection. Relevance.

2 THE COURT: The objection is overruled.

3 A. Yes.

4 Q. *Brady* is a really, really serious obligation for you,
5 right?

6 A. Yes. I mean, the *Giglio* obligation is too.

7 Q. Right. Your obligation to disclose to the defense
8 favorable evidence and impeachment evidence is a very important
9 obligation of yours, right?

10 A. Yes.

11 Q. You take it very seriously, isn't that true?

12 A. I would describe myself as taking it seriously, yes. I
13 apologize, I'm not trying to be difficult. I'm not sure -- I
14 don't know what you mean by that. I'm saying by my definition,
15 I would say, yes, I do.

16 Q. If you are made aware of *Brady* or *Giglio* evidence, you must
17 turn that over to the defense, right?

18 A. Yes.

19 Q. Even if you're told something orally that is *Brady*, *Giglio*
20 evidence, you have to disclose that to the defense:right?

21 A. The issue for both *Brady* and *Giglio* is the actual existence
22 of the underlying fact that has to be disclosed. It doesn't
23 matter if it is in written form or oral form. If there is a
24 fact, in *Brady*'s case, that tends to go to the defendant's
25 actual innocence, that has to be disclosed. If it's something

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Sangermano - Cross

1 that goes to the impeachment of a witness, in other words
2 something about his credibility, or the jury might question his
3 credibility, that would be *Giglio* material. *Giglio* material.
4 That has to be turned over as well.

5 Q. So the answer to my question is yes, right?

6 A. Yes.

7 Q. If you have notice of a civil lawsuit against one of your
8 police officers, you have to disclose that to the defense,
9 right?

10 A. Yes.

11 Q. If a police officer tells you I've been sued for false
12 arrest or malicious prosecution, you would disclose that to the
13 defense, right?

14 A. I would try to look up the case, I would try to find the
15 case, I would turn the case over to the defense.

16 Q. Right. You would turn the case over if you found it,
17 right?

18 A. Yes.

19 Q. If for some reason you didn't find it, you would tell the
20 defense, this officer told me that he was sued, right?

21 A. There would probably be a number of steps in the middle.
22 If the officer told me about something I couldn't find, I would
23 have to go back to the officer and have a conversation about
24 what do you know about the case, do you know a name or a docket
25 number or something we can try to do to find the case.

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Sangermano - Cross

1 Because, I have to actually know what I'm turning over, and I
2 have to know what the fact is out there to disclose so I can
3 disclose it appropriately. So I would have to do more research
4 to find what it was that he was talking about.

5 But I would ultimately -- this would wind up being a
6 disclosure of some kind. I don't know which category it would
7 fall under. It would depend on what the facts were once we
8 found them.

9 Q. If you are made aware in any way of a civil lawsuit against
10 one of your officers, you disclose that to the defense, isn't
11 that right?

12 A. Yes.

13 Q. If a police officer told you that he had been sued six
14 times for false arrest, you wouldn't just turn over two of
15 those lawsuits, right?

16 A. Correct.

17 Q. You would turn over all six of those lawsuits, right?

18 A. Yes. If an officer tells me -- if there is a case out
19 there, I turn it over. I don't -- I don't go to materiality.
20 I don't make that decision about what is important or what's
21 not. You turn it over.

22 Q. Well, my question was slightly different. If an officer
23 told you that he was sued six times, you would turn over all
24 six cases, right?

25 A. So, if an officer told me I was sued six times and those

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Sangermano - Cross

1 were things that I didn't have from a *Garrett* search, I
2 wouldn't have a case to turn over. I would have a statement by
3 an officer. Then I would have to try to connect the statements
4 by the officers to a case.

5 Somebody saying -- an officer saying I've been sued
6 six times for false arrest would be concerning and set off
7 alarm bells, and that would require me to do some work to
8 figure out what cases he's talking about. And I can do that
9 through him, I can do that through an independent search, I can
10 do that through a number of different ways. But I can't turn
11 over a case, I don't know what the case is. If an officer says
12 I've been sued, and he can't give me what that case is, then I
13 can't turn that case over. I have to find the case.

14 Q. Well, would it be fair to say if an officer says I've been
15 sued six times, and you only found two of those suits, you
16 would do a little more followup work, right?

17 A. Yes.

18 Q. You might go look for the other four, for example, right?

19 A. Yes. If I have the ability. We're talking about present
20 day when I can do the search myself.

21 THE COURT: We're actually talking about 2015.

22 THE WITNESS: So in 2015, I would have to go back to
23 the *Garrett* searcher ask them to run the officer's name again.
24 If the officer -- if nothing else came back, I would have to go
25 back to the officer and say, do you remember any of the party

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Sangermano - Cross

1 names associated with the case? Do you remember a docket
2 number? Did you get served with having to take a deposition,
3 like, do you have a piece of paper that might have the case
4 number on it? Then from there, I could go back to the *Garrett*
5 searcher again and say, hey, can you run this information and
6 see what we get.

7 Q. If you had been told that somebody had been sued six times,
8 and you only found two, fair to say you wouldn't just turn
9 those two over and do nothing else?

10 MS. McGUIRE: Asked and answered. Objection.

11 THE COURT: Overruled.

12 A. Correct. I would do some of the things I'm sure that I
13 just discussed.

14 Q. That disclosure to you that somebody has been sued in the
15 ballpark of six times imposes obligations on you in order to
16 comply with your *Brady* violations, right?

17 A. A person who was sued one time or 100 times, it is the same
18 obligation.

19 Q. You have to turn over all the lawsuits you are aware of,
20 right?

21 A. Yes.

22 Q. So if somebody said six, and you only found two, you would
23 be concerned that you hadn't turned over all the lawsuits that
24 you were made aware of, right?

25 A. I would be concerned that something was off. I don't know

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Sangermano - Cross

1 if -- I wouldn't know if he was wrong or if the search didn't
2 bring everything back and I would have to find it.

3 Q. You've talked about how you worked with police officers in
4 almost in every case, right?

5 A. I can't think of a situation where I didn't, so I'm sure,
6 yes.

7 Q. You have had hundreds of cases, hundreds of cases in your
8 career?

9 A. I'm sure I've had over 1,000.

10 Q. Over 1,000. And every one of those cases, as far as you
11 remember, involved at least one police officer, right?

12 A. Yes.

13 Q. You often call them to testify as witnesses in your cases,
14 right?

15 A. Have police officers as witnesses? Of course.

16 Q. Yeah. They are part of the law enforcement team, right?

17 A. I don't know what you mean by team.

18 Q. You are a law enforcement official, right? Prosecutor?

19 A. I am a prosecutor. At times I've, given the case or given
20 the circumstances, I have very tense relationships with certain
21 police officers. Sometimes everything is fine. I would not
22 use the phrase "team."

23 Police officers conduct their end of an investigation
24 and do the things that they do. Then when a case comes to me,
25 it is incumbent upon me to run an investigation that is largely

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Sangermano - Cross

1 independent of what they have done. At times that requires me
2 to contradict something that they have done, push back against
3 them for something they have done or failed to do, chastise
4 them for something they have done incorrectly. Again,
5 sometimes that's not an issue.

6 Q. Mr. Sangermano, you were not subpoenaed to testify here,
7 right?

8 A. No.

9 Q. In this case?

10 A. No.

11 Q. You're here voluntarily to testify for the City, right?

12 A. I was asked to testify -- I'm not sure -- you guys asked me
13 for a deposition. I came down for that. They asked me to come
14 today, I'm here for this.

15 Q. The City asked you to testify in this case, right?

16 A. They asked me to come today. My understanding was when I
17 took a deposition in this case, my understanding was you guys
18 asked me to come for that.

19 THE COURT: He is only asking you about today.

20 THE WITNESS: Oh, yeah, I came today.

21 Q. Now, you mentioned in this case you spoke with the officers
22 involved, right?

23 A. Yes.

24 Q. You spoke with UC 84?

25 A. Yes.

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Sangermano - Cross

1 Q. You met with him prior to his testimony in the pretrial
2 hearing, right?

3 A. Correct.

4 Q. You met with him one on one?

5 A. Part of it one on one, yes.

6 Q. You went over with him the questions you were going to ask
7 at the hearing, right?

8 A. I don't remember if I went over exactly what it was. Or if
9 we just talked about generally what I thought was going to
10 happen at the hearing.

11 Q. Generally speaking, is the answer yes?

12 A. Generally speaking, I will talk to the officers about the
13 kinds of questions I will ask at a hearing. Sometimes that
14 includes some specific questions that I will ask and sometimes
15 it includes covering general topics.

16 And the purpose of it is to make sure that the
17 narrative that I have in my head of what I think happened on a
18 case is correct. And often times when I'm talking to officers,
19 I learn something new, and I incorporate that into whatever the
20 hearing or trial is.

21 Q. You also met with Detective Regina on multiple times,
22 right?

23 A. I met with him at least twice, maybe three times that I can
24 remember.

25 Q. Including to prepare his testimony for pretrial hearings

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Sangermano - Cross

1 and trial?

2 A. Yes. Same thing. Just going over the questions I thought
3 I would be likely to ask and the topics that would be covered.

4 Q. You met with Detective Del Toro to prepare his trial
5 testimony, right?

6 A. Same thing, yes.

7 Q. And the officers that testified in the grand jury in this
8 case would have met with attorneys from your office before
9 doing so, right?

10 A. Yes.

11 Q. And the officers that testified in the grand jury were
12 Regina and UC 84?

13 A. I don't remember, but I accept that that's true.

14 Q. You talked about how it was your practice in 2015, when you
15 meet with officers, to have conversations with them about their
16 obligations under *Giglio*, right?

17 A. Prior to trial or prior to a hearing, depending on how
18 close in time the hearing and trial were together, I would have
19 had that conversation. Often times a hearing is followed
20 immediately by jury selection and then trial, so there is no
21 break. At which point I usually meet with them once
22 beforehand. Sometimes there can be a break between the hearing
23 and the trial of a couple of days or even a few weeks, at which
24 point I might meet with them again.

25 Q. ADA Sangermano, my question was, when you meet with them,

N3g3fra4

Sangermano - Cross

1 you have conversations with them about their *Giglio*
2 obligations, correct?

3 A. When I meet with them prior to the hearing or trial, I do.
4 If I meet with them before the grand jury, I wouldn't have that
5 conversation with them.

6 Q. When you meet with them prior to hearing or trial, you have
7 conversations about their *Giglio* obligations, right?

8 A. Yes.

9 Q. It's actually including -- withdrawn.

10 It's actually required by your office that you have
11 these conversations with police officers?

12 A. Are you saying *Garrett* or *Giglio*?

13 Q. I am saying *Giglio*.

14 A. Oh *Giglio*.

15 THE COURT: I'm saying *Brady*. Okay.

16 Q. I'll say *Brady*.

17 THE COURT: I am saying *Brady*. *Giglio*, as we
18 pronounce it here, is simply a subset of *Brady*. *Garrett*
19 discusses impeachment evidence as *Brady* evidence.

20 Can we stop confusing the jury and just use one term.

21 MR. BLOCH: Yes.

22 THE COURT: Thank you.

23 Q. ADA Sangermano, it was your general practice in November of
24 2015 to tell an officer or detective that lawsuits were
25 something they could be cross-examined on, correct?

N3g3fra4

Sangermano - Cross

1 A. Correct.

2 Q. And it was your general practice to ask officers if they
3 understood what that meant, right?

4 A. Yes, I'm sure that I did that in most cases.

5 Q. It was your general practice to go through some of the
6 cases with them?

7 A. I don't think -- I don't think that was my general
8 practice. I think I would talk to them about it, and then if
9 there was a ruling by the judge that materials would be
10 cross-examined upon, or could be crossed upon, then I would go
11 through those materials with them.

12 Q. Do you not recall whether it was your general practice to
13 go through some of the lawsuits with the officers you met with?
14 Or are you saying that was not your practice?

15 A. I'm saying I may have gone through it with some officers in
16 some instances, depending on the nature of the cases. But no,
17 I think as a general practice, I would talk about it with them
18 first.

19 Officers are people, and like any person who
20 testifies, they can get very nervous --

21 Q. There is no question. You answered it. Thank you.

22 A. Okay.

23 Q. There was actually a questionnaire that you used in 2015
24 with specific questions for police officers about their prior
25 lawsuits, right?

N3g3fra4

Sangermano - Cross

1 A. There was -- the Manhattan District Attorney's Office had a
2 number of questionnaires or checklists that were designed to
3 guide your practices in different areas. There were some that
4 covered these kinds of things.

5 I rarely sat there and used a checklist with a witness
6 in my office, but I followed the guidelines for all of those
7 practices. And the idea behind the checklist was to make sure
8 you covered all the materials that you were supposed to when
9 you spoke to somebody.

10 Q. One of the questions on those checklists was are you aware
11 of any pending or past lawsuits arising from your job as a
12 police officer. Right?

13 A. Correct.

14 Q. Do you agree with me, ADA Sangermano, that you have no
15 recollection of Detective Del Toro disclosing to you the fact
16 that he had been sued?

17 A. I don't recall whether he did or didn't. I don't have a
18 recollection of how the questions -- the specific questions I
19 asked him or the answers he gave in that meeting before the
20 hearings. I don't remember either way.

21 Q. You never wrote down anywhere that Detective Del Toro
22 disclosed to you the fact that he had been sued, did you?

23 A. No, I didn't write it down. I don't think I would have.

24 Q. You haven't seen any evidence or anything written down that
25 establishes that Detective Del Toro said anything to you about

N3g3fra4

Sangermano - Cross

1 ever having been sued, have you?

2 A. Anything written down? That I wrote down or that somebody
3 else wrote down?

4 Q. Have you ever seen a document that suggests that Detective
5 Del Toro disclosed to you the fact that he had been sued four
6 times?

7 A. I don't know what that document would be.

8 Q. So is the answer to my question no?

9 A. Yes. The answer is no. I haven't seen something that said
10 he -- said that.

11 Q. At some point you made a list of the lawsuits that you
12 believe you were aware of prior to Mr. Fraser's trial. Right?

13 A. Yes.

14 Q. And you put that in a sworn affirmation?

15 A. It was in response to a defense 440 motion, yes.

16 Q. My question was you put that in a sworn affirmation, right?

17 A. Yes. The affirmation was part of the 440 motion.

18 Q. We can agree that prior to the time of Mr. Fraser's trial,
19 you were not aware of a single lawsuit against Detective Del
20 Toro, isn't that true?

21 A. I don't remember. I know, I remember there were 13 cases.
22 I don't remember which officers they were against as I sit here
23 today.

24 Q. Would looking at that sworn affirmation refresh your
25 recollection?

N3g3fra4

Sangermano - Cross

1 A. I'm sure it would.

2 MR. BLOCH: Can I hand -- we may go back to this a few
3 times, Judge. May I hand him this document?

4 THE COURT: Sure.

5 Q. Detective, the document I've handed you, is that the sworn
6 affirmation you prepared?

7 A. Yes, this is.

8 Q. And you prepared this years, a number of years after
9 Mr. Fraser's trial, correct?

10 A. Yes, that's true.

11 Q. In this document, you created a list of the lawsuits that
12 you claim you were aware of prior to Mr. Fraser's trial, right?

13 A. I am fairly certain that's in here. I'd have to find it.

14 Q. DEF 926.

15 A. Okay, I see that.

16 Q. So the lawsuits that you claim in this document that you
17 were aware of prior to Mr. Fraser's trial consisted of 11 suits
18 against Detective Regina, right?

19 A. Yes.

20 Q. There were two suits against Detective -- UC 84, right?

21 A. Correct.

22 Q. And there was zero suits against Detective Del Toro, right?

23 A. Correct.

24 Q. So, does this refresh your recollection that by the time of
25 Mr. Fraser's trial, you were not aware of a single lawsuit

N3g3fra4

Sangermano - Cross

1 against Detective Del Toro?

2 A. I -- based on reading this, that is correct. I don't have
3 a recollection of it from years ago, but yes, based on reading
4 this, I did not have any cases from -- against Detective Del
5 Toro.

6 Q. Well, this is the list that you provided to a court that
7 was your sworn statement --

8 A. Absolutely.

9 Q. If I could finish the question.

10 This list is a sworn statement that you prepared that
11 you provided a court as to the 13 lawsuits that you were aware
12 of prior to Mr. Fraser's trial. Right?

13 A. Yes, I am not disputing that. I am saying I don't have an
14 independent recollection of it. It but I accept it from here.

15 Q. Before you prepared this list, you did some due diligence
16 to figure out which cases you were aware of, right?

17 A. Yes.

18 Q. One of the things you did is looked at your trial file at
19 that time, right?

20 A. Correct.

21 Q. And you found in your trial file there were 13 lawsuits,
22 right?

23 A. Yes.

24 Q. This was in 2019?

25 A. That sounds right.

N3g3fra4

Sangermano - Cross

1 Q. You don't have any reason to believe that you were aware of
2 any other lawsuits than what was in that trial file in 2019,
3 right?

4 A. Correct.

5 Q. In that trial file, in 2019, you didn't have a single
6 lawsuit against Detective Del Toro, right?

7 A. Correct. The 13 that were in here are the ones that were
8 in the trial box.

9 Q. You were not aware prior to Mr. Fraser's trial of a case
10 called *Murray v. City of New York*, correct?

11 A. No. It's not on the list, so no.

12 Q. You were not aware of a lawsuit -- withdrawn.

13 The case -- withdrawn.

14 You were not aware of a lawsuit named *Loglisci v. Del*
15 *Toro and the City of New York*, and others, right?

16 A. Correct.

17 Q. You were not aware, prior to Mr. Fraser's trial, of a case
18 called *Nuñez and Rivera v. Del Toro*, and others, right?

19 A. No, just the ones that were on this list.

20 Q. Right. And you weren't aware, prior to Mr. Fraser's trial,
21 of a case called *A.T. v. Del Toro*, and others, right?

22 A. Just the ones that are on this list.

23 Q. And you therefore did not disclose to Mr. Fraser any of
24 those four cases, right?

25 A. I just disclosed the ones that were on the list.

N3g3fra4

Sangermano - Cross

1 THE COURT: The answer is yes or no. Yes or no. It
2 is a one-word answer. Yes or no.

3 THE WITNESS: Can you repeat?

4 THE COURT: Did you disclose any of those four cases
5 to Mr. Stewart?

6 THE WITNESS: No. No.

7 Q. If you were aware of any of those cases, you would have
8 disclosed them to Mr. Stewart, right?

9 A. Yes.

10 Q. Turning to UC 84. You also don't have a recollection of UC
11 84 disclosing to you the fact that he had been sued, right?

12 A. Correct.

13 Q. You never wrote down anywhere that UC 84 disclosed to you
14 the fact that he had been sued, right?

15 A. Correct.

16 Q. By the time of Mr. Fraser's trial, you were not aware of a
17 case *Wright v. UC 84*, and others, right?

18 A. I was not aware of it.

19 Q. By the time Mr. Fraser's trial, you were not aware of the
20 case of *Parris v. UC 84*, and others, right?

21 A. I was not.

22 Q. By the time of Mr. Fraser's trial, you were not aware of
23 the case of *Best v. UC 84*, and others?

24 A. I was not.

25 Q. You were not aware of the case *Pieralisi v. UC 84*, and

N3g3fra4

Sangermano - Cross

1 others?

2 A. I was not.

3 Q. You did not disclose them?

4 A. I did not know about them.

5 Q. If UC 84 had disclosed those cases to you, you would have
6 produced them, right?

7 A. Yes.

8 Q. If you had been told by UC 84 that he had been sued six
9 times, you would not have only turned over two lawsuits, right?

10 A. Correct.

11 Q. I think you testified that, in your experience, when you
12 asked police officers if they've been sued, they often tell you
13 they don't know whether or not they've been sued. Is that
14 right?

15 A. Correct. They're notified when they have to appear for a
16 deposition.

17 Q. Sorry?

18 A. They're notified when they have to appear for a deposition.

19 Q. Right. So, you've interviewed a lot of police officers
20 about this, right?

21 A. Yes.

22 Q. And you have interviewed officers who have been sued,
23 right?

24 A. Yes.

25 Q. And you have conversations about that, right?

N3g3fra4

Sangermano - Cross

1 A. Yes.

2 Q. And your testimony is that, in your experience, many of
3 those officers who have been sued tell you that they haven't
4 been sued, is that right?

5 A. I don't remember if the conversations -- I've never
6 cataloged the ones who have been and what they said to me. But
7 my recollection is most officers don't know until they have
8 been deposed whether they have. And I have spoken with
9 officers who have said, yeah, I've been sued. I've spoken to
10 officers who said I have a deposition coming up or I had one or
11 I got sued once, but they don't know the outcome of the case,
12 and they're often not notified about it until they've been
13 deposed.

14 Q. You are saying it's your experience, when you speak to
15 officers, and they have been sued, a lot of them tell you that
16 they didn't know about it?

17 A. No, that's not my testimony.

18 Q. Well, did UC 84 tell you he wasn't aware of having been
19 sued?

20 A. I don't recall the conversations that I had with them about
21 this or frankly about the trial itself. It was a long time
22 ago, and I'm sorry that I don't remember the specifics of it,
23 but I don't remember those conversations.

24 Q. Did Detective Del Toro tell you that he wasn't aware of
25 having been sued?

N3g3fra4

Sangermano - Cross

1 A. I don't recall -- the four officers who testified, I don't
2 recall whether they told me that they had been sued or not. I
3 just don't recall it.

4 Q. You are saying, based on your experience with the police,
5 it's possible that you asked Del Toro if he had ever been sued
6 and he told you I don't know, right?

7 MS. McGUIRE: Objection. Argumentative.

8 THE COURT: Overruled.

9 A. Based on my practice, I probably had the conversation with
10 them, and then based on my experience, many officers don't know
11 if they've been sued. I'm not saying what these officers said
12 and I'm not connecting my general practice with specific
13 instances.

14 Q. But based on your experience, it's possible Del Toro told
15 you he didn't know he had been sued, right?

16 MS. McGUIRE: Objection. Speculative.

17 THE COURT: The objection is sustained. He has no
18 idea what he was told.

19 Q. You were just sort of offering that as general, as an
20 explanation for what happened sometimes?

21 A. I was offering it to explain why I don't depend on the
22 officers' knowledge of lawsuits to satisfy whether there are
23 lawsuits. Because officers may not know if they have been sued
24 or not, and my obligation is not to simply disclose what an
25 officer tells me, but the actual case itself.

N3g3fra4

Sangermano - Cross

1 Q. Now, you did turn over some number of lawsuits in this
2 case, right?

3 A. Yes, 13.

4 Q. Did you say 13?

5 A. 13.

6 Q. You're testifying that you remember turning over 13?

7 A. I'm testifying that I turned over 13, based on my review of
8 the trial box and seeing two identical packets of 13 cases,
9 consistent with my practice of making three copies of
10 everything, and turning one over to the defense.

11 Q. You testified -- I'll come back to that -- but you
12 testified that there was a process in your office where
13 prosecutors could search for lawsuits on your own, right?

14 A. In 2015, no.

15 Q. What you do is you provide the searchers a list of the
16 officers who are going to testify, right?

17 A. Correct.

18 Q. You don't provide them a list of officers who have told you
19 about lawsuits, right?

20 MS. McGUIRE: Objection.

21 THE COURT: I'm sorry. I've got to read that
22 question.

23 Overruled.

24 A. No, because the search is conducted usually prior to
25 meeting with them to prepare for the hearing or trial.

N3g3fra4

Sangermano - Cross

1 Q. You provide a list to your searcher of everybody that you
2 plan to call as a witness, right?

3 A. Police officers, yes.

4 Q. And then those searchers conduct the search, and then
5 provide you with whatever they found, right?

6 A. Yes.

7 Q. There is no record of you having ever received 13 lawsuits
8 when you requested that search being done, right?

9 A. There isn't a record generated of a number of suits. It
10 was a search by a paralegal, the results were printed and
11 handed to me. So the list was what I received. That stack was
12 what I received.

13 Q. I see. So you are saying when the cases get sent to you,
14 they are printed out in hard copy and handed to you?

15 A. That's the way they were for me. I often provided a
16 written list to the paralegal who did the search. I know some
17 people may have had some other system. It was just I handed
18 them the list, they handed me the cases.

19 Q. You wrote it down. None of this is done on e-mail in 2014?

20 A. I didn't do it on e-mail. The paralegal was outside and a
21 few feet away from my office. So I would walk out, tell them
22 what I needed, and at some point, it could be in the next few
23 minutes or the next few days, they would bring those back to
24 me.

25 Q. There is no documentation anywhere of you having requested

N3g3fra4

Sangermano - Cross

1 somebody in your office to search for lawsuits and that person
2 providing lawsuits to you, right? There is no documentation of
3 this process?

4 A. I promise I am not trying to be difficult. I couldn't have
5 gotten those cases without someone else doing the search for
6 me. If that counts as documentation. If you don't count that
7 as documentation, then no.

8 Q. To be clear, the documentation you are referring to, you
9 are saying because you found 13 lawsuits in your trial file, in
10 2019, you assume that those had been provided to you in 2014,
11 right?

12 A. I remember turning the cases over in 2015. The cases were
13 in my file when I went back to it in 2019.

14 Q. Well, we are going to talk about what you remember turning
15 over. But, I'm focused right now on what you received.

16 Who was the person that does the -- each trial bureau
17 has one person who conducts these searches, right?

18 A. In 2015, I believe it was one. I don't know if it was as
19 many as two, but I believe it was one.

20 Q. Who was the one that did it in 2015?

21 A. I don't remember the paralegals. There are about nine
22 paralegals or 10 paralegals in our bureau. One of them was
23 designated as the person who did the searches. They were
24 rarely there for more than a year, so there was a healthy
25 turnover. I don't remember who it was.

N3g3fra4

Sangermano - Cross

1 Q. So if we wanted to ask that person, you couldn't help us
2 find that person?

3 MS. McGUIRE: Objection. Relevance.

4 THE COURT: Overruled.

5 A. I don't know who they are.

6 Q. You don't actually recall, you don't have an independent
7 recollection of asking someone to do this search, right?

8 A. On this particular occasion, no. I remember doing it. But
9 I don't remember with this case, like I remember the process of
10 talking to paralegals about it and getting them generally. I
11 don't know if it was for this case or another one.

12 Q. You didn't take any steps to verify the results of this
13 search for lawsuits that happened?

14 A. I didn't have a way to. I was not trained on doing the
15 searches. I don't know what databases were searched. I didn't
16 have the passwords to do the searches.

17 Q. The answer to my question is no, you didn't take any steps
18 to verify.

19 A. I didn't have steps to take to verify.

20 Q. So let's just talk about what you actually turned over.
21 Your office has rules about documenting what you disclose to
22 the defense, right?

23 A. Yes.

24 Q. You are trained to make written records of *Brady*
25 disclosures, right?

N3g3fra4

Sangermano - Cross

1 A. Yes. Office policy is to make written records of *Brady*
2 disclosures, discovery in general.

3 Q. And the preferred method for documenting your *Brady*
4 disclosures is a written letter to defense counsel, cc'ing the
5 Court, right?

6 A. Yes.

7 Q. And you're trained that making no record or making an oral
8 record or merely handing over a folder of documents to the
9 defense is not acceptable. Right?

10 A. Correct.

11 Q. And the reason why it's not acceptable is because you may
12 be in a position down the road of having to confirm what
13 lawsuits you turned over, right?

14 A. Yes.

15 Q. And if you don't make a written record of it, you may be in
16 a position of having to sort of reconstruct that from your
17 memory, right?

18 A. And other sources, yes.

19 Q. On March 17, 2015, you received an e-mail from Armand
20 Durastanti, right?

21 A. Yes.

22 Q. He was the bureau chief?

23 A. In trial bureau 40, yes.

24 Q. That e-mail instructed prosecutors to make a list of the
25 civil lawsuits that you are disclosing to the defense?

N3g3fra4

Sangermano - Cross

1 A. I believe that's what it said.

2 Q. It also instructed you to advise your adversary and the
3 Court by use of the form letter that is included in these
4 materials?

5 A. Yes.

6 Q. And it says, it said that the disclosure should include the
7 caption and index number of the case?

8 A. That sounds right.

9 Q. And that e-mail attached the form letter for you to
10 disclose lawsuits, right?

11 A. I don't recall if it did, but I accept what you are saying,
12 yes.

13 Q. You've actually used that form letter in other cases,
14 correct?

15 A. I'm sure I have.

16 Q. You have made lists of disclosures of civil lawsuits that
17 you've disclosed in other cases?

18 A. Yes.

19 Q. And in addition to *Brady* materials, there are other written
20 documents you have to disclose to the defense, right?

21 A. Absolutely.

22 Q. And such as what's called *Rosario* materials?

23 A. It used to be called *Rosario* material. Now it's called
24 discovery.

25 Q. You know what I mean, right?

N3g3fra4

Sangermano - Cross

1 A. Yes.

2 Q. Like with *Brady* materials, you're trained to document the
3 specific *Rosario* materials that you turn over, right?

4 A. Yes.

5 Q. And the *Rosario* materials are other documents, right?

6 A. Documents, videos, paper, yes.

7 Q. In this case, you fully documented the *Rosario* you turned
8 over to the defense, right?

9 A. Yes.

10 Q. You sent the defense in this case a cover sheet that listed
11 each of the specific documents that you were disclosing to the
12 defense, right?

13 A. Correct.

14 Q. And that list that you provided in this case of the *Rosario*
15 materials included details such as the number of pages in each
16 document that you turned over, right?

17 A. If my memory serves about my practices, it would have been.
18 Unless it was one page, then I wouldn't have included the page
19 numbers. But otherwise, if it was more than one page, yes.

20 Q. The reason why you do that is there is no doubt at any
21 point if this becomes an issue as to what you turned over,
22 right?

23 A. Correct.

24 Q. Would it be fair to say that you've had experience with
25 defense counsel asking for more time when you turn over an

N3g3fra4

Sangermano - Cross

1 extensive number of documents the day before trial?

2 A. I'm sure I've had it happen. Generally, if I have a large
3 number of documents, I try to turn it over in advance so we
4 don't delay the trial.

5 Q. Okay. Right. So your general practice was if you had a
6 large number of documents, you turn it over in advance. But if
7 not a large number of documents, you could do it closer to
8 trial?

9 A. Yes. If it's like hundreds or thousands of pages, I would
10 turn that over in advance. If it is complex medical records, I
11 would turn that over in advance. If it's cell site records
12 where they might need an expert individually, I would turn that
13 over in advance.

14 Q. Well, the 13 lawsuits that you claim you turned over to
15 Mr. Fraser, isn't it true that that consists of over 450 pages?

16 A. I don't recall the number of pages in the lawsuits. I
17 don't recall, I don't recall that, no.

18 Q. And you turned over whatever you turned over the day before
19 Mr. Fraser's trial, right?

20 A. I would have turned it over between the hearing and the
21 trial. I don't remember if that was a Friday to a Monday. But
22 it would have been turned over. Yeah, I turned it over between
23 hearing and trial.

24 Q. There's like a day between hearing and trial, right?

25 A. There can be a day, there can be minutes, there can be

N3g3fra4

Sangermano - Cross

1 days.

2 Q. In this case, there was like a day or two, isn't that
3 right?

4 A. I don't recall what day we broke for the hearing and what
5 day we came back for the trial. I don't believe it was a
6 lengthy break.

7 Q. Fair to say there was no request by Mr. Stewart for more
8 time because he had just received 450 pages of *Rosario* -- of
9 lawsuits, right?

10 A. I don't remember how many pages it was. I would be
11 surprised if it was 450, but I don't remember. But he did ask
12 for time to look it over. As I recall, he asked for time to
13 look over what he had gotten, and he gave an explanation, as I
14 recall, about sometimes that leads to areas where he has to
15 investigate, and he might want additional time for that.

16 Q. He didn't ask for additional time for that, right?

17 A. No, no. He might ask for additional time for doing --

18 THE COURT: Not might. To the best of your
19 recollection, did he ask for additional time? Yes or no.

20 THE WITNESS: He asked for additional time to review
21 what I turned over. I don't believe he asked for additional
22 time to do any additional research.

23 THE COURT: Investigation. Okay.

24 Q. You would agree with me, ADA Sangermano, you didn't create
25 any list of the lawsuits that you turned over in this case,

N3g3fra4

Sangermano - Cross

1 right?

2 A. Correct.

3 Q. You didn't send a letter to defense counsel listing the
4 cases?

5 A. Correct.

6 Q. You didn't send a letter to the Court listing the cases?

7 A. That's right.

8 Q. You didn't do any of the things required by your office to
9 document the fact that you turned over any lawsuits?

10 A. That is right.

11 Q. You created no written record of turning over any lawsuits
12 to the defense, right?

13 MS. McGUIRE: Objection.

14 THE COURT: Overruled.

15 A. That was my mistake and I didn't do it.

16 Q. And you don't actually remember what you turned over,
17 right?

18 A. I don't. I remember based on things that came after, but I
19 don't remember as I sit here today what I turned over in the
20 courtroom in 2015.

21 Q. What you did is you handed over, and you said -- you handed
22 the stack of papers over, and you said I turned over some civil
23 lawsuits, civil lawsuits against the NYPD and the officers,
24 some of the officers involved in this case. Right?

25 A. That sounds right.

N3g3fra4

Sangermano - Cross

1 Q. You didn't say the names of the lawsuits you were turning
2 over?

3 A. Correct.

4 Q. You didn't say how many lawsuits you were turning over?

5 A. Correct.

6 Q. You didn't say how many pages in that stack you were
7 turning over?

8 A. That's right.

9 Q. You certainly didn't say I'm turning over 13 cases, right?

10 A. That's right. I will say if I had turned over two cases, I
11 would have absolutely said I was turning over two cases.

12 Because the entire point of disclosing this, the next step is
13 my moving to preclude them. And so if I had turned over two
14 cases, central to my argument to the judge would have been that
15 there is not meat on those bones, there is nothing here. If
16 there were only two cases, I would have said I'm turning over
17 all the cases, Judge, and there is only two of them.

18 Q. I see. You are saying if there were two, you would not
19 refer to two as some cases?

20 A. No.

21 Q. Correct?

22 A. Correct. I would have referred to them by the number of
23 cases.

24 Q. Isn't it true that what you said was that -- that there
25 were cases against some of the officers involved in this case?

N3g3fra4

Sangermano - Cross

1 A. That sounds right.

2 Q. And isn't it true that the number of officers you were
3 referring to is two?

4 A. No.

5 Q. Well, there were lawsuits against two of the officers that
6 you had in your possession, right?

7 A. Correct.

8 Q. UC 84, right, there were two?

9 A. Yes.

10 Q. And there were 11 against Regina, right?

11 A. Yes.

12 Q. So there were only lawsuits against two of the officers you
13 were turning over. Isn't that true?

14 A. Yes.

15 Q. What you said is I turned over some civil lawsuits against
16 the NYPD and some of the officers involved in this case, right?

17 A. Yes.

18 Q. And all of those lawsuits that you had in your file were
19 lawsuits that your office found on its own, right?

20 A. Yes.

21 MR. BLOCH: Judge, may I have one moment to confer
22 with my co-counsel?

23 THE COURT: Yeah.

24 BY MR. BLOCH:

25 Q. ADA Sangermano, would you agree with me that Mr. Fraser's

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1 case was overturned because you didn't turn over all the Regina
2 lawsuits?

3 A. I believe that -- I don't remember if the judge's decision
4 was based on -- if he specified which officer's lawsuits. I
5 just don't remember.

6 Q. It was because of your failure to disclose a number of
7 Detective Regina's lawsuits, isn't that right?

8 A. I believe it was because the office failed to locate all of
9 them when the searcher did the search that I initiated, and
10 that there were other cases that didn't come back in that
11 search that were not turned over, and that was the basis, as I
12 understand it, that was the basis for overturning.

13 Q. And the judge believed in overturning the conviction that
14 those lawsuits were material, right?

15 MS. MCGUIRE: Objection. Speculative. "Believed."
16 Form.

17 THE COURT: Oh really? The judge's opinion held what
18 it held. He held that there was a *Brady* violation. Correct?
19 We can all agree on? Fine.

20 MR. BLOCH: Nothing further, Judge.

21 THE COURT: Anything else?

22 MS. MCGUIRE: Nothing further, your Honor.

23 THE COURT: Thank you very much, ADA Sangermano.

24 (Witness excused)

25 THE COURT: Okay. So as I told you before, I think

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1 that the defense has one more witness and anticipates that that
2 will take up most of the morning.

3 So, we will start at 10 a.m. tomorrow, we will go
4 until we're done. And then I get to spend the afternoon with
5 these fine folks without you. And that way everything will go
6 very smoothly on Monday. Okay? When you are to be given the
7 case to deliberate.

8 So, don't discuss the case tonight. Keep an open
9 mind. Keep your notebooks back there, and we'll see you in the
10 morning.

11 (Jury excused)

12 THE COURT: Sit down. I'm still reeling from the
13 notion that *People v. Garrett* articulated some new rule of law.
14 I went back and read it again. Yikes.

15 Okay. So, how am I supposed to explain to this jury
16 or is it necessary for me to explain to this jury that the
17 lawsuits that formed the basis for the vacatur of Mr. Fraser's
18 conviction are not the lawsuits that are at issue in this case,
19 but rather were lawsuits against I believe Detective Regina.

20 MR. FRANCOLLA: I'll defer to counsel, but I think
21 that was our intention with the stipulation we prepared that
22 your Honor read in at the beginning of the case. That, in sum
23 and substance, said the date that the conviction was vacated
24 because the district attorney's office failed to disclose
25 additional lawsuits specific to Detective Regina, and that that

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1 issue is not for them to decide.

2 MR. RUDIN: Your Honor, I would just add to that,
3 that --

4 THE COURT: I think I am going to be more fulsome than
5 your stipulation, in light of the way everything has gone down.

6 MR. RUDIN: I would add to that, that the kind of
7 instruction that I would think the Court gives frequently, that
8 the jury is not to speculate about why there is no claim as to
9 officer -- Detective Regina on that issue, that's not before
10 it.

11 The only issue before it is the allegation that these
12 two defendants, Del Toro and UC 84, didn't disclose a total of
13 eight lawsuits in addition to the two lawsuits about UC 84 that
14 were disclosed.

15 THE COURT: Well, I'm not going to say the two
16 lawsuits about UC 84 that were disclosed, because ADA
17 Sangermano claims, and has consistently claimed, to have
18 disclosed 13 lawsuits with no basis whatsoever. But I can't
19 make that factual determination. Okay.

20 MR. RUDIN: Just with reference to the eight.

21 THE COURT: Don't ask me to say 13, don't ask me to
22 say two. Because I can't do that. Okay. All right. Okey
23 dokey.

24 MR. RUDIN: I guess there is an issue, which I think
25 your charge does resolve, that it's no defense of course that

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1 New York State and the *Garrett* decision issued a rule that in
2 this Court's opinion -- of course we think the opinion is
3 correct -- is considerably more narrow than what *Brady* and
4 *Giglio* and federal law would require. But I think some
5 instruction to the jury, and I leave it to your Honor's wisdom
6 how to clean up this confusion.

7 THE COURT: I think I cleaned it up this afternoon
8 when I said we're going to talk about *Brady*. And we're not
9 going to worry about this case subsequent to *Brady* or that case
10 subsequent to *Brady* or some other case subsequent to *Brady* that
11 held this, that, or the other factual situation to have
12 resulted in a *Brady* violation.

13 Brady is everything. And the fact that here in
14 federal court we refer to 3500 material, which is *Rosario*
15 material, or used to be *Rosario* material, and *Giglio* material,
16 which is *Brady* impeachment material, is irrelevant.

17 We're in state court. This took place in state court.
18 That's why I'm telling them I have to teach them a little state
19 evidence law. And the state case that I'm going to talk about
20 is, you know what. The People versus whatever it is.

21 MR. RUDIN: I think you refer to *Sandoval*.

22 THE COURT: Not *Sandoval*, though I mention it. What's
23 the Court of Appeals case that I'm quoting from extensively and
24 I didn't include the name of it.

25 MR. BLOCH: *Smith*.

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1 THE COURT: *People v. Smith*, of course. Right.
2 *People v. Smith*.

3 MR. RUDIN: Your Honor, of course certainly as to the
4 *Monell* claim, if New York State had an incorrect rule but the
5 City of New York was required to disclose under federal
6 constitutional law and had a policy that violated federal
7 constitutional law, whether or not the New York State Court of
8 Appeals had an incorrect ruling is no defense.

9 THE COURT: The New York State Court of Appeals
10 doesn't have an incorrect rule. There is nothing wrong with
11 *People v. Smith*. I don't see any inconsistency between it and
12 federal constitutional law.

13 Your point about the City is that it did not encompass
14 impeaching evidence for a period of time. It only included
15 exculpatory evidence. The New York Court of Appeals never said
16 in *People v. Smith* anything different.

17 MR. RUDIN: That's true.

18 THE COURT: All it did was say the fact of a lawsuit
19 isn't enough to impeach. But underlying -- Mr. Stewart was a
20 wonderful witness. I really loved Mr. Stewart, because he said
21 all the right things in exactly the right way. It was simple,
22 it was straightforward, it was really great. So, I don't have
23 any problem with *People v. Smith* as being an incorrect rule.

24 MR. RUDIN: All right.

25 THE COURT: I have a lot of problems, you know, I'm

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1 just finding out about all this stuff. If I were corporation
2 counsel, I would be tearing out my hair at the problems at the
3 police department and the district attorney's office in terms
4 of keeping track of lawsuits against police officers. Of
5 course, if I were the corporation counsel, the first thing I
6 would do was I would make damn sure that I had a complete
7 database of all lawsuits that were filed against police
8 officers, because I wouldn't trust anybody else.

9 But it's not corp counsel's job; it is the DA's job,
10 and the DA's obligation. And he's not a defendant in this
11 case, obviously. He can't be a defendant in this case.

12 Absolute unequivocal whether he knows about the suits
13 or doesn't know about the suits, if they exist, he must
14 disclose. The cops, on the other hand...

15 So, I've heard a lot of things in the last three and a
16 half days that I find extraordinary.

17 All right. So, I will remind them of your stipulation
18 and reinforce it somewhere in this charge. I'll put it in.
19 Okay. Okay.

20 (Adjourned until March 17, 2023, at 10 a.m.)
21
22
23
24
25

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N3h3fra1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 JAWAUN FRASER,

4 Plaintiff,

5 v.

20 CV 4926 (CM)

6 CITY OF NEW YORK, et al.,

7 Defendants.

Trial

8 New York, N.Y.
9 March 17, 2023
10:00 a.m.

10 Before:

11 HON. COLLEEN McMAHON,

12 District Judge

13 APPEARANCES

14 JOEL B. RUDIN
15 Attorneys for Plaintiff

-and-

16 BLOCH & WHITE LLP
17 BY: MICHAEL L. BLOCH
BENJAMIN D. WHITE
CRISTINA ALVAREZ

18 SYLVIA HINDS-RADIX
19 Corporation Counsel for the City of New York
Attorney for Defendants

20 BY: BRIAN C. FRANCOLLA
21 CAROLINE McGUIRE

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1 (Trial resumed; jury not present)

2 THE COURT: Case on trial continued. The parties are
3 present, jurors are not present.

4 Juror No. 1 who is here called and spoke to Philip
5 this morning. And he wanted us to know that he had not
6 mentioned -- and indeed wasn't asked, none of us thought to ask
7 it -- that he is a member of a union. He is a member of Local
8 1 of some union or other. Stagehands Union. Thank you. I
9 mean -- because he's in the theatrical business. And he wanted
10 us to know that, in case we thought that would make -- we would
11 think that he was biased toward Mr. Fraser, who was a member of
12 a union.

13 Of course, cops are all members of unions, everybody's
14 a member of a union.

15 But I think we should bring him in and ask him if he
16 can be fair and impartial in this case, where we got union
17 members on both sides. I commend him for calling this to our
18 attention. But, since everybody's in a union, it didn't occur
19 to me that this would to come up.

20 So why don't we bring Juror No. 1 in.

21 (Juror No. 1 present)

22 THE COURT: Hi. Come in. Take a seat.

23 JUROR NO. 1: My seat?

24 THE COURT: Your seat. It belongs to you. Your seat.

25 Hi. So, I've told the parties that you called and

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1 mentioned that you were a member of Local 1 of -- I assume one
2 of the theatrical unions?

3 JUROR NO. 1: Correct.

4 THE COURT: Frankly, we never thought to ask, because
5 everybody here is a member of a union. The cops are members of
6 a union, Mr. Fraser is a member of a union. So we didn't ask
7 people about membership. Now I know better. Next time I'll
8 think about that.

9 Is there anything that's going to cause you to be
10 biased for or against either side because you are a member of a
11 union and everybody else is a member of a union?

12 JUROR NO. 1: No.

13 THE COURT: Great. I commend you for having let us
14 know this so we could clear that up. I really, really
15 appreciate it.

16 I kind of hate to ask you to go back and get your
17 notebook, but since you didn't bring it, go back and get your
18 notebook and everybody else will come out.

19 (Juror No. 1 not present)

20 MR. FRANCOLLA: Should we get Ms. Flaherty, your
21 Honor? She's outside.

22 THE COURT: Bring her in. Jury.

23 (Jury present)

24 THE COURT: Good morning. Top of the morning to you.
25 All right. Have a seat. In keeping with the day, we

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Flaherty - Direct

1 have a good Irish witness on the stand.

2 Will you call your next witness, please.

3 MR. FRANCOLLA: Yes, your Honor. The defense calls
4 Director Katie Flaherty.

5 KATIE FLAHERTY,

6 called as a witness by the Defendant,

7 having been duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. FRANCOLLA:

10 Q. Good morning, Director Flaherty.

11 A. Good morning.

12 Q. Can you start by walking the jury through your educational
13 background.

14 A. Sure. So I graduated from the University of Florida with
15 my B.A. in English and criminology. Then I went to law school
16 at Villanova Law School, and graduated from there with my J.D.
17 Following that, I received my L.L.M. in risk management from
18 Texas A&M Law School.

19 Q. After you received that degree, can you walk the jury
20 through your employment history.

21 A. Absolutely. So after I graduated from Villanova Law
22 School, I started with the New York City Police Department in
23 2008. This is my 15th year with them, and I've been there
24 since law school.

25 Q. What roles have you had with within the police department

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Flaherty - Direct

1 since you've been working there?

2 A. I started as a civil attorney doing general litigation
3 matters, I did that for about four years. And then I worked in
4 the police commissioner's office for about a year on a project
5 management, special project there. After that, I came back to
6 the legal bureau, and started the risk assessment bureau in
7 2013. I did that until April of 2021. And then I went to the
8 criminal justice bureau. I was there for about a year, and
9 then I came back to the legal bureau and I'm the director of
10 privacy matters. I've been doing that for about a year.

11 MR. RUDIN: I didn't hear the last answer.

12 THE COURT: Could you repeat the last thing you just
13 said.

14 THE WITNESS: Sure. I've been back in the legal
15 bureau for about a year as the director of privacy matters.

16 MR. RUDIN: Thank you.

17 Q. Just very briefly, can you tell the jury what your current
18 assignment entails.

19 A. Absolutely. So currently, I oversee the department's
20 compliance with privacy-related issues, meaning I make sure
21 that we don't disclose information we shouldn't, that we're
22 properly collecting information and keeping it safe. I make
23 sure we comply with the City's identifying information law.

24 Q. I want to focus on the risk assessment unit you mentioned.
25 Can you tell the jury what that is.

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1 A. Absolutely. So the risk assessment unit was created in
2 2013. What it was intended to do is look at lawsuits, look at
3 civil litigation histories of officers, look at lawsuits filed
4 against the NYPD, go through them from a data standpoint. Look
5 at patterns and trends in the lawsuits, and figure out if there
6 is a problem that exists, figure out a solution, a way to
7 potentially solve that problem, mitigate lawsuits being filed
8 against the department. And also just provide more information
9 on lawsuits generally.

10 Q. When that risk assessment unit was initially created, were
11 any trainings created along with it?

12 A. They absolutely were. So, the unit itself began in 2013,
13 we began doing training in 2014. That still continues today.

14 Q. Relevant to civil lawsuits, can you explain what the
15 training initially began as in 2013.

16 A. In 2013, and 2014 the training was this is what we're
17 getting sued for. Right. These are the patterns and trends
18 that we're identifying in lawsuits. This is some of the issues
19 that have arisen, and these are ways we can present to officers
20 themselves to minimize exposure to civil liability. Meaning
21 prevent them from getting sued, if possible.

22 Q. What role did you have in the trainings you just described?

23 A. I created the trainings and also presented the trainings.

24 Q. When you say you presented them, can you explain what you
25 mean?

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1 A. Sure. I presented them to a number of officers. I
2 probably trained tens of thousands of officers at this point.
3 So one of the things that we do is train officers that get
4 promoted. So any officer that becomes a sergeant, a
5 lieutenant, or a captain, they go through a promotional
6 training at the police academy. And part of my
7 responsibilities in the risk assessment unit were to attend the
8 academy for a day with them, and train on risk mitigation and
9 civil liability, and talk about lawsuits to them.

10 Q. Focusing still on the initial iteration of this training.
11 Can you just explain a little bit to the jury about the sorts
12 of things you train officers on with respect to civil lawsuits?

13 A. Sure. So, a lot was just information sharing. Once you
14 know more about something, it's less scary. Right. So a lot
15 of times officers don't know what they've been sued for, or how
16 many times they've been sued, because they don't have the
17 knowledge. They're not lawyers.

18 So our job was to give them information, as much as
19 possible, give them an opportunity to ask questions about
20 lawsuits in general, and also provide advice about, like I
21 said, about civil liability and risk mitigation generally. And
22 just give them a source, a resource to ask a lawyer questions.

23 Q. Now, are you familiar with a New York Court of Appeals case
24 *People v. Garrett*?

25 A. I am.

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1 Q. Did that case in any way impact the training you were
2 providing?

3 A. It did. So, I'll give my understanding of the case first
4 and then talk about how it impacted the training.

5 My understanding of the case is that it kind of
6 allowed officers to be asked about civil lawsuits. It was the
7 first time that we were almost put on notice that this was
8 something that could be asked about during cross-examination.

9 THE COURT: Remember, I'm going to tell you what the
10 law is.

11 THE WITNESS: Sorry, your Honor.

12 THE COURT: It's okay. But I'm going to tell you what
13 the law is.

14 THE WITNESS: Absolutely.

15 THE COURT: She's allowed to tell you what her
16 understanding of it is. There is a difference between her
17 understanding and what I tell you that the law is, and you are
18 going to have to follow me.

19 I'm so jealous of my one and only prerogative,
20 Ms. Flaherty. I said this to the other lawyer who testified,
21 too.

22 THE WITNESS: Sorry about that.

23 A. The way that *Garrett* impacted our training is we started
24 talking more and more about, you know, this is how you learn
25 what your lawsuit history is, and this is how you get more

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Flaherty - Direct

1 information about it. And, you might be asked about it, right,
2 on the stand. So this is an affirmative obligation to start
3 learning more.

4 Q. Why was it important to share with the officers the fact
5 that they might be asked about this, and that they should know
6 about it?

7 A. Well, in case they were asked about it on the stand, they
8 needed the information. They also needed the information in
9 order to share it with the district attorney, the prosecutor in
10 a criminal case. We need to make sure that officers are
11 understanding of their lawsuit history, provide it to the
12 prosecutors or whomever they need to, and are able to be
13 prepared and answer questions. It is only to their benefit to
14 be able to be prepared to provide this information.

15 Q. To your knowledge, what year was *People v. Garrett* decided?

16 A. 2014.

17 Q. Was that understanding you just explained incorporated into
18 the training that was being provided to members of service?

19 A. It was.

20 Q. How, if at all, did you -- strike that.

21 Was there a mechanism to explain to the officers how
22 they might be able to learn about civil lawsuit histories they
23 didn't independently know of?

24 A. Yes. So, one of the things that we felt was most important
25 for officers to gain information was to give them a resource to

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Flaherty - Direct

1 reach out to say tell me about my lawsuit histories. So, what
2 we did was created a general e-mail address that they could
3 e-mail, but most of them just e-mailed me directly since I gave
4 most of the training. I would get their name and their
5 information, and then I would give them their lawsuit history
6 in a lot of cases. There also was a publicly available dataset
7 that they could also ask for or obtain.

8 I would give training about Googling yourself. I know
9 it sounds a little cheesy, but if you can find information
10 about yourself out there, everyone else kind of can too. So we
11 would tell them to look for that. There is also publicly
12 reported lawsuit information that the law department puts out.

13 Q. And how was it that you -- strike that.

14 From where did you obtain or learn of the civil
15 lawsuit histories with respect to the particular members of
16 service who were calling or e-mailing?

17 A. From a variety of sources. When we created the unit, we
18 already had access to what we called the civil litigation
19 database. When an officer gets sued, they have to fill out
20 what's called a request for legal assistance. Meaning they
21 have to ask the law department to represent them. When they
22 fill out that form, they send it to the -- they send it to
23 legal bureau first, and then we send it to the law department.
24 We can keep track of those forms to know how many times an
25 officer has been sued. We also ask the law department for

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1 their data. So they would send us litigation data spreadsheets
2 to say this is how many lawsuits have been filed against these
3 officers during this period of time. We would get those on a
4 monthly basis. So I could search through those, we would
5 compile them into one comprehensive database, if you will. And
6 we could look at that. And we could also look at publicly
7 available information on the docket in either federal or state
8 court.

9 Q. Now, when you were communicating with members of service
10 who would inquire about their civil lawsuit histories, can you
11 explain to the jury to what extent -- strike that.

12 What reasons, if any, existed for why they didn't know
13 in detail what their histories were?

14 MR. RUDIN: Objection, your Honor.

15 THE COURT: Overruled.

16 A. So --

17 THE COURT: This is a hypothetical. Hypothetically.

18 THE WITNESS: Absolutely.

19 A. So hypothetically, an officer might not get served with a
20 lawsuit. That's the first step, is you have to know --
21 somebody has to give you the papers that you were sued. The
22 police department is quite large, as you can imagine. So, that
23 individual one-on-one service doesn't always happen. An
24 officer might get sued at his or her precinct where they work,
25 or they might get sued at One Police Plaza.

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1 THE COURT: By sued, you mean the papers might be
2 served at the precinct or the papers might be served at One
3 Police Plaza?

4 THE WITNESS: Yes, I apologize for that.

5 THE COURT: Thank you.

6 THE WITNESS: Thank you.

7 A. So they could get served at those locations. If they don't
8 know that somebody else in their precinct has received the
9 papers on their behalf, it just didn't make its way to them,
10 the officer just might not know, and might not fill out the
11 request for legal assistance, and might never know that that
12 lawsuit existed. That's definitely a possibility.

13 The other possibility is they could have been served,
14 they could have filled out their request for legal assistance,
15 they might speak with a law department attorney on the case who
16 decides to represent them, and then maybe they're just never
17 called for a deposition, maybe there is no trial. The case
18 might end, and the officer might not know the outcome. They
19 might not have been told what happened with the case, so they
20 might not know the end result.

21 Q. Now, the trainings that you've discussed since 2013, within
22 those trainings, did you provide instruction as to how officers
23 should handle disclosure of civil lawsuit information they are
24 aware of?

25 A. Yes. Specifically after *People v. Garrett*, we started

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1 talking about it more. We had already been talking about
2 knowing your history of lawsuits. But we started saying you
3 need to tell the prosecutors, you need to give this information
4 if you are aware of it, and again, this is how you get it, by
5 contacting my office or looking at these other available
6 sources. So that they would know and could share it.

7 Q. How was this information conveyed to the officers?

8 A. In trainings at first, the trainings that I mentioned at
9 the beginning that -- or started at the beginning of 2014 and
10 continue today. We've also had a legal bureau bulletin that
11 talked about it, that came out. That explains what officers
12 can be asked about on the stand.

13 But the majority of it was these trainings that I
14 mentioned.

15 Q. What was your role in these trainings that you mentioned?

16 A. Again, I created them and I gave the presentations and the
17 trainings. So I was the one that was telling the officers how
18 important it is to know your lawsuits and where to get the
19 information.

20 Q. The legal bureau bulletin you mentioned, when did that come
21 out?

22 A. I believe it was 2017.

23 Q. Now, in terms of the trainings we've been discussing, can
24 you just generally describe to whom they were provided?

25 A. Absolutely. So there is a number of ways that officers can

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1 get trained, starting with when they're first on the job,
2 they're called recruits in the police academy, they get
3 training there. They get training about how to testify in
4 court in the academy as recruits. Once they're, quote unquote,
5 on the job, right, already a police officer, they get what's
6 called in-service training, so they can be trained on a number
7 of different more specific topics.

8 Part of that in-service training is command level
9 training. What we do is bring in training sergeants at each
10 precinct or command, smaller unit of the department, into one
11 place, once a month, and give them training on particular
12 topics. So I gave this lawsuit training at command level
13 training during that time frame. And the idea is these
14 sergeants, the supervisors, take the information learned back
15 to their commands.

16 I've also given the promotional training that I
17 referenced before, to newly promoted sergeants, lieutenants,
18 and captains, so that those supervisors also are aware of it.
19 And then I've given training to police officer specialized
20 commands. So, for example, detective bureau. In 2015 and
21 2016, they were conducting their annual professional
22 development training, and I gave presentations to them, to the
23 entirety of the detective bureau, during that time, on risk
24 mitigation related to lawsuits and just generally knowing your
25 lawsuit history.

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1 Q. Now, I want to briefly -- you mentioned a bit earlier about
2 a little bit about the process that occurs when a lawsuit is
3 served on a police officer.

4 Focusing on officers in the narcotics bureau. Can you
5 just explain to the jury how that process works.

6 A. So officers assigned to the narcotics bureau get served at
7 police headquarters, One Police Plaza. They don't get served
8 at their individual unit that they work in. Part of that is
9 because undercover officers might work there, and we don't want
10 to obviously disclose their identity, so we have them served at
11 police headquarters. The papers are accepted there. And then
12 they are given either via messenger or through department mail
13 to the defendant officer who is getting sued.

14 Q. You have also mentioned what's called a request for legal
15 representation. Can you explain to the jury that process?

16 A. Yes. So once an officer is sued, they have to follow
17 patrol guide, so that's basically our department guidelines on
18 how to do your job. The patrol guide has a requirement that
19 when you're sued, and served with those papers, the officer has
20 to fill out this form. Now it's available on the internet, so
21 it is available online.

22 They fill it out with the information about the
23 lawsuit itself, some of the allegations that are listed in the
24 lawsuit, the details, the date it happened, all of that, and
25 then they give it to their supervisor.

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1 Their supervisor then does a check to see is there any
2 sort of allegation of wrongdoing or misconduct related to this.
3 So the supervisor checks with our internal affairs bureau that
4 conducts investigations within the department to see if
5 anything happened related to this instance. They also check
6 with our department advocate who does our internal department
7 prosecution and trials, if an officer is accused of wrongdoing.
8 They check with them to say is there anything related to this
9 specific incident. We have to check a yes or a no.

10 Then their commanding officer, so their boss of their
11 entire office, has to approve that request for legal
12 assistance, and then that is processed through the legal bureau
13 and sent ultimately to the law department.

14 Q. To the extent it's sent to the law department, and an
15 officer is requesting legal representation, do they necessarily
16 get it solely because they requested it?

17 A. Absolutely not.

18 Q. Can you explain?

19 A. Sure. So an officer, if they have had one of those checks
20 yes that I said, if either IAB, the internal affairs bureau or
21 an advocate says there is an underlying allegation of
22 wrongdoing or misconduct related to this incident, that
23 information is provided to the law department. The law
24 department also conducts their own investigation, if you will,
25 for lack of a better word. They look into the incident. If

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Flaherty - Direct

1 they think that there is any sort of wrongdoing or misconduct,
2 they will not represent the officer despite having asked for
3 it.

4 MR. RUDIN: Objection.

5 THE COURT: The objection is sustained. It is totally
6 irrelevant. Nothing to do with this case. Move on.

7 I just want to clarify one thing. The officer has
8 notified the law department that the lawsuit exists and it goes
9 into the database, even if you ultimately tell the officer that
10 you are not going to represent them.

11 THE WITNESS: Correct.

12 THE COURT: Fine.

13 Q. I want to transition, Director Flaherty, to the civil
14 lawsuit monitoring committee. Can you tell the jury what that
15 is?

16 A. The civil lawsuit monitoring committee was created in 2013
17 around the same time as the risk assessment unit that I
18 described earlier. What that is, is part of our monitoring of
19 police officers at the police department. The civil lawsuit
20 monitoring committee was created to look at lawsuits, and
21 determine whether or not some sort of intervention needed to
22 be -- needed to take place for these officers.

23 So, we looked at if an officer had three or more
24 lawsuits filed in a 12-month period, six or more lawsuits filed
25 in a five-year period, or if a lawsuit had been closed and a

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1 payout of over \$100,000 had been made in the prior year, those
2 were the initial criteria. If that trigger happened, we would
3 look at the lawsuits, "we" meaning legal bureau would look at
4 the lawsuits, and determine whether or not they needed to be
5 reviewed by the civil lawsuit monitoring committee.

6 Q. How would you conduct the investigation into the lawsuits?

7 A. We would review the lawsuit paperwork itself, we would read
8 the complaint, we would read any papers that we could find. We
9 would look at internal department records to see if we could
10 figure out what actually happened in this case. We would look
11 at an officer's prior disciplinary history. We would look to
12 see whether the officer was actually involved in the case or
13 not, and ultimately that would be presented to the committee.

14 The committee is made up of executives within the
15 police department who would vote on whether or not the officer
16 needed, like I said, some type of intervention. Meaning maybe
17 their boss just needs to talk to them about something, maybe
18 they need to more formally go through some kind of training or
19 retraining, or maybe they actually need to be placed on
20 monitoring.

21 Q. The fact that an officer may trigger that review, does that
22 necessarily result in them going before the monitoring
23 committee?

24 A. No not necessarily.

25 Q. Can you explain why that trigger might be hit but that the

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Flaherty - Direct

1 monitoring doesn't actually occur?

2 A. Sure. So we actually changed those criteria that I
3 mentioned in 2016, because we had a lot of officers that we
4 were reviewing initially, and we realized -- in the risk
5 management world, there are key performance indicators. Those
6 are the criteria that I mentioned. It was creating too many
7 false positives, meaning too many officers were getting
8 flagged.

9 We realized we were reviewing people who were not
10 actually part of the incident that led to the lawsuit, so they
11 should not have been reviewed. So the triggers changed.

12 So it was still the three lawsuits filed in one year,
13 six filed in the prior five-year period, or a lawsuit that was
14 disposed of for \$200,000 or more in the last year. What we did
15 was change that, and also add the personal involvement level.
16 Meaning an officer's level of involvement in the incident was
17 being looked at more carefully.

18 If, for example, it was the incorrect officer, we have
19 officers with common names that was actually being sued, and it
20 should have been Jane Doe 1 instead of Jane Doe 2, we would not
21 review Jane Doe 1 for the monitoring committee. There would be
22 no point to that. It was the wrong officer.

23 So we were looking at that level of personal
24 involvement in a little bit more detail before it even rose to
25 the committee.

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Flaherty - Direct

1 Q. You mentioned that there was criteria, part of the criteria
2 was an amount a case may have been disposed of. Can you
3 explain what that means?

4 A. Sure. Disposition just means the end of a lawsuit. Was
5 there some sort of judgment or payout, a settlement. Money
6 paid to end the case or resolve the case.

7 Part of the reason that we increased the amount of
8 money is because there were a lot of cases settled for \$100,000
9 or more. That, as a very base threshold was too low, because
10 that \$100,000 is not just what's paid to the person themselves
11 that's suing, but it also includes legal fees. So we had had
12 to change that a little bit to make sure we were actually
13 looking at lawsuits that were more substantive in nature.

14 MR. RUDIN: Your Honor, I object to this testimony.

15 THE COURT: The objection is sustained. This has
16 nothing to do with anything.

17 MR. FRANCOLLA: The civil lawsuit monitoring was
18 raised in a portion --

19 THE COURT: I'm sorry. I don't think this has
20 anything to do with anything.

21 MR. RUDIN: My objection is to the testimony about
22 more recently after this case was tried in 2015.

23 THE COURT: Obviously, ladies and gentlemen, anything
24 that happened after 2015 when this case is tried doesn't have
25 any relevance to what happened in this case. And I'm sure you

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Flaherty - Direct

1 understand that. But, okay. Keep going.

2 MR. FRANCOLLA: Okay.

3 Q. Now, how is it -- are there mechanisms that the police
4 department can be made aware of instances where members of
5 service are found to have violated *Brady*?

6 A. Yes.

7 Q. Can you explain to the jury how the police department is
8 made aware of that?

9 A. So there are a few ways that we could be made aware of it.
10 Obviously there's too many police officers and too many court
11 appearances to have somebody sit in proactively on each time an
12 officer is testifying.

13 But our internal affairs bureau that I mentioned
14 earlier can sit in any courtroom and listen to an officer
15 testify, and if they think the officer isn't being truthful or
16 isn't being forthcoming, they can initiate an investigation
17 into that officer.

18 Additionally, anyone can call internal affairs bureau
19 and make a complaint at any time about any officer. So, we
20 have prosecutors that can call -- that do call internal affairs
21 bureau and make a complaint when they think there is a
22 potential *Brady* issue or violation. And we have defense
23 attorneys do it too. Like I said, anyone can call.

24 Q. Assuming such a call is made, what's the result of that?

25 A. So the internal affairs bureau would initiate an

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Flaherty - Direct

1 investigation. They would talk to the people involved. They
2 would potentially pull the transcript, if there is one, of the
3 officer's testimony and read it. They could take to anyone
4 involved that was present in the courtroom. They could look to
5 see if this violation actually happened. And if they believe
6 that it was, and substantiated the allegation, then it would be
7 referred to our department advocate for some kind of
8 discipline.

9 Q. Director Flaherty, were you, prior to 2013, were you
10 involved in any training that was provided with respect to
11 *Brady* materials generally?

12 A. I was not.

13 Q. Now, focusing on the trainings you provided prior to
14 November of 2015. Were there any written materials associated
15 with the trainings at that time?

16 A. There were PowerPoint presentations associated with the
17 trainings that I had personally given starting in 2014 through
18 present.

19 Q. Did those PowerPoint trainings specifically reference the
20 civil lawsuit aspect that you discussed earlier that you were
21 involved in providing?

22 A. Some of them did. I mean, it was different PowerPoint
23 presentations for different groups, right. Different
24 audiences. But all of them mentioned civil lawsuits, they all
25 talked about risk mitigation, and even if they didn't

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Flaherty - Cross

1 specifically say you have to give your lawsuit history, or you
2 have to know your lawsuit history, we talked about it in those.
3 And the end of every PowerPoint presentation or training that I
4 gave, I would give my direct phone number and e-mail address
5 for the officers to reach out to me to give them their lawsuit
6 histories.

7 MR. FRANCOLLA: Can I just take one moment.

8 Your Honor, I have nothing further. Thank you,
9 Director.

10 THE WITNESS: Thank you.

11 MR. RUDIN: May I cross-examine, your Honor.

12 THE COURT: I can hardly stop you.

13 CROSS-EXAMINATION

14 BY MR. RUDIN:

15 Q. Good morning, Ms. Flaherty.

16 A. Good morning.

17 Q. My name is Joel Rudin. I'm one of the attorneys for the
18 plaintiff. We've never met before, have we?

19 A. I don't believe so, no.

20 Q. Now, you began with risk management in 2013?

21 A. Correct.

22 Q. And you only became involved with in-service training after
23 that, correct?

24 A. No.

25 Q. When did you become involved with in-service training?

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Flaherty - Cross

1 A. I began doing training in 2011 and 2012 with the
2 department. I began the lawsuit training in 2014, after the
3 creation of the risk assessment unit.

4 Q. You gave a deposition in this case on July 28, 2021?

5 A. Yes.

6 Q. You testified about, among other things, training,
7 in-service training and police academy training?

8 A. Yes.

9 Q. You are familiar with police academy training?

10 A. Yes.

11 Q. By the way, what is an officer CPI?

12 A. A CPI is called a central personnel index. And it's
13 ultimately a listing of an officer's personnel history or
14 information.

15 Q. Until 2016, the police department's CPI for police officers
16 included lawsuit information, correct?

17 A. I believe it was from 2018 -- I mean, 2008 to 2016.

18 THE COURT: Mr. Rudin, could you please use that
19 microphone.

20 MR. RUDIN: I'm sorry, your Honor.

21 THE COURT: Thank you.

22 Q. You testified a little while ago about the decision by the
23 New York State Court of Appeals in the *Garrett* case?

24 A. Yes.

25 Q. That was in 2014?

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Flaherty - Cross

1 A. Yes.

2 Q. The New York Court of Appeals is the highest court in the
3 State of New York?

4 A. Yes.

5 Q. In that decision, in 2014, the New York Court of Appeals
6 talked about the obligations of prosecutors' offices to
7 disclose civil lawsuit information involving police officers?

8 A. So, I already gave my understanding.

9 THE COURT: No, no, answer his question.

10 A. Yes.

11 Q. You are familiar, are you not, that the highest court in
12 the United States is the U.S. Supreme Court?

13 A. Yes.

14 Q. You are a lawyer, right?

15 THE COURT: They teach that at Villanova?

16 THE WITNESS: Yes.

17 THE COURT: Good.

18 THE WITNESS: I did learn that, yes.

19 Q. You got that one at Villanova Law School?

20 A. That one I did, yes.

21 Q. You learned either in law school or while on the job about
22 the *Brady* decision by the U.S. Supreme Court?

23 A. Yes.

24 Q. You understand that decision was decided in 1963?

25 A. That sounds correct.

N3H3FRA1

Flaherty - Cross

1 Q. We all agreed --

2 THE COURT: It was decided before you went to
3 Villanova Law School, right?

4 THE WITNESS: Yes, it was.

5 THE COURT: Yeah, it was. Okay.

6 Q. I think we've all agreed in court, it was decided at least
7 50 years ago?

8 THE COURT: We can stipulate it was decided in 1963.

9 MR. RUDIN: Thank you, your Honor.

10 Q. You are also aware of the Supreme Court's decision in the
11 *Giglio* case?

12 A. Yes.

13 Q. That was decided in 1972?

14 A. Again, I am not familiar with the year, but yes.

15 THE COURT: Before you went to law school.

16 THE WITNESS: Correct.

17 Q. You understand that the *Giglio* case specifically concerned
18 the obligation of prosecutors to disclose what's called
19 impeachment information, correct?

20 A. Correct.

21 Q. So since at least 1972, prosecutors in this country and
22 police officers are required to understand the obligation of
23 the prosecution to disclose impeachment information to a
24 criminal defendant, correct?

25 A. That was -- sorry, I think the answer is yes, but that was

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Flaherty - Cross

1 quite a complex --

2 THE COURT: I agree.

3 Would you agree with me that the *Brady* and *Giglio*
4 cases apply to prosecutors in every state in the country?

5 THE WITNESS: Yes, yes.

6 THE COURT: And have since they were decided?

7 THE WITNESS: Correct, yes.

8 Q. We didn't need a decision of the New York court --
9 withdrawn.

10 THE COURT: Thank you, because that was very
11 argumentative.

12 MR. RUDIN: Yes, your Honor.

13 Q. Now, a couple of days ago, I think it was, the days sort of
14 merge into each other, but I think it was a couple of days ago
15 we read to the jury some excerpts from your deposition
16 testimony about, among other things, the procedure for
17 notifying officers of lawsuits. But I'd like to ask you a few
18 more questions about that, okay?

19 A. Sure.

20 Q. Now, you gave a PowerPoint presentation, you would give a
21 PowerPoint presentation to police officers about, among other
22 things, what they should do when they get sued, right?

23 A. Correct.

24 Q. And you understand as a lawyer, and you explained to the
25 police officers, that every lawsuit begins with the filing of a

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Flaherty - Cross

1 complaint?

2 A. Correct.

3 Q. It is a requirement of every lawsuit, if a person or an
4 entity is going to be brought into the case as a defendant,
5 that this person or entity be served with a copy of the
6 complaint, right?

7 A. Correct.

8 Q. This gives notice to the person or the entity being sued
9 what he or she or the entity is being sued for?

10 A. Correct.

11 Q. You've explained that in the case of a police officer,
12 ordinarily the lawsuit is not served directly on the police
13 officer, but it's served upon some representative or some
14 office of the NYPD?

15 A. Most of the time that is correct. They can also be served,
16 unfortunately, at their homes. Any normal method for civil
17 process or service process of service, sorry.

18 Q. You testified that the procedure of the NYPD when a lawsuit
19 is served with regard to a particular officer, is to make sure
20 that that lawsuit is forwarded to the officer so he or she can
21 respond to it, correct?

22 A. Correct, so they know to fill out the request for legal
23 assistance.

24 Q. You train that officers should read the contents of a
25 complaint, the allegations against that officer, correct?

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Flaherty - Cross

1 A. Correct.

2 Q. And after doing so, the officer was required, I think you
3 testified a few moments ago, to fill out a form requesting
4 legal representation, correct?

5 A. If they want the law department, the City of New York to
6 represent them, that is correct.

7 Q. Unless a police officer fills out the form, the law
8 department ethically cannot represent the officer, correct?

9 A. I don't want to testify to the law department's
10 obligations. I'm not sure what they can and can't do there.

11 Q. You are familiar with the ethical obligations on lawyers
12 generally, aren't you?

13 A. Correct.

14 Q. A lawyer cannot appear in court and represent that that
15 lawyer's representing an individual or a party without first
16 speaking to the individual or the party, and obtaining
17 authorization to appear in court, correct?

18 A. Correct, but that's not always done through a request for
19 legal assistance. And I think that was your prior question.

20 Q. Yes. But my question is, if the city law department
21 appears in court, on behalf of a particular police officer,
22 that can only happen after the police officer requests a
23 representation --

24 A. And they speak --

25 Q. -- and they speak to the law department, right?

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Flaherty - Cross

1 A. Yes.

2 Q. Ordinarily a lawyer cannot respond to allegations against a
3 particular client about certain facts that allegedly occurred
4 without speaking to the client first, right?

5 A. Yes.

6 Q. You testified that the form that the officer would fill out
7 requesting legal representation would be entered into the civil
8 litigation database?

9 A. Correct.

10 Q. And the form would be sent to the New York City law
11 department which would take over from there?

12 A. Correct.

13 Q. And then, in the ordinary course, the individual officer
14 would be represented by an attorney like Mr. Francolla or
15 Ms. McGuire?

16 A. If the law department approves representation of the
17 officer, that's correct.

18 Q. Right. When the lawsuit -- withdrawn.

19 When an -- ordinarily in a civil lawsuit, the
20 defendant responds to the complaint by filing an answer?

21 A. That's correct.

22 Q. And sometimes the answer contains admissions by the
23 defendant that certain of the allegations are true?

24 A. That's correct.

25 Q. Sometimes the answer contains denials that some of the

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Flaherty - Cross

1 allegations are true?

2 A. Are not true. Correct, yeah.

3 THE COURT: It denies they're true. It's sort of a
4 statement that they are not true.

5 MR. RUDIN: Yes.

6 Q. If an allegation is made that a particular officer named
7 Jane Smith, a common name, was present at an incident, and the
8 Jane Smith being sued or who has been served with the lawsuit
9 in fact was not present at the incident, then it would be the
10 obligation of the corporation counsel to submit a denial that
11 that client was present at the incident, correct?

12 A. Correct.

13 Q. And all officers employed by the NYPD, prior to 2015, were
14 required under patrol guide section 211.21 and pursuant to the
15 trainings that they receive, beginning in the police academy
16 and continuing through the in-service trainings, to be familiar
17 with these procedures?

18 A. I'm sorry I --

19 THE COURT: It's a very complicated question. I
20 understand it, but it's a very complicated question.

21 MR. RUDIN: I'll withdraw the question.

22 Q. Would it be correct to say that, prior to November of 2015,
23 all New York City police officers were required to be familiar
24 with the procedures about answering lawsuits that you have been
25 testifying about?

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Flaherty - Cross

1 A. Correct.

2 THE COURT: That's a much better question.

3 MR. RUDIN: Thank you, Judge.

4 THE COURT: Thank you very much.

5 Q. You've been testifying this morning about your involvement
6 and your knowledge about the risk management program?

7 A. The risk assessment unit?

8 Q. Yes.

9 And one of the purposes of that unit is to develop
10 procedures that would result -- the department hopes -- in a
11 decrease in civil lawsuits against police?

12 A. Correct.

13 Q. And with regard to your responsibilities at the risk
14 assessment program, it's not called the risk management program
15 now?

16 A. No. There is no program involved. It was called the risk
17 assessment unit, which eventually spun off into the risk
18 management bureau, that is called the professional standards
19 bureau. We like to switch things up.

20 Q. With respect to the risk assessment program, you reported
21 to the deputy commissioner for legal affairs?

22 A. Under the risk assessment unit, it was under the deputy
23 commissioner of legal matters for the police department, yes.

24 Q. That was true in 2015?

25 A. In 2015, the risk management bureau became its own bureau,

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Flaherty - Cross

1 and I don't quite know if it was 2015 or 2016, but it actually
2 was no longer under the deputy commissioner of legal matters.
3 It reported directly to the first deputy commissioner.

4 Q. First deputy commissioner for?

5 A. The entire police department.

6 Q. That's the number two person under the police commissioner?

7 A. Correct.

8 Q. Prior to that happening, you reported to the deputy
9 commissioner for legal matters, and after that, around 2015 or
10 so, you reported to an even higher person?

11 A. Yes.

12 Q. And that included with respect to the in-service training
13 you provided?

14 A. I don't follow the question. I apologize.

15 Q. Did you report to either the deputy commissioner for legal
16 matters or the first deputy commissioner with respect to the
17 in-service training you provided?

18 A. I'm sorry. I'm not following. Report in what manner?

19 Q. Did you inform them, generally speaking, about the kinds of
20 training you would be giving?

21 A. Yes.

22 Q. Would you agree with me that the New York City police
23 commissioner is ultimately responsible for all the policies of
24 the New York City Police Department?

25 A. Yes.

N3H3FRA1

Flaherty - Cross

1 Q. Including policies with respect to *Brady*?

2 A. Yes.

3 Q. And the deputy commissioner for legal matters also was
4 responsible for setting policies with respect to interpreting
5 and following the law, correct?

6 A. Yes.

7 Q. Sometimes the police commissioner delegates responsibility
8 to that official?

9 A. Yes. On legal matters.

10 Q. So the training and procedures of the NYPD with respect to
11 disclosing information to prosecutors are based upon the
12 policies set by the commissioner and the deputy commissioner
13 and the first assistant, correct?

14 A. Yes.

15 Q. I assume you would agree with me that it is important in
16 criminal trials to disclose to the defense information that
17 concerns the credibility of police officers who testify at
18 criminal trials?

19 A. Yes, credibility of witnesses is important.

20 Q. Including civil lawsuit information?

21 A. Yes.

22 Q. In fact, it was the deputy commissioner for legal matters
23 who approved the issuance of the legal bureau bulletin in
24 January of 2017 that first spoke about the responsibility of
25 police officers to disclose their civil lawsuit histories,

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Flaherty - Cross

1 correct?

2 A. No, that's not correct. That's not the first time that was
3 addressed or spoken about.

4 Q. I'm asking about in writing. Isn't that the first time
5 that the police department ever issued a legal bulletin or any
6 other written document disseminated to police officers
7 requiring them to disclose their civil lawsuit histories?

8 A. I believe that that's correct.

9 Q. That's not an issue that was unknown to the deputy
10 commissioner or the police commissioner before January 2017, is
11 it?

12 A. Of course not. That's why we had the training that began
13 in 2014.

14 Q. Let's take a look at PX 76 which is the bulletin from
15 January of 2017.

16 Theo, please put that up on the screen for everyone.

17 THE COURT: Can I ask a question? I'm a little
18 confused.

19 After *Garrett* when you did this training, was every
20 police officer in the field -- I don't know how many million
21 police officers there are in New York. I have no idea.

22 THE WITNESS: About 35,000.

23 THE COURT: 35,000 police officers. Were they all
24 brought in and trained on this point?

25 THE WITNESS: Yes.

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Flaherty - Cross

1 THE COURT: In 2014, every one of them?

2 THE WITNESS: 2014 and continuing, yes.

3 THE COURT: I don't know what that means.

4 THE WITNESS: I'm sorry, we repeated the training year
5 after year. So we started it in 2014, and called in all of the
6 training sergeants and then repeated the message.

7 THE COURT: Maybe I don't understand. Does every
8 police officer have in-service training every single year?

9 THE WITNESS: Yes.

10 THE COURT: That's what I missed in the original
11 testimony.

12 THE WITNESS: Sorry.

13 Q. Is it your testimony that every single police officer in
14 2014 received in-service training about their civil lawsuit
15 disclosure obligations?

16 A. Through the command level training that I mentioned
17 earlier, yes.

18 THE COURT: What does that mean, through the command
19 level? I need to understand this. I'm really sorry.

20 THE WITNESS: It's confusing. Because we're so large,
21 we can't pull 35,000 officers off the street to come in.

22 THE COURT: 35,000 officers did not come in and get
23 in-person training.

24 THE WITNESS: Their supervisors, their training
25 sergeants are brought in every month to the police academy and

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Flaherty - Cross

1 given training on a variety of subjects, and then that message
2 is taken back to the officers by the sergeant.

3 THE COURT: Okay. Got it. Now I understand. Thank
4 you. I'm sorry I interrupted.

5 THE WITNESS: So I just want to clarify that
6 in-service training, it's not about civil lawsuits every single
7 time. But we did talk about civil lawsuits in command level
8 training, yes.

9 Q. So, in command level training, but not every single time,
10 beginning in 2014, you talked to supervisors about this
11 obligation, right?

12 A. Yes.

13 Q. And supervisors were then supposed to go back to their
14 precincts or their units or their commands, and provide
15 training to line officers?

16 A. Correct.

17 Q. And did you have any system for monitoring the training
18 that was then given to line officers?

19 A. Me personally, no.

20 Q. So you don't know whether that training was actually given,
21 right?

22 A. No, the training was given.

23 Q. I'm not talking about the training to the commanding
24 officers or the supervisory officials. I am asking you whether
25 you have any personal knowledge that those individuals in fact

N3H3FRA1

Flaherty - Cross

1 went back to their precincts and gave training to the officers
2 under their command?

3 A. I understood the question, and my answer was yes. I am
4 personally aware that the training was given. Because many of
5 those supervisors would contact me afterwards and ask me to
6 come speak at the precincts to their officers. So I would do
7 that as well.

8 Q. Would you go to every precinct in the city?

9 A. I have not gone to every single one, no. But when
10 requested, yes I would attend or someone else that worked with
11 me.

12 Q. So if this struck a particular supervisor as important to
13 emphasize to line officers, he might or she might call you to
14 deliver that training yourself?

15 A. Yes.

16 Q. If an officer, if a supervisor did not consider it
17 particularly important, that supervisor might not call you,
18 correct?

19 A. I would not agree with that characterization. No.

20 THE COURT: Not every -- without the characterization
21 about important/not important. Not every supervisor in the
22 city called you and asked you for supplemental reinforcement
23 from your office.

24 THE WITNESS: That is correct.

25 Q. When the training was given by a supervisor, how would that

N3H3FRA1

Flaherty - Cross

1 happen? Would they be in a classroom, would they be in a --
2 where would it happen?

3 A. Sure. So it happened at the precinct, or at whatever
4 office they worked in. So not everybody works in a precinct.
5 We have different types of offices.

6 The training sergeant at the beginning of every --
7 what's called roll call, meaning we have three groups of
8 officers starting a day. They would talk to them at the
9 beginning of their tour, at the start of their day, and give
10 whatever relevant training they needed.

11 THE COURT: This is like *Hill Street Blues*.

12 MR. RUDIN: That might predate some of the jurors.

13 THE COURT: It undoubtedly does, but not everybody.
14 TV show in the 1980s. It always began every episode with roll
15 call. Every episode with roll call.

16 Q. And roll call, at least as far as *Hill Street Blues* is
17 concerned, would occur before the police officers were sent out
18 into the field to begin their day?

19 A. That is correct in real life as well.

20 Q. It might go on for a few minutes or longer than few
21 minutes?

22 A. Correct.

23 Q. The officers may or may not all attend the roll call?

24 A. All of them have to attend the roll call.

25 Q. Are they required to not have their cell phones and their

N3H3FRA1

Flaherty - Cross

1 computers with them?

2 A. I'm not sure what you mean.

3 Q. Do you know whether officers always paid attention to
4 training they received about matters like civil lawsuit
5 history?

6 MR. FRANCOLLA: Objection.

7 THE COURT: Overruled.

8 A. I can't testify as to the mind space of every single
9 officer receiving training, no.

10 Q. Was there any requirement that they take any test to make
11 sure they had received that training and understood it?

12 A. Not on the civil lawsuit training, no.

13 Q. Did they have to fill out any written acknowledgment that
14 they received the training?

15 A. Generally at the precinct, the training sergeant would have
16 a logbook, basically a big notebook, and they -- either the
17 individual officer would ascertain or affirm in that notebook
18 that they took it, that they were present, or the training
19 sergeant could denote that as well.

20 Q. What would happen if a particular officer didn't sign that
21 book? Are you personally familiar with that?

22 A. I'm not.

23 Q. Now, getting back to PX 76 under the discussion section.
24 This is the January 2017 legal bureau bulletin that was issued
25 by the police department, correct?

N3H3FRA1

Flaherty - Cross

1 A. From what I can see, yes.

2 Q. It begins: "At every trial, the defendant has a
3 constitutional right to confront and cross-examine witnesses
4 called to testify against him or her. A key purpose of
5 cross-examination is to create doubt in the minds of jurors
6 about whether a witness is reliable or believable. To ensure a
7 defendant's right to a fair trial, the law requires that before
8 trial, the prosecutor must disclose to the defense attorney all
9 relevant impeachment material for a prosecution witness.
10 Impeachment material for a witness includes, among other
11 things, a witness's criminal convictions (if any) and any prior
12 misconduct committed by the witness and known to the
13 prosecution that bears on the witness's credibility."

14 Correct?

15 A. That's what it says, yes.

16 (Continued on next page)

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N3HHFra2

Flaherty - Cross

1 Q. Then it goes on to say that the purpose of this bulletin
2 was to -- and this is under No. 2 -- advise officers that
3 before they take the witness stand, a prosecutor may ask the
4 witness about any instances of misconduct in the officer's
5 background in order to prepare the witness -- the officer for
6 cross-examination, right?

7 A. That's what it says, yes.

8 Q. Then it goes on to say that, on a subsequent page, that
9 they must disclose to the -- that a prosecutor must disclose to
10 the defense attorney all relevant impeachment information for a
11 prosecution witness, correct?

12 A. I'm catching up with you now. Yes.

13 Q. And that, therefore, a police officer is required to
14 disclose his or her lawsuit information to the prosecutor,
15 right?

16 A. You're not reading that from this now.

17 Q. That's the essence of what it says, right?

18 A. Well, it's any allegations, yes.

19 Q. Well, does it say lawsuit history?

20 A. Not in the part that you just read, no.

21 Q. Well, does it say it later? Are you familiar --

22 A. I don't have the whole thing in front of me, so I can't
23 confirm that.

24 MR. RUDIN: All right. Theo, would you scroll down to
25 get to that point.

N3HHFra2

Flaherty - Cross

1 A. It does talk about asking about lawsuit history.

2 Q. "Court decisions make clear that impeachment material may
3 include mere allegations against a police officer in a civil
4 lawsuit even when the allegations have not been proven at trial
5 or in a court proceeding," right?

6 A. Yes. I'm in the same place, yes.

7 Q. And prior to January of 2017, you're not aware of any
8 writing by the New York City Department that was distributed to
9 police officers that told them they had this obligation?

10 A. Specifically about lawsuits?

11 Q. Yes.

12 A. No.

13 Q. Well, my question is you're not aware, so the answer's yes?

14 A. That is correct.

15 Q. OK. And would you agree with me that you and the Legal
16 Bureau understood that a jury's doubt about an officer's
17 truthfulness might affect the outcome of the trial?

18 A. Yes.

19 Q. And that in a criminal trial, if just one juror has a
20 reasonable doubt, then the jury will not convict, correct?

21 A. Yes.

22 Q. Because all 12 jurors in a criminal trial must be unanimous
23 in finding guilt proven beyond a reasonable doubt, correct?

24 A. Yes.

25 Q. And you understood this in November 2015, right?

N3HHFra2

Flaherty - Cross

1 A. Yes.

2 Q. So did the New York City police commissioner?

3 A. I can't speak to the mindset of the New York City police
4 commissioner.

5 Q. How about the deputy commissioner for legal matters?

6 A. I also cannot speak to their mindset.

7 Q. Did you ever discuss with the deputy commissioner for legal
8 matters the importance of disclosing civil lawsuit information
9 so that jurors could evaluate police officer credibility?

10 A. We discussed talking about lawsuit histories and the
11 importance of officers knowing about them, yes.

12 Q. And you discussed that prior to November of 2015?

13 A. Yes.

14 Q. Now, you testified --

15 THE COURT: Can I interrupt again? I apologize.

16 As part of the in-service training that you gave to
17 the supervisors that they were then supposed to give to the
18 officers, did that include all these details that you've given
19 us about contacting you to find out their lawsuit history and
20 all that stuff?

21 THE WITNESS: So the availability of contacting me,
22 yes, was given to the sergeants to pass down to the police
23 officers.

24 THE COURT: So you could find out your lawsuit
25 history?

N3HHFra2

Flaherty - Cross

1 THE WITNESS: Yes.

2 THE COURT: OK.

3 BY MR. RUDIN:

4 Q. Now, you testified a couple of times today that you were
5 familiar with the training given at the New York City Police
6 Academy concerning court appearances by police officers?

7 A. Yes, I have some familiarity with that, yes.

8 MR. RUDIN: Theo, would you please put up Plaintiff's
9 Exhibit 61, the police academy student guide to court
10 appearances from 2015.

11 MR. FRANCOLLA: I'm just going to object to this line,
12 your Honor.

13 THE COURT: Well, I haven't heard a question yet, so
14 there's not much I can rule on, is there? All he's done is put
15 up document.

16 Q. Now, with respect to -- withdrawn.

17 You understood when you were involved in designing
18 in-service training that police officer credibility might be
19 important in the course of a particular criminal prosecution,
20 right?

21 A. Yes.

22 Q. And that whether or not a police officer -- withdrawn.

23 A jury's belief that a police officer might be
24 perjuring himself is something that might determine the outcome
25 of a criminal trial, right?

N3HHFra2

Flaherty - Cross

1 A. Yes.

2 Q. That one of the reasons that you need to disclose civil
3 lawsuit information is so that a jury could evaluate whether or
4 not a police officer, in giving a particular testimony about
5 what happened in a case, is telling the truth?

6 A. If -- if it gets on the stand. So the officer needs to
7 disclose it to the prosecution, and then they can speak to the
8 judge beforehand, and maybe the lawsuits don't even come out on
9 the witness stand, because it might not be relevant.

10 Q. Or it might be relevant?

11 A. Correct.

12 Q. If the defense attorney doesn't know about the lawsuit,
13 then he can't even ask the judge to make a ruling on whether
14 the lawsuit could be used, right?

15 A. Correct.

16 Q. And you were aware in November of 2015, were you not, that
17 there had been cases from time to time in the history of the
18 New York City Police Department where police officers had not
19 given truthful testimony, right?

20 A. Well, I can't speak for the entire history of the police
21 department, but, yes, during my time there, that is correct.

22 MR. RUDIN: And turn to page 45, please, Theo.

23 Q. So you were familiar with the fact that the New York City
24 Police Department trained officers against the temptation to
25 commit perjury, right?

N3HHFra2

Flaherty - Cross

1 A. That's what it says here.

2 Q. Well, it says: "The temptation to perjure yourself may
3 sometimes be strong. If an officer observes a defendant
4 engaged in some activity that arouses their suspicion and the
5 officer searches the defendant illegally and finds narcotics in
6 the defendant's pockets, the officer is presented with a
7 problem. The search was clearly illegal, but the officer may
8 feel that justice would best be served by testifying that the
9 defendant dropped the narcotics in the street as the officer
10 approached. If the officer did so, they would be committing
11 perjury."

12 That training was given to police?

13 A. I was not part of this training. It looks like our police
14 department training, but I am not personally familiar with
15 this.

16 Q. And then the training went on: "Another situation that
17 occurs quite often is when the police officer is in pursuit of
18 a suspect, the officer is certain that the defendant is guilty,
19 and testifies that they never lost sight of the defendant from
20 the scene of the crime up to the eventual arrest. If this is
21 not true, they are committing perjury," right?

22 A. That's what it says, yes.

23 Q. Did you also instruct police officers not to commit
24 perjury?

25 A. Yes.

1 MR. RUDIN: Now, Theo, would you turn to page 27.

2 Q. At page 27, officers were instructed, in boldface: "There
3 are no such things as stretching the truth, fibs, or white lies
4 on the witness stand. Anything that is not the whole truth and
5 nothing but the truth is perjury," correct?

6 A. That's what it says, yes.

7 Q. And then at page 28: "No case" -- repeat, and then this is
8 in capital letters -- "not any case is worth perjury," right?

9 A. That's what it says, correct.

10 Q. And then at page 31: Going head to head with a defense
11 attorney is not the answer. "When you do this, juries begin to
12 believe that you are more interested in beating the defense
13 attorney than in whether justice is accomplished. Don't fight
14 with the defense attorney and certainly keep in mind that" --
15 in capital letters and boldface -- "no case is worth perjury,"
16 right?

17 A. That's what it says, yes.

18 Q. And then on page 42, boldface, italicized and capital
19 letters: "Tell the truth -- No case is worth perjury!"?

20 A. That's what it says, yes.

21 Q. Then page 43 begins a three-page section explaining to the
22 police officers the complete law relating to perjury, right?

23 A. I haven't seen all three pages, and I have said I'm not
24 personally familiar with this. So I can't confirm what the
25 next three pages say.

1 Q. Well, the first page begins by explaining the definitions
2 relating to perjury, right, under the New York State Penal Law?

3 A. That's what it looks like.

4 Q. It explains what an oath is, what it means to swear
5 falsely?

6 A. Yes, both of those are on here.

7 MR. RUDIN: And the next page, Theo.

8 Q. And then it explains the difference between perjury in the
9 third degree, which is a misdemeanor, and perjury in the second
10 degree, which is a felony?

11 A. Yes, both of those are contained in here.

12 Q. And just like there are different elements, let's say, to
13 robbery, robbery in the third degree, robbery in the second
14 degree, it explains different elements that may make perjury
15 more serious, right?

16 A. It explains what the law says.

17 Q. Well, it explains that third degree perjury is a
18 misdemeanor, but if certain additional things happen, it may
19 make the perjury into a felony, right?

20 A. That's what it says, yes.

21 MR. RUDIN: The next page, Theo.

22 Q. Then it goes on on the next page to have that paragraph
23 about the temptation to perjure yourself, right, that I read
24 earlier?

25 A. Yes.

N3HHFra2

Flaherty - Cross

1 Q. Isn't it extraordinary that the New York City Police
2 Department had to spend seven or eight pages in a training
3 manual to explain to police officers that they may not perjure
4 themselves?

5 A. I wouldn't call --

6 MR. FRANCOLLA: Objection.

7 THE COURT: The objection's sustained. Really? Very
8 argumentative.

9 Q. Would you agree with me that the reason this training was
10 given at the police academy and the reason that you've given
11 similar training is because of awareness of a history of New
12 York City police officers not testifying truthfully?

13 MR. FRANCOLLA: Objection.

14 THE COURT: The objection's sustained.

15 Q. Would you agree with me that because of the possibility
16 that a police officer might testify untruthfully, it is
17 particularly important that defense lawyers have all the
18 information they need in order to confront police witnesses to
19 try to show that they're not being truthful?

20 MR. FRANCOLLA: Objection.

21 THE COURT: I'm sorry. I was distracted. Excuse me.
22 The objection's overruled.

23 A. Could you repeat the question? I'm sorry.

24 THE COURT: Read it back.

25 (Record read)

N3HHFra2

Flaherty - Cross

1 A. I would not agree with that characterization.

2 Q. You don't think it's important that defense lawyers have
3 civil lawsuit information so they can cross-examine police
4 officers about whether or not they're truthful?

5 A. That's not what I -- that's not what I said. I said I
6 wouldn't agree with your characterization.

7 Q. Which part of the characterization?

8 A. The possibility that police officers might lie being the
9 basis for this training.

10 Q. You don't think it's possible that police officers lie?

11 A. It is possible. It's possible that anybody could tell a
12 lie, of course.

13 Q. Have you ever heard of a witness taking a witness stand in
14 a court of law and having to be warned that if they didn't tell
15 the truth, they could be in trouble, could be prosecuted for
16 perjury?

17 A. All witnesses swear an oath when they take the stand.

18 Q. But they're not warned that if they lie, they could be
19 prosecuted for perjury, are they? Were you? Were you warned?

20 A. Which question would you like me to answer?

21 Q. Were you warned before you testified today that if you
22 lied, you could be prosecuted for perjury?

23 MR. FRANCOLLA: Objection.

24 THE COURT: Oh, go ahead and answer the question.

25 A. No, I personally just swore the oath that you --

N3HHFra2

Flaherty - Cross

1 THE COURT: And I bet you knew that that was the
2 effect of the oath, right?

3 THE WITNESS: Yes.

4 THE COURT: Because they told you that at Villanova.

5 THE WITNESS: I learned that at Villanova, too, and
6 the second law school I went to.

7 THE COURT: OK. Great.

8 BY MR. RUDIN:

9 Q. And you didn't have to be trained before you came here
10 today to testify not to perjure yourself?

11 A. Well, I did go to law school twice, and I've learned a lot
12 about perjury and the law.

13 Q. And the police officers, because they don't go to law
14 school, have to be explained that they can't perjure
15 themselves?

16 A. I think everyone who takes the stand as frequently as they
17 might should be trained on how to properly testify, including
18 on that topic.

19 Q. Now, you were aware that the same officers who might be
20 tempted to perjure themselves or had perjured themselves would
21 be tempted to not disclose their own civil lawsuit history,
22 correct?

23 MR. FRANCOLLA: Objection.

24 THE COURT: Read it back.

25 (Record read)

1 THE COURT: The objection's sustained.

2 Q. Now, as the head of risk management for civil -- with
3 respect to civil liability and as an attorney, you were
4 familiar with the kinds of information that disclosure of
5 lawsuits may make accessible to a criminal defense attorney?

6 A. I'm not sure I understood the question. I apologize.

7 Q. Well, do you understand that in a civil case, in addition
8 to there being a complaint, a police officer as a defendant may
9 have to submit to a deposition?

10 A. That is correct.

11 Q. And at a deposition he may -- he is likely to give far more
12 extensive testimony about the events in question and about his
13 own history than a criminal defense attorney receives from a
14 prosecutor prior to trial?

15 MR. FRANCOLLA: Objection.

16 THE COURT: Overruled.

17 A. I'm not -- I mean, I guess it depends on the questions that
18 take place in the deposition.

19 Q. But you understand, because you went through this yourself,
20 right, that a deposition takes place in a lawyer's office?

21 A. It could.

22 Q. Well, how about your deposition in this case?

23 A. That took place in my office. It was a virtual deposition.

24 Q. Didn't take place in a courtroom, right?

25 A. No.

N3HHFra2

Flaherty - Cross

1 Q. There was no judge present, right?

2 A. No.

3 Q. And you were required to answer all the questions that were
4 asked by the plaintiff's attorney?

5 A. I believe I was, yes.

6 Q. And those questions sometimes were exploratory, right, they
7 were seeking to find out information from you that the defense
8 attorney may not have had?

9 A. I don't know what information the attorney may have had or
10 what their mindset was in their questioning of me.

11 Q. But you do know it's part of what lawyers call the civil
12 discovery process?

13 A. My understanding of the civil discovery process is
14 obtaining information.

15 Q. Right. And that information may be obtained through civil
16 depositions of defendants and witnesses?

17 A. That is correct.

18 Q. And there's no similar process in a criminal trial, right?
19 You know that criminal -- in New York State, criminal
20 defendants have no right to take depositions of opposing
21 witnesses or police officers?

22 A. I believe that that's correct.

23 Q. Well, you know that that's correct?

24 A. Is that a question?

25 Q. Yes.

N3HHFra2

Flaherty - Cross

1 A. Do I know? I said I believe that that's correct.

2 Q. You know it's correct, right?

3 A. I'm sorry. I don't understand the -- can you just repeat
4 the question.

5 Q. You've been an attorney for the New York City Police
6 Department since 2008?

7 A. Yes.

8 Q. And you give advice to police officers about what their
9 obligations are in criminal prosecutions, right?

10 A. Yes.

11 Q. About disclosing information in criminal prosecutions,
12 correct?

13 A. About disclosing civil lawsuit information, that's correct.

14 Q. And in the course of the last 15 years, you don't know for
15 sure that there's no such thing as depositions in criminal
16 cases in New York State?

17 A. I said I believe that that's correct.

18 Q. You believe it or you know it?

19 MR. FRANCOLLA: Objection.

20 THE COURT: There's no need to raise your voice.

21 A. That is my understanding. I've never been a prosecutor, so
22 that is my understanding as a civil attorney, yes.

23 Q. And you also understand that in the civil discovery
24 process, that the attorneys for each side exchange documents?

25 A. Yes.

1 Q. And so far more information may become available during a
2 civil lawsuit to a plaintiff than he had available to his
3 defense at his criminal trial, right?

4 A. I can't speak to what was available to a defense attorney
5 at a trial as a hypothetical.

6 Q. Well, you know that through the civil discovery process,
7 including depositions and disclosure of documents, that
8 information relating to possible wrongdoing in the past by a
9 police officer may be disclosed that wasn't known to a
10 plaintiff or his attorney when the lawsuit was filed, correct?

11 A. It's a possibility, yes.

12 Q. And if a plaintiff's lawyer is willing to share that
13 information with the lawyer for a criminal defendant, then the
14 defense lawyer may have much more ammunition to use in
15 cross-examining a police officer than he would have had just
16 from the civil complaint, correct?

17 A. I'm not sure that I understand the question.

18 Q. That if a plaintiff's attorney is called by a criminal
19 defense lawyer, that plaintiff's attorney may elect to share
20 with the defense lawyer information that the
21 plaintiff's attorney learned about during a civil lawsuit?

22 A. I think that's a situation that I can't speak to. It's
23 completely hypothetical, and I don't -- I don't know whether
24 that can happen.

25 Q. Would you agree with me that as a result of the civil

N3HHFra2

Flaherty - Cross

1 discovery process, it's possible that a good deal of additional
2 information beyond what's alleged in a bare civil complaint may
3 become known to a criminal defense attorney?

4 A. Information in the civil discovery process could become
5 available to --

6 Q. A criminal defense attorney.

7 A. That's possible.

8 Q. That might depend to some extent on whether or not the
9 criminal defense attorney has been notified that there was a
10 lawsuit at all, right?

11 A. Correct, or whether they looked at the publicly available
12 information about lawsuits.

13 Q. But we've already been told by Judge McMahon that there's
14 no such obligation.

15 A. There's no obligation --

16 THE COURT: She wasn't in court when I said that, so
17 you really can't charge her with knowing what I said.

18 MR. RUDIN: That's true, your Honor.

19 THE COURT: There is, in fact, no such obligation, at
20 least in my courtroom for the purposes of this lawsuit. So,
21 OK.

22 THE WITNESS: Thank you.

23 BY MR. RUDIN:

24 Q. One of the reasons that the civil complaint is turned over
25 to the criminal defense attorney is so that the criminal

N3HHFra2

Flaherty - Cross

1 defense attorney, if he gets the complaint early enough, will
2 have the opportunity to investigate the allegations, right?

3 A. I could imagine that's a possibility.

4 Q. Now, you have an advance degree in risk management?

5 A. Yes.

6 Q. Would you agree with me that the perception by an
7 organization's employees of how important a rule is to the
8 leadership of that organization may affect whether the
9 employees follow the rule?

10 MR. FRANCOLLA: Objection.

11 THE COURT: I'm not sure I understand the question.
12 Read it back.

13 (Record read)

14 THE COURT: No, the objection's sustained.

15 Q. Would you agree with me that if an employee believes that
16 the leadership doesn't care about a rule, that they're less
17 likely to follow it?

18 MR. FRANCOLLA: Objection.

19 THE COURT: If they're affirmatively told?

20 MR. RUDIN: No.

21 THE COURT: No foundation for that question. Let's
22 just move on.

23 BY MR. RUDIN:

24 Q. Well, the NYPD in November 2015 had various written
25 materials setting forth the policies and procedures of the New

N3HHFra2

Flaherty - Cross

1 York City Police Department, right?

2 A. There were policies in place in 2015, yes.

3 THE COURT: He asked if there were written materials
4 embodying those policies.

5 THE WITNESS: Yes.

6 Q. And these were meant to inform police officers how they
7 were expected to act in various situations, right?

8 A. Yes.

9 Q. And these included the patrol guide for officers generally?

10 A. Yes.

11 Q. And that was issued to all officers, right?

12 A. Correct.

13 Q. And then there was a detective's guide that was issued to
14 detectives?

15 A. Correct.

16 Q. And there were Legal Bureau bulletins that were issued to
17 everybody?

18 A. Yes.

19 Q. And there were written training materials?

20 A. Yes.

21 Q. Prior to Mr. Fraser's trial in 2015, the NYPD had no
22 written policy requiring officers to disclose civil lawsuit
23 information to prosecutors, right?

24 A. Yes.

25 Q. And no such written policy was issued until the bulletin

N3HHFra2

Flaherty - Cross

1 that you've been testifying about was issued in January 2017?

2 A. About civil lawsuits, that's correct.

3 Q. And so the policy of the NYPD prior to -- well, withdrawn.

4 In fact, with regard to the training that you gave
5 with respect to disclosure of impeachment and civil lawsuit
6 information, you're not sure if you even gave that training
7 before 2016, right?

8 A. That's not correct.

9 MR. RUDIN: May we have shown to the witness and to
10 the Court her deposition at page 30.

11 Q. Beginning at line 14, do you recall at your deposition
12 being asked these questions and giving these answers:

13 "Q. And you mentioned there was a training given to all
14 detectives in 2015. Am I getting that right?

15 "A. 2015 or 2016, yes.

16 "Q. And that training -- and that training was the subject of
17 *Giglio* material also addressed?

18 "A. I don't recall off the top of my head, but it very likely
19 was. I would have given part of that -- I would have given
20 that entire presentation, I apologize, and I would have talked
21 about the need to disclose all information regarding lawsuits,
22 regarding disciplinary history to the prosecution."

23 Do you recall being asked those questions and giving
24 those answers?

25 A. I do.

N3HHFra2

Flaherty - Cross

1 Q. But you're not sure, at least you weren't sure at the time
2 you gave that deposition, whether or not this training was
3 given in 2015 or 2016, right?

4 A. That's not correct. So this was solely for the detectives'
5 training, this line of questioning, and I think it was both
6 2015 and 2016.

7 Q. But weren't you saying in that answer that you weren't sure
8 if it began in 2015 or 2016?

9 A. No. I said I don't recall off the top of my head whether
10 the *Giglio* information was there.

11 Q. Well, then you went on to talk about the civil lawsuit
12 history in your answer.

13 A. I would have talked about -- I said I would have talked
14 about the need to disclose all information regarding lawsuits.

15 Q. In either 2015 or 2016?

16 A. To detectives, yes.

17 Q. Whichever year you began the training, either 2015 or 2016,
18 right?

19 A. Or detectives, yes.

20 THE COURT: Did you bring in all the detectives?

21 THE WITNESS: We did. That's why it took so long. It
22 was multiple days, multiple dates.

23 THE COURT: I'm sure that's true.

24 BY MR. RUDIN:

25 Q. So *Giglio* was decided in 1972, and you began training

1 detectives in 2015 or 2016?

2 MR. FRANCOLLA: Objection.

3 THE COURT: Overruled.

4 A. I began training on civil lawsuit histories to detectives
5 in 2014 because it was the entire department, inclusive of
6 detectives. That annual professional development training that
7 I was referring to in my testimony took place in 2015, 2016.
8 All officers were trained from the time that they became a
9 police officer and joined the academy on their obligations
10 regarding testimony in court.

11 Q. And you used a PowerPoint during your training?

12 A. I usually do, yes.

13 Q. And the PowerPoint is something that's displayed to the
14 people in the audience?

15 A. Correct.

16 Q. And isn't it correct that you did not add to your
17 PowerPoint presentation any reference to disclosure of civil
18 lawsuit information until after 2017?

19 A. I don't think that that's correct.

20 Q. Well, after your deposition, were you asked by your
21 attorney, by Mr. Francolla, to make a search of your
22 PowerPoints prior to 2017?

23 MR. FRANCOLLA: Objection.

24 THE COURT: Overruled.

25 A. I don't recall. I'm sorry.

N3HHFra2

Flaherty - Cross

1 Q. Well, isn't it a fact that you told Mr. Francolla that
2 there were no PowerPoints referring to civil lawsuit
3 information before 2017?

4 A. That's not correct. I started training on civil lawsuit
5 information --

6 THE COURT: You weren't asked about training. You
7 were asked about PowerPoints.

8 THE WITNESS: Yeah. The PowerPoint --

9 THE COURT: Are you aware of the existence of a
10 PowerPoint that has written on it "you have to disclose your
11 civil lawsuit information" prior to 2017?

12 THE WITNESS: I don't recall. I don't --

13 THE COURT: You don't recall? OK.

14 MR. RUDIN: Your Honor, may I have a moment, please?

15 THE COURT: Yes.

16 (Counsel confer)

17 Q. Prior to 2017, did your -- oh, now I'll sneak in a real
18 zinger.

19 (Pause)

20 THE COURT: Should I give the jurors a little break?

21 MR. RUDIN: Sure.

22 THE COURT: Five minutes, folks. Don't discuss the
23 case. Keep an open mind.

24 (Jury excused)

25

N3HHFra2

Flaherty - Cross

1 (Jury present)

2 THE COURT: OK. Thank you.

3 You're still under oath, ma'am.

4 THE WITNESS: Yes.

5 BY MR. RUDIN:

6 Q. Ms. Flaherty, let me try to come back to an area that we
7 were talking about just before the break where I maybe asked
8 you some questions that weren't clear enough.

9 A. OK.

10 Q. Would you agree with me that prior to 2017, your PowerPoint
11 presentations did not have any statement concerning the
12 obligation of police officers to disclose their civil lawsuit
13 history to prosecutors?

14 A. Correct, yes.

15 Q. So that when you showed your PowerPoints to supervisors or
16 detectives, you did not display to them anything in writing
17 concerning their -- the obligation of police officers to
18 disclose civil lawsuit information to prosecutors?

19 A. Correct.

20 Q. And you didn't add to your PowerPoint any reference to that
21 obligation until after 2017?

22 A. I believe that's correct.

23 Q. And you didn't give copies of your PowerPoint presentation
24 in writing to the people you were training, right?

25 A. Correct.

N3HHFra2

Flaherty - Cross

1 Q. And you did not give out any written materials concerning
2 the obligation of a police officer to disclose to a prosecutor
3 impeachment information or lawsuits at any of these trainings?

4 A. That is correct.

5 Q. So all -- so nothing in writing was given out, right?

6 THE COURT: Do we really have to?

7 MR. RUDIN: You're right, your Honor.

8 THE COURT: That's why you have a closing statement.

9 MR. RUDIN: Yes, your Honor.

10 Q. Does the New York City Police Department have any procedure
11 for reviewing court decisions finding *Brady* or *Giglio*
12 violations by police officers?

13 A. Yes.

14 Q. Did it have such a procedure in 2015?

15 A. Yes.

16 MR. RUDIN: From deposition page 58, please, lines 5
17 to 10, just shown to the witness and the Court.

18 Q. Do you recall giving this answer to this question:

19 "Q. So the NYPD doesn't have a practice of reviewing appellate
20 or trial court decisions to look for *Brady* or *Giglio* violations
21 by police officers, is that correct?

22 "A. To my knowledge, that's correct."

23 MR. FRANCOLLA: I would just object on completeness
24 grounds, your Honor.

25 THE COURT: I'm sorry?

N3HHFra2

Flaherty - Cross

1 MR. FRANCOLLA: Just on completeness grounds. I would
2 just ask if --

3 THE COURT: You get to recross her.

4 MR. FRANCOLLA: OK. I can do that.

5 THE COURT: Is there a question pending?

6 MR. RUDIN: No, your Honor.

7 THE COURT: Oh. Well --

8 MR. RUDIN: But there will be in a moment.

9 BY MR. RUDIN:

10 Q. You testified that beginning in 2013, you were in charge of
11 developing the risk program?

12 A. I was not in charge, no. I was one of the people that
13 helped create the unit.

14 Q. And one part of the program, as you've explained, was to
15 monitor allegations of misconduct against individual police
16 officers, right?

17 A. No. The risk assessment unit was created as more of a
18 statistical analysis review of lawsuits.

19 Q. But you also had a civil lawsuit monitoring committee?

20 A. That is correct.

21 Q. And the responsibility of that committee was to monitor
22 allegations of misconduct against individual police officers?

23 A. Related to lawsuits, correct.

24 Q. Yes. And that committee included the deputy commissioner
25 for legal matters?

N3HHFra2

Flaherty - Cross

1 A. Yes.

2 Q. The chief of the risk management bureau?

3 A. Yes.

4 Q. The chief of personnel?

5 A. Yes.

6 Q. The chief of the department?

7 A. Yes.

8 Q. The deputy commissioner for equity, right?

9 A. Yes.

10 Q. And the overall purpose of this program was to identify
11 officers who might be problems?

12 A. It could be, yes.

13 Q. Well, to identify officers who might need further training
14 or remediation?

15 A. Correct.

16 Q. To be able to monitor them, to supervise them, and provide
17 additional training if necessary, right?

18 A. Yes.

19 Q. To have information about possible misconduct of officers
20 available to the department when an officer applied for or was
21 up for a promotion, right?

22 A. That wasn't the role of the civil lawsuit monitoring
23 committee.

24 Q. Wasn't it a factor for the police department in deciding
25 whether or not to transfer or promote an officer whether or not

N3HHFra2

Flaherty - Cross

1 the officer had a history of being sued?

2 A. Yes, that is correct.

3 Q. And that includes detectives, right?

4 A. Yes.

5 Q. And the way that a command would find out whether an
6 officer had been sued before an officer was transferred or
7 promoted would be to check with your unit, right?

8 A. Yes, or to the CPI, the Central Personnel Index --

9 THE COURT: I'm sorry, your dropping your voice.

10 THE WITNESS: The CPI, the Central Personnel Index
11 that I referenced earlier, has lawsuits on it for a period of
12 time as well.

13 THE COURT: For what period of time?

14 THE WITNESS: 2008 to 2016.

15 THE COURT: OK.

16 BY MR. RUDIN:

17 Q. And that includes undercover officers, right?

18 A. The CPI?

19 Q. That when undercover were up for a promotion or a transfer,
20 that they would not be dealt any differently from any other
21 officers with respect to the internal database?

22 A. That is correct.

23 THE COURT: In other words, police officer is a police
24 officer?

25 THE WITNESS: Correct.

N3HHFra2

Flaherty - Cross

1 THE COURT: For purposes of your database, a police
2 officer was a police officer?

3 THE WITNESS: Yes, correct.

4 THE COURT: OK.

5 BY MR. RUDIN:

6 Q. Now, to carry out this program, you received monthly
7 reports from the New York City Law Department about lawsuits
8 that had been filed and their status?

9 A. Yes.

10 Q. And that information would be inputted into the police
11 department database?

12 A. Yes.

13 Q. And you began getting information from the New York City
14 Police Department -- from the New York City Law Department
15 before 2013, right?

16 A. Yes.

17 Q. For a number of years before?

18 A. I'm not sure how long before. I believe it had been for
19 some time before.

20 Q. And if you needed further information about a lawsuit, you
21 can't obtain it from the Law Department, correct?

22 A. Yes.

23 Q. And you also received information about lawsuits when
24 individual police officers asked for legal representation,
25 right?

N3HHFra2

Flaherty - Cross

1 A. That's how we became notified, yes.

2 Q. And you'd include that information in the database as well?

3 A. Correct.

4 Q. And I think you testified that if an officer was named in
5 three or more lawsuits within a 12-month period or six over a
6 five-year period, the committee would review whether he or she
7 should be placed on special monitoring?

8 A. That's correct.

9 THE COURT: And when did that start?

10 THE WITNESS: Civil lawsuit monitoring started in
11 2013.

12 Q. And you considered that three lawsuits within a
13 twelve-month period was a significant indicator, right?

14 A. I wouldn't say it was a significant indicator. It aligned
15 with our other monitoring criteria that we had for things like
16 Civilian Complaint Review Board complaints. That's why we
17 chose the numbers that we did.

18 Q. If an officer had been named in three lawsuits within a
19 twelve-month period, you would take a closer look at that
20 officer in order to determine whether the officer needed some
21 sort of monitoring, right?

22 A. We would look at them to see whether they needed to appear
23 in front of the committee for the monitoring, yes.

24 Q. And what triggered that process was the mere fact that an
25 officer had been sued three times within a twelve-month period,

N3HHFra2

Flaherty - Cross

1 right?

2 A. That triggered the initial review, yes.

3 Q. And you developed this database back in 2013 and 2014 which
4 had all this lawsuit information, right?

5 A. Yes.

6 Q. And the spreadsheets -- withdrawn.

7 The database included the names of the parties to a
8 lawsuit, right?

9 A. I believe it did, yes. Definitely the officers' names.

10 Q. The names of the police officers?

11 A. Yes.

12 Q. The docket numbers of the cases?

13 A. Yes.

14 Q. The types of claims?

15 A. Not always, no. It might be a very general category.

16 Q. Sometimes details of the factual allegations?

17 A. No.

18 Q. Never?

19 A. I don't believe so.

20 Q. What about the place of filing?

21 A. I believe yes.

22 Q. Status of the case?

23 A. Whether it was open or closed, yes.

24 MR. RUDIN: May we go to her deposition at page 60,
25 please, just for the Court, to line 3. Theo, I can't tell

1 which page we're on. OK. Line 23, I'm sorry.

2 "Q. What type of information is in the spreadsheets?

3 "A. The spreadsheets contain the name of the case, the docket
4 number, I believe the names of plaintiffs, the names of
5 defendants, the venue. I believe that they include the date of
6 filing, potentially the date and location of the incident,
7 although many times that's not completed. And it may contain a
8 brief description of the lawsuit, but, again, that's usually
9 not completed. It's just the basic facts of the filing
10 itself."

11 Do you recall being asked that question and giving
12 that answer?

13 A. I do and I understand your question was about the database.
14 This is about the spreadsheet. So while some of the
15 information from the spreadsheet is put into the database, not
16 all of it is initially. So that's why I was saying some of
17 this was not in the database. It's in the spreadsheet.

18 Q. But at the very least the database included each lawsuit
19 against a particular named officer?

20 A. If it came from the Law Department data or from a request
21 for legal assistance, then it would be in there, yes.

22 Q. And then in order to decide whether or not an officer who
23 had been named in three lawsuits over 12 months needed to be
24 brought in for some sort of additional training or discussion,
25 or whatever, you would look further into those lawsuits, right?

N3HHFra2

Flaherty - Cross

1 A. Yes.

2 Q. And you could obtain information about those lawsuits from
3 the New York City Law Department, right?

4 A. Yes.

5 Q. So would you agree with me that as of November 2015, you
6 could produce -- and by "you" I mean the Legal Bureau of the
7 New York City Police Department -- could produce a listing of
8 all the civil lawsuits in which an individual officer had been
9 named when the lawsuit either had been sent to you by the Law
10 Department or the officer had asked for a lawyer?

11 A. We would have both of those, yes.

12 Q. Now, you testified earlier that you explained at some point
13 to officers that if they chose to, they could email you to ask
14 for their civil lawsuit history?

15 A. Correct.

16 Q. But you didn't tell them they were required to do that, did
17 you?

18 A. No.

19 Q. You didn't issue any kind of bulletin to police officers
20 prior to November 2015 that when they learn they were going to
21 be a witness in a criminal case, they were required to contact
22 you or anyone at the Legal Bureau to find out a complete
23 lawsuit history, did you?

24 A. I did not, no.

25 Q. Would it be fair to say that you put the responsibility --

N3HHFra2

Flaherty - Cross

1 and by saying "you," I mean the police department -- put the
2 responsibility completely on the shoulders of individual police
3 officers to disclose their own lawsuit history, right?

4 A. No.

5 Q. You had no process to be notified by -- prior to November
6 of 2015, to be notified by District Attorney's offices when an
7 individual police officer was going to be called to testify?

8 A. I'm sorry. I'm not sure I understood the question.

9 Q. Did you have any process as of November 2015 under which a
10 District Attorney's office could contact the police department
11 and find out all the information you had in your database about
12 a civil -- officer's civil lawsuit history?

13 THE COURT: I'm sorry. Forgive me. Could you read
14 that back.

15 (Record read)

16 THE COURT: Thank you.

17 A. We did. So we have a great relationship with the District
18 Attorney's offices, and they can call the Legal Bureau, and
19 they do frequently to ask for information.

20 Q. Did you have any process or protocol worked out with the
21 DA's office where there was a formal process for the DA's
22 office to call you up and find out an officer's civil lawsuit
23 history in every case?

24 A. Not for the police department, no, because we're not the
25 repository or main person that oversees or has knowledge of the

N3HHFra2

Flaherty - Cross

1 lawsuits.

2 Q. As far as the actions taken by the New York City Police
3 Department to ensure that lawsuit information was disclosed to
4 prosecutors, you put all the responsibility on the shoulders of
5 the police officer, right?

6 A. No.

7 Q. If a District Attorney's office elected to call you to
8 learn about civil lawsuit information, you're saying that you
9 would have provided that information?

10 A. Absolutely.

11 Q. And if a police officer told the district attorney that
12 there were no lawsuits and the district attorney didn't call
13 you, then the district attorney wouldn't learn what was in your
14 database, right?

15 MR. FRANCOLLA: Objection.

16 THE COURT: Overruled.

17 A. They might know about lawsuits. They might not know, if
18 they don't call me, what's in the database.

19 THE COURT: Look, if a district attorney didn't call
20 you about lawsuits, then it was entirely -- then the only way
21 for him to learn about the lawsuits or for her to learn about
22 the lawsuits would be if the police officer told him or her,
23 right?

24 THE WITNESS: From the police department, yes.

25 THE COURT: OK.

N3HHFra2

Flaherty - Cross

1 Q. You could have required police officers to check with your
2 office or some unit to find out all their lawsuits before they
3 testified at a criminal case, right?

4 A. Sure, we could have done that.

5 Q. And you elected not to require that, right?

6 THE COURT: I've got to hear it.

7 A. Yes.

8 Q. Yes?

9 THE COURT: There was no such requirement?

10 THE WITNESS: There was not a requirement.

11 Q. You left it to the officer to -- to email you if the
12 officer elected to find out additional information about
13 lawsuits, right?

14 A. That is what I said in my training, yes.

15 Q. The same officers -- the same officers who were repeatedly
16 warned about not perjuring themselves in criminal trials, you
17 depended upon those officers to contact you --

18 THE COURT: Stop. Look, I just -- I need to be clear
19 about this. In 2014, after *Garrett*, you brought in
20 supervisors, and you told them to tell their line officers that
21 they had to disclose their civil litigation history to
22 prosecutors before they got on the stand and that the police
23 officers were responsible for knowing what their lawsuit
24 history was?

25 THE WITNESS: Yes.

N3HHFra2

Flaherty - Cross

1 THE COURT: OK. And they couldn't just avoid knowing
2 it; they were absolutely responsible for knowing it?

3 THE WITNESS: That's correct.

4 THE COURT: And then you said and you can -- and they
5 can find out by calling our office?

6 THE WITNESS: Yes.

7 THE COURT: OK. And you expected your supervisors to
8 pass that information -- I'm just trying to summarize
9 everything that you've said over about an hour and 15 minutes.
10 And then they could pass that information on to their line
11 officers?

12 THE WITNESS: Correct.

13 THE COURT: OK.

14 Q. And you could have had a procedure where officers were
15 required to find out their lawsuit information, right?

16 A. At any time the police department can create a requirement
17 depending on what they want.

18 Q. And you allege --

19 THE COURT: That's why I'm confused, because I thought
20 you testified that you trained the supervisors to tell the
21 officers that they were required to know what their lawsuit
22 history was. So you did have a requirement?

23 THE WITNESS: Yes. Sorry. I understand.

24 THE COURT: I just don't want to be confused. I
25 actually have to write jury instructions in this case. I don't

N3HHFra2

Flaherty - Cross

1 want to be confused. OK? All right.

2 BY MR. RUDIN:

3 Q. You're saying that you told supervisors to train police
4 officers that they were required to disclose their civil
5 lawsuit information to prosecutors, right?

6 A. Yes, after 2014.

7 Q. And you told supervisors that they could let police
8 officers know that if they wanted to find out more information
9 about their civil lawsuit history, then they could email you,
10 right?

11 A. My office, correct.

12 Q. But you did not tell supervisors to tell officers that they
13 were required to email you, right?

14 A. We told them that officers, before they testified, needed
15 to know their civil lawsuit history, and if they had questions
16 about their civil lawsuit history, they could contact us.

17 Q. But you did not -- well, withdrawn.

18 You were aware, as you testified earlier, that
19 sometimes officers do not remember a particular lawsuit, right?

20 A. That's correct.

21 Q. And so there was a risk of human error, correct?

22 A. Correct.

23 Q. But you had all the information in your database, right?

24 A. From those two sources, that's correct.

25 Q. Right. So you could have required police officers to --

N3HHFra2

Flaherty - Cross

1 require police officers to contact you to eliminate the risk of
2 human error, right?

3 A. So there still would have been room for error because we
4 only would have had cases from when we received the request for
5 legal assistance or on the spreadsheets from the lawsuit
6 department. So that still leaves some room for error.

7 Q. Well, the spreadsheets from the Law Department have the
8 lawsuits known to the Law Department, right?

9 A. It should, yes.

10 Q. And the Law Department is the agency for New York City that
11 represents police officers, right?

12 A. They can, yes.

13 Q. So they know whenever they represent a police officer in a
14 misconduct lawsuit, right?

15 A. They should, yes.

16 Q. And they let you know on the spreadsheet?

17 A. That the case exists, yes.

18 Q. Yeah. And then when a police officer asks for legal
19 representation, you get that information too, right?

20 A. Yes.

21 Q. And you put it in your database, right?

22 A. Yes.

23 Q. So you have information when the officer asks for
24 representation and you have information from when the City Law
25 Department finds that an Officer has been named in a lawsuit,

N3HHFra2

Flaherty - Cross

1 right?

2 A. Yes.

3 Q. So you might even have cases where an officer was named in
4 a lawsuit but for some reason the officer wasn't served and
5 didn't ask for a lawyer, right?

6 A. Those could exist, yes.

7 Q. And so you had information that a police officer might not
8 even know about, right?

9 A. It's possible.

10 Q. So you might have lawsuits where particular police officers
11 were accused of misconduct that the defense attorney in a
12 criminal case should know about, right?

13 A. I'm sorry. Can you repeat the question?

14 Q. You might have information in your database about an
15 officer being accused of misconduct in a lawsuit that a
16 criminal defense lawyer would be entitled to know about?

17 A. It's possible, yes.

18 Q. And he wouldn't know about it if he had to depend entirely
19 on the police officer disclosing it in the case where the
20 police officer didn't know about it?

21 A. Well, a police officer could not disclose something that
22 they were not aware of, that's correct.

23 Q. So you have all these lawsuits where police officers asked
24 for lawyers and were actually represented, right?

25 A. That happens, correct.

N3HHFra2

Flaherty - Cross

1 Q. Right. And those are the lawsuits that the police officer
2 presumably knows about, correct?

3 A. They should know that it was filed. They might not know
4 additional information about the case itself.

5 Q. Well, they know -- they were served with a complaint,
6 right? They're served with the complaint before they ask for a
7 lawyer?

8 A. That's what should happen, correct.

9 Q. That's what does happen?

10 A. Not in all cases, no.

11 Q. Where the officer ends up with a lawyer, it happened in
12 that case, correct?

13 A. So they might not have been properly served until after
14 talking to the Law Department. But, yes, at some point they
15 get served, and they get represented by the Law Department.

16 Q. And so I've been asking you about additional lawsuits that
17 may have named an officer and accused him of misconduct that
18 for some reason didn't find its way to the officer would not be
19 disclosed to a defense attorney because the officer didn't know
20 about it, right?

21 A. Not by the officer, that's correct.

22 Q. But the police department would know about it if it was in
23 the information provided by the Law Department, correct?

24 A. If the Law Department had the information, then, yes.

25 Q. So you had information in your database about lawsuits that

N3HHFra2

Flaherty - Cross

1 officers knew about and lawsuits that officers did not know
2 about, correct?

3 A. Yeah.

4 Q. And if an officer due to human error and good faith, if
5 that happened -- I mean, obviously, that happens from time to
6 time, right?

7 A. Yes.

8 Q. If an officer, due to his own or her own human error, did
9 not disclose a lawsuit to a prosecutor, you were in a position
10 to make sure that didn't happen, right?

11 A. Well, yes, with the database, but also the Law Department
12 was in a position to provide that information to the District
13 Attorney's offices as well.

14 (Continued on next page)

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N3h3fra3

Flaherty - Cross

1 Q. You were a position to have a procedure where every officer
2 was required to find out all the lawsuits against that officer,
3 to make sure that the officer didn't neglect to inform the
4 prosecutor about some of those lawsuits, right?

5 A. I'm sorry. Can you repeat --

6 Q. You had possession in your database of all the lawsuits
7 that an officer had been served with, and possibly additional
8 lawsuits, right?

9 A. Correct.

10 Q. By requiring police officers to contact you and get that
11 information, you would ensure that there wasn't a human error
12 such that an officer forgot about a particular lawsuit, right?

13 A. There is always room for human error.

14 Q. Right. And you could have cured that problem, right?

15 A. No.

16 Q. You could have provided all the information that you had
17 about lawsuits to the police officer, so that the police
18 officer would be able to provide it to the prosecutor, right?

19 A. We could have provided the information that we knew, that's
20 correct.

21 Q. So then there would be no possibility that a lawsuit that
22 you had a record of, but that an officer had forgotten about,
23 would not find its way to the prosecutor, correct?

24 A. If the prosecutor reached out to us, yes, that's correct.

25 Q. No.

N3h3fra3

Flaherty - Cross

1 THE COURT: Forget about the prosecutor reaching out.

2 THE WITNESS: Sorry. I misunderstood.

3 Q. You had the ability to make sure that all the lawsuits you
4 had in your system were disclosed to prosecutors, either by
5 directly informing the prosecutors, or by telling the police
6 officer about all those lawsuits, right?

7 A. Yes.

8 Q. And you did not have any such system, correct?

9 A. We spoke to officers and we spoke to the district
10 attorney's offices, particularly after *Garrett* came out in
11 2014, about ways to share that information, as did the law
12 department.

13 Q. You had no procedure for sharing with the district
14 attorney's office in every case lawsuit information about
15 particular officers, correct?

16 A. Not at that time.

17 Q. And you had no procedure for sharing with police officers
18 who were being called to testify all the lawsuit information
19 that you had in your system about that officer?

20 A. We had a procedure for --

21 THE COURT: Automatically.

22 THE WITNESS: Oh, no.

23 THE COURT: Automatically. Officer Smith is going to
24 testify next week in *People v. Jones*. You automatically send
25 him his lawsuit information.

N3h3fra3

Flaherty - Redirect

1 THE WITNESS: No, we cannot do that for 35,000
2 officers with the amount that they testify.

3 THE COURT: You do or you don't require Officer Smith
4 to call you week before he testifies and say tell me about my
5 lawsuits?

6 THE WITNESS: It's not a requirement for them to reach
7 out.

8 THE COURT: I think that's what -- can we stop beating
9 around the bush and move on, please.

10 MR. RUDIN: Yes, your Honor.

11 May I have one moment.

12 Your Honor, I have nothing further.

13 THE COURT: Do we have redirect?

14 MR. FRANCOLLA: Very brief.

15 REDIRECT EXAMINATION

16 BY MR. FRANCOLLA:

17 Q. I want to start and read the question and answer from the
18 completeness objection I made earlier.

19 Specifically page 57, line 20, to 58, line 4. This is
20 in reference to the practice of reviewing appellate or trial
21 court decisions that you were asked about on cross.

22 "Q. Does the NYPD have any process for tracking at trial or
23 appellate court decisions relating to *Brady* or *Giglio*
24 violations by NYPD officers?

25 "A. Again, if we receive notice of those decisions from the

N3h3fra3

Flaherty - Redirect

1 DA's office or a judge, however, it would have been tracked
2 through our internal affairs bureau in their case management
3 system."

4 Were you asked that question and did you give that
5 answer?

6 A. Yes.

7 Q. Just generally, what's the only other way you could be
8 aware of that, other than learning from the DA's office?

9 A. If an IAB, internal affairs bureau, investigator were
10 sitting in a courtroom and became aware of something, then we
11 might know about it that way.

12 Q. You were asked about the fact that the PowerPoints you
13 created prior to I think 2017 did not explicitly say in writing
14 that officers had an obligation to disclose their civil
15 lawsuits to prosecutors. Do you recall that?

16 A. Correct.

17 Q. Was that information conveyed in a form to them other than
18 in writing?

19 A. Yes, it was part of the training, actual verbal training
20 that I gave. And might not -- not everything that you say out
21 loud during a presentation is written on the PowerPoint slide.
22 That kind of defeats the point of having the presentation
23 itself. So we would talk about it. It was not necessarily
24 written on the slide.

25 Q. Then you were just most recently asked about communication

N3h3fra3

Flaherty - Recross

1 between the NYPD and the DA's office about sharing lawsuit
2 information. Do you recall that?

3 A. Yes.

4 Q. Based on your experience of that communication, did the
5 Manhattan District Attorney's Office have their own process for
6 obtaining this information?

7 MR. RUDIN: Objection, your Honor.

8 THE COURT: Overruled.

9 A. I believe that they did.

10 MR. FRANCOLLA: Nothing further, your Honor.

11 THE COURT: But you don't really know.

12 THE WITNESS: I believe that they did. We spoke to
13 them after the *Garrett* case came out. But the New York City
14 law department is the keeper of litigation data. So, it would
15 be best coming from law, not from NYPD.

16 THE COURT: Okay. Do you have something else?

17 MR. RUDIN: One question. Can I ask it from here?

18 THE COURT: If you use the microphone.

19 RE CROSS EXAMINATION

20 BY MR. RUDIN:

21 Q. When you were deposed in 2021, you testified that you were
22 not aware of any officer having been disciplined by the NYPD
23 for failing to disclose civil lawsuit information to a
24 prosecutor, is that correct?

25 MR. FRANCOLLA: We object, scope.

N3h3fra3

1 THE COURT: Overruled.

2 A. That was my testimony, yes.

3 MR. RUDIN: Nothing further.

4 THE COURT: Anything else?

5 MR. FRANCOLLA: No.

6 THE COURT: Thank you Ms. Flaherty.

7 THE WITNESS: Thank you.

8 THE COURT: Go have fun. That's not fun, I know.

9 I've done it.

10 (Witness excused)

11 MR. FRANCOLLA: And with that, defense rests.

12 THE COURT: Okay. The defense rests. Does the
13 plaintiff have any additional evidence it wishes to put on?

14 MR. RUDIN: No, your Honor.

15 THE COURT: Okay.

16 So, we've heard it all, folks. And we've seen it all
17 in the sense that all of the exhibits are in evidence, but we
18 did that -- one of the wonderful things that these lawyers did
19 was meet with me before the trial and we worked out the
20 objections to the exhibits and they were all kind of
21 preadmitted. So we didn't have to slow things down to admit
22 the exhibits. They've really been very cooperative. They've
23 been great.

24 So you may see some exhibits on Monday during the
25 closing that you haven't seen during the course of the

N3h3fra3

1 testimony, but rest assured, everything that is shown to you is
2 in evidence. All right?

3 So, Monday, here's how things are going to unfold.
4 We're going to start at 9:30. We have two closing statements
5 to hear. The first closing statement will be made by --
6 Mr. Francolla, Ms. McGuire. Mr. Francolla, okay, on behalf of
7 the defendants.

8 And the second and last closing statement will be made
9 by? Mr. Rudin on behalf of the plaintiff.

10 Now, why do they get to go last? Because they have
11 the burden of proof. Okay? If you were a high school debater,
12 you know that the first affirmative opens and closes, because
13 that's the party with the burden of proof. So, that's why we
14 hear from the plaintiff last.

15 During their presentations, and I've given them each
16 about an hour to make a presentation to you, the lawyers will
17 summarize the evidence, they'll summarize their recollection of
18 the evidence. Perhaps your recollection of the evidence will
19 differ from their recollection of the evidence. In the end,
20 your recollection of the evidence is the only thing that's
21 important, because you are the decision makers in the case.
22 And they will make arguments about how you ought to view
23 particular types of evidence.

24 And what we're going to do this afternoon, is we're
25 going to work out the details of the jury charge so that they

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1 can cast their arguments knowing what it is that I'm going to
2 tell you about the law. Okay? That's why we have to let you
3 go home, so we can do that. We can't do that until we've heard
4 all the evidence.

5 You are going to work very hard on Monday, and
6 possibly Tuesday. I do have to cut things a little short on
7 Monday. I'm teaching a class at Columbia Law School that was
8 arranged about seven months ago. I didn't feel like I could
9 call them up and tell them I'm not coming. But, we'll go until
10 4 o'clock on Monday without question. So, yes, so we'll have a
11 pretty full day, and it will be a hard day.

12 So I would like you to relax this weekend. There is
13 lots of fun stuff to do this weekend. I hear the weather is
14 going to be great tomorrow. There is a great deal of excellent
15 basketball to be watched. And just all kinds of fun stuff. So
16 please relax and enjoy yourselves, get a lot of rest so you're
17 fresh and ready to go on Monday, and I will see you then.
18 Don't discuss the case. Keep an open mind. Okay?

19 (Jury excused)

20 THE COURT: Okay. Have a seat. Motions?

21 MS. McGUIRE: Yes, your Honor. Defendants renew their
22 Rule 50 motion for the reasons previously stated. And add in
23 that as to the *Monell* claim, based on Ms. Flaherty's testimony
24 that there is a training policy in place for this exact
25 purpose.

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1 THE COURT: Oh my God, I've never heard more
2 persuasive *Monell* evidence for the plaintiff in my life.

3 So I'm sitting here listening to this, and trying to
4 figure out how I have to modify the charge, and trying to
5 figure out what needs to be added in light of everything that
6 I've learned.

7 So, since it doesn't make any difference from a date
8 standpoint, because *Garrett* was decided in June of 2014 and
9 everything in this case happened after June of 2014, let's
10 assume that *Garrett* clarified the *Brady Giglio Kyles* obligation
11 on a police officer by making it real clear that civil lawsuits
12 constituted impeachment material. Okay, because that's
13 basically what *Garrett* did. It didn't impose a new
14 constitutional obligation. But it certainly made it real clear
15 in words of one syllable that civil lawsuits accusing the
16 officer of misconduct were impeachment evidence under *Brady*
17 *Giglio Kyles*.

18 So if what I heard this morning from the lawyer at the
19 police department is correct, they were alert to that
20 immediately, they understood the implications, they called in
21 their supervisors, they said, guys, your officers have to
22 disclose to the prosecutors as *Brady* material any lawsuits that
23 have been filed against them so the prosecutor can decide --
24 because ultimately we all know the prosecutor has the *Brady*
25 obligation. ADA Sangermano has the *Brady* obligation. But

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1 they've got to disclose. And they've got to know their
2 lawsuits. They have an obligation to be aware of their
3 lawsuits. And by the way, in case they don't know, because
4 people forget, they don't remember, blah, blah, blah, blah, it
5 happened 15 years ago, we can tell them because we've got a
6 database. You guys need to tell that to your line officers.

7 Now, we have no evidence that that ever happened. We
8 have no evidence that that ever happened in the precinct where
9 these officers worked. We certainly have no evidence that any
10 of the officers ever did it.

11 I don't think a single officer testified that he
12 contacted either the law department or the police department to
13 find out if he had any lawsuits. Although the police
14 supervisors had been told that the officers were required to
15 know about their lawsuits, and you can't consciously avoid
16 knowing about your lawsuits. Unless I'm missing something.

17 So I couldn't possibly grant a Rule 50 motion in this
18 case. And I've got poor Mr. O'Neill back in the back trying to
19 figure out what I need to do, and you guys need to look at this
20 over lunch, with the knowledge part of the charge. Frankly,
21 you know, if you know that if you've got an obligation to do
22 something and you don't do it, there is your intent requirement
23 right there. Done. Satisfied.

24 MR. FRANCOLLA: The issue there, your Honor, is it is
25 not a constitutional requirement.

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1 THE COURT: Oh, yes, it is.

2 MR. FRANCOLLA: To know your lawsuit history?

3 THE COURT: No. It is a constitutional requirement
4 that you disclose your lawsuit history. That is a
5 constitutional requirement.

6 MR. FRANCOLLA: I agree. But, the fact --

7 THE COURT: You cannot avoid a constitutional
8 violation by not finding out your lawsuit history. That would
9 be my current position. We're looking into that right now.
10 Especially, when the lady from the police department says she
11 told the supervisors the officers have to know what their
12 lawsuit history is.

13 Now, the Lord only knows why the Manhattan District
14 Attorney's Office was not required to contact you guys, the
15 ultimate repository of information, and say, okay, here are the
16 guys who are testifying at my next trial. But, the Manhattan
17 District Attorney's Office is not on trial here.

18 MR. FRANCOLLA: And we -- that was fleshed out in
19 litigation. Just the claim was dropped.

20 THE COURT: I'm not responsible for any of that.

21 MR. FRANCOLLA: I understand.

22 THE COURT: They're not on trial here. The cops are
23 on trial here. But, my whole perspective on the knowledge
24 requirement -- knowledge, by the way, is subsumed in intent, or
25 intent is subsumed in knowledge the way it's written. And they

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1 concede knowledge is required.

2 But, my whole perspective on it has changed in the
3 last two hours based on what I heard.

4 MR. FRANCOLLA: I understand. The point though from
5 ours is that, again, and there is no way to do this, but
6 ultimately, that's, you know, we're talking a lot about perfect
7 worlds. It doesn't necessarily mean everything translates to
8 these individual officers.

9 THE COURT: Well, then, they committed a
10 constitutional violation. They commit a constitutional
11 violation if department policy that they're required to know,
12 which is what Ms. Flaherty said, since 2014. And she didn't
13 tell all 35,000 police officers, but she told the supervisors,
14 and she told the supervisors to tell the police officers. Then
15 it was their responsibility to find out about their litigation
16 history, and these guys did not.

17 I mean, there is not any evidence that they made the
18 slightest effort. UC 84: I was sued six or eight times, I
19 told the prosecutor I was sued six or eight times.

20 We know Detective Regina was sued 12 times. But
21 because that's why the conviction was vacated. And the
22 conviction was vacated because the obligation to disclose those
23 lawsuits ultimately was absolute.

24 So, I mean, I need to go upstairs and sit and think
25 about this, but I'm just -- I'm flabbergasted by what I have

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1 heard in the last two days, I got to tell you, I'm
2 flabbergasted. It's not just me. Judge Wood had a St.
3 Patrick's Day breakfast this morning, and I talked about
4 yesterday's testimony to some of my colleagues and they were
5 flabbergasted too. All right.

6 Go do some research, folks. There is a template for a
7 charge. I've got to figure out whether anything is left out
8 and where it goes and what's needed.

9 MR. RUDIN: Your Honor, I have several authorities to
10 the Court's attention if I may.

11 THE COURT: Fine. You want to put them on the record
12 or you are going to hand me up copies.

13 MR. RUDIN: I could -- well, I have, first of all,
14 *Giglio* decision itself --

15 THE COURT: I don't need the *Giglio* decision and I
16 don't need *Kyles*.

17 MR. RUDIN: There is a reference in that case to the
18 obligation of district attorney's offices to have information
19 management systems so they could keep track of impeachment
20 information.

21 THE COURT: You're not suing the district attorney's
22 office. I don't know why. But you are not suing the district
23 attorney's office. You dropped that claim. Sangermano is not
24 in the case. I don't think he did anything right in this case.
25 I am ashamed of the way he conducted himself in this case. But

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1 guess what? He's not a defendant.

2 MR. RUDIN: My point is that was the first case where
3 they talked about -- implied the possibility of liability for a
4 government organization to not have information sharing --

5 THE COURT: So what. There was an information sharing
6 system. We had testimony ad nauseam today that there was an
7 information sharing system, and every one of the 35,000 police
8 officers, from at least the middle of 2014, was supposed to be
9 told to access that information, to get -- so I'm not going to
10 talk about facts, you are going to talk about the facts. I'm
11 going to talk about the law. And specifically, I'm going to
12 talk about the law of knowing and intentional. And intentional
13 subsumes knowing, so I am really concerned about knowing.

14 Okay?

15 MR. RUDIN: Okay.

16 THE COURT: Look, UC 84 said I don't know anything, I
17 don't know anything. I'm dumb. I don't know a damn thing
18 about these lawsuits. I know I've been sued. Some times. I
19 don't know. Six time, eight times, something like that.
20 Something like that. And that's all he said. According to
21 him. And Sangermano doesn't even remember what the guy said.
22 And yet, Ms. Flaherty says that before going in to talk to the
23 district attorney, UC 84 had an obligation that was supposed to
24 have been communicated to him by his supervisor, because she
25 told his supervisor that he had to know his lawsuit history.

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1 Okay? So, does that satisfy the culpable state of mind
2 requirement? Okay? That's the issue. That's the legal issue.
3 Facts, you guys can talk about.

4 MR. RUDIN: So, our overall argument to the jury, at
5 least what I have in my mind, is first, is of course the
6 official policy question that you already have a charge on.
7 And the second part is deliberate indifference. But it seems
8 to me there are various factors that go into deliberate
9 indifference in this case that are somewhat broader than what
10 is in the charge.

11 THE COURT: Can we talk about that. We've been
12 talking about deliberate indifference in connection with the
13 *Monell* claim.

14 MR. RUDIN: Yes.

15 THE COURT: What about deliberate indifference in
16 connection with the claims against the individual officers.
17 Which this morning I've been thinking of as conscious
18 avoidance.

19 MR. RUDIN: Yes.

20 THE COURT: Okay.

21 MR. RUDIN: Agreed.

22 THE COURT: Just because that comes up in criminal
23 cases in federal court as a way of satisfying the knowledge
24 requirement of an element of some crimes.

25 So, I don't know where I am going with this. I don't

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1 know where you want to go with this, but the time to talk about
2 it is this afternoon. I'm just laying it out. So you know
3 what you have to do over lunch, and I'll see you at 2 o'clock.

4 MR. RUDIN: I think it falls under recklessness as
5 well. Conscious avoidance.

6 THE COURT: Figure out what you want me to add to this
7 charge and why.

8 MR. RUDIN: Yes, your Honor. Thank you.

9 THE COURT: I confess I could never figure out why,
10 why there wasn't a database somewhere where officers to go to
11 find out their litigation history or the DA could go to find
12 out their litigation history. Turns out there was a database
13 all along. No one goes there.

14 MR. FRANCOLLA: Unfortunately, everyone at the time
15 had their own database, and the coordination between agencies
16 candidly was not what it should have been. So nature of the
17 beast.

18 THE COURT: Okay.

19 (Recess)

20 (continued on next page)

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AFTERNOON SESSION

2:00 p.m.

(In open court; jury not present)

LAW CLERK: Case on trial continued, lawyers are present, judge is present, jurors are not present.

THE COURT: Hi, everybody. Okay. Well, the usual and customary way in which I do this is I look at the plaintiff and I say, what challenges do you have to the charge.

I have passed out a replacement for the first paragraph on page 26 which fleshes it out somewhat.

MR. RUDIN: Your Honor.

THE COURT: If you sit down, you have to use the microphone. Stay seated and use the microphone. And I would really like to go from the beginning to the charge to the end of the charge.

MR. RUDIN: That's fine.

THE COURT: It's just easier than jumping around.

MR. RUDIN: The first thing we have is on credibility of witnesses on page, present page 9.

THE COURT: The odds that I'm going to change a word in my standard charge is somewhere between slim and none.

MR. RUDIN: Unless I missed it, the charge does not have the language about police officers as witnesses are not more or less entitled to be credited.

THE COURT: It doesn't. That's okay.

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1 MR. RUDIN: All right. I guess we'll just argue it.
2 On multiple defendants, each defendant stands on his own.

3 THE COURT: What page?

4 MR. RUDIN: Page 14 and 15.

5 THE COURT: Yes.

6 MR. RUDIN: The quirk in this case is while it's true
7 that certain persons are not named as defendants, there is also
8 the quirk that two of the defendants are named in the *Brady*
9 claim but one is not.

10 THE COURT: That's okay. I don't have to explain that
11 here. I'm going to have a verdict sheet for each defendant.
12 They will have a verdict sheet for Del Toro, they are going to
13 have a verdict sheet for Regina, they are going to have a
14 verdict for UC 84, and a verdict sheet for the City. It will
15 be very easy for them to know, because they're going to be
16 told, they will fill out this verdict sheet for this one.
17 There's no way they will be able to hold Regina liable for
18 failing to disclose *Brady* material.

19 MR. RUDIN: That's fine. On page 19.

20 THE COURT: Yeah.

21 MR. RUDIN: On this deprivation of a fair trial. On
22 line 5, it says evidence that was used to convict him. That
23 the defendants denied him a constitutional right to a fair
24 trial by fabricating evidence that was used to convict him.

25 The gist of that tort is actually, as your Honor

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1 otherwise explains, causing someone to be deprived of his
2 liberty based upon fabricated evidence. It doesn't have to be
3 at trial.

4 THE COURT: What would you like me to say?

5 MR. RUDIN: That was used to prosecute or convict him.

6 THE COURT: But, the only reason I have convicted here
7 is in this case he was in fact convicted.

8 MR. RUDIN: Okay.

9 THE COURT: He was convicted, wasn't he convicted?
10 Isn't that why he spent all that time upstate? He was
11 convicted.

12 MR. RUDIN: Yes, but we intend to argue to the jury
13 that once -- if the jury finds that fabricated evidence caused
14 Mr. Fraser to be deprived of his liberty, that that's the
15 complete tort, and the rest is damages. That's the only
16 reason. It is a little bit inconsistent with what comes later.
17 It won't change the shape of the world.

18 THE COURT: Fine. You want to prosecute or convict?

19 MR. RUDIN: We also refer to this as malicious
20 prosecution. I'm wondering --

21 THE COURT: I thought we took that -- wait a minute.
22 Do I have the version they have or have you made changes,
23 Josie, and they don't have what I've got?

24 LAW CLERK: It's one page off. It is the page before.
25 The first paragraph.

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1 THE COURT: Never do that. We have to be working off
2 the same document. Okay.

3 Yes? Okay. I'm now on the same page you're on.

4 MR. RUDIN: Oh, okay.

5 THE COURT: Okay. So what do you want?

6 MR. RUDIN: At that place?

7 THE COURT: Yes.

8 MR. RUDIN: I just think maybe it will make no
9 difference to the jury, but we as lawyers know that we are not
10 really calling this a malicious prosecution case. We took it
11 out of the tort.

12 THE COURT: Fine. We'll take it out. Next.

13 MR. RUDIN: Immediately underneath that fabrication of
14 evidence. The second paragraph, it's rather specific about
15 what we allege as to each officer, and I think that our --

16 THE COURT: Make it clear because I'm going to say
17 something here. It's very confusing for the jury.

18 What do you object to in this formulation?

19 MR. RUDIN: What we would like to convey is that we
20 allege that the officers both -- either conveyed a false story,
21 prepared false documents, or both. Because it sort of differs
22 as to -- our claim as to Del Toro is he prepared the false
23 evidence voucher. I don't think we have any evidence in the
24 record about what he said to the prosecutor.

25 THE COURT: I'm sorry. Because of this, I made this

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1 statement rather specific.

2 What is inaccurate about the statement plaintiff
3 alleges that Undercover Officer 84 made up a false story that
4 Mr. Fraser robbed him by threatening him and taking his fake ID
5 and \$20 of prerecorded buy money?

6 What is inaccurate about that statement from your
7 perspective?

8 MR. RUDIN: Nothing inaccurate. I just --

9 THE COURT: Is there anything else that you say
10 Undercover 84 did that contributed to this tort or is that what
11 you say is his activity that constitutes this tort?

12 MR. RUDIN: No. He also prepared a false DD-5, a
13 false document, which contains a detailed story that was given
14 to the prosecutor.

15 THE COURT: He made up a false story. That he wrote
16 it down in five or six different places you can point out. He
17 made up a false story. Okay.

18 Plaintiff also contends that Detective Regina lied
19 when he swore that he found Undercover Officer 84's fake ID in
20 Mr. Fraser's pocket. Right?

21 MR. RUDIN: That's true. But he also prepared a
22 series of reports accusing the plaintiff of robbery, false
23 reports.

24 THE COURT: Fine. Okay. Of course he didn't prepare
25 them. All he did was sign them.

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1 MR. RUDIN: He prepared an arrest report, he
2 prepared -- he prepared the -- participated preparing the
3 vouchers.

4 THE COURT: I may take the whole thing out.

5 MR. RUDIN: No.

6 THE COURT: I may take the whole thing out. Because
7 frankly, this is a general summary of what the officers are
8 alleged to have done. Regina is alleged to have lied. So he's
9 alleged to have lied there was a robbery. Okay. And he found
10 the evidence. He found the evidence in the plaintiff's pocket.
11 And therefore, accused him of robbery and that's what Regina
12 did.

13 MR. RUDIN: I think, your Honor, if you said Detective
14 Regina lied, that he found Undercover Officer 84 -- to take out
15 when he swore. Because that --

16 THE COURT: I thought it mattered to you that he swore
17 out a criminal complaint. I mean, to me, that's what the key
18 thing is in this case, is that Detective Regina swore out a
19 criminal complaint. Frankly, what he did back at the station
20 house.

21 MR. RUDIN: Your Honor, what if it said when he swore
22 that there was a robbery and that he found Undercover Officer
23 84's fake ID.

24 MR. FRANCOLLA: The only aspect is he's relying on
25 what he's told about the actual interaction for the robbery

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1 component. I think the paragraph needs to stay, considering
2 the way things have come in. So, ultimately, I don't think
3 that would -- if the Court thinks that's clearer to add that,
4 fine. I think it is --

5 THE COURT: How about lied when he said he found
6 Undercover 84's fake ID in his pocket and when he swore out the
7 criminal complaint.

8 MR. FRANCOLLA: That's fine with us.

9 MR. RUDIN: Of course we will argue that there is
10 additional evidence.

11 THE COURT: Fine. Argue anything you want.

12 And it contends that Detective Del Toro.

13 MR. RUDIN: That's fine.

14 THE COURT: Okay.

15 MR. RUDIN: On the next page, on page 21, your Honor,
16 I think for the most part this charge is great. I am just
17 trying to improve it.

18 THE COURT: I understand. I want to improve it too if
19 it can be improved.

20 MR. RUDIN: I'm not trying to nitpick.

21 THE COURT: But I also, for me, given the number of
22 complications in this lousy four-day trial, it's really hard, I
23 hate to marshal evidence. On the other hand, you have to kind
24 of explain to the jury what the essence of the claim is. I
25 don't want to make your arguments for you. I want the charge

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1 to be neutral. And I've had a tougher time than unusual
2 formulating this charge. It has changed a lot in the last
3 three days. It really has.

4 MR. RUDIN: I'll skip my page 21.

5 On page 26, that's --

6 THE COURT: Page 26 is --

7 MR. RUDIN: Evidence favorable to the accused.

8 THE COURT: That's now the key page.

9 MR. RUDIN: I think the page that your Honor was
10 substituting I think it was on page 27.

11 THE COURT: It's on page 26. That's what I've got.
12 My beloved law clerk has never done a trial before. She didn't
13 know she was violating an unwritten rule that once it goes to
14 you guys, it must never be updated and given to the judge,
15 because then we're not working off the same piece of paper.
16 Okay. I can't blame Josie. She's never done this before, and
17 I didn't explicitly say.

18 MR. RUDIN: It would probably be the prior page.

19 THE COURT: What are we talking about?

20 MR. RUDIN: Under A, evidence favorable to the
21 accused.

22 THE COURT: Yes.

23 MR. RUDIN: Near the end of that instruction. In the
24 middle of the instruction.

25 THE COURT: Evidence favorable.

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1 LAW CLERK: Page 24.

2 THE COURT: Page 24 on this copy. Geez. Okay.

3 MR. RUDIN: The paragraph that begins therefore the
4 rule in New York is.

5 THE COURT: Hang on. Hang on. Okay. Yes.

6 MR. RUDIN: So then about seven lines into that
7 paragraph.

8 THE COURT: Yes.

9 MR. RUDIN: Were accused of lying or other bad acts
10 that would reflect on their dishonesty. And the only example
11 that's given at that point is such as, for example, stealing.

12 It seems to me it sets a high standard for the jury
13 that we can't win, we can't meet that standard. I wonder if
14 the example can just be omitted.

15 THE COURT: Happy to omit the example.

16 MR. RUDIN: Then under B.

17 THE COURT: I confess I was thinking like a state
18 court judge, which I was once upon a time a long time ago. And
19 I did a lot of *Sandoval* hearings, and there is a lot of things,
20 that, you know, reflect on this and reflect on that, that you
21 wouldn't think reflect on this and reflect on that. So okay.

22 MR. RUDIN: Under B evidence your --

23 THE COURT: B.

24 MR. RUDIN: Your Honor's new version is fine for us
25 for the paragraph that begins the word knowingly.

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1 THE COURT: The reference to the Supreme Court's
2 two-part test is actually in a civil case. The first thing I
3 did was to go upstairs, and because Mr. O'Neill, who is always
4 right about everything, convinced me that the conscious
5 avoidance is a criminal law doctrine, and that I needed to get
6 away from that and look at civil cases, and then he proceeded
7 to find the civil case. Which is *Global Tech*, it is a 2011
8 Supreme Court case where a majority, though not the entire team
9 of the Supreme Court, basically adopted the conscious avoidance
10 standard of actual knowledge in a civil case. That happened to
11 be a patent case. But the mens rea standard in that case was
12 knowledge.

13 MR. FRANCOLLA: We're fine with the Court's update as
14 well. I would just point out, and I know this was done quickly
15 and I don't mean anything by it. The third sentence of the
16 second paragraph, I think it says "you may consider" as
17 opposed to "you may."

18 THE COURT: There has to be typos in here. I typed
19 it. I'm surprised there aren't more of them. Okay.

20 MR. RUDIN: On C, evidence material to the
21 prosecution. The paragraph, the last paragraph that begins I
22 remind you that.

23 THE COURT: Okay. Let me get -- I now have a copy of
24 the old charge so we're on the same pages.

25 MR. RUDIN: That's page 28.

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1 THE COURT: I'm on page 28 now. Okay. Yes.

2 MR. RUDIN: So, the first sentence is fine from our
3 point of view, but the second sentence it seems to us would
4 eliminate the whole point that was made by Mr. Stewart, that
5 the way in which a witness answers questions about allegations,
6 even if the substance of the answer is "I didn't do it," if the
7 way that the witness answers the question causes one or more
8 jurors to doubt the witness's credibility, that the witness is
9 not being honest --

10 THE COURT: Page 28 on my old copy is intentional or
11 recklessness. Fair trial due to *Brady* violations. We still
12 don't have the same pages.

13 MR. RUDIN: All right.

14 THE COURT: What's at the top of the page that you are
15 on?

16 MR. RUDIN: And used by the defense during trial. It
17 is under C. Evidence material to the prosecution.

18 THE COURT: Evidence material to the prosecution.
19 Okay. The third and last thing.

20 MR. RUDIN: So the way it reads now, so for evidence
21 of the factual allegations underlying the lawsuit to be
22 material, the jury would have to believe that those allegations
23 were true, either because the officer admitted them while on
24 the witness stand or because the jury did not believe the
25 officer's denial of the allegations.

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1 THE COURT: That's exactly what Mr. Stewart said. He
2 said that, I mean, maybe you cast that differently when you're
3 arguing to the jury. But he said, look, I'm bound by their
4 answer. We all know they're bound by the answer. And that
5 means there is no evidence. But if I have 12 lawsuits that I
6 can talk about, and he keeps saying, no, I didn't do it; no, I
7 didn't do it; no, I didn't do it; no, I didn't do it, no, I
8 didn't do it, and the jury ends up not believing him, because
9 of the way he answers the question, the fact that he has to
10 answer so many of them, whatever --

11 MR. RUDIN: It seems to me there is a difference
12 between --

13 THE COURT: What is it you want me to say?

14 MR. RUDIN: So for evidence of the factual allegations
15 underlying a lawsuit, or lawsuits to be material, it must be
16 reasonably probable that cross-examination about them would
17 have caused one or more jurors to have a reasonable doubt about
18 the guilt of the accused.

19 MR. FRANCOLLA: We would object to that, your Honor.

20 THE COURT: I'm sorry?

21 MR. FRANCOLLA: We would -- I think the way you have
22 it is entirely both true, accurate, and what Mr. Stewart said.
23 There needs to be context for the fact that, in a literal
24 sense, it is not evidence, assuming it is denied, and this
25 addresses the officer's denial which Mr. Stewart said the

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1 number, if he gets agitated, angry, etc., the jury can infer
2 they're not being truthful when they are saying no. I think
3 this is fair to both sides to argue from.

4 THE COURT: The thing that concerns me is that if the
5 officer says no, and we all know, and Stewart testified so it
6 is the only evidence they heard, is the officers will always
7 deny the conduct. Unless there has been an unfavorable outcome
8 in the lawsuit, in which case, it has already been inquired
9 about on direct. He's of course going to say in an open
10 lawsuit I didn't do that. I didn't do that.

11 I suppose there is some officer out there who might
12 tell the truth if he actually did do it. I'm going to allow
13 for such officers. I believe there are officers who would tell
14 the truth no matter what.

15 But, in Mr. Stewart's experience, the officers deny
16 the conduct. And that's the end of the matter, unless the jury
17 does not believe the officer's denial. That's the end of the
18 matter. Unless the jury does not believe the officer's denial.

19 MR. RUDIN: I'm fine with that, as opposed to saying
20 the jury has to find that the allegations are true. That puts
21 a burden on the defense it really doesn't have.

22 THE COURT: But then we are assuming that the officer
23 is going to deny them, you know, which I can't assume. Because
24 I can't assume that an officer, maybe an officer won't deny
25 them, as I just said. Maybe there is an officer out there who,

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1 without an adverse finding of liability already on the record
2 against him, will say, yeah, I really did that. I planted
3 evidence on that guy.

4 MR. RUDIN: Well, that's why I put it in terms of
5 whether one or more jurors would have a reasonable doubt after
6 hearing it.

7 THE COURT: But hearing it is not the thing. It is
8 not the thing that they are allowed to consider. They're only
9 allowed -- the "it," because the "it" was denied. Remember?
10 The fact of the allegation was made cannot be used to impeach
11 the officer's credibility. So, the "it," the allegation of the
12 lawsuit, if it's denied, it is as though it never happened.

13 MR. RUDIN: Would it be possible to have a charge that
14 put it in terms of, as your Honor said a moment ago, if the
15 jury has a reasonable doubt about the denial, as opposed to
16 affirmatively finding it's true. That sort of flips the
17 burden.

18 MR. FRANCOLLA: I think the issue, though, is that
19 obviously it has to be true to implicate the credibility, and
20 the way they believe that is they don't believe the manner in
21 which it's denied. It is not a bad act for credibility if
22 there is no inference to believe it happened.

23 THE COURT: I puzzled over this, and I think I got it
24 right.

25 MR. RUDIN: Would your Honor --

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1 THE COURT: What I would say is either because the
2 officer admitted them while on the witness stand, which admits
3 the possibility we discussed, or because one or more jurors has
4 a reasonable doubt about the officer's denial of the
5 allegation.

6 MR. RUDIN: That's fine.

7 THE COURT: Okay.

8 MR. RUDIN: The next issue we have goes to the *Monell*
9 liability which is complicated.

10 THE COURT: I can't hear you.

11 MR. RUDIN: The next issue we have goes to the *Monell*
12 liability which is a very complicated subject. So, we could
13 turn to that if your Honor is ready for that.

14 THE COURT: We can certainly turn to that.

15 MR. RUDIN: Okay.

16 THE COURT: It is a complicated subject. I don't know
17 it is the most complicated part of the charge, but it is a
18 complicated subject. It is a complicated subject to argue.

19 MR. RUDIN: The main issue we have is that the charge
20 is put in -- the policy part is fine. I think it's exactly.

21 THE COURT: You mean A, policy implemented by the
22 City. That part is fine.

23 MR. RUDIN: Yes. It is the introduction to that.
24 Then which covers in part B, training, then the training
25 part -- itself.

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1 THE COURT: Can we start at the beginning.
2 Deprivation of a constitutional right (municipal liability.)
3 On page 31 of what I am looking at, it is somewhere around
4 there for you guys.

5 In addition to the three individual defendants, the
6 City of New York is also a defendant in this case. I will now
7 instruct you on the law relating to the potential liability of
8 the City of New York.

9 Do you have a problem with that paragraph?

10 MR. RUDIN: No.

11 THE COURT: The next paragraph.

12 MR. RUDIN: Yes, it is the next paragraph.

13 THE COURT: What's the problem with the next
14 paragraph?

15 MR. RUDIN: Because our claim is not -- the secondary
16 claim, not the policy, the claim about training is actually
17 broader than training, because we've produced evidence about a
18 deliberate indifference to the failure of officers to comply
19 with the training. Because they've introduced some evidence
20 that there was training. And I tried to show through my
21 cross-examination that the training --

22 THE COURT: That's a lot of malarkey, is what you
23 tried to show in the cross-examination. That what she called
24 training is -- I'm not allowed to say it on the record.

25 MR. RUDIN: Yes. That the training was inadequate.

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1 THE COURT: The training was inadequate. I should say
2 failed to train its officers adequately.

3 MR. RUDIN: Yes. But the other part of it is they had
4 readily available to them another way, another system for --
5 ensuring that the information would be turned over.

6 And so our claim is really a little broader than
7 inadequate training. It is an overall deliberate indifference
8 through inadequate training, supervision, and discipline. And
9 the failure to --

10 THE COURT: Do we have the plaintiff's proposed charge
11 somewhere?

12 MR. RUDIN: The proposed charge we submitted many
13 months ago does not include this.

14 THE COURT: Right. Yeah. Okay. I didn't think so.
15 All right.

16 MR. RUDIN: I could tell you the language I prepared
17 and then see if your Honor --

18 THE COURT: Why don't you tell me the language that
19 you prepared.

20 MR. RUDIN: See if it's not impenetrable. All right.

21 THE COURT: Either because the City had a policy about
22 the disclosure of *Brady* material that was itself
23 unconstitutional or because the City.

24 MR. RUDIN: Had a policy of deliberate indifference to
25 whether such information was fully disclosed. And then later

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1 on we'll elaborate. Or your Honor would elaborate.

2 THE COURT: Oh good. You want to make it shorter at
3 the beginning.

4 MR. FRANCOLLA: I don't see the basis for that.

5 THE COURT: Say what you said again. The City was
6 deliberately indifferent.

7 MR. RUDIN: Had a policy of deliberate indifference.

8 THE COURT: Had a policy of deliberate indifference.

9 MR. RUDIN: To whether such information was fully
10 disclosed.

11 THE COURT: To whether its officers fully -- only
12 we're only dealing with the officers, we aren't dealing with
13 the DA. Whether its officers fully complied or complied with
14 their *Brady* obligations.

15 MR. RUDIN: That's fine, your Honor.

16 THE COURT: Complied with their *Brady* obligations.
17 Then we'll get into how they were deliberately indifferent in
18 detail later.

19 MR. FRANCOLLA: Your Honor, I guess the concern --
20 what I'm struggling with, I don't know what the evidence is of
21 that.

22 THE COURT: Oh. I heard a lot. I heard a lot.

23 MR. FRANCOLLA: Again, I'm not addressing the claim
24 generally that they're deliberately indifferent. That they
25 have a policy of deliberate indifference to knowing --

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1 THE COURT: Deliberate indifference through inadequate
2 training. Deliberate indifference through not having materials
3 available. Deliberate indifference through not requiring
4 officers to make an inquiry before -- that's what he's talking
5 about I think. This is just an introduction, okay. This is
6 not the charge. This is the introduction. I just need to get
7 into it. Okay?

8 MR. FRANCOLLA: Okay.

9 THE COURT: And I was given two reasons. Reason one
10 was the policy itself was unconstitutional because it was
11 limited to exculpatory evidence, did not include impeachment
12 evidence. That was the first thing I was told. Second thing I
13 was told was a classic failure to train. That's what I got.

14 MR. FRANCOLLA: And I think the issue is that's what
15 we understood it to be as well. And now it's, you know, to the
16 extent that's argument that's fine. Now it's overcomplicating
17 an overcomplicated issue.

18 MR. RUDIN: It's clearly in the complaint, your Honor.

19 THE COURT: Page, line?

20 MR. RUDIN: Paragraphs -- well, in a series of
21 paragraphs beginning with 140.

22 THE COURT: Want to read it? I don't happen to have a
23 copy.

24 MR. RUDIN: I'm sorry, I'm sorry.

25 THE COURT: Now I have a copy of the complaint.

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1 MR. RUDIN: 140 to the end, to 147.

2 THE COURT: I'm sorry?

3 MR. RUDIN: 140 to 147 it talks about, in particular,
4 145 and 146 that 146, the *Brady* violations in this case were
5 directly, foreseeably, proximately, and substantially caused
6 by --

7 THE COURT: You really detest the microphone and I
8 don't know why. You got to use the microphone.

9 MR. RUDIN: Paragraph 146. The *Brady* violations in
10 this case were directly, foreseeably, proximately, and
11 substantially caused by conduct chargeable to defendant City
12 amounting to deliberate indifference to the constitutional
13 rights of persons, including plaintiff, who are investigated,
14 arrested, or prosecuted for alleged criminal activities by the
15 New York City Police Department.

16 THE COURT: That says nothing. I'm going back to the
17 previous page.

18 MR. RUDIN: I was starting at --

19 THE COURT: I'm going to back to the previous page.

20 MR. RUDIN: Yes, your Honor.

21 THE COURT: Excuse me. So, 141 is training. 143 is
22 training. 145 is training. You completed training. Failure
23 to train.

24 Frankly, I think you've proved a failure to train
25 claim. Me, I am not making the decision in this case. But I

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1 can tell you that if I were a juror how I would vote, right
2 now, on the basis of everything I heard in the last four days.

3 MR. RUDIN: I guess if a failure to train includes the
4 failure to require officers -- to train officers that they were
5 required --

6 THE COURT: Yeah, of course it does.

7 MR. RUDIN: Then that's fine, your Honor.

8 THE COURT: I mean, I have to agree with
9 Mr. Francolla. I think you're overcomplicating something
10 that's already complicated enough. And my goal in a charge is
11 to simplify, simplify, simplify, if I possibly can.

12 I'm going back to my original formulation, okay, of
13 the second paragraph under second element, deprivation of a
14 constitutional right (municipal liability.)

15 MR. RUDIN: Would your Honor use "adequately train."

16 THE COURT: Yes, I would be happy to use the word
17 adequate. I think that was an omission that you have properly
18 corrected. Next?

19 MR. RUDIN: Under B, training implemented by the City.

20 THE COURT: Yes.

21 MR. RUDIN: The very last line on that page.
22 Plaintiff must establish that the NYPD's training program was
23 not adequate to allow its employees to carry out their duties.

24 I would ask that you say ensure that their employees
25 were carried out.

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1 THE COURT: Now we are on the wrong page. Training
2 implemented by the City. There is a paragraph that reads:
3 Alternatively, plaintiff may establish City liability by
4 showing that a constitutional violation was caused by a policy
5 maker's deliberate indifference to the need to give its
6 employees adequate training so that they would not violate
7 their constitutional rights as citizens.

8 Is there a problem with that sentence?

9 MR. RUDIN: No, your Honor.

10 THE COURT: Next sentence. Is there a problem with
11 the next sentence?

12 MR. RUDIN: No.

13 THE COURT: Okay. Is there a problem with the next
14 sentence?

15 MR. RUDIN: Just one word.

16 THE COURT: Easiest way to do it. Is there a problem
17 with the next sentence?

18 MR. RUDIN: One word in the second line. I would ask
19 your Honor to substitute "ensure" for "allow."

20 THE COURT: Fine to ensure its employees could carry
21 out their duties.

22 MR. RUDIN: Or would. Would carry out.

23 MR. FRANCOLLA: The issue with that is, as the
24 testimony I think, just understanding it, like the police
25 department's ability to know what's happening with the

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1 prosecutors in trials is largely, if not entirely, dependent
2 upon what they're told. Not their ability to ensure that
3 issues aren't arising, then you become aware of it.

4 THE COURT: Mr. Francolla, what this case is about at
5 the *Monell* level, from my stand point, is the fact that is on
6 the record I heard, police officers may have been told at roll
7 call, which ain't training as far as I'm concerned, guys, you
8 got to disclose your lawsuits to the prosecutor if you're
9 testifying. And then they went out and did a day's dangerous
10 work on the street, and by evening, they'd forgotten that.

11 It's that officers were not told, ever, and certainly
12 not at the time of this lawsuit, guys, here's the deal. You're
13 responsible for knowing about your lawsuit history and for
14 telling it to the prosecutor. Maybe not fair. But that's the
15 law. So we've got to deal with it and here is how you do it.
16 And in every instance, before you go to testify, this is what
17 you have to do. You have to call 911 Katie Flaherty. You have
18 to check with the corporation counsel. You have to do this.
19 Because you have an obligation to know your lawsuit history.

20 She said we told our supervisors they had an
21 obligation to know their lawsuit history. Okay? She said
22 that. So, okay, that was the policy of the New York City
23 Police Department, and the evidence is certainly arguable that
24 the officers were not trained to recognize the imperativeness
25 of that obligation or how they could carry it out. It is

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1 certainly arguable from the evidence. That is the case.

2 MR. FRANCOLLA: I'm not arguing any of that. All I'm
3 saying is the language is essentially putting the obligation to
4 determine whether or not they failed at that, and their ability
5 to do that is dependent upon the prosecutors saying I met with
6 so-and-so and I didn't get this, I didn't find out about it.
7 They can't go to every trial and listen and make a
8 determination.

9 THE COURT: It has nothing do with trials. This has
10 nothing to do with going to trial.

11 MR. FRANCOLLA: I am saying the ensure that employees
12 carry out their duties. There is no way for them to do that,
13 is my point.

14 THE COURT: Now you are overcomplicating something.

15 MR. FRANCOLLA: I didn't change it. I'm fine with how
16 it was written. I didn't change any of this. I'm fine with
17 how your Honor wrote it. It is the law.

18 THE COURT: How about to allow its officers to
19 understand what was required of them under *Brady*, and to carry
20 out that obligation.

21 MR. RUDIN: Your Honor, the difficulty I have with
22 that is it implies that they were giving them permission to
23 carry out their duties, not that they were being required to
24 carry out their duties.

25 THE COURT: To allow its officers to understand what

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1 was required of them under *Brady*, and to carry out that
2 obligation.

3 MR. RUDIN: That's fine.

4 THE COURT: Isn't that what I just said?

5 MR. RUDIN: I guess I missed the required part.
6 That's fine.

7 THE COURT: Anybody have a problem with the deliberate
8 indifference paragraph?

9 MR. RUDIN: No, your Honor.

10 THE COURT: Okay. What's next?

11 MR. RUDIN: Compensatory damages.

12 THE COURT: Damages? We obviously pulled this from a
13 case where there were no economic damages.

14 MR. RUDIN: It also doesn't mention loss of liberty or
15 which is the --

16 THE COURT: It is certainly part of pain and
17 suffering, mental anguish, shock, discomfort.

18 MR. RUDIN: Your Honor begins with physical injury,
19 which isn't an issue in this case at all.

20 THE COURT: Wait a minute. I mean, I didn't look at
21 the damages part closely. We pulled it from a different case.
22 I haven't tried a case that's been quite like this one. So,
23 okay. So, first of all, we have to add in a whole thing on
24 economic damages. Okay? And then there's non-economic damages
25 that he suffers as a result of any violation of law by the

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1 officers, which can include pain and suffering. Those are
2 classic words. You are the one who is going to say they threw
3 him in jail. He had to watch people, you know, assaulting each
4 other in the bathroom. He had to tell his mother not to come
5 so she wouldn't be strip searched and deprive himself of the
6 solace of her company. He had to, you know, he lost his job.
7 He lost his freedom to do what you would do and I would do on a
8 Saturday night. That's your argument to make. It's not my
9 argument to make.

10 MR. RUDIN: But loss --

11 THE COURT: That's pain and suffering damages.

12 MR. RUDIN: Loss of liberty is such a fundamental
13 damage here, I think the Court should tell them they may
14 consider loss of liberty. Otherwise I don't know what they're
15 going to think.

16 THE COURT: Okay. Obviously the fact that Mr. Fraser
17 lost his liberty is something you should consider.

18 So we've got to pull, we got to find a case where we
19 had economic damages, Josie, and we've got to throw in an
20 expert witness charge at the front, which we will do.

21 Next?

22 MR. RUDIN: I think I only have one other request
23 which is to omit the nominal damages charge. I think that's
24 normally something that the plaintiff requests. I don't see
25 why there should be any suggestion they could find one dollar

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1 in damage. If these damages occurred, they are not nominal, if
2 these injuries occurred.

3 THE COURT: I had the same thought. Either he loses
4 or he's got real damages.

5 MR. RUDIN: Yes, your Honor.

6 THE COURT: I'm happy to keep it out.

7 MR. FRANCOLLA: I --

8 THE COURT: It's not possible, Mr. Francolla. If they
9 brought in a verdict of one dollar, if they found for
10 Mr. Fraser and brought in a verdict of one dollar, I would set
11 it aside in about 30 seconds. Okay? It's not possible.

12 MR. FRANCOLLA: I haven't --

13 THE COURT: It's literally logically impossible.

14 (Continued on next page)

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1 MR. FRANCOLLA: Your Honor very well may be correct.
2 I haven't worked through the contours of it. Hearing it,
3 obviously, to the extent -- if it blows that way --

4 THE COURT: I appreciate that in every single other
5 1983 case I've ever charged I've charged nominal damages. I
6 don't think there's any danger to the plaintiff if I charge
7 nominal damages. If they're going to find for Mr. Fraser,
8 they're going to find for Mr. Fraser, I would predict, in a big
9 way.

10 MR. FRANCOLLA: I mean, but isn't there a world where
11 they might find that he did the underlying acts but somehow the
12 facts from there on resulted in a violation that did not
13 independently deprive him of anything -- any damages?

14 THE COURT: Really?

15 MR. FRANCOLLA: I mean --

16 THE COURT: Two years in an apprenticeship program?

17 MR. FRANCOLLA: Again, I'm saying if there is an issue
18 particularly --

19 THE COURT: I'm going charge nominal damages. And I'm
20 telling you right now that if a verdict comes back with nominal
21 damages, it will be set aside, because I don't see how
22 logically it could possibly be. By then perhaps you will have
23 figured out some reason why it could logically possibly be. I
24 don't really think there's any danger in it. I think either
25 you're going to win and Mr. Fraser is going to get no damages,

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1 or you're going to lose, and you're going to lose big. That's
2 what I think the two alternatives are in this case. I don't
3 think that it is a realistic possibility that you will lose and
4 he will get a dollar.

5 MR. FRANCOLLA: And that's -- I don't disagree, but I
6 don't think -- I just don't think it's a certainty. That's
7 what I'm thinking of because of the complexity of the
8 overlapping issues, that's all. I'm not -- granted, I'm not --

9 THE COURT: OK. How about from you guys at the back
10 table?

11 MR. FRANCOLLA: I think as to the charge, your Honor,
12 what's there, subject to the changes, we have no issues with.
13 We think it's appropriate, and obviously, your Honor ruled on
14 the complexity in about as clear a way as possible.

15 The two sort of separate questions that we have, I
16 guess one is thinking about -- is whether to insert or how to
17 deliver the stipulation again. I think your Honor indicated
18 that you would do that.

19 THE COURT: Right. That's a good question. Where
20 should we put that in?

21 MR. FRANCOLLA: I think Ms. McGuire had pointed out on
22 page 24, perhaps, after that -- under --

23 THE COURT: At the beginning of the *Brady* section?

24 MR. FRANCOLLA: Yeah -- sorry.

25 THE COURT: OK. Blah, blah, blah, blah, blah. OK.

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1 MR. FRANCOLLA: Yeah.

2 THE COURT: I could either put it at the beginning or
3 I could put it at the end of the fair trial due to the *Brady*.

4 MR. FRANCOLLA: I think the end probably makes it
5 simpler, just so they start where the claim is, and then
6 they're reminded what it isn't.

7 MR. RUDIN: The end of the introduction or the end of
8 the full charge?

9 THE COURT: The end of the whole charge. Basically
10 after I talk about proximate cause. And it would be: I remind
11 you, ladies and gentlemen, that you've heard in this trial
12 about a decision of a New York State Supreme Court that
13 resulted in the setting aside of Mr. Fraser's conviction on the
14 ground that certain *Brady* material was not turned over by the
15 state. That decision -- the parties have agreed the issues
16 that you're being asked to determine are not the issues that
17 were decided by that judge. Same case, but that judge was
18 considering different issues.

19 I'll find your stipulation. I've got it somewhere.

20 MR. FRANCOLLA: OK. Then I think the only other
21 question would just be -- and I'm not asking for it today,
22 candidly, but would we have an opportunity before closings just
23 to review the verdict sheet or sheets, or however your Honor --

24 THE COURT: I haven't even read the verdict sheets, or
25 written the verdict sheet. So the answer is probably no, but

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1 here's what they're going to say. You've seen my verdict
2 sheet, Mr. Francolla. You're the one person in this room who
3 can say you've seen my verdict sheet.

4 Undercover 84, does the plaintiff, Jawaun Fraser,
5 prove by a preponderance of the evidence that Undercover 84
6 violated his right to a fair trial by fabricating evidence?
7 Yes, no.

8 Did plaintiff prove by a preponderance of the evidence
9 that Undercover 84 violated his right to a fair trial by
10 withholding *Brady* material? Yes, no.

11 That's what it's going to say.

12 MR. FRANCOLLA: I think just the question that we
13 would have, that all --

14 THE COURT: General verdicts.

15 MR. FRANCOLLA: Yeah, no, I think in terms of -- I
16 guess the only question would be to the extent that the *Monell*
17 liability is premised on the underlying violation, that there
18 would be some sort of instruction in that regard.

19 THE COURT: I don't understand what you mean.

20 MR. FRANCOLLA: Well, in other words, in order to
21 determine *Monell* liability, the jury needs to first determine
22 that there was an underlying violation.

23 THE COURT: It's in the charge.

24 MR. FRANCOLLA: OK.

25 THE COURT: That is true. I didn't pull out -- I

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1 didn't pull out, Josie pulled out --

2 MR. FRANCOLLA: We know it's in the charge.

3 THE COURT: -- the law.

4 MR. FRANCOLLA: And we're fine with the way it is in
5 the charge.

6 THE COURT: "Where the plaintiff does proceed against
7 both the municipal actors alleged to have inflicted the tort
8 and the municipality that promulgated the offensive policy, the
9 plaintiff's failure to secure a judgment against the individual
10 actors would, indeed, preclude a judgment against a
11 municipality if the ruling in favor of the individual
12 defendants resulted from the plaintiff's failure to show that
13 they committed the alleged tort."

14 So if somebody's guilty of a *Brady* violation here,
15 then the jury considers the *Monell* claim, but the *Monell* claim
16 doesn't have anything to do with evidence fabrication.

17 MR. RUDIN: Your Honor, my concern with that is that I
18 understand that your Honor has determined that --

19 THE COURT: That's *Askins v. Doe*. That was just the
20 law.

21 MR. RUDIN: I understand that your Honor has
22 determined that there has nobody a knowing violation by the
23 officers, but if the NYPD was aware that officers might
24 unknowingly not disclose *Brady* and they had procedures for
25 ensuring that they would -- that the material would be

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1 disclosed either directly to the DA or to the officer so that
2 they could disclose it, it seems to me that there's still a
3 *Monell* violation.

4 THE COURT: This is *Askin v. Doe No. 1*,
5 727 F.3d 248 (2d Cir. 2013). Now, if you can find some law
6 that says even if these officers get cleared, the City's
7 outrageous behavior in this case is such that it can be
8 independently held liable for a constitutional violation, you
9 have 48 hours to find it.

10 MR. RUDIN: Thank you.

11 THE COURT: OK.

12 MR. RUDIN: Yes.

13 THE COURT: And you should have looked for it before
14 because I queued this up two days ago when I said I'm going to
15 find that case. And I didn't find it; she found it. She found
16 it about 15 minutes. OK?

17 So if you can find such a case, because I'll tell you,
18 I would -- if I were aware of such case, I would happily say,
19 even if all the officers are cleared, if you think the City has
20 done a bad thing -- problem is that's not a case in
21 controversy. Because if the officers are cleared, then he
22 wasn't damaged, and it's only -- the only person -- it's his
23 damage that leads to the -- we're not here to punish the City
24 of New York or to make a -- we're not a special grand jury.
25 We're not here to make a pronouncement about the bad procedures

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1 followed by the City of New York.

2 If the officers didn't violate their *Brady*
3 obligations -- by the way, that includes if the evidence wasn't
4 material, or whatever. It's a three-part thing that has to be
5 proved -- if he isn't damaged by any of those officers, then he
6 has not been damaged by the City's terrible policies, and he
7 can't collect damages therefor, even though we all think that
8 the City's policies suck.

9 MR. RUDIN: Your Honor, the argument is that *Brady*, of
10 course, is a strict liability standard. The District
11 Attorney's required -- the prosecution's required to turn over
12 the *Brady* material. If they fail to do so because the NYPD has
13 been deliberately indifferent to its obligation to ensure that
14 officers turn over the information, then that's why the City's
15 liable. There's an intent requirement under --

16 THE COURT: But you haven't sued anymore the District
17 Attorney's Office. The district attorney indeed does have
18 strict liability, and you have an appeal issue if you should be
19 unfortunate enough to lose this case on my decision that there
20 is a mens rea requirement against the officers. OK? But
21 absent -- look, the strict liability standard on the district
22 attorney got him out of jail.

23 MR. RUDIN: Your Honor.

24 THE COURT: That's what it got him.

25 MR. RUDIN: There's a mens rea requirement under 1983

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1 for the City. Your Honor has held there's a mens rea
2 requirement for the individual officers, but if the officers
3 acting without mens rea are caused to not disclose the
4 information so that it's not disclosed by the prosecutor and
5 that's due to a deliberately adopted policy by the City of New
6 York through the police department, then they are causing the
7 violation --

8 THE COURT: Mr. Sangermano -- then it's
9 Mr. Sangermano's violation, and he's not a defendant in this
10 case.

11 MR. RUDIN: Well, the officers are the instrumentality
12 of the unlawful policy.

13 THE COURT: Excuse me, no, no, way too attenuated.
14 Sorry. You have your objection. If you can find a reason why
15 *Askins v. Doe No. 1* is not good law in these circumstances, I'm
16 happy to entertain it.

17 MR. RUDIN: Very well, your Honor.

18 MR. FRANCOLLA: That's all we had, your Honor.

19 MR. RUDIN: Your Honor, just one other thing that I
20 overlooked on damages.

21 THE COURT: Yes.

22 MR. RUDIN: There's testimony in the record from
23 Mr. Fraser that he paid \$13,000 in legal fees. I believe
24 that's a damage as well. I would ask that your Honor mention
25 it, but it's up to the Court, of course.

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1 THE COURT: Economic damages includes all the money he
2 is out as a result of the violation. You explain to the jury
3 in great detail what that is.

4 MR. RUDIN: Very well.

5 THE COURT: I'm not going to say anything about
6 \$268,000.

7 All right. I'll see you on Monday morning.

8 MR. RUDIN: 9:30?

9 THE COURT: Yes, I'd like to start at 9:30.

10 MR. RUDIN: All right. Have a nice weekend, everyone.

11 THE COURT: And I would take like a 10-, 15-minute
12 break between charges -- between summations, and then we'll see
13 what time it is. And then we'll see what time it is.

14 MR. FRANCOLLA: We're at an hour time limit max, your
15 Honor?

16 THE COURT: You're on a hour time limit. This case,
17 complicated though it may be, can be argued in an hour.

18 MR. FRANCOLLA: Fair.

19 THE COURT: Especially as fast as you both talk.

20 (Adjourned to March 20, 2023, at 9:30 a.m.)
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23
24
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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 JAWAUN FRASER,

4 Plaintiff,

5 v.

20 CV 4926 (CM)

6 CITY OF NEW YORK, *et al.*,

7 Defendants.

Trial

New York, N.Y.
March 20, 2023
9:30 a.m.

10 Before:

11 HON. COLLEEN McMAHON,

12 District Judge

13 APPEARANCES

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Attorneys for Plaintiff
15 -and-

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19 Attorney for Defendants
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20 CAROLINE McGUIRE

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1 (Trial resumed; jury not present)

2 THE COURT: Well, good morning.

3 MR. RUDIN: Good morning, your Honor.

4 THE COURT: OK. Well, thank you for ruining my
5 morning, and we certainly did waste a lot of time on Friday.
6 The reason we have charge conferences is so I don't get letters
7 like this on Monday morning at 9:15. OK. Have a seat.

8 So here's what's been bothering me throughout this
9 case. This case is in many way *sui generis*. We already know
10 there's been an underlying constitutional violation. We know
11 that, although we also know that it relates --

12 Come on up, Mr. Fraser. You're the star of the show
13 here. Don't be sitting in the back.

14 MR. FRASER: Sorry, your Honor.

15 THE COURT: No, no, it's OK. Good to see you.

16 -- although it doesn't relate to these eight lawsuits,
17 it relates to Detective Regina's 12 lawsuits. So we have an
18 already found, not challenged, absolutely the law
19 constitutional violation in this case perpetrated by someone
20 who is not one of the individual actors charged. So a *Monell*
21 violation could have been found against the City if Detective
22 Regina's failure to train -- failure to get training resulted
23 in that constitutional violation even though he hasn't been
24 sued for it. That's the upshot of *Askins* and *Bellamy*, and I'd
25 forgotten that *Askins* was my case. But I remember it. We got

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1 rid of -- we got rid of all the defendants for one reason or
2 another, and I said, OK, that's it, no *Monell*. Circuit said,
3 not so fast.

4 So that would be easy. So now we have here two
5 different defendants, not Detective Regina. There's been no
6 finding by a state Supreme Court justice that there was any
7 *Monell* -- there was any *Brady* violation as a result of the
8 failure to turn over the lawsuits, although the failure to turn
9 over the lawsuits is undisputed, but there's been no finding
10 about materiality. There's been no -- none of the things that
11 the state court judge did in connection with Detective
12 Regina's.

13 So I have to tell you I've been groping. And I got
14 the charge out on Wednesday, and I really thought we were going
15 to have conversations. And to have this happen at 9:30 on
16 Monday morning with the jury sitting there waiting for closing
17 statements is really crazy, because this is the key issue in
18 the case which somebody should have thought about before over
19 the weekend, which is -- obviously, if they conclude that none
20 of these lawsuits was material, I don't see how that could
21 happen, but if they did, there wouldn't be any underlying
22 constitutional violation. Because I perceive that the
23 violation to the right to a fair trial under due process clause
24 has a mens rea requirement, an issue for the Second Circuit,
25 really, they ought to decide that in the context of a *Brady*

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1 violation, they really should. They should quit hinting
2 around. They should quit beating around the bush. I keep
3 getting cases where the Second Circuit beats around the bush
4 and refuses to decide issues. It's an important issue.

5 But I've ruled in accordance with what I think the
6 ruling would be. So it's possible that even though these guys
7 didn't turn over these lawsuits, the jury would find out that
8 they didn't do it knowingly or intentionally, then there's no
9 underlying constitutional violation arising out of the failure
10 to turn over these lawsuits.

11 You shake your head, but why do you shake your head?

12 MR. RUDIN: Because, your Honor, the constitutional
13 violation was committed directly by the prosecutor in
14 failing -- in failing to turn over the *Brady* material. That
15 violation was caused by the officers, and they're liable under
16 Section 1983 if they did it knowingly. But if they didn't do
17 it -- they didn't turn it over for lack of sufficient --

18 THE COURT: I appreciate your -- but the
19 constitutional violation for fair trial purposes requires a
20 finding of materiality.

21 MR. RUDIN: Totally agree.

22 THE COURT: OK. So what are we going to do? We're
23 going to have a special verdict sheet. We're going to start
24 from scratch. I'm going to send them home today so we can
25 start from scratch crafting a special verdict sheet that will

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1 break out every lawsuit and ask if the allegations of the
2 lawsuit were material? I don't know of any other way to do
3 that.

4 MR. RUDIN: I think that's addressed by one of the
5 cases that we cite.

6 THE COURT: It's not addressed by a general verdict
7 sheet, I can tell you that.

8 MR. RUDIN: I think the charge is perfect up until the
9 last sentence of --

10 THE COURT: I'm not concerned about the charge. I'm
11 concerned about the verdict sheet. I'm concerned about getting
12 a -- you're right, by the way, about the damages. I woke up in
13 the middle of the night on Saturday and said: Wait a minute.
14 I've got to have a separate verdict sheet for damages.

15 MR. RUDIN: I think the problem is cured, your Honor,
16 if you instruct the jury that if they find that favorable
17 information material to the outcome of the trial was not turned
18 over by the District Attorney's Office and the cause of that, a
19 substantial cause of that, was a policy or practice of the
20 NYPD, then they may find the City liable under *Monell*.

21 As long as the jury is instructed that with respect to
22 the *Monell* claim they have to find -- your Honor has already
23 ruled that it's favorable. They have to find it was material
24 and not disclosed, then that's sufficient. If the officers get
25 off because the jury does not find that we've proved knowledge,

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1 or mens rea, so be it, but the City shouldn't get off for
2 failing to train them adequately so they didn't recognize their
3 obligation.

4 THE COURT: I hear you. I hear you. I understand.
5 As I say, I've been groping with this.

6 MR. RUDIN: And I think the problem with *Askins* is
7 that the discussion where they introduced the concept of
8 failure to prove a tort is actually a discussion of whether or
9 not a constitutional violation has been proved.

10 THE COURT: Correct, whether a constitutional
11 violation has been proved. And actually, Mr. Francolla and
12 Ms. McGuire, it's in their letter that the truly damning
13 language is found. It's from *Barrett v. Orange County* where it
14 says we agree with our sister circuits that under *Monell*
15 municipal liability for constitutional injuries may be found to
16 exist even in the absence of individual liability, at least so
17 long as the injuries complained of are not solely attributable
18 to the actions of named individual defendants. In this case,
19 the *Monell* -- the actual constitutional -- the ultimate
20 constitutional violation, we'll call it the ultimately
21 constitutional violation, was committed ADA Sangermano.

22 MR. RUDIN: Exactly.

23 THE COURT: So there is some actor other than Del Toro
24 and UC 84. Forget about Regina. Regina's out. He's
25 irrelevant for this purpose. There is some individual actor

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1 other than UC 84 and Del Toro who is responsible for actually
2 perpetrating the constitutional violation. And if ADA
3 Sangermano did that because the City failed to train its
4 officers adequately so that UC 84 and Detective Del Toro were
5 not knowledgeable enough to know what they were supposed to do,
6 then it seems to me, under *Barrett*, that there's the
7 possibility of municipal *Monell* liability.

8 MR. RUDIN: I think that's exactly the point.

9 THE COURT: But now I'm trying to figure out why --
10 I'm trying to figure out how we get that reduced to a verdict
11 sheet.

12 MR. RUDIN: I think it's sufficient if your Honor
13 instructs them that if they find that -- that favorable
14 evidence material to the outcome of the trial was not disclosed
15 by the District Attorney's Office and that a substantial cause
16 of that was the policies and practices of the City of New York
17 through the New York City Police Department, then they may find
18 the City liable under *Monell*. I don't understand why that
19 isn't clear to the jury.

20 THE COURT: Mr. Francolla, you look like you want to
21 say something.

22 MR. FRANCOLLA: Well, I guess what I'm struggling --
23 and I understand --

24 THE COURT: You're struggling because you don't think
25 that it's possible to find the City liable in the absence of a

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1 finding of liability by your two officers, and the reason we
2 looked up *Askins* last week, without remembering that it was my
3 case, is that I had been struggling with this issue because I
4 could see a very real possibility of the City being at fault
5 and the officers getting cleared and everybody going home happy
6 except Mr. Fraser.

7 MR. FRANCOLLA: Yes, and I think the disconnect I'm
8 struggling -- I know Regina's out, but I think briefly on why
9 he's out --

10 THE COURT: Yeah, why is he out?

11 MR. FRANCOLLA: So -- because, ultimately, I think it
12 was -- it was a footnote, if I remember correctly, by
13 plaintiffs in their opposition to summary judgment where they
14 conceded that the DA's office had knowledge of all but, I
15 think, possibly two lawsuits, and thus it was not material, if
16 I'm remembering that correctly. That's why we didn't proceed
17 against him.

18 So in that sense, to the extent that the DA had this
19 information and Sangermano didn't turn it over, the City --
20 even if the City -- there's no evidence about --

21 THE COURT: There's no -- I'm not aware, I'm
22 personally --

23 (Discussion off the record)

24 THE COURT: We've got a lot of history in this case,
25 so I don't pretend to remember everything. But I'm not aware

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1 of a concession that Sangermano was aware of the lawsuits, the
2 four lawsuits against Del Toro and the four lawsuits against
3 the undercover. And Regina, I don't care why you didn't
4 proceed against Regina. Sangermano was originally a defendant
5 in this case. He got dropped. I assume prosecutorial
6 immunity. I don't know. Otherwise there's no excuse for
7 dropping him.

8 MR. RUDIN: He did have immunity.

9 THE COURT: Right. So lucky him.

10 But Regina is irrelevant to this entire -- has there
11 ever been a concession that Sangermano was aware of the eight
12 lawsuits that we're talking about here at this trial? I don't
13 think so.

14 MR. RUDIN: No, your Honor.

15 THE COURT: No.

16 OK. So forget about Regina. It's like he's not even
17 alive. He doesn't exist. For our purposes he doesn't exist.
18 For their purpose he doesn't exist. That's why you entered
19 into that stipulation, to put him to one side on the *Brady*
20 issue.

21 But if the jury were to find that the eight lawsuits
22 that we're talking about in this case were (a) not disclosed --
23 duh, what else are they going to find? Everybody said they
24 weren't disclosed. Sangermano said he didn't disclose them.
25 Officers said they didn't disclose them. They weren't

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1 disclosed. OK. So the jury's going to find that -- and (b)
2 gave Mr. Stewart some ammo to use on cross, then whether they
3 did it intentionally or -- and knowledgeably or not, if the
4 City's -- there was a *Monell* violation, and it was committed by
5 the DA's office. And if the City is somehow responsible for
6 that *Monell* violation's happening because it wasn't making its
7 officers sufficiently aware of what it was they were supposed
8 to do and how they were supposed to do it and wasn't imposing
9 requirements on them that they consult the database before they
10 go visit the DA -- I've got to try to divorce my own horror at
11 the DA's testimony because that too is not in the case -- then
12 I see, as I've always seen, the possibility that the City can
13 be liable even if the officers are not. Ironically, if there
14 were no mens rea requirement, that probably wouldn't be true,
15 but you convinced me that there was a mens rea requirement.

16 So now I've got to figure out what to do here because
17 I can't let you close without addressing this.

18 So where in the charge, Mr. Rudin, are you proposing
19 that I somehow make this clear?

20 MR. RUDIN: Page 32, the last sentence in the third
21 paragraph, the paragraph that begins, "I charge you that."

22 THE COURT: Right, which is basically -- OK. That's
23 where we start with there's no respondeat superior liability.

24 MR. RUDIN: Yes. So I would delete the last sentence
25 in that paragraph. I propose deleting the last sentence in

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1 that paragraph which injects the problem and instead instruct
2 the jury about what they must find to find a violation to hold
3 the City responsible.

4 THE COURT: I want proposed language.

5 MR. RUDIN: Yes.

6 THE COURT: Excuse me. I'm sitting here with a jury
7 waiting to hear closing arguments. I want proposed language.

8 MR. RUDIN: If you find that favorable information --

9 THE COURT: I think one or more of the eight
10 lawsuits --

11 MR. RUDIN: That's fine.

12 THE COURT: -- that are at issue in this case qualify
13 as *Brady* material, that is, information favorable to the
14 accused, in quotes.

15 Yes.

16 MR. RUDIN: And if you find that such undisclosed
17 information was material to the outcome of the trial.

18 THE COURT: Yes.

19 MR. RUDIN: Then you may find the City liable if the
20 failure to disclose -- if you find that the failure to disclose
21 was substantially caused by a policy or practice of the New
22 York City Police Department, including an unlawful failure to
23 train officers about their responsibility.

24 THE COURT: We haven't even talked about that. I
25 would stop right there.

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1 MR. RUDIN: Yes, then you go on to explain it later.

2 THE COURT: Then you go on to explain.

3 OK. I know the City objects to that. That's OK.

4 It's all right. I may mess with that a little, but that's more
5 or less what I intend to convey. I've got to go look at the
6 verdict sheets.

7 MR. RUDIN: Your Honor, just on the verdict sheets,
8 again, we --

9 THE COURT: There will be liability verdict sheets and
10 then there will be a separate damages verdict sheet.

11 MR. RUDIN: That's fine. We just really request the
12 Court to take off nominal damages because it's suggesting to
13 them a way they could come out one of two ways. It's giving it
14 equal billing with the actual damages when the Court has
15 already, I think, correctly observed that nominal damages would
16 be inappropriate in this case. I don't see -- I mean, if
17 you're going to instruct them that they could return a verdict
18 of \$1 for nominal damages, we object to that, of course, but I
19 don't see why it has to be further highlighted in the verdict
20 sheet itself.

21 THE COURT: You have your objection.

22 MR. FRANCOLLA: Your Honor, putting aside just our
23 objection to the prior point, can I just ask a clarifying
24 question to make sure --

25 THE COURT: Sure, Mr. Francolla.

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1 MR. FRANCOLLA: To make sure --

2 THE COURT: To make sure that you know what's going on
3 so you can actually close to the jury?

4 MR. FRANCOLLA: Yes.

5 THE COURT: I would like to be fair.

6 MR. FRANCOLLA: And you always are, your Honor.

7 THE COURT: That's why you keep saying "fair enough."

8 MR. FRANCOLLA: I know. That's a tick I've learned to
9 remove from this experience.

10 If I understand the result, putting aside the specific
11 language, there does still need to be a *Brady* constitutional
12 violation involving one or more of the eight lawsuits. The
13 distinction is just there could be a world where it's not
14 proven against the defendants, but it does exist.

15 THE COURT: If they have the mens rea that you so
16 brilliantly urged I charge the jury they have to have, but,
17 yes, it has to have to do with one of the eight lawsuits. And
18 that, frankly, is a big hole in this charge that at least this
19 exchange of letters is allowing me to plug. I did not catch
20 it, and I thank you for catching it.

21 MR. FRANCOLLA: Understood.

22 THE COURT: Has to be these eight lawsuits. Can't be
23 Regina. Can't be some other lawsuits. We've limited it to
24 this eight lawsuits. This is what this case is about.

25 MR. FRANCOLLA: Understood. Thank you.

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1 THE COURT: OK. Gee, is everybody ready to go?

2 MR. FRANCOLLA: Yes, your Honor.

3 THE COURT: All right. By the way, this is Sam. Sam
4 is my intern. She was planning to be here for the entire
5 trial, and she got sick. So she's here for the end. She'll
6 have no idea what you're talking about. She's the perfect
7 audience. If you can convince her, then you've done a great
8 job.

9 MR. FRANCOLLA: Hopefully, she's not the only one.

10 (Recess)

11 (Jury present)

12 THE COURT: Good morning, everybody. I am so sorry
13 that we have kept you.

14 There's been some really terrific lawyering. Aside
15 from the fact that they've been so cooperative, the lawyers,
16 throughout this case, which has been great, there's been some
17 really terrific lawyering behind the scenes that you don't get
18 to see but I get to see.

19 We spent some hours together on Friday afternoon, and
20 that generated some new questions which got suggested answers
21 over the weekend, and we had to resolve those issues before we
22 could bring you in this morning. So I apologize for the delay,
23 but we've done our legal work, and now we're ready to turn to
24 your work, which is making a decision on the issues of fact.
25 That is entirely your decision.

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1 Remember, nothing that I have said during the course
2 of this trial should be taken by you as an indication that I
3 have some opinion about the issues of fact. I am told that I
4 have a very expressive face. If I rolled my eyes or did
5 something like that, just forget about it. It has nothing to
6 do with how you should come out on the issues of fact, and your
7 decision on the issues of fact is to be based entirely on the
8 evidence, which I remind you is the testimony of the witnesses
9 that you have heard on the witness stand; in the case of the
10 parties, the portions of deposition testimony that were read
11 into the evidence. There are a few exhibits in this case, a
12 few pieces of paper. There's a chart, there's a -- but not
13 much. OK?

14 This is basically a testimony-heavy case, and that
15 makes your burden in evaluating the credibility of the
16 witnesses, their believability, whether they persuaded you by
17 what they said, and the manner in which they said it a very
18 important part of today's deliberations.

19 Now, before you can deliberate, you need to hear from
20 the lawyers, and they're going to talk to you about the
21 evidence that you've heard. Each side has about an hour to do
22 that.

23 All right. Now, summations are not themselves
24 evidence, but, frankly, from where I sit, they're the most
25 interesting part of the case because everything has come in

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1 piecemeal, and now the lawyers are going to take it, put it
2 together, and paint two very different pictures of what
3 happened. All right? And you're going to decide whether you
4 find one lawyer's -- one side or the other side's picture to be
5 more beautiful and more persuasive or whether you have your own
6 view of the evidence because you're not required to adopt
7 conclusions about evidence that are suggested to you by
8 lawyers. If you find that their suggestions don't comport with
9 what you think is believable and credible and persuasive, draw
10 your own conclusions about the evidence.

11 It is theoretically possible that a lawyer will object
12 during the course of a summation. Objections are permitted if
13 one side -- in fact, lawyers have an obligation to object if
14 they think that one side is violating the rules that are
15 imposed on lawyers in making summations. I will tell you right
16 now that "objection, that's not in evidence" will be overruled
17 immediately. What's in evidence is for you to recall, not for
18 me to recall right now. OK?

19 By the way, if during your deliberations you have any
20 doubt or questions about what the evidence showed and you can't
21 resolve those doubts and questions by talking among yourselves,
22 you know what you have to do. You have to send me out a note
23 and ask for a readback of the testimony because your notes, in
24 the end, are not the record in this case. The record in this
25 case is what our amazing court reporters have been taking down

1 throughout this trial.

2 All right. I told you on Friday that the burden of
3 proof rests with the plaintiff, Mr. Fraser, so we will first
4 hear the summation for the defendants, and we'll take a little
5 break, and then we'll hear the summation for the plaintiff.

6 All right. That's the way we're going to do it.

7 Mr. Francolla, are you ready?

8 MR. FRANCOLLA: I am. Yes, your Honor. Thank you.

9 THE COURT: In that case, take the microphone and go
10 right ahead.

11 MR. FRANCOLLA: Good morning, ladies and gentlemen.
12 It's been a long week. I'm going to do my best to try to cover
13 the various topics in play here, be as succinct as I can, speak
14 as slowly and clearly as I can, both for your benefit and Madam
15 Court Reporter, who I know I can create some issues for.

16 In order for the plaintiff to prevail on this lawsuit,
17 you must believe he was framed for a crime he did not commit.
18 While there are several specific claims he's making, all of
19 which I'll touch on in a bit, we submit that all of them
20 essentially rise and fall with whether or not you believe he
21 was framed.

22 Judge McMahon will instruct you, as she just
23 mentioned, that for plaintiff's claims, he carries the burden
24 of proof. To prevail, he must prove each claim by what's
25 called a preponderance of the evidence. In other words, and

1 you'll be instructed on this, but a shorthand is more likely
2 than not. That means, for example, if the evidence is even as
3 to a particular claim, plaintiff loses because he fails to
4 carry his burden. He has to get it above.

5 So turning back to the central question in this case,
6 whether or not plaintiff was framed. He wasn't. How do we
7 know that? He admitted to doing what he was arrested for. He
8 admitted to doing what he was convicted of. He admitted how he
9 ended up in this situation with UC 84 in the first place, and
10 it was not because of a chance encounter en route to Rite Aid
11 to get medication for his mother.

12 Now, there can be no dispute that if
13 plaintiff's statements to the parole board were true, he did
14 it. And if he did it, this lawsuit falls apart. In other
15 words, what he said to parole is a giant problem for plaintiff
16 and plaintiff's counsel. They all have to distance themselves
17 from what he said, and the first attempt to do so occurred
18 during plaintiff's deposition, which you heard was back in May
19 of 2021. When confronted with what he said to parole, his
20 sworn testimony was that I didn't say that. The court reporter
21 must have got it wrong.

22 Now, I submit, obviously, that's an absurd excuse, so
23 don't go with that. It morphs. We get to this trial, and we
24 see the second attempt to distance himself. When asked about
25 his statements here, now his sworn testimony was: Yes, I did

1 say that, but the reason I said that is not because it's true,
2 it was so I could get favorable treatment from parole.

3 Now, the fact that plaintiff gave two excuses for what
4 he said, both under oath, should be all the evidence you need
5 on this point. But we're going to test a new excuse by going
6 through the portions that were read in of what he said to
7 parole. And before I do so, I think it's important to remind
8 you of the timeline.

9 These hearings took place in June of 2017 and
10 September of 2017, respectively. Plaintiff's conviction was
11 not overturned until December of 2019, more than two years
12 later. So his statements to parole are the closest thing
13 you'll get to him telling the truth about what happened on the
14 date of this incident back in 2014.

15 Three other things to keep in mind before I go through
16 it: (1) Plaintiff had no appeal pending at the time; (2) he,
17 of course, had no lawsuit for money damages pending at the
18 time; and (3) while he wasn't under oath, he testified that he
19 believed he may have been as most recently as his deposition in
20 2021, and regardless, he was specifically told by parole
21 officials before he answered questions that his statements
22 could be used against him as part of future proceedings.

23 So let's test plaintiff's second excuse for what he
24 said to parole. According to him, he got advice for how to
25 handle these hearings from other inmates. These inmates told

1 plaintiff, you can't challenge the parole board on anything.
2 If they say you did something, just say you did that specific
3 something. Parrot their words. Make sure you show remorse for
4 the crime you committed.

5 Now, it's important to note the crime plaintiff was
6 convicted of having committed. It was robbery in the third
7 degree. He was neither arrested nor prosecuted for selling
8 drugs. As UC 84 told you, he didn't even engage plaintiff
9 initially. It was plaintiff who engaged him. UC 84 once
10 engaged was like, I'm good, man. I'm being helped. I don't
11 need anything from you. But it was plaintiff who was the
12 persistent one.

13 Now, the first hearing was June 6, 2017. I'm going to
14 read a brief portion, and what I want you to do is listen to
15 it. And pay close attention to the first person that brings up
16 anything about drugs, plaintiff or a parole official.

17 "Q. This is your first time in state prison. Instant offense
18 involved you approaching the victim who was an undercover
19 officer. You asked him for identification. You then proceeded
20 to call six other individuals over to where the undercover
21 officer was standing and stated, 'Give me your money and ID.'
22 At that point the undercover officer hands you his
23 identification and a sum of U.S. currency. What identification
24 did he give you?

25 And the answers, of course, are Mr. Fraser.

1 "A. A New York State driver's license.

2 "Q. Who are the six other individuals?

3 "A. Ma'am, this crime was committed alone. I was alone.

4 There were six others they claim was on the premises, but I did
5 this by myself.

6 "Q. And why?

7 "A. Well, as it says, this was a buy and bust. I was dealing
8 with drugs at the time, and that's how the whole incident
9 actually started. It started from a drug sale, which it was
10 supposed to be. At the time I was being selfish to my family
11 and myself, and it was a bad decision overall."

12 Again, we just covered it. The parole official simply
13 lists the allegations that supported the conviction, right?
14 It's plaintiff who volunteers his involvement in drugs as part
15 of the arrest. He's not asked, for example, You were dealing
16 drugs, right, and says yes. He's asked an open-ended question
17 and volunteers that fact even though it's not part of the
18 allegations that led to his conviction. And once plaintiff
19 volunteers his involvement, that's when the parole official for
20 the first time asks some questions about it. And I'm going to
21 continue in that same portion.

22 "Q. But it seems that you thought that this individual was an
23 undercover police officer. Were you trying to sell him drugs
24 or was he trying to buy drugs? Is that how it started?

25 "A. Yes, ma'am. He was trying to buy drugs.

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Summation - Mr. Francolla

1 "Q. Why not walk away at that point if you thought he was a
2 police officer? Why demand his money?

3 "A. It was identification that was demanded. I just wanted to
4 see that he wasn't a police officer. And at the time I was
5 selling drugs, making a bad decision, and I wanted the money at
6 that time.

7 "Q. All right. Were you also using drugs at that time, sir?

8 "A. No, ma'am.

9 "Q. What did you do after the undercover officer handed you
10 his identification and a sum of U.S. currency? Did you
11 complete the transaction?

12 "A. We didn't get to make the money transaction because his
13 whole unit came in. When I saw the rest of the narcotics
14 division was then there, I ran and was apprehended three blocks
15 away from where we originally spoke."

16 That portion, plaintiff corrected the parole official
17 as to things that were said. Plaintiff said it was him who
18 demanded the ID, not it was something that was offered. He
19 made clear he was not trying to walk away from anybody. He
20 made clear he wanted to see the ID to see if UC 84 was a police
21 officer or not, not so he can send a picture of it to his mom.
22 He said he wanted money out of the interaction, and he ran not
23 because he was afraid of getting beaten up, or whatever he says
24 in this case. He ran to avoid getting caught for what he knew
25 he had done.

1 Similar portion, this is from the other hearing,
2 September of 2017. Here, again, pay attention who volunteers
3 anything about drugs. Also pay attention to what plaintiff
4 says about where he was living at the time. And last thing,
5 keep in mind the dispute over who approaches who.

6 "Q. All right. So -- but what was going on? Why did you
7 approach this officer? Clearly, you figured he was an
8 undercover officer, right?

9 "A. Well, at the time, at that time in my life, I wasn't
10 staying with my parents, and I thought I was selling drugs.
11 That's what I thought, it would give me some money. I didn't
12 have any funds. This is actually in the middle of my project
13 where I used to reside. And, you know, this guy came in to
14 purchase drugs. That was his intentions, and I was there
15 selling drugs, and the transaction didn't go well at all."

16 Again, no question about drugs. Plaintiff volunteers
17 it. He's asked why he approached the officer and answers
18 proceeding to explain. As to where he was staying at the time,
19 he volunteers that it was not with his mom, which again in and
20 of itself doesn't mean anything except that now, as part of
21 this lawsuit, the whole way he got involved with UC 84 was
22 because he was going to get his mom medication after having
23 returned home to where they were both living at the time.

24 There's no reason, even if he was trying to get
25 favorable treatment from the parole board, to, I guess,

1 creatively lie that he wasn't staying with his mom. It had
2 absolutely nothing to do with what he was charged with.

3 And I think when he was asked about this on one
4 instance, he said he may have just mistakenly said that, but he
5 actually said that twice, that being that he was not staying
6 with his mom. This is back from the June hearing.

7 "Q. Upon release you planned to reside with your mother. Is
8 that still the case?

9 "A. Yes.

10 "Q. Were you residing with her when you committed the instant
11 offense?

12 "A. No, not at that time."

13 Again, even if you accept plaintiff's new excuse, why
14 say he's not living with his mom if he, in fact, was? There's
15 no reason to make that up. We submit that what he's making up
16 is what he's telling you about that.

17 Now, one of plaintiff's arguments, I expect, will be
18 he never would have done what was alleged because he had a good
19 job at the time, and we're not disputing that he had started
20 his job. It was a good job, you know. So normally, absent
21 some explanation otherwise, I concede that might be a pretty
22 strong argument, except here we happen to have an explanation
23 otherwise, and it's from the plaintiff's own mouth, as to why
24 he did what he did even with a new job.

25 Back to the June hearing:

1 "Q. The judge before sentencing says you threatened an
2 undercover officer by threatening to assault him. You stole
3 his identification. But since you've been in, again, this is
4 your first time in state prison, you've been working, employed
5 by Nicholas and Galloway Roofing?

6 "A. Yes, ma'am.

7 "Q. What are you doing there?

8 "A. It's actually a union job. I do roofing, architectural
9 sheet metal work. I was working there before I was
10 incarcerated, and I returned back to work there when I got to
11 this program.

12 "Q. That's a good job. Why were you out there involved in
13 selling drugs or in possession of drugs?

14 "A. I was being selfish at the time. Greedy, I should say. I
15 was just being selfish and greedy to myself and my family
16 because I was making decent money at that job. It wasn't worth
17 this."

18 So I submit that I expect some element of this
19 argument from plaintiff's counsel. I imagine you may see the
20 Instagram post, or whatever, of him, of Mr. Fraser and his
21 superior. When you hear those arguments and see that evidence,
22 just keep the two words from plaintiff as to how both things
23 can be true, selfish and greedy.

24 The last two portions I want to highlight to tie a bow
25 on all of this, and it they address plaintiff's realization

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Summation - Mr. Francolla

1 that what he did, what UC 84 explained he did, was, in fact, a
2 robbery. This is still in the June hearing, the first one of
3 the two.

4 "Q. I want to bring to your attention we have a stenographer
5 present on this end, and what's being said here today is being
6 put into a permanent record which can be used at any future
7 proceedings. Saying that, do you have any appeals pending at
8 this time?

9 "A. No, ma'am.

10 "Q. And were you offered a plea, if you recall?

11 "A. Yes, ma'am.

12 "Q. And what was that?

13 "A. Two and a half years.

14 "Q. And were you involved in this crime?

15 "A. Yes, ma'am.

16 "Q. Why didn't you take the plea?

17 "A. At the time I didn't feel as if I was guilty for the crime
18 because I didn't understand what robbery was at the time."

19 Now, that statement's a bit ambiguous, but he
20 clarifies it shortly later, and this will be the last portion
21 I'm reading in to you. Same transcript.

22 "Q. I thought I heard you say in the interview that you didn't
23 know it was a crime?

24 "A. No, what I said was I didn't know what robbery consisted
25 of. I read robbery consists of forcibly taking someone's

1 property. It was explained to me robbery forcibly taking
2 someone's property -- can simply be raising your voice or just
3 being aggressive, asking someone to turn over his property,
4 which then I began to understand the way the situation took
5 place would be what is considered a robbery.

6 "Q. You threatened him. You seem to appear so naive as to
7 what you are doing. I would think it's not the first time you
8 ever told somebody that you told that officer -- what you said
9 to that officer.

10 "A. Sir, what are you referring to?

11 "Q. When you told him, give me your ID or I'll fuck you up,
12 when you said that, that's what the record says.

13 "A. All right. We actually spoke normally than that. That's
14 not exactly what was stated, but I spoke aggressively to a lot
15 of individuals. Like you said, we were in a public area. I
16 was trying to get in and get out, and that didn't work out
17 well."

18 Again, here, ladies and gentlemen, he's essentially
19 admitting he raised his voice; he was aggressive. And it was
20 that action that resulted in him getting UC 84's ID, not the
21 other way around. In sum, those aren't statements from
22 plaintiff saying what parole wanted to hear. It's plaintiff
23 admitting in large part what actually happened on the date in
24 question.

25 And staying on witness credibility, you heard during

1 this trial that you can judge it both by the answer itself and
2 the manner in which the witness provides it. Considering that,
3 I just want you to think about how plaintiff responded to these
4 questions when I asked him about what he said, whether it was
5 true. There's a lot of back and forth. We submit he was quite
6 evasive. He asked me to reread several portions of his own
7 statements before he could tell you whether what he said in
8 them is true.

9 The most he would say about damaging admissions was
10 that those admissions were partially true. I asked, of course,
11 well, if it's partially true, then by definition it's partially
12 false. And he wouldn't concede that, even though, as I
13 understand it, that's the argument. He just kept repeating the
14 statements "partially true" over and over. If this was all
15 supposed to be a lie to get special treatment, just say that
16 and move on.

17 Plaintiff's version of what happens changes once the
18 financial incentive of this lawsuit comes into play. I'll give
19 you another example. His claim for emotional damages. He
20 gives testimony in a proceeding on October 10, 2019. As a
21 reminder timeline-wise, that's a few months before his
22 conviction gets vacated. So, obviously, it's before this
23 lawsuit's filed. He's asked an open-ended question: What
24 emotional issues did you face from being arrested and
25 incarcerated? His answer pre-lawsuit was one word: Stress.

1 Post-lawsuit, he's asked during this trial about the same
2 topic, and his answer goes from one word to at least one hour
3 of testimony.

4 Now, I'm not saying this to comment on the issue of
5 damages. We submit you shouldn't even get there because the
6 plaintiff has failed to prove his claims, but I mention it
7 because it's further evidence of a tale being spun to convince
8 you to award him money for a crime he actually committed.

9 I want to turn now to plaintiff's allegations in this
10 trial as to what happened, what he's actually claiming
11 factually. As my cocounsel, Ms. McGuire, told you in her
12 opening statement, plaintiff's story is, in fact, ludicrous.
13 There is a reason for that. He knows he took a picture of
14 UC 84's ID. He knows his phone was confiscated as part of his
15 arrest. So he has to come up with a story that explains how he
16 ended up with a picture of an undercover police officer's ID in
17 his phone. And when you're forced to do that, come up with an
18 explanation after the fact, the margins of the story don't
19 always make sense.

20 According to plaintiff's version, his mother comes
21 home from work at 4:30 p.m. She's suffering from a migraine.
22 He gets home at 6:00. She asks him immediately to go to Rite
23 Aid to get her medication for the migraine, and it is en route
24 to Rite Aid that plaintiff encounters UC 84. According to
25 plaintiff, he's not doing anything else outside of his mom's

1 apartment prior to that encounter.

2 There is no dispute that the encounter between him and
3 UC 84 occurs at 8:00 or 8:15 p.m. All plaintiff said he did in
4 between those times, 6:00 and 8:00, 8:15, was take a shower for
5 two hours while his mom's in pain, waiting for him to get her
6 medication. Doesn't make sense.

7 Never mind that plaintiff tells parole he wasn't even
8 living with his mom then. Think about it. If plaintiff wanted
9 leniency from parole, what's more sympathetic than saying, you
10 know, what happened I regret, but I was trying to get
11 medication for my mom who was sick at the time? But he never
12 even mentions it. We went through how he got involved. It's
13 not said.

14 Let's jump to what happened outside. There's no
15 dispute that UC 84 first encounters Diane Smith before he ever
16 interacts with plaintiff. He asks her if she knows where to
17 find drugs. She says she does and agrees to go find some. He
18 gives her \$50. She asks people around if they have drugs,
19 including plaintiff, because according to her "he usually had
20 stuff on him." And by "stuff" she meant crack cocaine.

21 Plaintiff claims he told Diane Smith to get the fuck
22 out of here. Yet according to Diane Smith's sworn testimony
23 from her deposition that was read in when she testified, what
24 plaintiff actually told her was to get UC 84 the fuck out of
25 here.

1 Going back to the dispute over who approached whom
2 between plaintiff and UC 84, according to Ms. Smith, as she
3 left, she saw plaintiff talking to UC 84, but that plaintiff
4 was "far away from him saying, get the fuck out of here, get
5 the fuck out of here." All she heard UC 84 say in response is
6 "I'm not a cop." The interaction wasn't plaintiff and UC 84
7 doing that little walk that plaintiff demonstrated. They
8 weren't right in front of each other at that moment. They
9 weren't talking at normal levels. It was plaintiff shouting at
10 UC 84 from far away that Ms. Smith could hear as she's walking
11 away. She then leaves before plaintiff and UC 84 end up
12 getting closer together as UC 84 described.

13 Now, just as to Ms. Smith, two brief points. You
14 know, she clearly didn't want to be here, which is totally
15 understandable. She lives in the neighborhood. She knows
16 plaintiff. Presumably, she doesn't want to say things that
17 hurt his case. But she was under subpoena, so she had to come.
18 And while she had to be confronted with some things she said in
19 her deposition as to how UC 84 and plaintiff became involved,
20 she did ultimately confirm it was true.

21 And just one note on the deposition itself, and this
22 might just be sort of a little inside baseball in my own head,
23 but plaintiff's counsel asked questions about how Ms. Smith
24 went to myself and Ms. McGuire's office to somehow insinuate
25 that like whatever she said there was a by-product of that.

1 OK. Except you heard on my questioning that it was a virtual
2 deposition that occurred in the middle of the pandemic, and she
3 didn't have a computer, so she went to our office to use one.
4 A deposition, by the way, that Mr. Fraser's lawyers
5 participated in.

6 And last point, just generally as to Ms. Smith, you
7 know, when plaintiff's counsel talks about how Mr. Fraser
8 was -- you know, turned over a new leaf after this incident,
9 new job, whole deal as I mentioned earlier and, I imagine,
10 glosses over his time selling drugs, remember Ms. Smith because
11 she's not just a witness in this case. There's no dispute she
12 was one of plaintiff's customers. He literally sold her crack
13 cocaine, poison, for money. Someone clearly in the throngs of
14 addiction. And he sold to her frequently enough that, as of
15 the date of this incident, her belief was that he still usually
16 had crack on him.

17 Back to plaintiff's version. As a practical matter,
18 it would make no sense for UC 84 to begin a transaction with
19 Diane Smith, then before that's even finished, go badger
20 plaintiff about a whole new transaction. Remember, everything
21 between plaintiff and UC 84 starts, Ms. Smith is still looking
22 for crack. She ends up leaving once things go down.

23 Let's focus on that interaction between plaintiff and
24 UC 84 from plaintiff's perspective and what he told you. He
25 immediately suspects UC 84 is an undercover cop. He says UC 84

1 begins badgering him and asking plaintiff for drugs, even
2 though in plaintiff's version he's just a normal guy who's
3 simply walking on a straight line to Rite Aid.

4 What happens next, we submit, is the least believable
5 part of plaintiff's entire version, which is saying something.
6 He says after going back and forth with UC 84 for some time,
7 UC 84 calls plaintiff by his name, also identifies the floor of
8 the building plaintiff lives on, and most absurd, he correctly
9 calls out the name of plaintiff's mother. There's absolutely
10 no evidentiary or logical basis for how UC 84 could have known
11 any of those things, let alone all of them. When asked how,
12 plaintiff simply said that UC 84 was a police officer. But
13 he's not assigned to the census. He doesn't have this
14 information. You've heard how much discovery occurs in a case
15 like this. Don't you think if there was an explanation for how
16 UC 84 would have known any of this, they would have found it.

17 Again, no dispute the operation was a buy and bust.
18 It wasn't some long-term investigation where plaintiff was the
19 target. UC 84 was just randomly going up to people trying to
20 buy drugs. How was it remotely possible that in doing that he
21 would upon chance encounter someone he knows all this
22 information about? It's not.

23 Again, why a lie so absurd? Because the explanation
24 for taking the picture is that, again, admittedly bizarre
25 thing, is that he did it because this stranger said he knew his

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1 mom, so he was concerned about that and wanted to ferret it
2 out. Obviously, without knowing his mom's name, that
3 explanation falls apart.

4 As to plaintiff taking the picture of UC 84's ID, why
5 not just text his mom the ID? In fact, why the urgency at all
6 to bring it up with her at that very moment? Remember, she's
7 now four hours, according to him, without any pain, in need of
8 pain relief. Couldn't he have just walked to the Rite Aid, got
9 what he needed, and then went back and been like, mom, some
10 random guy stopped me and said he knew you? Do you know him?
11 This is what he looked like, especially considering the guy in
12 question is someone you expected to be an undercover cop who
13 tried to buy drugs off him.

14 (Continued on next page)

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1 MR. FRANCOLLA: As to the picture of the ID, if we
2 credit the benign explanation from plaintiff, let me ask you
3 this. Why wouldn't he in that scenario say something to UC 84
4 before he took the picture? Why not just be like, look, you
5 are saying you know my mom, man, let me take a picture of the
6 ID and send it to her. Is that cool? He says yes or no and
7 perhaps he gets his answer. But he just does it.

8 Think about it from an every day life perspective.
9 When would this ever happen during an encounter between two
10 strangers on the street?

11 It is unbelievably bizarre. That is, of course,
12 plaintiff, have other motivations, like trying to blow UC 84's
13 cover.

14 Back to plaintiff's version. Once he takes a picture
15 of the ID and realizes his suspicion that UC 84 is in fact a
16 cop, if we are crediting his benign explanation for all this,
17 why not be like, whoa, whoa, sorry, man, here's my phone,
18 delete the pic. my bad. You know, just do that. No harm no
19 foul. Because, according to their theory, that's the moment
20 that the frame comes into play. It is all to try to get back
21 the phone.

22 Instead, what does plaintiff do? He takes off
23 running. If everything he did was so innocent and explainable
24 as he trying to convince you, why run? Now, you've given a
25 self-serving excuse that plaintiff has seen other people beat

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Summation - Mr. Francolla

1 up. He has experiences. And yet he gets caught and nothing
2 happens to him. He just gets handcuffed.

3 Here is an important point to analyze the frame
4 allegation itself. That's what plaintiff is saying. He says
5 he was given the ID, that once he took the picture of it, UC 84
6 grabbed him, forcing him to drop it, that he never took any
7 money. He says to the extent the defendants say otherwise,
8 they're lying.

9 From the moment plaintiff dropped the ID, according to
10 his version, UC 84 always had control of it.

11 The other allegation is that Detective Regina lied
12 when he said he found the ID on plaintiff.

13 The most interesting part about this frame allegation
14 is the prerecorded buy money. Think about it. We admit and
15 have admitted since that night that plaintiff did not have it
16 on him. It was documented in the expense reports, one of the
17 exhibits, PX 8.

18 According to plaintiff, again, this wasn't some random
19 piece of evidence. It was stuff that UC 84 had in his pocket,
20 according to plaintiff. So if this were a frame, why not just
21 say both were found on plaintiff after he was stopped. Why lie
22 about, according to plaintiff, about both items being taken,
23 but then be truthful that one of the items was not found on
24 him.

25 It's completely illogical. All you are doing is

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Summation - Mr. Francolla

1 making it harder to get away with your frame. Because a
2 seasoned defense lawyer can say what happened to that 20? You
3 said he took it. He didn't have it on him.

4 More broadly, think about the allegation as a whole as
5 it pertains to Detectives Regina and Del Toro. Both admit and
6 have admitted they couldn't see plaintiff put the ID in his
7 pocket based on where they were standing, people in the way.
8 Detective Del Toro says he never saw Detective Regina perform
9 the actual search when the ID is recovered. From the start.

10 How does that make sense if they are all in on it? If
11 you are framing plaintiff, it is really easy to be like, yeah,
12 totally saw it. Totally saw the recovery, took it out of his
13 pocket. Why voluntarily provide more openings to the person
14 you are framing so they can ultimately beat the charge.

15 These openings exist because that's how it happened.
16 Detective Del Toro and Regina couldn't see certain things, so
17 they didn't testify to them. The money wasn't found on
18 plaintiff, so nobody said otherwise. Even though if they were
19 actually inclined to frame plaintiff, those are obvious fixes.

20 Even more broadly than that, the three defendants are
21 in on the frame but nobody else on their team is? You heard
22 lots of testimony how the whole team works together, how they
23 are all friends, they talk after their shift. Putting aside
24 the legitimate explanations for all of that, which exist, just
25 taking plaintiff's narrative, why is he so sure Lieutenant

1 Patane and Detective Lee aren't part of this. Lieutenant
2 Patane was the one monitoring the kel. He signed off on the
3 paperwork. Detective Lee drafted some of the paperwork. These
4 questions all exist because plaintiff was not framed.

5 I want to briefly talk about what happened from the
6 defendants' perspective.

7 We've covered the initial interaction between 84 and
8 Ms. Smith. Detectives Regina and Del Toro are both like
9 50 feet away, keeping an eye on things, monitoring the radio.
10 Plaintiff sees UC 84 and Diane Smith interacting. He is
11 suspicion of UC 84. He's with people. As to this, plaintiff
12 himself admitted, there were four to six of his associates was
13 the word in the courtyard as well as another friend named Eddie
14 Sanchez. Ms. Smith also said when she first saw plaintiff he
15 was with a group of people.

16 So plaintiff sees UC 84 and starts messing with him.
17 Starts getting aggressive. As plaintiff admitted to parole, he
18 was talking aggressively to a lot of people in connection with
19 the incident. As an aside here, plaintiff also admitted he
20 made bad decisions that day. Whatever he was planning on doing
21 didn't work out well.

22 And for trying to understand the rationale, remember
23 how plaintiff explained what got him into selling drugs in the
24 first place. He said he got into it, in sum and substance, and
25 ultimately, as the judge said, your recollection, especially at

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1 this point is probably a thousand times better than mine. But
2 he said he got into selling drugs, he indulged in selling
3 drugs, because he was running with the wrong people, trying to
4 impress, then trying to be cool, essentially trying to be
5 tough. From that perspective, what bigger way to be cool and
6 tough in this context than robbing and blowing up an
7 undercover.

8 So he demands the ID. He also wants the money. UC 84
9 shows him the ID. When he shows, he's got a \$20 bill behind
10 it. Plaintiff snatches both out of his hand takes, a picture
11 of the ID. Clearly doing so with the intention of blowing him
12 up. UC 84 was like, give me that back. Plaintiff says no.
13 Puts both in his pocket of the sweatpants. Up to this point,
14 UC --

15 THE COURT: Slow down, Mr. Francolla.

16 MR. FRANCOLLA: I'm sorry. My apologies.

17 He is trying to deescalate the situation, right.
18 Because you got to think about it. The distress signal is a
19 big deal. Not just because it shows he is in distress, but
20 because him doing it is 100 percent confirmation to whoever he
21 is dealing with that he is actually a cop. If he is able to
22 talk his way out of this, then people might think he is a cop,
23 he told you, people always think that, he has to talk his way
24 out. But once he puts up the distress signal, the team is in
25 within seconds. He's burned. They know he is the cop because

1 other cops are coming to arrest him. So, he is only going to
2 use that sparingly.

3 Detective Regina explained his perspective. Things
4 were getting tense, yeah, but, like, I don't want to burn him.
5 I want to let him talk his way out of it. So they both, him
6 and Del Toro are made aware of the distress signal, they run
7 in. Plaintiff and UC 84 are struggling, pushing and pulling.
8 Plaintiff breaks away, takes off as the two other defendants
9 get there.

10 As you can see plaintiff, compared to the two
11 defendants it is a pretty clear speed discrepancy, I would
12 submit, with all due respect.

13 Ultimately the van with Lieutenant Patane and
14 Detective Lee get around, they are able to stop. He's
15 handcuffed, patted down his pockets are searched, Detective
16 Regina finds the ID. Separately, 84, who is not on the scene
17 but watching from afar, confirms, he fills in what happened
18 leading up to that.

19 Members of the team try to retrace steps to see if
20 they can find the money. They can't. What happens to the
21 prerecorded buy money? Nobody knows. Maybe it fell out of
22 plaintiff's sweatpants, maybe it fell out when he was running,
23 maybe he tried to discard it. It was just a \$20 bill we are
24 talking about. Once it's gone, on the ground, etc., you know.

25 As to Ms. Smith and other people in the vicinity of

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1 plaintiff, they are not spoken to by police because they all
2 run. Plaintiff admitted he knew them.

3 On witnesses who don't testify, you'll be instructed
4 not to take any inference from that. Other members of the team
5 we heard are retired and are out on medical leave. If they did
6 testify, I imagine they're just going to be like they're lying
7 too. To the extent plaintiff knew people in the courtyard, for
8 whatever reason, who knows.

9 So, after plaintiff's arrest, we know additional
10 arrests are made but not whether UC 84 was involved. He wasn't
11 asked that. Luckily he wasn't hurt.

12 In terms of the four hour delay in paperwork, several
13 people got arrested that night, you saw that. They had do
14 paperwork for all of them.

15 Plaintiff's charged with robbery in the third degree
16 by the charging document from Detective Regina. The DA
17 subsequently decides to up that charge to robbery in the second
18 degree. Plaintiff's indicted by a grand jury. Goes to trial,
19 he gets convicted of robbery in the third, while being
20 acquitted of robbery in the second. Which kind of makes sense,
21 if you are trying to Monday morning quarterback it. If there
22 are people in the vicinity but was it beyond a reasonable doubt
23 they were literally involved as opposed to just kind of hanging
24 out and saying whatever they said.

25 So now, this is all really to the evidence fabrication

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Summation - Mr. Francolla

1 claim. I want to transition to the *Brady* violation claim.

2 Now, as you know, this just against UC 84 and
3 Detective Del Toro, because there is no dispute -- and Judge
4 McMahon will tell you -- the parties stipulate that the
5 Manhattan District Attorney's Office committed a *Brady*
6 violation with respect to lawsuits involving Detective Regina.
7 That has absolutely no bearing on this case. That aspect of
8 it. It is completely unrelated to what you have to decide.

9 And because there was a *Brady* violation in connection
10 with the DA's Office, the conviction gets vacated. That's
11 what's supposed to happen. Even if the person actually did it.
12 That's what's supposed to happen. That's one thing. But to
13 come in federal court and ask for money when we submit you're
14 guilty, that's an entirely other one.

15 So, let's talk about the eight lawsuits. Four against
16 UC 84 who had about 11 years on the job at the time of
17 plaintiff's trial. And four were against Detective Del Toro,
18 who had about 13.

19 For this claim I want to primarily focus on the prong
20 of evidence material to the prosecution. You'll be instructed
21 by Judge McMahon, and again, obviously, that's her province.
22 I'm just previewing what I know. But if I make a mistake in
23 that regard, I do of course defer to her. I'm not trying to.

24 She'll tell you that for these lawsuits to be deemed
25 material to the prosecution, you must find that had they been

1 disclosed to plaintiff's defense attorney, and used by the
2 defense during trial, it would have put the whole case in so
3 different a light as to undermine confidence in the verdict by
4 the jury. Would the guilty verdict have changed. It would not
5 have.

6 If we assume the lawsuits had been provided to
7 Mr. Stewart, the questions would be as follows: one, would he
8 have wanted to use them. Two, would he have been allowed to
9 use them. If he were allowed to use them, would the jury
10 believe the denial of the allegations.

11 I'm going to go through each of these and show the
12 lawsuits in question to give you a framework. But I want to
13 highlight a very telling exchange that occurred at the end of
14 Mr. Stewart's examination. It was when Judge McMahon actually
15 asked him a few clarifying questions toward the end.
16 Specifically she asked whether he knew anything about the
17 lawsuits in question regarding this claim. His answer was no,
18 I don't. She responded, so, it's hard to say what you would
19 have done with them. And he said, yes, that's correct.

20 I submit this was quite enlightening as to whether the
21 evidence would have changed the result of this trial. Let me
22 explain. Mr. Stewart was a very good witness. He seemed like
23 a very nice man. Certainly a very accomplished and seasoned
24 trial attorney. Someone who clearly knows what he is doing in
25 the criminal defense world.

1 If the eight lawsuits in question were such great
2 evidence, why didn't plaintiff's counsel ask Mr. Stewart, hey,
3 if you knew about these specific lawsuits and the allegations
4 therein, would you have used them? And then assuming he said
5 yes, how would you have used them so you can have an
6 understanding of it. If he were able to convincingly answer
7 those questions, I submit that would have been compelling
8 evidence. That he wasn't even asked kind of tells you what the
9 answer would have been. It's their case. Their witness.
10 Again, plaintiff has the burden of proving this claim. They
11 didn't ask him to do that, we submit, because they didn't want
12 you to know what he'd say.

13 As we look through the specific complaints, you'll see
14 why an attorney like Mr. Stewart wouldn't have bothered asking
15 the questions that are alleged about the allegations in these
16 lawsuits. He testified that not all lawsuits are created equal
17 as far as impeachment goes. Specifically stating in many civil
18 rights cases, there a number of police officers named as
19 defendants, and it's hard to figure out from the complaints
20 whether any particular officer may have committed certain acts,
21 bad acts, other types of things.

22 So unless there was explicit allegations against the
23 officer in question, he might look into it further to try and
24 see if you can cure that, and find out who did what before he
25 tried to use anything.

1 And you've heard different examples where someone is
2 arrested during a buy and bust. I submit that some of these
3 complaints we'll go through reflect just that. And that a lot
4 of those cases, they get the tac plan, which you've seen, and
5 they name everybody and try to figure it out from there. Let
6 me walk over and show you PX 1 that's in evidence. The tac
7 plan.

8 No dispute this document pertains to what happened
9 that night. Point out three names you literally haven't heard
10 out. A Detective Miller, a Detective Allison.

11 THE COURT: Are you showing something?

12 MR. FRANCOLLA: I'm sorry.

13 THE COURT: I'm not seeing anything.

14 MR. FRANCOLLA: I think -- can I -- oh. Sorry.

15 THE COURT: I see a nice sign that says no video.

16 Okay.

17 MR. FRANCOLLA: Thank you so much. My apologies, all.

18 Going back to my last point. There is three names of
19 people you haven't heard about. A Detective Miller, Detective
20 Allison, and a Detective Lahens.

21 Point being, ladies and gentlemen, here we know who
22 was involved in what because of the trial and this lawsuit
23 happened after the trial. But imagine a world where this is a
24 pretrial discovery lawsuit, they would likely be named, and it
25 wasn't worth it for anybody to bring these people up.

1 So now, the first question I mentioned, would
2 Mr. Stewart have used these lawsuits, we submit the answer is
3 no. At the outset, Mr. Stewart testified that in preparing his
4 defense strategy, he didn't view this case as one of police
5 corruption and planting evidence based upon what he knew. He
6 also mentioned that, you know, all lawsuits aren't created
7 equal. He is not going to go through a number, if that's what
8 he's given. He is going to look at the specifics. Again, very
9 accomplished guy.

10 First as to Detective Del Toro. Now there is an
11 important sort of qualifier with him. He doesn't actually say
12 anything that the plaintiff disputes. Think about it. He
13 couldn't see if --

14 THE COURT: Who is the "he" we're talking about?

15 MR. FRANCOLLA: Detective Del Toro.

16 THE COURT: Thank you.

17 MR. FRANCOLLA: He couldn't see if plaintiff pocketed
18 anything, which he's always said. He didn't see if anything
19 was recovered from plaintiff himself. He is actually the
20 witness who keeps sight of plaintiff during the chase. And he
21 testified that, while he couldn't be certain, he didn't
22 affirmatively see plaintiff discard anything, which is actually
23 arguably helpful to plaintiff.

24 I submit even if there was impeachment for him, why
25 use any when you're not arguing that he's lying about anything.

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Summation - Mr. Francolla

1 All he does relevant to this case is make a photocopy of the ID
2 as arrest evidence, because of what he was told happened
3 regarding evidence he couldn't or didn't see.

4 The parties agree that all of these lawsuits generally
5 involve allegations that theoretically could be used to
6 cross-examine officers. However, when you look at the
7 specifics, it clearly wouldn't have been used by Mr. Stewart,
8 even if he changed his mind as to his theory.

9 Now, I am going to just kind of like -- the lawsuits
10 are like 10 pages, obviously, I am not going through that. A
11 lot of it is legal boilerplate stuff. I submit what's
12 important is the statement of facts, which again, aren't facts,
13 they are allegations. But that's where the specifics are sort
14 of laid out.

15 So I am going to start with Detective Del Toro's four
16 lawsuits. The first one is *Loglisci*. I highlighted a few
17 portions you can see here. I am going to jump around just for
18 time purposes, so you may not have the opportunity to read
19 anything. I am not hiding it. You should look at these
20 yourselves in deliberations, but just want to make my points.

21 First page is who's named. 20 people. Let's go to
22 page five, that's the statement of facts I told you. It starts
23 there. I am going to turn to the next page of it. And here,
24 what I was talking about, references a buy and bust operation
25 that alleges of those 20 people, one of the defendant officers

1 came up from behind the plaintiff and handcuffed him. Several
2 other defendant officers were also present and participated in
3 the arrest. Out of 20. If you go through, Detective Del Toro,
4 other than being named and working for the City, is literally
5 not mentioned.

6 There was also some testimony about follow ups and
7 things like that. The way you do that for each of these, you
8 go to the last page. The attorney's information and phone
9 number and e-mail are all there. So if you are so interested,
10 you can call.

11 And the fact section is really all you are concerned
12 with, not hundreds of pages of documents that you have to comb
13 through.

14 Let's go to the next one. That's *Nuñez*. Here again,
15 including unidentified officers, we have 15 defendants. Right.
16 Page three. Statement of facts. If you read the allegations,
17 this one clearly pertains to a search warrant. Now, as you can
18 see here, nobody of these 15 are specifically identified as
19 doing anything.

20 Next page. Same thing. As a shorthand, you can see
21 where the names are because they tend to be capitalized. If
22 you go through, there is not allegations that anybody lied in
23 here, let alone that Detective Del Toro did. Okay.

24 Let's go to the next one, the A.T. lawsuit. Here
25 again we have nine people that are named. Go to the statement

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Summation - Mr. Francolla

1 of facts. This is, again, if you look at the context, clearly
2 a search warrant which has a tac plan kind of like you saw.
3 Again, there are allegations here, sure. Not about lying or
4 fabricating anything, specifically as to Del Toro or anyone,
5 candidly.

6 And the last one I'll go to is the *Murray* case. Now
7 here, there is a vague allegation against Del Toro that he was
8 somehow involved in the filing of a false complaint. This is
9 the incident he actually remembered. He told you what happened
10 and would be able to tell a jury what happened if confronted on
11 it. He's not present for the arrest. His sergeant's in a
12 diner, gets into a fight, he gets there, the plaintiff's
13 already in handcuffs, and because his supervisor tells him to
14 take it, he takes the arrest as per procedure. That's it.

15 Now, UC 84 is obviously more central. And I want to
16 note one thing with him before I show you his lawsuits.
17 Mr. Stewart mentioned how he had two for UC 84, other than the
18 four I'm about to go through. But there is no evidence in the
19 record about what these lawsuits allege, whether UC 84 was even
20 served, and whether they contain evidence favorable to the
21 accused. For any relevant analysis to the *Brady* claim, it is
22 not six lawsuits. It is just the four we are talking about.

23 Here again, the first one we'll talk about is *Best*.
24 Now, the facts are on page two. Okay. Here, there are sort of
25 general allegations about the arrest, which, again, UC 84 would

1 not have been involved in physically. Turn to the next page.
2 The only allegation about anybody lying or falsely charging
3 anybody is specifically somebody else, not UC 84. And you'll
4 note there is no specific allegation made against him in this
5 case.

6 Let's move on to the *Parris* case. Here, again, we'll
7 go to straight to page three, the facts section, which is
8 pretty short, shows what I'm talking about. Very general
9 allegations about an arrest, and to the extent there is an
10 allegation of false statement, it's for another defendant,
11 other than UC 84. Again, just allegations saying another
12 officer falsified evidence.

13 Let's go to the *Pieralisi* complaint. Here, there are
14 19 officers named. Okay. So let's go to the facts. I
15 couldn't highlight on this one because of the way it was saved.
16 Just to go through, there is the paragraph factually about who
17 falsified what. Here another specific defendant, who is not UC
18 84.

19 Now, last one I am going to go through is the *Wright*
20 complaint. This one arguably has more specifics in terms of
21 84's involvement. But, it's notable for other reasons. If you
22 kind of go through here, and I'll sort of -- let's see. This
23 complaint actually concedes that another person who was
24 arrested along with the plaintiff did in fact retrieve crack
25 cocaine for the defendant officer, okay. Which if you are

1 going into these claims, obviously, the officer can respond to
2 them. Right. And again, there is also just no allegation of
3 any fabrication in this complaint.

4 So ladies and gentlemen, I encourage you to go through
5 them and think about it from that perspective.

6 The second question is would Mr. Stewart have been
7 allowed to use them. Now, ADA Sangermano explained when he
8 produced whatever he produced, that if Mr. Stewart wanted to
9 use anything, he would want to have the court decide whether he
10 would be allowed to. "He" being ADA Sangermano. So on this
11 point, I think it's worth considering the frequency that this
12 question occurs because you have some evidence.

13 Now, ADA Sangermano was involved in approximately 40
14 trials he said. He has no recollection of it ever being used
15 in one of his cases or being allowed.

16 Mr. Stewart says it's more frequent, but he is asked
17 by plaintiff's counsel how many trials he's done. He said
18 close to 100. How many times has that testimony, has he used
19 it? His answer was two. Two times. So that's two out of 140.

20 Now, Mr. Stewart's take on it was that it's more
21 permissible than ADA Sangermano said. But, even if that's
22 correct -- it very well may be -- it clearly shows how little
23 impact these sorts of allegations have.

24 So the last point is, if Mr. Stewart wanted to use
25 them and were allowed to, would the jury believe the denials.

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Summation - Mr. Francolla

1 I can't even come up with what the questions would be. But
2 going off sort of what we looked at and focusing on planting
3 evidence, there is nothing specific.

4 By example, for Detective Del Toro, in that *Murray*
5 case. You were part of an arrest of Donnell Murray that he
6 said was false? No, I wasn't. I was present. I was assigned
7 after the fact.

8 Mr. Stewart wouldn't confront him with that.

9 For *Logilisci*, are you one of the few officers sued
10 out of many who may have lied in connection with that arrest?
11 No.

12 He is not going to ask that question.

13 For UC 84 using the *Wright* case. UC 84, in a case
14 where you successfully bought drugs from one guy, did you lie
15 about another who was arrested by different officers other than
16 you? No.

17 For the *Parris* case, were you involved at all in
18 another officer filing a false complaint against someone? No.

19 I get why there is a focus on this. But it's much
20 easier to talk about this stuff generally than explain how
21 practically it would make a difference.

22 Mr. Stewart totally should have known about these,
23 1,000 percent. Because if he had, and done nothing with them
24 as we submit would have been the case, there would be no claim.

25 Just very briefly as to the knowledge component. This

1 is the suppressed by the state. Here the question is did the
2 individual officers know about their lawsuit in more detail
3 than they explained and deliberately withhold that information,
4 or be willfully blind to their existence.

5 Having gone through them in detail, I ask you, what do
6 they have to gain by hiding those complaints, assuming they
7 recalled and knew them? Nothing. Perfect world, they know,
8 they have docket numbers and names and all that and remember
9 the details so when they're sued, nothing falls through the
10 cracks. Combine that with the fact that the DA had their own
11 system for looking this stuff up, independent of the officers.
12 And had the DA system not failed, again, we wouldn't be here.

13 None of that absolves the officers for not having this
14 information handy. Much simpler if they did. Trust me. But
15 even just to show the context, one of the cases that wasn't
16 turned over by the DA was the *Wright* case where UC 84 actually
17 testified in a prosecution handled by the same office.

18 So in sum, plaintiff needs to prove on this claim that
19 both 84 and Del Toro knew about the lawsuits, and deliberately
20 withheld them or were willfully blind. That if turned over,
21 Mr. Stewart would have even wanted to use them. If he did, a
22 judge would have let him after considering each case in
23 relation to Mr. Fraser's trial. And then assuming all that
24 occurred, a jury would hear the questions and not believe the
25 denials. Plaintiff hasn't proved any of those, let alone all.

1 Last note, to the extent there is notes about a
2 deadlock, there is no evidence about what the jury in
3 Mr. Fraser's case had issues with, had questions about. They
4 very well, for all we know, they could have deadlocked on the
5 robbery 2 charge for which plaintiff was ultimately acquitted.
6 If you look at the notes, they ask specific questions about
7 potential direct involvement of the other people that were
8 standing around.

9 Now, I don't have a lot of time, I am going to try to
10 hit this as fast as I can. The last claim is sort of a
11 derivative. It's if there was a constitutional violation
12 regarding *Brady* and the lawsuits, was it caused substantially
13 by the City's failure to train or the City's unconstitutional
14 policy.

15 Now, this is a bit more complicated, as you'll see the
16 charge language, there is a lot to it. If there is no
17 constitutional violation in connection with these lawsuits not
18 having been disclosed, again, as I mentioned, think about it in
19 the would it have made the difference context we just went
20 through. If there is no constitutional violation, then you do
21 not have to decide this claim. There needs to be a
22 constitutional violation, and then you analyze the City's
23 policy, training, etc., whether it caused it.

24 Now, the first claim very basically deals with an
25 unconstitutional policy, because in the academy, up until I

1 think 2019, the definition of *Brady* was accurate but
2 incomplete. It did not have a component about impeaching
3 evidence. But when you are looking at this, remember that as
4 of the time this incident happened, both UC 84 and Detective
5 Del Toro had been on the job for 14 and approximately 12 years
6 respectively, since when they were actually at the academy. As
7 everyone explained, you get on-the-job training that increases
8 the very basic training you get at the academy.

9 Turning to the second and last theory. And that's
10 that the City was deliberately indifferent to the need to give
11 adequate training on this topic.

12 What's important here just basically is the standard.
13 Deliberate indifference, which means more than simply or even
14 heightened negligence. Plaintiff must establish that a failure
15 to train on this topic created a high risk that officers would
16 deprive citizens of their constitutional rights and consciously
17 disregarded it.

18 A lot to go through. It's complicated. It is why I
19 made clear at the outset it is only relevant if you find an
20 underlying violation.

21 Turning very briefly to the training. Detective
22 Flaherty walked you through what it was. In 2013 they
23 started -- the NYPD -- to train members about knowing their
24 history for risk mitigation. *People v. Garrett* comes down in
25 2014 explicitly stating that civil lawsuits of the type we are

1 talking about are considered impeachment evidence favorable to
2 the accused under New York State law. Trainings then
3 incorporated that members of service should know their lawsuit
4 histories and disclose what they know. They are given tips how
5 to do that. Google, call Katie, the whole thing.

6 Considering, as we mentioned, there might be a lot of
7 reasons they may not know, they might forget, etc., as to it
8 this training I expect plaintiff's counsel may say it wasn't
9 given, and if it was, it was inadequate.

10 As to the it wasn't given point, the fact it's not
11 written specifically in a PowerPoint, of which you are going
12 through stuff, doesn't mean she didn't say it. Director
13 Flaherty is like, I remember the training, I gave it, I said
14 it. Okay.

15 Now, again, a lot of I expect the argument to be is
16 that as to the adequacy of it is that the training could be
17 better. I don't disagree. Training can always be better in
18 this context what you heard, can always be more. There was a
19 lot of back and forth between plaintiff's counsel and Director
20 Flaherty about eliminating human error and perfect world stuff.
21 That's not a criticism. Perfect world, we should aspire to.
22 That the NYPD should. But context is required. You can't
23 eliminate human error no matter how good the training is.
24 There are 35,000 officers who need to be trained on all sorts
25 of stuff, right. That something can be better is not

1 deliberate indifference. That system that allows the
2 possibility of human error is not deliberate indifference.

3 Last thing I'll say on this point, other than the
4 allegations against the two defendants for this claim, there is
5 no evidence in the record of any police officers having
6 committed constitutional violations of citizens by failing to
7 disclose this information. None. Just the allegation against
8 the two. So, even if you find that plaintiff proved that,
9 which we submit he hasn't, it's one instance, not evidence that
10 this training created a high risk that officers had or would
11 commit similar violations. Again, all of which is to say
12 training can be better, but applying the high bar the judge
13 will instruct you on plaintiff must prove, should you even
14 reach it, is not enough to find liability.

15 And I'm at the end of my remarks. I want to finish
16 with one point. I expect the focuses of this case are going to
17 shift in terms of time spent. Clearly, the majority of my
18 remarks were spent on the underlying incident. I imagine there
19 may be -- it almost may be inverted in terms of this training.

20 But I submit, again, if plaintiff fails to prove that
21 he was framed, which we submit he absolutely has failed to do,
22 then this case becomes very simple from there.

23 Ms. McGuire you told you, if he did it, how would
24 these few lawsuits changed the outcome of the trial.

25 So, you are going to get verdict sheets for each of

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1 the three defendants, individual defendants as well as the
2 City. I would suggest you put the City on the side until you
3 get through the first three just for efficiency sake. You are
4 going to be asked for Detectives Del Toro and UC 84, has
5 plaintiff proved liability by a preponderance of the evidence
6 as to evidence fabrication, i.e. they just made it up. The
7 answer is no. They didn't prove that for both.

8 Same question. This goes to the *Brady*. Has plaintiff
9 proved by a preponderance of the evidence the three *Brady*
10 prongs, and, namely, that had these lawsuits been produced,
11 Mr. Stewart would have wanted to use them, would have been
12 allowed to use them, and that they would have made a difference
13 in the result. Again, the answer is no.

14 For Detective Regina, he's only in this case on the
15 evidence fabrication claim. Again, submit that, for him, the
16 answer as to whether plaintiff proved liability by a
17 preponderance of the evidence is no.

18 Assuming you reach that there was no constitutional
19 violation in connection with the training claim and the *Brady*
20 claim, then the City cannot be liable. All right.

21 Sorry. It's been a lot. I want thank you all for
22 your time. You know, I threw a lot at you, I apologize for
23 speaking fast, most notably madam court reporter and Judge
24 McMahon. But I thank you for your time and attention.

25 THE COURT: Okay. Let's take a 10-minute break, clear

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Summation - Mr. Rudin

1 our heads, get ready to hear the plaintiff's summation. Don't
2 discuss the case. Keep an open mind.

3 (Jury excused)

4 THE COURT: Okay. Take a break. We printed some
5 pages from the charge. So you're right, there has to be a
6 charge on joint and several liability. I assume it's your
7 contention that everybody is jointly and severally liable for
8 everything that happened to your client.

9 MR. RUDIN: Yes, your Honor.

10 (Recess)

11 THE COURT: The way this thing has worked out timing
12 wise, because of the way this thing has worked out timing wise,
13 we're going to do like a 45-minute lunch break before I charge.
14 I don't want to interrupt the charge, and it's too long. Okay.

15 You can all sit down. I want to spend some time on
16 these verdict forms. So, okay.

17 Nicely done as always, Mr. Francolla.

18 (Jury present)

19 THE COURT: Okay. Have a seat. So, we have heard the
20 closing arguments from the defendants. And now we will hear
21 the closing arguments on behalf of the plaintiff.

22 MR. RUDIN: Thank you, your Honor.

23 Judge McMahon, counsel, court staff, Mr. Fraser,
24 ladies and gentlemen of the jury. I would like to thank you
25 for your attention during this trial. The fact that you

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Summation - Mr. Rudin

1 remained so alert when I cross-examined Ms. Flaherty on Friday
2 was very gratifying to me.

3 A lot of the information has been thrown at you during
4 a brief period, during the last week. I hope my summation will
5 help you make sense of it all.

6 Our burden, as Judge McMahon will instruct you, is to
7 prove the elements of our claims by a preponderance of the
8 evidence. That is, if you are convinced by the evidence it is
9 51 percent likely our claims are true, we win.

10 It is a civil, not a criminal case. I submit we've
11 reached a much higher level than 51-49 but 51 would be enough.

12 The judge will instruct you on judging witness
13 credibility. Some the factors include does the story make
14 sense, is it corroborated by other evidence or contradicted,
15 does the witness contradict himself. Does he have a motive or
16 reason to lie.

17 I will begin using these factors to examine the
18 defendants' story that puts you Jawaun Fraser in prison, and to
19 show the story is false. I will discuss the only evidence they
20 can cite for their side, Jawaun's parole interviews. And
21 finally, I'll discuss the *Brady* claims and the issue of
22 damages. I'll certainly discuss the mass of evidence that
23 Mr. Francolla's summation completely ignored.

24 First of all, the elements of evidence fabrication are
25 listed in the slide we'll show to you. Evidence was fabricated

1 by a defendant, it was likely to influence a jury, it was given
2 to a prosecutor, and it resulted in the defendant being
3 deprived of his liberty.

4 Well, there is no question that evidence the
5 defendants gave to the prosecutor was likely to influence a
6 jury. There is no issue that it was given to the prosecutor,
7 and there is no question, since it was the only evidence of
8 guilt, that it caused the defendant to be deprived of his
9 liberty. So the sole issue is whether or not any or all of the
10 defendants fabricated evidence.

11 And of course there is also no question that
12 Mr. Fraser, that Jawaun was deprived of his liberty. He went
13 to Rikers Island for several days after he was arrested and
14 before he obtained his release. The rest, what happened after
15 that, during the prosecution, the ultimate result of the
16 prosecution that he was convicted at trial, is all a
17 consequence of the initial wrongdoing.

18 If you find that the defendants' fabricated evidence,
19 and gave it to the prosecutor, and you know for a fact that
20 Mr. Fraser was deprived of his liberty, then that's the claim,
21 it's completely made out, and the rest of all is what the law
22 calls consequential damages. It is the result of that
23 wrongdoing, all reasonably foreseeable that the evidence was
24 fabricated and caused his initial loss of liberty would later
25 on be used at trial to cause his conviction.

1 Now let's address the elephant in the room first,
2 whether Jawaun was selling drugs that night, the linchpin of
3 their so-called defense.

4 All the evidence, except for his own coerced statement
5 at two parole hearings, shows he was not selling drugs. UC 84
6 conceded it Mr. Regina conceded it. Diane Smith said it.
7 Jawaun, of course, testified to it. No drugs or buy money were
8 found on him. He didn't come from the location where Diane
9 supposedly was calling her dealer. He lived on the other side
10 of the Jacob Riis Houses. But regardless, it's a nonissue.
11 It's a distraction and a smoke screen. Jawaun was never
12 charged with selling drugs. He was only charged with robbery.
13 Your job is to determine whether that charge was false. The
14 drug seller label is a smear to dehumanize him as someone who
15 isn't worthy of having rights. It's an unfortunate
16 continuation by the defense lawyers of the dehumanization
17 process their clients began when they made Jawaun one of the
18 five bodies they picked up that night and framed him for a
19 robbery he didn't commit.

20 Now we have to show that each of the defendants is
21 responsible for the evidence fabrication. We can't just paint
22 them with a broad brush, and we don't. To begin, all three
23 defendants were present at the incident. All met afterwards in
24 the post-tac meeting to discuss it, after which most of the
25 false documents were prepared. They played varying roles in

1 preparing the false documents and in making false oral
2 allegations to the ADA, which I'll now discuss.

3 UC 84 prepared a false DD5 containing a detailed set
4 of lies attempting to show Jawaun forcibly robbed him of his
5 identification and \$20 in buy money. That's PX, or Plaintiff's
6 Exhibit, 9. His false story became the basis for the criminal
7 court complaint signed by Regina. That's PX 6.

8 UC 84 told the false story to the ADA at various
9 times, causing the prosecution. Regina prepared numerous forms
10 falsely accusing Jawaun of robbery, including the prisoner
11 pedigree sheet, PX 151; and arrest report, PX 2; evidence
12 vouchers, PX 5; and the criminal complaint itself, PX 6. He
13 also told his false story to the prosecutor before arraignment
14 and throughout the case.

15 Del Toro and Regina together prepared the evidence
16 voucher for the ID, PX 5, claiming that Regina found the ID,
17 and it was arrest evidence for the robbery. But as I'll
18 discuss more later, Del Toro was right there when Regina claims
19 that he searched Jawaun and found the ID, and Del Toro was in a
20 position to see that he did not find the ID. So Del Toro knows
21 the document was false. He knows all along that the evidence
22 voucher he helped prepare was false. He could have blown the
23 whistle on his lying colleagues, but he did not.

24 Let's discuss UC 84 and Regina's false robbery story.
25 The only witness who claims knowledge of the alleged robbery is

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Summation - Mr. Rudin

1 UC 84. He prepared that DD5 and he told ADA Sangermano and he
2 testified to you that Diane Smith said she would call a drug
3 dealer and used her phone to do so. Jawaun then angrily
4 accosted him, accused him of being a cop. Angrily demanded his
5 ID and money, grabbed them from him, photographed his ID,
6 wouldn't give the items back, put them in both of his pants
7 pocket, and threatened him verbally and physically by
8 repeatedly balling his fists.

9 According to UC 84's DD5 and to the criminal court
10 complaint, Jawaun then called over the group of six men who
11 were nearby and they came over, yelling and screaming, to aid
12 him in the robbery. According to UC 84, after he gave a
13 distress signal and Del Toro, Regina, and the other cop backups
14 moved in, the crowd yelled, Cops.

15 After that Jawaun put his hands in his pants as if to
16 draw a gun, took his hands out, balled up his fists again, told
17 UC 84 he was going to get him good, and rather than flee from
18 UC 84 and the onrushing cops, he rushed at UC 84 and started to
19 grapple with him. Only when he was about to be grabbed by
20 Del Toro and Regina, according to UC 84, did he flee.

21 After Jawaun was arrested two blocks away, according
22 to Regina, he found the ID card in Jawaun's pocket and more
23 than \$100 in cash. UC 84 alleges he told Regina at the scene,
24 right after the arrest, that Jawaun had taken the buy money and
25 the ID, which supposedly led to Regina, Del Toro, and UC 84

1 searching the area for the buy money, searching high and low
2 throughout the projects, and anything else Jawaun might have
3 dropped.

4 Ladies and gentlemen, this story is a cartoon. It is
5 an insult to your intelligence and a lie that UC 84 and Regina
6 said to your face in this court under oath. That story makes
7 absolutely no sense. It is absurd that Jawaun would do these
8 things to someone he suspected from the very beginning was an
9 undercover cop undoubtedly backed up by a support team.

10 Balling up his hands and fists and reaching into his
11 pocket even after he knew that there were cops around him, that
12 UC 84 was a cop, it would have been suicidal. This was 2014.
13 Jawaun knew and you know what happens when cops think a suspect
14 in the street is about to draw a weapon on them or physically
15 threatens the police. Why would he rob a cop of his ID and
16 \$20? Why would this proud young man have done any of these
17 things three days after taking this picture, having finished
18 school and landed the job of his dreams paying him a good
19 salary, with his first paycheck already having been cashed?
20 Why would he do this with \$128 in a pocket, a child to care
21 for, and on the way to buy medication for his mother's migraine
22 headache? Why, if his intent from the outset is to rob the
23 cop, would he stop to take a picture of the ID before stealing
24 it? Why would they then rush at UC 84 and attack him when the
25 crowd was yelling "cops" and when other cops were coming in

1 into the undercover's aid when you would think, if this was a
2 robbery, he'd be trying to get away? Why, when he was being
3 chased by a horde of police on foot and in cars, would he have
4 discarded the only thing of value he took in the robbery, \$20,
5 but keep a worthless ID card when he knew he had a picture of
6 it anyway?

7 Let's talk about consistency and corroboration or,
8 should I say, inconsistency and lack of corroboration. There
9 are numerous reasons, which I'll go through roughly in the
10 order of events, that prove the police story to be false and
11 Jawaun's testimony to be true.

12 First, contrary to UC 84's definite testimony, Diane
13 Smith, their witness, testified she had no phone and made no
14 calls.

15 Second, Regina said UC 84 and Jawaun -- Regina said
16 that he saw UC 84 and Jawaun talking, but contrary to UC 84's
17 testimony and his DD5, it "looked like normal conversation."

18 Testimony in trial at page 262, line 2:

19 "Q. OK. Why wouldn't you or why didn't you -- why wouldn't
20 you or why didn't you move in prior to the point of a distress
21 signal was made by UC 84?

22 "A. Because to what I was observing wasn't -- didn't look --
23 you know, it didn't look bad. It looked just like normal
24 conversation."

25 And then at page 237, line 7:

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Summation - Mr. Rudin

1 "Q. Were they just standing there in your estimation?

2 "A. Yes.

3 "Q. You thought they were just doing their own thing, talking,
4 right?

5 "A. Yes."

6 Regina saw a group of about six males nearby, but they
7 just standing there, doing their own thing. They weren't doing
8 any of the things that UC 84 told you.

9 And remember that Regina and Del Toro were there for
10 the purpose of watching everything that UC 84 did. Regina
11 testified that he would move when UC 84 moved to make sure he
12 had -- constantly keep him in his sight. And that was
13 Del Toro's job, too. So when they contradict UC 84 about every
14 important aspect of his story, you know that UC 84 was not
15 telling the truth.

16 Third, UC 84 contradicted himself. He contradicted
17 his DD5 and the criminal court complaint that Jawaun called the
18 other men over to help him. This is at page 97 of the
19 transcript in this case, line 3:

20 "Q. Right. So the truth is you don't know whether Mr. Fraser
21 was with that group or not, right?

22 "A. Right.

23 "Q. And the truth is you never saw him physically standing
24 with that group of people, right?

25 "A. I did not.

1 "Q. You don't recall Mr. Fraser saying anything to that group
2 of people, right?

3 "A. I don't recall, no."

4 This is now page 99:

5 "Q. Before I move on, you agree that this criminal court
6 complaint is not accurate, right?

7 "A. Other than the part with the other individuals approaching
8 me, it's accurate. It's just the other individuals, I don't
9 remember ever saying that they approached me."

10 "I don't remember ever saying that they approached
11 me," except that's what he wrote in his DD5 and that's what was
12 in the criminal court complaint. And you know that that aspect
13 of the criminal court complaint, which elevated a simple
14 robbery, a D felony robbery into a C felony robbery was false.
15 You know that that allegation made Jawaun now have to face a
16 15-year possible sentence, not a seven-year sentence. Those
17 allegations were admittedly false.

18 Fourth, UC 84 contradicted himself, he contradicted
19 his DD5, and the criminal court complaint alleging that Jawaun
20 demanded both his money and ID or he would fuck you up. He
21 admitted to you that in his prior testimony, he contradicted
22 his DD5 and the complaint. This is at page 103, line 11:

23 "Q. You didn't even say he asked for money?

24 "A. During the deposition, no.

25 "Q. You didn't even say he asked for your ID?

1 "A. During the deposition, no."

2 And now, at page 105:

3 "Q. When you told the story at trial, you claimed what he said
4 was do you have ID on you, right?"

5 "A. Yes."

6 Not that it was demanded from him. He can't tell the
7 same story twice because he's making it up.

8 Fifth, contrary to UC 84, Regina didn't see Jawaun do
9 anything violent or aggressive. He didn't see Jawaun do
10 anything violent or aggressive. He didn't see him ball up his
11 fists, didn't hear anyone screaming or cursing, even though he
12 was only 50 feet away. You saw -- I measured that out when I
13 was cross-examining him. That's not a very far distance. He
14 didn't say there was anything in between him and UC 84. He had
15 a perfectly good view, and from 50 feet he could certainly hear
16 yelling and screaming if it really happened.

17 And neither did Del Toro. He didn't see that, and he
18 said he could hear things. And he didn't hear any yelling or
19 screaming either. Their testimony proves that UC 84's story is
20 false.

21 The only reason Regina rushed in was not that he saw
22 anything that struck him as alarming, but that UC 84 gave a
23 distress signal. He admitted that after that point he saw them
24 tussling or grappling, but that it was consistent with UC 84
25 trying to grab Jawaun's phone away from Jawaun. It was

1 consistent with Jawaun's story.

2 Regina and Del Toro testified they did not see Jawaun
3 reach into his waistband and into his pants as if to draw a
4 weapon. They thus refuted this outlandish claim in UC 84's DD5
5 and in the false testimony he gave to you.

6 Sixth, a horde of cops chased Jawaun, but no one,
7 including Del Toro and Regina, saw him drop anything. He
8 didn't have any buy money on him. None was found. As Regina
9 acknowledged, the money simply disappeared.

10 Seventh, the evidence shows that Regina's and
11 Del Toro's claim that they searched for the buy money was
12 false. Regina had copies of the buy money and testified when
13 they questioned him that they also had physically marked it.
14 So if UC 84 had told him that Jawaun had stolen the money, he
15 could have easily confirmed that Jawaun still had that money.
16 They wouldn't have had to search high and low throughout the
17 housing complex. But he admitted he didn't check. Indeed,
18 Regina testified at the hearing in the criminal case that UC 84
19 never told him about any buy money being stolen. That's a
20 fundamental part of UC 84's story.

21 This is how the questioning came out at this trial:
22 "Q. Isn't it a fact that the undercover never told you that
23 Mr. Fraser had stolen money from him, right?

24 "A. No."

25 He denies it, and then what comes is the impeachment.

1 It shows that his testimony is false. Page 27 of the pretrial
2 hearing, please, line 7. Now, I'm reading from the pretrial
3 hearing:

4 "Q. Did the undercover ever say Mr. Fraser had stolen from
5 him, had stolen money from him?

6 "A. No."

7 "Did you give that testimony?

8 "A. Yes."

9 Did you ever hear the defense counsel ask him to
10 explain that testimony, to explain how he could possibly have
11 given that testimony? No, there's no explanation for it except
12 that his story that he told you is untrue.

13 He also testified at the same proceeding what he was
14 looking for during the so-called search of the housing complex,
15 but in that testimony, he omitted anything about the buy money.
16 The buy money, it's the buy money and the ID that supposedly
17 were stolen and that they were interested in recovering, but he
18 omits anything about the buy money.

19 Page 248 of the trial transcript in this case:

20 "Q. Didn't you testify at the suppression hearing, when you
21 went back to look, what you were looking for?

22 "A. Anything" --

23 I'm sorry. When he was questioned at the suppression
24 hearing, he was asked this question:

25 "Q. When you went back to look, what were you looking for?

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Summation - Mr. Rudin

1 "A. Anything, really.

2 "Q. Drugs?

3 "A. Drugs, weapons, you know, contraband."

4 "Did you give that testimony? Were you asked those
5 questions and give those answers?

6 "A. Yes.

7 "Q. You didn't say anything about looking for money, right?

8 "A. No."

9 The only thing that mattered and that's not what they
10 were looking for? They knew that Jawaun didn't have any buy
11 money on him because he didn't steal it. To explain away that
12 he had it, they had to concoct a story that he must have
13 dropped it and that they searched for it high and low. That
14 story was false.

15 Eighth, UC 84 and Regina also lied to you, just as
16 they lied to the prosecutor, about the claim absolutely
17 essential to their case that Jawaun had UC 84's ID card in his
18 pocket. That was the other object they accused him of robbing.
19 Contrary to his statements to the ADA, his prior testimony, and
20 his testimony at this trial, Regina admitted at his deposition
21 that he did not find any ID card. Page 257:

22 "Q. At any point from when the undercover first interacted
23 with the female to when the undercover gave a distress signal,
24 did you lose sight of the undercover?

25 "A. No."

1 And now comes the important question:

2 "Q. When you searched the black male, what did you find in his
3 pockets?

4 "A. He had personal property of the cell phones and U.S.
5 currency.

6 "Q. That's it?

7 "A. Yes."

8 "Do you recall being asked those questions and giving
9 those answers?

10 "A. Yes."

11 Did you hear defense counsel when they got up to
12 question their client to explain that inconsistent testimony?
13 Not a word because he couldn't explain it. It absolutely
14 refutes their case.

15 Even in the grand jury, immediately after the
16 incident, Regina didn't initially say they found the ID card.
17 He had to be reminded to say it by the ADA. This is at
18 page 259:

19 "Q. Do you recall that when you testified in the grand jury,
20 initially you did not say anything about recovering an
21 identification, and you only gave that testimony after the
22 prosecutor had to remind you about the identification?

23 "A. No, I don't remember that.

24 "Q. Let's go to the grand jury testimony."

25 And then I'm reading from the grand jury transcript.

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1 "Q. What, if anything, did you recover from the defendant?

2 "A. U.S. currency and cell phone.

3 "Q. Did you recover anything else belonging to the
4 undercover?"

5 And then you said "the undercover's ID card."

6 "Do you remember being asked those questions and
7 giving those answers?

8 "A. Yes."

9 Did you hear any questioning from Mr. Francolla or
10 Ms. McGuire to their client to explain that testimony? Not a
11 word.

12 Ninth -- before I get to ninth, let me just make the
13 point that this is the most important evidence in the case, but
14 he kept forgetting to say it. Why? Obviously because it's not
15 really in his memory, because it didn't happen. The story to
16 the DA was false.

17 Ninth, Regina admits he was trained to fully document
18 the details of an arrest and search because otherwise, as the
19 NYPD training materials state, jurors like you wouldn't believe
20 him. He acknowledged he was specifically trained to include
21 important details like which pocket important evidence is found
22 in. This is at page 202 of the trial transcript. Yet he did
23 not document anything about the search. He cannot tell you
24 which pocket he supposedly found the ID in even though the ID
25 is the only physical evidence in the entire case, the very

1 thing they claim was robbed.

2 Indeed, Regina's paperwork disproves his false claim
3 that he found the ID in Jawaun's possession. Look at the
4 prisoner pedigree sheet. This is a document he said he filled
5 out at the scene of the arrest. He told you it's supposed to
6 document whatever evidence he found and put in the envelope,
7 but it said only phones, nothing about ID. This was a
8 document, though, that he prepared before the post-tac meeting
9 at the precinct, before they all met to concoct a story. All
10 the other documents were prepared later. In this document, he
11 reminded himself to voucher the phones because that was the
12 whole object here. The phones had the photograph of the ID,
13 but he didn't remind himself to voucher any ID because he
14 hadn't found it.

15 Let's look at Regina's arrest report, PX 4. It
16 checked "no" regarding whether the victim's personal
17 information was taken or possessed. Wasn't the ID card
18 personal information of the victim, of UC 84? And it states
19 that the arrest was without further incident. Wasn't the
20 discovery of the ID in a search following the arrest, the
21 discovery of the stolen property, an important incident? He
22 had no explanation for why he omitted the discovery of the ID
23 from these reports and also from his memo book.

24 Del Toro, meanwhile, admitted the, normally, he would
25 put in the evidence voucher where the item was found, but

1 there's nothing in the evidence voucher about where the item
2 was found.

3 Tenth, Regina testified that Del Toro, Patane, and Lee
4 were right next to him and could observe the search. This was
5 brought out at page 251 of this trial transcript:

6 "Q. In fact" --

7 And notice I'm going through the trial transcript.
8 You didn't hear them go through the trial transcript.

9 "Q. In fact, you, Detective Lee, Lieutenant Patane, and
10 Detective Del Toro were all standing together when you
11 conducted the search, right?

12 "A. Yes.

13 "Q. And you understood that they could observe what was
14 happening, right?

15 "A. Yes."

16 Yet Del Toro told you he didn't see any ID card
17 recovered. He didn't even tell him -- tell you that Regina
18 told him at the scene that he found it. This is remarkable.
19 Regina finds the undercover ID on Jawaun after a chase, but
20 then he just quietly puts it in an envelope and doesn't mention
21 it to Del Toro. What a crazy story. And there's no police
22 documentation and no testimony that any of the other officers
23 present saw Regina find the ID either, even though they were
24 right there. Regina's story, central to the prosecution, was
25 false.

1 Eleventh, Regina testified they are trained to
2 immediately voucher evidence, but he waited until nearly three
3 hours after the tac meeting and his conversation with UC 84 at
4 the precinct to voucher it. He waited until after UC 84 made
5 more undercover buys leading to more arrests and returned to
6 the precinct where he could then give Regina his ID card,
7 having found it at the scene after Jawaun dropped it. It was
8 only after that meeting of the whole team, according to
9 Del Toro, that he received the Xerox of the undercover ID to
10 voucher for Regina.

11 Twelfth, UC 84 told you he was scared and this was a
12 frightening incident. And Del Toro told you that after what he
13 called an undercover rescue, they'd normally return to the
14 precinct. But now you know that, in fact, they went out and
15 made another arrest of another body and five minutes later of
16 two more bodies. I don't know how they made a case against two
17 bodies in five minutes, but anyway, the point is that doesn't
18 sound consistent with what you'd expect them to do after a
19 highly unusual and traumatic undercover rescue, if one really
20 occurred.

21 Thirteen, they easily could have gotten surveillance
22 video. The Jacob Riis projects is a high-crime area and was
23 heavily surveilled, but they never bothered. They didn't want
24 such evidence to be preserved. It would prove their story
25 false.

1 Let's now talk about their motive to make up a false
2 story. UC 84 downplayed it, but Regina admitted it in detail.
3 UC 84 feared his cover was blown. After eight years his
4 undercover career might be over. It might be dangerous for his
5 safety. Jawaun having the phone was dangerous for him, or so
6 he believed.

7 You saw the remarkable NYPD recruit training about the
8 strong temptation police officers feel to commit perjury to
9 cover up unlawful arrests. This training was given in all the
10 police academy training materials and court appearance guides
11 from 2006 to 2015 which are all in evidence. I went through a
12 couple of them in my examinations. Here it wasn't just one
13 search that was at stake. It was, in their view, the fate of
14 UC 84's undercover career. If they didn't charge Jawaun,
15 they'd have to release his phone with the photo on it.

16 Regina admitted it. Page 230:

17 "Q. So on that day, to protect UC 84, you had to gain
18 possession of Mr. Fraser's cell phone, correct?

19 "A. Yes.

20 "Q. To protect UC 84, you had to be able to keep the cell
21 phone, right?

22 "A. Yes."

23 And he admitted to you elsewhere in his testimony that
24 if they did charge Jawaun with a crime and they had to release
25 him, they'd also have to release his cell phone, and so they

1 had to make the story stick.

2 Just parenthetically, Mr. Francolla argued to you that
3 you'll be instructed not to draw inferences from witnesses who
4 did not testify. But you also should not draw any inferences
5 or conclusions about why other police officers who were present
6 are not on trial too.

7 Jawaun's story made more sense and was corroborated by
8 Regina, Del Toro, and Diane Smith. In other words, all the
9 witnesses in this case other than UC 84 basically showed that
10 Jawaun is telling the truth and that UC 84 was not.

11 Jawaun was 18. He was a father and a son finishing
12 his first week of work at his dream job. He had long since
13 outgrown his 16-year-old drug dealing days, days that were
14 inexcusable, but that's not the issue in this case. Kids make
15 mistakes, particularly kids growing up in that environment.
16 But he was someone who was going to escape that environment.

17 His mother was a lifelong schoolteacher who had raised
18 three children mostly alone and even got a graduate's degree at
19 the same time. She had a headache that fateful evening and
20 asked her son after he came home from work to go to the store
21 to get her medication. Were they precise about the exact time
22 when everything happened nine years ago, about everything that
23 Jawaun did before he left for the store besides taking a
24 shower? Maybe they weren't precise enough, but that doesn't
25 prove that the story isn't true.

1 Jawaun encountered Diane Smith who asked him for drugs
2 for the man on the bench. He said no, he had no drugs, to get
3 away from him. This was the life he had put behind him. He
4 told her he believed the man was a cop. He testified the man
5 kept stepping in his path, persisting in trying to buy drugs
6 from him. Diane Smith, called by the defendants, corroborated
7 that Jawaun told her to get away, that the man appeared to be a
8 police officer, and that the man persisted in asking Jawaun for
9 drugs.

10 She also corroborated Jawaun's testimony that he
11 hadn't sold her drugs for many, many months. I think she even
12 said years. Jawaun testified, as he was about to get away from
13 the man, the man said, I know you, and where he -- and where
14 you and your mother live, which drew Jawaun back in and led to
15 the ID card incident.

16 Diane corroborated that UC 84 told her and Jawaun that
17 he knew each of them, contradicting UC's testimony that he
18 would never do that. Diane Smith testified that this happened.
19 Diane Smith testified that Undercover 84 told her that he knew
20 where she lived, and he told -- I'm sorry, that he knew her and
21 that he knew Jawaun, too. Meanwhile, UC 84 admitted that he
22 would get apartments in target buildings to infiltrate target
23 communities. This is such important testimony that he
24 admitted. Page 60:

25 "Q. Wary" --

1 It was tough to draw it out of him, but we got it all:

2 "Q. Wary subjects are people that are reluctant to speak with
3 you, right?

4 "A. Yes.

5 "Q. People that are skeptical of you?

6 "A. Yes.

7 "Q. Is it fair to say you are constantly looking for creative
8 ways to get people to speak you?"

9 "No," he says.

10 "Q. Well, one of the things you've proposed is getting an
11 apartment in a building in a certain neighborhood so you can
12 convince people that you live in their neighborhood, right?

13 "A. We were sometimes offered apartments in SRO, single
14 occupancy room, hotels. They will offer us apartments to prove
15 that you live there, because only individuals that live there
16 are allowed into the buildings.

17 "Q. You do that so you can convince people in the neighborhood
18 that you live in the neighborhood, right?

19 "A. Correct.

20 "Q. You have come up with different ways to gain access to
21 buildings that you are not allowed in, right?

22 "A. Yeah, that's one of the ways, is getting an apartment.

23 "Q. That's one of the ways that you have been praised for
24 finding creative ways to get wary people to talk to you, right?

25 "A. I don't recall specific praise for that, but, yes, I've

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1 done that.

2 "Q. You've suggested getting an ID card for like a shelter so
3 you can come in and out of the shelter so people see you in the
4 neighborhood, right?

5 "A. I haven't suggested it, but I have had an ID card for that
6 reason."

7 Did he actually have an apartment in Jawaun's building
8 or another one nearby? Surely he made it part of his job to
9 know as much as he could about who lived in the community. He
10 was working in this community for eight years. He had made
11 hundreds of buys in this community. He was part of the
12 narcotics division. There were intelligence in the narcotics
13 division. They collected information. It was UC 84's business
14 to know the community and know the people in the community.
15 Did Jawaun, who's admitted drug dealing, fall under a previous
16 investigation and become known to UC 84? Did the detectives --
17 did UC 84 find out in whose apartment he lived? Did Diane tell
18 UC 84? Any of these scenarios are possible.

19 Regina and Del Toro both corroborate that Jawaun, as
20 he testified, was not acting in an aggressive or combative way,
21 just talking. Del Toro corroborates that Jawaun was holding
22 out the ID and taking a picture. Neither defendant saw him put
23 anything in his pocket like Jawaun says. Both officers
24 corroborate Jawaun's account that he did not ball up his fist
25 or reach into his pants. Regina admitted that the grappling

1 you saw was consistent with UC 84 grabbing for Jawaun's phone,
2 just like Jawaun told you. Del Toro did not see Jawaun find an
3 ID in Jawaun's pocket, corroborating Jawaun that he didn't have
4 it. And as Jawaun testified, he dropped it before he ran.

5 All the police witnesses corroborated Jawaun's
6 testimony that Jawaun was not selling drugs that night as I
7 discussed earlier, and so did Diane Smith, their witness, too.

8 In sum, the evidence is overwhelming that the police
9 story was false. It makes no sense. It's full of
10 contradictions. The officers contradict each other. They
11 contradict themselves. Their story is totally uncorroborated.
12 They have a strong motive to lie. Jawaun's testimony refuting
13 their lies is true.

14 So what are their defenses to evidence fabrication?
15 They said in their opening statement that a criminal jury
16 convicted him and want you to think the only thing different
17 now is our knowledge of the eight additional lawsuits, but
18 that's not true. We presented evidence to you that Geoffrey
19 Stewart, the defense attorney at trial, never had the results
20 of civil deposition testimony and civil document discovery that
21 he did not have at the criminal trial. Yes, the lawsuits and,
22 equally important, the time to put it all together. He
23 testified that whatever limited documents he received, he
24 received immediately before jury selection. Then he had to
25 select a jury and give his opening statement and then get right

1 into the witness testimony. How could any attorney, no matter
2 how skilled, make full use of such material under those
3 circumstances?

4 Anyway, a New York State judge has overturned Jawaun's
5 conviction because he did not get a fair trial. You are
6 judging this matter fresh based upon the evidence you have
7 heard.

8 Second, you heard Mr. Francolla argue, basically, why
9 would these cops have lied? Why would they have made up a
10 false story about Jawaun? Why didn't they make up a better
11 story? First of all, you know why they lied, to get that phone
12 and to punish this young man for running from him.

13 How are they risking anything by making up this story?
14 You heard them each testify to having been involved in hundreds
15 or even thousands of arrests, but each has testified that over
16 nearly 20 years they testified at trial in only a handful of
17 trials. Most people take plea bargains and don't go to trial.
18 They're not at risk of the documents that they've produced
19 being produced because you heard that those documents are only
20 produced right at the time of jury selection.

21 Jawaun was offered two and a half years, and most
22 defendants, innocent or guilty, would be tempted to accept such
23 a deal rather than risk 15 years in prison. These cops never
24 thought this case would ever get to trial, let alone receive
25 the scrutiny it's getting in this courtroom.

1 Why would they not make up a better story? Arrogance?
2 They thought they were invincible and would never be
3 challenged. They thought no one would question them or believe
4 some black kid from the street over them.

5 Third -- well, the defense made a big deal in their
6 opening that Jawaun just got lucky when his conviction was
7 vacated, and he must be guilty because he pleaded to the big
8 crime of disorderly conduct. That's what a constitutional
9 violation is, luck? Was he lucky to spend two years in prison
10 on an unconstitutional conviction? They got their guy
11 Sangermano to say it's a crime, too, that's disorderly conduct,
12 until Judge McMahon questioned him and he stopped misleading
13 you and he admitted that it's not a crime but a violation, the
14 equivalent of a traffic ticket.

15 Jawaun accepted the equivalent of a traffic ticket so
16 he wouldn't have to keep coming back to court, missing work,
17 and possibly having to undergo another traumatic trial, and so
18 it doesn't contradict his testimony that he didn't commit a
19 robbery.

20 And now, fourth and finally, I get to their main
21 argument, the parole hearing transcripts. Jawaun admitted
22 selling drugs that night, being selfish and greedy, and he used
23 the terminology used by the parole commissioners referring to
24 his crime, and he used the word "robbery." So let's look at
25 what led up to these two hearing.

1 Jawaun was sent to Lakeview Shock Correctional
2 Facility. He was beaten into the ground. He was brainwashed
3 to think of himself as a criminal, to accept his crime. The
4 goal was to destroy the person he had been and to build up a
5 new person. So long before the parole hearing he had been
6 conditioned to express himself in terms of his crime, his
7 robbery, his offense, or else he'd be severally punished.

8 But the system had not yet fully broken Jawaun. He
9 refused in his initial parole paperwork to admit guilt for the
10 robbery, and so he was denied parole directly from Shock for
11 the very reason that he had not shown remorse for his crime.
12 They decided he needed more rehabilitation, and so he was sent
13 to Greene Correctional Facility.

14 You heard in vivid painful detail the so-called
15 rehabilitation he received at Greene. He was housed in a
16 60-man dorm with murderers and rapists. He slept on a metal
17 slab with just two sheets. Inmates slept with skully caps
18 pulled over their faces to protect against slashings in their
19 sleep. There were daily knifings and stabbings, beatings and
20 assaults. The inmates essentially policed themselves and were
21 left to kill and maim each other. He lived in fear every
22 minute that that would happen to him.

23 People were attacked by surprise. One week there were
24 57 slashings. The fear of going to sleep, the fear of going to
25 the bathroom, the constant fear you could bump into someone or

1 look at him the wrong way and then have to worry about being
2 killed in your sleep, day after day after day after day after
3 day after day after day after day of this torture.

4 And then the visits. You look forward to the visits
5 as the only good thing in your life, and then you have to see
6 the pain in your loving mother's face when she describes having
7 been searched under her underwear and humiliated, how your
8 little kids were searched. And then after a visit when you're
9 about to go back inside, to have to listen to your babies
10 crying, Daddy, why can't you come home?

11 And you see your son walk for the first time, but
12 you're in prison, and you feel like you failed your kids as a
13 father. And it's so awful that you beg your mother not to come
14 anymore, but she knows you need her and, even more than that,
15 to see your children. And she keeps coming and enduring the
16 humiliation to not allow the system to destroy your
17 relationship with your kids.

18 And then you come to your parole hearing and you've
19 already been denied once. And you're on work release, but you
20 know that if you break any one of their demanding rules, you
21 could go right back to Greene, or not break a rule but be
22 falsely accused. God know's that's happened to you before.
23 You're facing the potential for four more years of prison for
24 something you didn't do and the loss of more precious years
25 with your young children, years and experiences you can never

1 make up. And you're told by everyone that you must admit your
2 alleged crime and not disagree with the commissioners. If you
3 don't say you're sorry, you'll be sorry you didn't say you're
4 sorry.

5 And you're just 21 years old, and with no attorney to
6 advise you or object to the accusatory questions, there's no
7 judge present to make sure the questioning is fair, you're
8 nervous and intimidated and you're brought in shackles to a
9 six-by-eight or eight-by-ten gloomy, windowless room, locked
10 inside. And three faces appear on a screen and fire questions
11 at you for six to eight minutes. And your life, your life, is
12 at stake, your children are at stake, and you react as best as
13 you can. You plan to admit what you really did and not admit
14 what you didn't, but it's impossible to walk that line, and you
15 start debasing yourself and groveling and saying whatever comes
16 to your mind to save yourself.

17 But when they finally ask for your confession
18 specifically to robbing the money and the ID, you steel up your
19 courage to deny it. And then it's over, and you're denied
20 parole because you haven't shown sufficient contrition. And
21 three months later it happens again.

22 Now, Mr. Francolla went through in great detail
23 excerpts from the parole hearing to try to create the
24 impression that Jawaun really was a drug dealer or that
25 somehow, by not denying that there was a robbery or that there

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Summation - Mr. Rudin

1 was -- that he demanded or asked for ID, that he was
2 admitting that he was guilty of robbery. But he didn't read to
3 you this passage, page 563 from the trial transcript:

4 "Q. But did you state, give you money -- give me your money
5 and ID?

6 "A. No, ma'am. This was actually a buy-and-bust operation.
7 The undercover actually was trying to purchase drugs from me at
8 that time."

9 "Did you give that testimony in your parole hearing?

10 "A. Yes, sir, I believe so."

11 When he was asked specifically whether he took money
12 by force and an ID, he denied it.

13 And when it's over, these two extraordinarily
14 high-stakes stressful inquisitions, Jawaun doesn't even know
15 quite what he said or exactly why he said it. And then four
16 and five years later he's shown the transcript at a deposition
17 and grilled by a very experienced and skillful attorney for the
18 City about every word that appears there, and about whether
19 questions and answers he doesn't clearly remember are stated
20 accurately in the transcript. You're being asked to draw
21 conclusions from isolated excerpts that Mr. Francolla read into
22 the record without being there and knowing the rapidity of the
23 question. Did you hear how slowly and nicely Mr. Francolla
24 read the questions? That doesn't reproduce the actual
25 atmosphere at this awful, stressful hearing where Jawaun Fraser

1 was basically being tried for his very freedom.

2 Now, there's no evidence in the record about what was
3 in the commissioners' minds when they decided the third time to
4 finally grant Jawaun parole, but we do know Jawaun had an
5 incredible prison record, totally inconsistent with the picture
6 they're trying to paint. Not one infraction, not one ticket.
7 He was made a peer leader at Greene. One of two out of 60
8 inmates given that responsibility. And he finished all his
9 programs. And so it appears the commission finally could see
10 his humanity, and they gave him parole, even though he never
11 admitted the acts making up his alleged robbery.

12 You know it was untrue he was selling drugs that
13 night. I've already shown that to you. You know that's
14 untrue. UC 84 admitted it was untrue. Regina admitted it's
15 untrue. Diane Smith said it was untrue. And you know I've
16 shown you already there was no robbery. You know he had to say
17 what he said, and it's sad that the defendants, through their
18 lawyers, will try to use the parole hearings to justify the
19 wrongs that they committed that put Jawaun in that situation.

20 You've all heard about coerced confession cases. To
21 the extent Jawaun admitted things at his hearings, it was not
22 voluntary. It was begging for his life. You shouldn't hold it
23 against him. Quite to the contrary. The human humiliation of
24 it is part of his damages.

25 One final point. Like the other parties to this case,

1 Jawaun submitted to a lengthy deposition where the defendants'
2 lawyers were free to ask him anything they wanted. You didn't
3 hear at this trial a single contradiction about the events of
4 October 21, 2014, between his testimony at the deposition and
5 his testimony here at this trial, just about the parole
6 hearing. Compare that to the police officer defendants who
7 testify for a living and don't have to grovel before parole
8 commissioners. It's night and day. We have proven evidence
9 fabrication against each defendant by a preponderance of the
10 evidence.

11 Let's talk now about the *Brady* claim against the
12 individuals, and I'd like to really emphasize this. The *Brady*
13 claim is almost like you're participating in a second trial.
14 It's almost like -- to some extent it's a different record.
15 The issue in evidence fabrication is whether you find by a
16 preponderance of the evidence that Jawaun -- that the
17 defendants fabricated evidence, but the issue as to the *Brady*
18 violation is whether or not favorable information was withheld,
19 knowingly or recklessly, that was material to the outcome of
20 the trial where the prosecution had the burden of proof beyond
21 a reasonable doubt. Jawaun Fraser did not have any burden to
22 prove himself innocent. He was entitled to listen to the
23 evidence from the prosecution and to challenge that evidence
24 and to try to show there was a reasonable doubt.

25 So they're wrong when they say that the only issue in

1 this case is whether we've proven by a preponderance of the
2 evidence that Jawaun Fraser was framed. We believe we've
3 proven that. But as to the *Brady* violation, the issue is
4 whether the evidence that was not disclosed in the criminal
5 case likely would have created a reasonable doubt in the minds
6 of at least one juror so that Jawaun would not have been
7 convicted. It's focusing on the prosecution's case and whether
8 there was a reasonable doubt about that case. It's not
9 focusing on whether or not Jawaun could have proven himself
10 innocent at the criminal trial, which is not what happens at
11 criminal trials in this country. The prosecution has the
12 burden of proof. All the defense has to show is that there's a
13 reasonable doubt or convince at least one juror that there is a
14 reasonable doubt so there could not be a unanimous verdict
15 against him.

16 Let's talk first about the issue of knowingly failed
17 to disclose. Judge McMahon will define "knowingly" for you,
18 acting intentionally or by avoiding knowledge by essentially
19 burying your head in the sand or through recklessness. There,
20 I submit to you, is no real issue about knowledge. This isn't
21 some hypothetical case where an officer was not served with a
22 lawsuit or didn't know about a lawsuit. You heard them
23 bringing that up over and over and over again, some officers
24 aren't served with lawsuits, some don't have lawyers who answer
25 for them and don't know about their lawsuits.

1 But that's not this case. All four of UC 84's
2 lawsuits were answered by an attorney for the City. You know
3 an attorney for the City cannot answer for a police officer
4 unless the officer has requested representation, which UC 84
5 did in this case, so he knew. There's proof of service of all
6 four lawsuits on Del Toro, and two were answered. So you know
7 that he knew.

8 Plus the City's witness, NYPD director Katie Flaherty,
9 on Friday testified that commanding officers at every precinct
10 were supposed to train officers that they were required to know
11 their lawsuits, and if they needed more information, they could
12 email Ms. Flaherty. She has a database with lawsuits, lawsuits
13 that the City answered, lawsuits that the officers asked for a
14 lawyer for, lawsuits maybe where for some reason maybe the
15 officer wasn't even served, but the lawsuit still might be
16 relevant to their credibility. They had them all.

17 So here the officers knew if they couldn't remember
18 all their lawsuits, they could easily find out and tell the
19 ADA. They could find out by emailing Ms. Flaherty. However,
20 none of them testified they needed any help. None of them
21 testified they had forgotten any of their lawsuits. If they
22 did, they are liable for deliberately failing to ask
23 Ms. Flaherty for the information they were required to
24 disclose.

25 Sangermano's practice, he testified, was to ask each

1 police witness for lawsuits, and Regina testified that he was
2 asked. So it's obvious that UC 84 and Del Toro would have been
3 asked, but they did not disclose the lawsuits, otherwise
4 Sangermano testified he would have found those lawsuits and
5 disclosed them to the defense.

6 You know from ADA Sangermano, who obviously is on
7 their side in this case, that he didn't learn about the
8 lawsuits because he wasn't told by the officers, and that's why
9 he didn't disclose them. The only lawsuits he knew about for
10 UC 84 and Del Toro were two for UC 84 that his paralegal
11 happened to find in a routine search, and he knew of none for
12 Del Toro.

13 The specific circumstances also show that it's not
14 credible that the detectives didn't remember the lawsuits.
15 UC 84 was sued twice, May 15, 2015, and June 10, 2015. That's
16 within two months and within half a year of Jawaun's trial.
17 That is, within half a year of Jawaun's trial, in the span of
18 really one month, he was sued twice. And he was sued in 2013,
19 only two years before the trial, and 2011, only four years
20 before the trial.

21 And in the June 10, 2015 case, the *Wright* case, which
22 is at PX 38A, the facts were remarkably similar to Jawaun's
23 case. The complaint alleged that UC 84 arrested the plaintiff
24 at Avenue D and Sixth Street, right near the Jacob Riis Houses,
25 after the complainant -- after the plaintiff warned another

1 person he was with that UC 84 was a cop. That person bought
2 drugs from UC 84. But to get even, to teach a lesson to the
3 person who called out UC 84 for being a cop, UC 84 arranged to
4 have him arrested too.

5 How could he not remember that case so similar to the
6 allegations in this case? How could he not remember that case
7 where he was served with a lawsuit four or five months before
8 the trial of Jawaun in 2015?

9 And as for Del Toro, he was sued three times in
10 2089 -- I'm sorry, he was sued three times in 2009, within four
11 months, from June through October, and again in 2012. Even now
12 you heard him, he still recalls the lawsuit after all these
13 years in which, memorably, he gave a deposition. So if he
14 remembers that now, obviously, he remembered it in 2015, but he
15 didn't tell the prosecutor.

16 Let's talk about materiality, which is really the only
17 issue for you to decide. The rest is so obvious.

18 Judge McMahon will instruct you regarding materiality
19 to consider whether the evidence, if disclosed, would be likely
20 to cause even one of 12 jurors to have a reasonable doubt and
21 not convict. You heard this was an exceedingly close criminal
22 case. The jury acquitted on the top charge, and it only
23 convicted after initially reporting that it was deadlocked on
24 both charges. They were deadlocked. They told the judge we're
25 having so much trouble that we cannot decide this case, and so

1 the judge had to give a special charge to the jury urging them
2 to try to resolve their differences, and only then did they
3 finally convict, only of the lesser charge.

4 You heard Geoffrey Stewart's testimony. He might not
5 use two suits, but eight or ten would be totally different.
6 The impact of questions about so many specific fact patterns,
7 even if the cops tried to deny each one, would cause one or
8 more jurors to disbelieve the denials. That was his belief.
9 He was deprived of the opportunity to make a strategic decision
10 during the trial about how to use and whether to use those
11 lawsuits because he was deprived of the lawsuits. He was
12 deprived of the information.

13 He told you that his usual practice and experience was
14 to use lawsuits when he knew of a large number of lawsuits. He
15 told you he did it in at least two cases, but he also told you
16 he believed he probably did it more than twice. And they
17 suggest to you, he tried a lot of cases, but he only did it
18 twice or maybe a few times more than twice? That somehow
19 proves that the lawsuits in this case were not material. Well,
20 how many cases did he have that officers were sued so many
21 times? You think that happens in a lot of cases? It's
22 extraordinary in this case that they're sued so many times.

23 And how do we know if there were other cases where
24 officers were sued a lot of times that it was disclosed by the
25 DA? How do we know the officers in those cases told the DA

1 about their lawsuits? You heard the testimony that it wasn't
2 until 2014, at the earliest, that the NYPD did anything at all
3 to get out the question of disclosing civil lawsuits. I'm
4 going to discuss with you that I don't think what they did was
5 enough, but that was the first time they ever did anything.

6 For nearly 50 years, more than 50 years from when the
7 *Brady* case was decided until 2014, they did absolutely nothing.
8 So how do you know that their officers were disclosing their
9 civil lawsuits to DAs before 2015? How do you know how many
10 cases Mr. Stewart had to make that decision in? You do know
11 from a very honest and credible witness that he knows that if
12 he learned about eight or ten lawsuits rather than two, he
13 would have used them, and he thinks they would have made a
14 difference.

15 It took some chutzpah for Sangermano to degrade
16 defense lawyers for losing things. His suggestion that
17 Mr. Stewart actually received 11 more lawsuits involving
18 Regina, so he had 13, and he didn't use 13, so his testimony
19 that he would have used eight or ten is not truthful. It takes
20 some nerve for him to degrade a defense lawyer for -- defense
21 lawyers for losing things and to suggest that he really turned
22 over those 11 lawsuits when he violated the basic training of
23 his office to make a record of *Brady* disclosures.

24 He's to blame if there's any issue about this at all.
25 He tried to suggest that civil lawsuit information is never

1 useful because he's never seen a defense attorney use it, but
2 even UC 84 told you that he's been cross-examined before about
3 his lawsuits. And Stewart, Mr. Stewart, of course, testified
4 that he's done it multiple times. If such lawsuits are not
5 material, then why was the *Garrett* case decided the way it was?
6 And why did the judge in Jawaun's case overturn his conviction
7 for the failure to turn over lawsuit information?

8 And don't forget when evaluating where Sangermano is
9 coming from, he's the prosecutor whose failure to disclose the
10 Regina lawsuits caused the conviction to be overturned. He had
11 some nerve coming in here so smug, self-righteous, and
12 sanctimonious.

13 Contrary to Sangermano, Katie Flaherty, despite being
14 so obviously invested in defending the City, testified that
15 even the NYPD considers a handful of lawsuits significant.
16 They were considered before approving transfers and promotions.
17 Just three in 12 months would cause an officer to be evaluated
18 for possible special monitoring or six in five years.

19 Now, you heard Mr. Francolla testify on the issue of
20 materiality that these lawsuits really wouldn't have made any
21 difference. Mr. Stewart wouldn't have used them. I mean, they
22 were so innocuous. Well, in the *Wright* case, as I mentioned to
23 you a moment ago, the undercover was accused of orchestrating
24 the arrest of an innocent person because that person had the
25 temerity to try to warn his friend that the undercover -- that

1 the undercover was an officer. And Mr. Francolla suggested to
2 you that in that lawsuit there weren't any allegations that he
3 did anything dishonest.

4 Well, first of all, at paragraph 27 of that lawsuit,
5 the allegation is that this poor guy spent five months in
6 prison, in jail, before all the charges against him were
7 dismissed when a jury found him not guilty. Then at
8 paragraph 40, the lawsuit alleges defendants withheld
9 exculpatory evidence from the district attorney. And then at
10 paragraph 46, defendants misrepresented and falsified evidence
11 throughout all stages of the criminal proceedings. That's
12 Exhibit 38A.

13 Then, as to Del Toro, there's the *Murray* case. I
14 mentioned to you a moment ago that, obviously, he knew about
15 the *Murray* case because he still remembers it to this day. In
16 the *Murray* case, paragraph 13 alleges that defendant Del Toro,
17 along with a couple of other -- along with one other police
18 officer, deliberately and maliciously prosecuted plaintiff
19 Donnell Murray, an innocent man, without any probable cause
20 whatsoever by filing or causing a felony complaint to be filed
21 in the criminal court of the City of New York for the purpose
22 of falsely accusing the plaintiff of violations of the criminal
23 laws of the state of New York. Paragraph 14, that Del Toro and
24 his codefendant deliberately provided false and/or incomplete
25 information to the District Attorney's Office to induce

1 prosecution of the plaintiff. And at paragraph 16, as a result
2 of this conduct, plaintiff was deprived of his liberty and
3 suffered the humiliation, mental anguish, indignity, and
4 frustration of an unjust criminal prosecution.

5 Then they suggest that maybe the undercover -- I'm
6 sorry, maybe Del Toro didn't remember the *Sanchez* case, PX 17,
7 or that that wasn't material. That's an extraordinary case
8 where Del Toro and other officers allegedly barged into an
9 apartment without a warrant while this 15-year-old plaintiff, a
10 15-year-old girl, was attempting to get dressed. She heard
11 them bang on the door and eventually break the door and enter
12 the apartment, and while she was undressed to -- trying to get
13 dressed, she heard them continue to bang on the door and break
14 the door in and enter the apartment. And while the plaintiff
15 was undressed, approximately four male officers who were
16 holding riot shields entered her bedroom and pinned her down on
17 to the bed. And while she was held by the officers, she was
18 pinned down for five to six minutes, and then they asked her
19 her age and if anyone else was home. And she informed them she
20 was 15 years old and no one else was home. And then they
21 handcuffed the plaintiff, which caused plaintiff to drop her
22 towel, and she was standing naked in handcuffs while the
23 officers continued to interrogate her for approximately five
24 minutes.

25 And then she was -- You forgot that one? That's not

1 material? Mr. Stewart couldn't have used that effectively to
2 challenge his credibility?

3 We have proven by a preponderance of the evidence
4 knowledge, materiality, and causation. You should award Jawaun
5 for all his damages caused by his unfair conviction.

6 And now turning to *Monell* liability. The best
7 evidence of the City's attitude about compliance with *Brady*
8 came out of its own lawyer's mouth during her opening
9 statement. Jawaun was lucky to have his conviction overturned
10 for a *Brady* violation, as if it's a mere inconsequential
11 technicality. This was totally dismissive of the importance of
12 *Brady*, but it certainly reflected the attitude of her clients.

13 He was lucky, I suppose, in a sense that I don't think
14 she was thinking of. He was lucky that the *Brady* violation was
15 discovered at all. Remember that *Brady* material is information
16 the prosecution fails to disclose, and by definition it's
17 information the defense doesn't have at trial. They don't know
18 about it. So had Jawaun not been lucky to have an excellent
19 appellate attorney find the information several years later,
20 the violation would never have been discovered, and he still
21 would be a convicted felon. And unfortunately, the discovery
22 was too late to shorten his time in prison and on parole.

23 We've proven that the NYPD commissioner and other
24 policymaking officials were deliberately indifferent leading up
25 to Jawaun's trial about whether officers complied with their

1 *Brady* obligations. For 51 years, when *Brady* was decided in
2 1963 until 2014, there was no written *Brady* policy or mention
3 of it in any training materials given to officers. For 51
4 years they adopted no disclosure policy. This was just
5 incredible malfeasance. Think of what *Brady* is. *Brady* is
6 evidence of innocence or evidence that may so discredit a
7 police officer that a jury might not or would not convict.
8 That a person who does not deserve to go to prison may not go
9 to prison. For 51 years they so trivialized *Brady* in their
10 minds that they didn't tell -- they didn't have any policy and
11 they didn't train officers about their obligations for 51
12 years.

13 And then in 2014, the *Garrett* decision comes down from
14 the New York Court of Appeals making clearer still that civil
15 lawsuit information has to be disclosed. And then, this is
16 unbelievable, the department adopted a definition of *Brady* that
17 defeated such disclosure. It defined *Brady* as extending only
18 to exculpatory evidence indicative of complete innocence.
19 Complete innocence, not a word about impeachment.

20 (Continued on next page)

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1 MR. RUDIN: They defined out of the *Brady* obligation
2 what the New York Court of Appeals had just told them had to be
3 disclosed.

4 You heard that definitively established in the
5 deposition testimony we read from Mr. McNally, an NYPD
6 representative. This was an unlawful policy. This unlawful
7 written policy wasn't changed until January 2017, too late for
8 Jawaun, who was in Greene Correctional Facility by that time.

9 No wonder, in view of this unlawful policy, police
10 officers like UC 84 and Del Toro didn't take their obligations
11 seriously.

12 Katie Flaherty claims she began telling commanding
13 officer and roll call officers to discuss with line officers
14 they had to disclose impeachment and civil lawsuit information
15 beginning sometime in 2014. That she told -- that she told
16 them -- that's the commanders -- to tell officers they had to
17 know their lawsuit history, but there was no follow up to make
18 sure this occurred or that the officers followed any such
19 instruction.

20 Indeed, Stella Urban, one of the representative
21 witnesses who gave a deposition admitted there was no process
22 for supervisors to make sure that officers were properly
23 disclosing their lawsuit information to prosecutors. This at
24 page 420 of the trial transcript.

25 Ms. Flaherty claims she told commanding officers to

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Summation - Mr. Rudin

1 tell line officers, including detectives, that they could, if
2 they wished, e-mail her to find out additional information.
3 The legal bureau as you heard had a comprehensive database.
4 She admits she could have made a rule they had to contact her.
5 But she didn't.

6 The NYPD could have proactively provided the
7 information to every testifying officer in every case, or
8 direct them to the DA's Office, but they elected not to do any
9 of these things. They could have prevented virtually all human
10 error. They could have prevented the consequence of officers
11 forgetting in good faith. Instead they were passive. They
12 allowed violations like in this case to happen.

13 While Ms. Flaherty claims she began training
14 detectives directly, she admitted it wasn't until 2015 or 2016.
15 And critically, Detectives Regina and Del Toro both told you
16 they received no such training. So much for the claimed
17 comprehensiveness of the training program.

18 The uncontradicted evidence in the record also is that
19 no officer has ever been disciplined for failing to disclose
20 civil lawsuit information, and that includes the officers in
21 this case. Only you have the power to discipline them. The
22 police department has no interest in it. So there was no
23 supervision and no discipline. Another signal to officers that
24 the department didn't take this seriously.

25 The NYPD took this extraordinarily lax attitude about

1 *Brady, Giglio*, and civil lawsuit disclosure, even though it
2 knew its officers had such a history of perjury that it felt
3 compelled to repeatedly tell them in training materials not to
4 commit perjury. Imagine that. You think, you never -- you
5 don't hear witnesses told when they take the witness stand not
6 to commit perjury. We all understand what it means to take an
7 oath. To tell the truth. Yet they had to tell police officers
8 over and over and over again in bold face and capital letters
9 to resist the temptation to commit perjury.

10 I would say, by the way, if they are tempted to commit
11 perjury in order to defend an arrest they make of some body
12 they picked up in the street, imagine the temptation to commit
13 perjury if it's necessary to save the undercover career of UC
14 84.

15 You also heard from Mr. McNally's deposition that the
16 withholding of impeachment information, according to the New
17 York Police Department, they knew it, was a leading cause of
18 wrongful convictions.

19 How many individuals are in prison wrongfully today
20 because the NYPD allowed its officers not to disclose their own
21 lawsuit histories or other impeachment information before 2017?
22 You must hold New York City liable so that doesn't continue to
23 happen to others.

24 Finally, damages. The damages in this case, which
25 they didn't address at all, are enormous. Jawaun was

1 prosecuted on fabricated evidence. He went through the trauma
2 of a prosecution for a year. 15 to 20 pretrial court
3 appearances. Trial. Conviction. The horror of conviction for
4 something you didn't do, and the horror of sentencing, of being
5 sentenced to two to six years in prison. Then he suffered two
6 horrific years in prison followed by a year of strict parole
7 supervision.

8 He went through the horrible experience at Rikers
9 Island followed by boot camp, where they tried to completely
10 strip him of his pride and humanity. He then had the gruesome
11 exposure to prisoner violence at Greene, having to live every
12 minute of his life on guard to avoid situations that could
13 become deadly or to avoid being killed or maimed for no reason
14 at all.

15 He had no privacy, he had no companionship, he had no
16 romantic or sexual relationships, he had no entertainment, he
17 had no freedom of movement, he had no ability to control his
18 own life. He couldn't pursue his career goals. He had to
19 debase and humiliate himself at two parole hearings, having to
20 admit to things he truthfully denied for three years and he
21 knew he hadn't done.

22 Worst of all, he couldn't be a real father to his two
23 adorable children, and missed out on that special time of life
24 when your children are young and you are the world to them.

25 All this happened in his most formative years, when

1 many of you or your children were in college, years 18 to 21.
2 For four years he was a convicted felon, losing jobs, being
3 turned down for apartments, his right to travel substantially
4 limited.

5 You heard what a day in that life was like at Greene
6 Correctional Facility. Waking up very early before other
7 inmates were up and able to attack you. Going to sleep late
8 after they all went to sleep. Eating the awful food. Being
9 vigilant every moment not to bump another person or to make eye
10 contact so you don't rub someone the wrong way and end up being
11 shanked. Having to answer at all times to the corrections
12 officers. Having to take programs against violence and drug
13 use you don't want or need. Having to watch your back in the
14 shower and having to watch inmates stab or slash each other.
15 And then when you are allowed a visit, seeing your children
16 having grown without you, seeing them cry when you leave.
17 Seeing your mother's anguish after she's been violated by
18 guards searching her under her underwear.

19 How many thousands of dollars a day would you want to
20 go in for one of those days when you are sure it would be
21 follow by more and more years.

22 MR. FRANCOLLA: Objection.

23 THE COURT: Overruled.

24 MR. RUDIN: Assuming you'll survive each day, when you
25 know that at any minute your life could change forever or even

1 end. When you know you'll never come out the same person
2 mentally and emotionally.

3 Jawaun became withdrawn, lost relationships, felt
4 uncomfortable around his own family, almost can't bear to visit
5 his mother because he would have to go back to the Jacob Riis
6 projects where all this happened. Has avoided public
7 transportation and closed in areas, fears police. The scars
8 will live with him forever.

9 Would \$10,000 be enough for each such day? Three and
10 a half million dollars a year?

11 You are the conscious of the community and I trust you
12 to come up with an appropriate figure that tells Jawaun and
13 tells the police officer the value of three years of his life
14 and of everything that's followed.

15 No, UC 84; no, Detective Del Toro; no, Detective
16 Regina, Jawaun Fraser is not just a body. His life matters.

17 I don't want to overlook the economic damages, the
18 \$224,000 in lost wages and benefits including interest, and the
19 \$13,000 in legal fees.

20 Punitive damages. Then I'll be done. What these
21 detectives did to this young man, this man of limitless
22 potential who was scarred for life, is unconscionable. They
23 must be punished for it. There must be a consequence. You
24 cannot put them in jail like Jawaun. You can appropriately
25 punish them through punitive damages. Punitive damages are

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1 essential to deter them and others from doing the same thing to
2 other Jawauns. Anything less than a seven figure amount per
3 officer would give the wrong message. Your message should be
4 loud and clear. Make sure they and their police colleagues
5 never forget this lawsuit. Thank you very much.

6 THE COURT: Okay. So, we've heard the closing
7 arguments. I'm going to give you from now until 1:30 to have
8 your lunch. We ordered lunch, I believe, and it should be
9 there. It is there. And take a stretch. And be back in the
10 jury room at 1:30 ready to go to law school. And that will
11 probably take about an hour to an hour and 15 minutes, which is
12 not going to leave a lot of time for deliberations this
13 afternoon, given my unfortunate but longstanding commitment at
14 Columbia. But, it will get you started.

15 Don't discuss the case over lunch. There is a missing
16 piece. It's right here. I'm going to read it to you after
17 lunch. Keep an open mind. All right? Keep an open mind for
18 another just another couple of hours and then you can start to
19 close it. All right? Have a good lunch.

20 (Jury excused)

21 THE COURT: Okay. I will see you probably about 1:25.

22 (Recess)

23 (Continued on next page)

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Charge

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AFTERNOON SESSION

1:30 p.m.

LAW CLERK: Case on trial continued. Judge present, parties are present, jurors are not present.

THE COURT: Okay. All right. So we created a damages verdict sheet, which on the compensatory line, the jury is free to fill in any number from one to whatever. It will only fill it out obviously if somebody's liable. And then there is a punitive damages.

Okay. Are the jurors ready? We'll go find out.

(Jury present)

THE COURT: I hope you had a good lunch. Okay. Everyone be seated.

This is a new cafeteria vendor for us. We've just had a new vendor take over our cafeteria, so I'm particularly interested in feedback, if you have any.

Okay, ladies and gentlemen, now that you've heard the evidence and the arguments of counsel, it is my duty to give you instructions about the law that's applicable in this case. It is your duty as jurors to follow the law as stated in these instructions, and to apply the rules of law as I give them to you to the facts you find from the evidence in this case.

And I just want to let you know that don't bother taking notes, because you are going to have copies of this charge with you in the jury room. Okay? Just listen.

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Charge

1 Concentrate.

2 You are not to single out any one instruction as
3 stating the law. You have to consider all of the instructions
4 as a whole. And you are also not to be concerned with the
5 wisdom of any rule of law that I give you. It is your sworn
6 duty to issue a verdict based on the law as instructed by the
7 Court, regardless of any opinion that you have about what the
8 law should be.

9 Nothing I say in these instructions is to be taken as
10 an indication that I have any opinion about the facts in the
11 case. It is not my job to determine the facts in the case.
12 That is your job. You need to weigh and consider this case
13 without regard to sympathy, prejudice, or public opinion. In
14 reaching your verdict, you must not consider anything other
15 than the evidence that's been presented to you in this action.

16 All of the parties to the case and the public have the
17 right to expect that you will carefully and impartially
18 consider all the evidence, follow the law as I state it, and
19 then reach a just verdict, regardless of the consequences.

20 The case should be considered and decided by you as an
21 action between persons of equal standing in the community of
22 equal worth and holding the same or similar stations in life.
23 Remember, all people stand equal before the law, and are to be
24 dealt with as equals in a court of justice.

25 As I told you, it's your function to decide the issues

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1 of fact, which decision is to be based solely on the evidence.
2 The evidence consists of the sworn testimony of witnesses, and
3 of the exhibits that were received into evidence for your
4 consideration. Also, there have been a few stipulated facts
5 during this case, and those should be regarded as proven.

6 Now, that's the evidence. Nothing I say is evidence.
7 Nothing either of the lawyers -- any of the lawyers, they've
8 all talked -- nothing that any of the lawyers say is evidence.
9 The questions that they ask by themselves aren't evidence.
10 Objections are not evidence. Any evidence to which an
11 objection was sustained by the Court, and any evidence that I
12 struck -- although I don't remember having stricken any
13 testimony during this trial -- must be entirely disregarded.

14 Now, understand, I am going to emphasize this one more
15 time, I'm neutral. I don't have opinions about how you should
16 decide the case. Your decision is going to be my decision.
17 All right? So I leave that issue entirely up to you. My
18 function was to make sure the trial was concluded as fairly and
19 as promptly as possible, and to explain the law to you. Don't
20 assume that I have some certain attitude or view about the
21 case.

22 One of the aspects you have to deal with is the burden
23 of proof. The burden of proof refers to the obligation to
24 establish the essential facts that you must find if the
25 plaintiff is to recover from the defendants. In your

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1 deliberations, it is important to bear in mind that a plaintiff
2 in a civil action -- in this case, Mr. Fraser -- has the burden
3 of proof with respect to every essential element of his claims.
4 That means that unless the plaintiff can demonstrate each
5 essential element of his claims by what we call a preponderance
6 of the credible evidence, then your verdict must be in favor of
7 the defendants.

8 The credible evidence means the testimony or exhibits
9 that you find to be worthy of belief. The plaintiff has
10 convinced you by a preponderance of the evidence if, after
11 hearing all the evidence, you believe it is more likely than
12 not that some event has occurred or that some fact exists. If
13 you believe it more likely than not that an event did not
14 occur, or that a fact does not exist, then the matter has not
15 been proven to you by a preponderance of the evidence. And if
16 you find the likelihood evenly balanced -- maybe yes, maybe no,
17 50/50 -- the party having the burden of proving the fact to you
18 has not succeeded. The balance must tip in favor of your
19 believing that the particular event did occur or the particular
20 fact did exist in order for plaintiff to meet his burden of
21 proof.

22 Let me stop for a minute. Juror No. 8, would you like
23 us to pull down -- you're starting to be in the sun. Would you
24 like us to pull this down a little bit?

25 A JUROR: No, it's okay.

1 THE COURT: If anyone gets uncomfortable as the sun
2 moves around, let me know.

3 In determining whether a fact has been proved by a
4 preponderance of the evidence, you may consider the testimony
5 of all witnesses, regardless of who called them, and all of the
6 exhibits that were introduced into evidence, regardless of who
7 produced them. But remember that the words "preponderance of
8 the evidence" do not mean the greater number of witnesses or
9 how much time either side took during the trial. The phrase
10 refers to the quality of the evidence, its weight, its
11 significance, and the effect it has on your minds.

12 Some of you may have served as a juror in a criminal
13 trial, and I'm pretty much everyone has watched movies or read
14 articles or books dealing with criminal cases, and you've heard
15 the words proof beyond a reasonable doubt. That standard does
16 not apply in this civil trial. That is a very high standard of
17 proof that society requires before anyone can be found guilty
18 of a crime and lose his or her liberty. It's not applicable
19 here. Put out of your mind any discussion you may have heard
20 about proof beyond a reasonable doubt. Because in a civil
21 case, the proof must be by a preponderance of the credible
22 evidence, as I've explained it to you.

23 There are two types of evidence you can consider.
24 Direct evidence is proof of a fact through the medium of a
25 witness's five senses: What someone saw, heard, smelled,

1 tasted or touched. Circumstantial evidence is proof of a fact
2 from which one can infer or conclude, using reason and common
3 sense, that some other fact exists.

4 Plaintiff can prove the elements of his claim by using
5 direct evidence, circumstantial evidence, or some combination
6 of direct and circumstantial evidence. You, the jury, must be
7 convinced by a preponderance of all the credible evidence,
8 whether that evidence be direct, circumstantial, or both.

9 During their argument, the lawyers asked you to draw
10 inferences on the basis of your reason, experience, common
11 sense, and established facts, the existence of some other fact.

12 An inference is a reasonable deduction or logical
13 conclusion which you, the jury, are permitted -- but not
14 required -- to draw from the facts that have been established
15 by the evidence. You may draw such reasonable inferences as
16 seem justified in light of your experiences and the facts that
17 you find to have been proved.

18 For example, some of the claims in this case will
19 require you to determine whether plaintiff has proven that a
20 person had a particular intent. Well, direct proof of a
21 person's intent is seldom available, but direct proof is not
22 required. For that reason you're permitted, but not required,
23 to infer that a defendant acted with a particular intent based
24 on whatever facts you find that are relevant to your drawing
25 that inference.

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1 Now you, the jurors, are the sole judges of the
2 credibility, the believability of the witnesses, and of the
3 weight their testimony deserves. You may be guided by the
4 appearance and the conduct of the witness, or by the manner in
5 which the witness testified, or by the character of the
6 testimony given, or by evidence you find to be credible that's
7 contrary to the testimony that was given.

8 You should carefully scrutinize all the testimony
9 you've heard, the circumstances under which each witness
10 testified, and every matter in evidence that tends to show
11 whether a witness is worthy of belief. Consider each witness's
12 intelligence, motive, state of mind, and demeanor or manner
13 while on the stand. Consider the witness's ability to observe
14 the matters about which he or she has testified, and whether he
15 or she impresses you as having an accurate recollection of
16 those matters. Consider any relation any witness may bear to
17 either side of the case, the manner in which each witness might
18 be affected by the verdict, and the extent to which, if at all,
19 each witness's testimony is supported or contradicted by other
20 evidence in the case.

21 Now, inconsistencies or discrepancies between the
22 testimony of different witnesses may cause you not to believe
23 the testimony of one of the witnesses, so may inconsistencies
24 within the testimony of a single witness.

25 But I want you to remember that two or more people who

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1 witness an incident or transaction may see or hear it
2 differently. You should also remember that innocent
3 misrecollection, like failure of recollection, is not an
4 uncommon experience. So in weighing the effect of a
5 discrepancy, consider whether it pertains to a matter of
6 importance or to an unimportant detail, and also whether you
7 believe it results from innocent error or intentional
8 falsehood.

9 After making your own judgment, you will give the
10 testimony of each witness such weight, if any, as you think it
11 deserves.

12 Now you heard evidence that at some earlier time, a
13 witness said something that counsel argued to you is
14 inconsistent with the witness' trial testimony.

15 Now, evidence of a prior inconsistent statement, other
16 than a statement by a party to the lawsuit, statement by
17 Mr. Fraser, a statement by the officers, a statement by
18 representatives of the City, which is pretty much everybody, is
19 not testimony, so it can't be considered by you as affirmative
20 evidence in determining liability. Diane Smith is someone who
21 is not a party, so her prior statements are not evidence in the
22 case. What she said on the stand is evidence in the case.

23 But if you find that a witness, even a non-party
24 witness, made an earlier statement that conflicts with his or
25 her trial testimony, you may consider the fact of that

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1 inconsistency in deciding how much of the trial testimony of
2 that witness, if any, you believe.

3 In making this determination, you may consider whether
4 the witness purposely made a false statement or whether there
5 was an innocent mistake; whether the inconsistency concerns an
6 important fact, or has to do with a small detail; whether the
7 witness had an explanation for the inconsistency, and whether
8 that explanation appealed to your common sense.

9 It is exclusively your duty, based on all the evidence
10 and your own good judgment, to determine whether the prior
11 statement was inconsistent -- remember, I told the lawyers
12 that's for you to decide. Whether a prior statement was
13 inconsistent, and if so, how much weight, if any, to give to
14 the fact of the inconsistency, as you decide whether you
15 believe all or part of the witness's trial testimony.

16 If you find that a witness testified falsely about a
17 material fact, the law permits you to disregard completely the
18 entire testimony of that witness. Put otherwise, somebody lies
19 to you about something that's important, you can say, I don't
20 believe anything that person says. You can do that. You're
21 not required to do that. You may accept as much of the
22 witness's testimony as you deem to be true, and disregard
23 whatever portion you think is false. How you treat the
24 testimony of a witness who testifies falsely about a material
25 fact is up to you.

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1 As parties to the action, some of the witnesses you've
2 heard have an interest in the outcome of the case. Mr. Fraser,
3 the defendant officers, as parties, they're obviously
4 interested in the outcome of the case.

5 Now, interest in the outcome of the case may create a
6 motive to testify falsely, and may persuade a witness to
7 testify in a way that advances his or her own interests. So if
8 you find that there is a witness whose testimony you're
9 considering, and that witness has an interest in the outcome of
10 the trial, you should bear that in mind when you're evaluating
11 the witness's credibility.

12 But keep in mind, it does not automatically follow
13 that testimony given by an interested witness is to be
14 disbelieved. There are many people who, no matter what their
15 interest in the outcome of a case, would not testify falsely.
16 It is for you to decide, based on your own perceptions and
17 common sense, to what extent, if at all, the witness's interest
18 has affected his or her testimony.

19 We've heard testimony from Kristin Kucsma. She is a
20 witness who, by education and experience, has become an expert
21 in some art, science, profession, or calling. Expert witnesses
22 may state their opinions about relevant and material matters,
23 and give you their reasons for having those opinions. Expert
24 testimony is allowed in order to help you reach conclusions
25 about matters that are generally beyond the everyday knowledge

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1 of people who have no background or training in a particular
2 field. In this case of the field of labor economics.

3 You should consider the expert opinion that was
4 received in this case, and give it such weight, if any, as you
5 think it deserves. If you decide that the expert was not
6 testifying based on sufficient education and experience, or
7 that the reasons given in support of her opinion are not sound,
8 or if you feel that her opinion is outweighed by some other
9 evidence, you're perfectly free to disregard her opinion. You
10 are not required to accept it just because she's an expert
11 witness.

12 The law does not require a party to call as witnesses
13 everybody who may have been present at the time or place
14 involved in a case, or who may appear to have some knowledge of
15 the matters at issue in the trial. Thank God. Nor does the
16 law require any party to produce as exhibits all the papers and
17 things that were mentioned in the case.

18 There are people whose names you heard during the
19 trial but didn't appear as witnesses. Each party had an equal
20 opportunity or lack of opportunity to call them. Don't draw
21 any inference or reach any conclusion about what any uncalled
22 witness would have testified about. In fact, the absence of
23 witnesses should not affect your judgment in any way. Your job
24 is to evaluate the evidence you heard here in court and that
25 you saw here in court.

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1 Let's talk about the law that's applicable to the
2 plaintiff's specific claims.

3 Mr. Fraser is bringing three claims. Three types of
4 claims. First is a claim that Undercover Officer 84, Detective
5 Matthew Regina, and Detective Jason Del Toro denied him his
6 constitutionally guaranteed right to a fair trial by
7 fabricating evidence. That's the first claim.

8 Second claim is a claim that Undercover Officer 84 and
9 Detective Del Toro violated his constitutionally guaranteed
10 right to a fair trial by failing to disclose to the assistant
11 district attorney the existence of lawsuits whose underlying
12 allegations could have been used to cross-examine them at
13 Mr. Fraser's criminal trial.

14 And the third claim is a claim against the City of New
15 York for having an unconstitutional policy concerning the
16 disclosure of what we've all come to call *Brady* material,
17 and/or failing, as a matter of policy, practice, or custom to
18 give adequate training to its police officers so they could
19 comply with their obligation to provide possible impeachment
20 evidence to prosecutors.

21 All of these claims are brought under a federal law,
22 42, United States Code, Section 1983. We know them
23 colloquially as Section 1983 claims.

24 You must consider each claim and each defendant,
25 separately. You are not required to find that any defendant

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1 committed all of the alleged violations in order to find that
2 he or it committed one or more of the alleged violations. Nor
3 does the fact that you find one of the defendants to have
4 committed a particular violation mean that you have to find any
5 other defendant committed the same violation. The fact that
6 all four defendants are represented by Mr. Francolla and
7 Ms. McGuire does not mean you can treat them as a unit. Each
8 defendant is entitled to your fair consideration of the
9 evidence against him or it. "It" being the City.

10 Keep in mind that in order to prevail on a claim
11 against any defendant, plaintiff must prove each element of
12 that claim by a preponderance of the evidence.

13 Now, what is this Section 1983? Well, it is a law
14 that creates a federal remedy for persons who have been
15 deprived by state officials of the rights, privileges and
16 immunities that are secured to everyone by the Constitution and
17 laws of the United States.

18 To prevail on a Section 1983 claim, the plaintiff must
19 prove each of the following elements by a preponderance of the
20 evidence: First, that the defendants were acting under color
21 of state law in their actions toward Mr. Fraser; second, that
22 the defendants' conduct deprived Mr. Fraser of some
23 constitutional right that he enjoys; and third, that said
24 conduct injured him and caused him damage.

25 The first element of the plaintiff's federal claims as

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1 to each defendant and as to each of the claims is that the
2 defendants act under color of state law. You don't need to
3 deliberate about this. It's conceded. The officers were
4 acting in their capacity as New York City police officers at
5 the time of the acts in question. Therefore, they were acting
6 under color of state law. And of course, the City is acting
7 under color of state law. So you don't need to deliberate
8 about the first element.

9 Now, the second element, deprivation of a
10 constitutional right, and let's focus on the claims against the
11 officers. There are two claims, but they are both deprivation
12 of the constitutional right to a fair trial. But in two
13 different ways.

14 The first way is deprivation of a fair trial due to
15 evidence fabrication. Mr. Fraser contends that Undercover 84,
16 Detective Regina and Detective Del Toro, all three of the
17 defendant officers, denied him his constitutional right to a
18 fair trial by fabricating evidence that was used to prosecute
19 him.

20 Under the due process clause of the United States
21 Constitution, which is applicable to the states by virtue of
22 the 14th Amendment to the Constitution, a criminal defendant
23 has a right to a fair trial, based on evidence that is not made
24 up.

25 In order to establish a claim of denial to the right

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1 to a fair trial resulting from the fabrication of evidence, the
2 plaintiff must prove four things by a preponderance of the
3 evidence.

4 The first thing is the defendant whose conduct you are
5 considering -- remember you're thinking about each officer
6 individually -- fabricated evidence.

7 Plaintiff alleges that Undercover Officer 84 made up a
8 false story about being robbed by threatening him and by taking
9 his fake ID and \$20 of prerecorded buy money. Plaintiff
10 alleges that Detective Regina lied when he said that he found
11 Undercover 84's fake ID in Mr. Fraser's pants pocket and when
12 he swore out the criminal complaint. And the plaintiff
13 contends that Detective Del Toro supported this false story by
14 labeling a photocopy of this ID as evidence that was seized
15 from Mr. Fraser following his arrest, when in fact he knew that
16 it was not seized from Mr. Fraser during the arrest. Those are
17 the allegations made by the plaintiff. Okay?

18 Mr. Fraser of course says he didn't threaten
19 Undercover 84, didn't take any money from him, didn't put
20 Undercover Officer 84's fake ID in his pocket, so it couldn't
21 have been taken out of his pocket.

22 You all know what fabricate means. It means to make
23 something up. Fabricated evidence is false evidence. It's
24 untrue evidence. Evidence is false if it was untrue at the
25 time it was made, and it was known to be untrue at that time by

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1 the person who made it or caused it to be made. If an officer
2 gave a false account of his or her own observations of alleged
3 criminal activity, which led to an arrest, then he fabricated
4 evidence. Plaintiff bears the burden of proving by a
5 preponderance of the evidence that each defendant made up
6 evidence that was used to prosecute him at his trial.

7 Now, a person can only fabricate evidence
8 intentionally. That is, with a conscious aim or objective to
9 tell a lie. An officer's good faith mistake about what he
10 thinks he saw is not fabricated evidence, even if what he
11 thinks he saw is not what actually occurred. Also, good faith
12 mistakes in paperwork prepared by officers afford no basis for
13 concluding that evidence was fabricated.

14 Now the second element to the fabrication claim is the
15 allegedly fabricated evidence was likely to influence a jury's
16 verdict. False information is likely to influence a jury's
17 decision if the false information is material -- that is, if a
18 reasonable juror would consider it important when evaluating
19 the charges against the person who's on trial.

20 So Mr. Fraser went on trial charged with the crime of
21 robbery in the second degree, under New York Penal Law section
22 160.10(1). The elements of that crime are that the defendant
23 forcibly stole property from another person; and that the
24 defendant was aided in doing so by another person actually
25 present.

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1 Now, as we know, the defendant was not convicted of
2 that crime. He was ultimately convicted of something called a
3 lesser included offense, which I believe Mr. Stewart testified
4 was charged at the request of the defense. That lesser
5 included offense is robbery in the third degree under New York
6 Penal Law 160.05, which requires the prosecution to prove that
7 the defendant forcibly stole property from another person.

8 If a reasonable juror would consider evidence that you
9 find to have been fabricated as material in deciding whether
10 Mr. Fraser was in fact guilty of that crime, then the
11 fabricated evidence was material.

12 The third element of the fabrication claim is that the
13 defendant whose conduct you are considering either sent the
14 allegedly fabricated evidence to the prosecutor or caused it to
15 be sent to the prosecutor. Proof that a police officer gave
16 the evidence to the prosecutor can be satisfied either by
17 direct evidence that the officer gave it to the prosecutor, or
18 by other evidence from which it can be inferred that the
19 officer took steps to get the fabricated evidence to the
20 prosecutor, such as, for example, officer A tells officer B,
21 and officer B tells the prosecutor.

22 Testifying in a legal proceeding, actually giving
23 testimony in a courtroom, is privileged conduct. So you cannot
24 conclude that a defendant forwarded evidence to a prosecutor
25 based on what he said in his testimony at the trial. However,

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1 if fabricated evidence was included in a signed complaint or an
2 affidavit or a memorandum or a report that was prepared in
3 connection with the investigation, you may conclude that a
4 defendant caused the information to be forwarded to the
5 prosecutor.

6 The fourth element of a fabrication of evidence claim
7 is that the plaintiff was deprived of life, liberty or property
8 as a result of the fabrication. Now, the plaintiff was
9 incarcerated in this case following his arraignment.
10 Incarceration constitutes a deprivation of liberty as a matter
11 of law.

12 Now, if you conclude that any or all of the three
13 individual defendants -- Undercover 84, Detective Regina, or
14 Detective Del Toro -- fabricated evidence to be used against
15 plaintiff, and caused that fabricated evidence to be forwarded
16 to the prosecutor, you have to decide whether the defendant you
17 are considering did so intentionally or recklessly.

18 An act is intentional if it is done voluntarily and
19 deliberately, rather than negligently or accidentally. An act is
20 reckless if it is done in conscious disregard of its known
21 probable consequences.

22 Now, in determining whether a defendant who you are
23 considering acted intentionally or recklessly, remember that
24 while witnesses can give direct evidence of what a person does
25 or fails to do, we don't have any way of looking into one's

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1 mind. So you have to depend on what was done, and what the
2 people involved said was in their minds and your belief or
3 disbelief about those facts.

4 It is not necessary for you to find that the defendant
5 whose case you are considering had a specific intent to harm
6 Mr. Fraser or a specific intent to violate his constitutional
7 rights. The plaintiff is entitled to relief if the evidence
8 was fabricated by any defendant, intentionally or recklessly,
9 as I have explained those terms to you. That is, if the
10 fabrication was intentional or reckless.

11 The third element that the plaintiff must prove is
12 whether any defendant's fabrication of evidence was the
13 proximate cause of some injury sustained by the plaintiff.
14 Now, since we all have a right to a fair trial, it's guaranteed
15 by the Constitution, I charge you that being deprived of a fair
16 trial is in and of itself an injury.

17 Proximate cause means that there must be a sufficient
18 causal connection between a defendant's act or omission and any
19 injury or damage that was sustained by the plaintiff. An act
20 or omission is a proximate cause of an injury if it was a
21 substantial factor in bringing about or actually causing that
22 injury; that which is to say, if the injury or damage was a
23 reasonably foreseeable consequence of the defendant's acts or
24 omissions.

25 So in this way, if a defendant's act or omission had

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1 such an effect in depriving plaintiff of a fair trial that a
2 reasonable person would regard it as being the cause of that
3 deprivation, then the act or omission is a proximate cause of
4 plaintiff's injury.

5 If you find that the plaintiff has shown, by a
6 preponderance of the evidence, that any or all of Undercover
7 Officer 84, Detective Regina, and Detective Del Toro
8 intentionally or recklessly deprived Mr. Fraser of his right to
9 a fair trial, and in this instance by the fabrication of
10 evidence and forwarding of the same to a prosecutor, and that
11 this proximately caused some injury to Mr. Fraser, then the
12 plaintiff has proven his civil rights claim for deprivation of
13 that right under Section 1983.

14 On the other hand, if you find that plaintiff has not
15 met his burden of proof on all three elements of his 1983 claim
16 as to any individual defendants, then you must find for that
17 individual defendant.

18 Okay. The plaintiff next contends that he was denied
19 his right to a fair trial, same constitutional violation,
20 because Undercover Officer 84 and Detective Del Toro did not
21 turn over certain information to the prosecutors prior to his
22 criminal trial.

23 So, same constitutional violation, different medium of
24 allegedly bringing it about. Okay?

25 Under our Constitution, prosecutors are required to

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1 disclose to the defense any evidence that is "favorable to the
2 accused." "Favorable to the accused." The phrase "favorable
3 to the accused" is a technical term. It encompasses two kinds
4 of evidence: Exculpatory evidence and impeaching evidence.

5 Evidence is exculpatory if it tends to show that the
6 defendant is not guilty of the crime charged. I think in
7 opening one of the lawyers may have mentioned an example. If
8 the prosecutor is aware of a statement by a witness saying the
9 defendant didn't do it, John Doe did it. That's exculpatory
10 evidence. Has to be turned over.

11 Impeaching evidence is evidence that a defense
12 attorney could use on cross-examination to cast doubt on the
13 credibility of a witness's testimony.

14 Now since this requirement was first articulated by
15 the United States Supreme Court in a case called *Brady v.*
16 *Maryland*, we refer to exculpatory and impeaching evidence as
17 *Brady* material or *Brady* evidence, and the obligation to
18 disclose it is the government's *Brady* obligation.

19 In this case, the evidence that was allegedly
20 suppressed was impeaching evidence. Specifically, evidence
21 about lawsuits -- a total of eight lawsuits that had been
22 brought against Undercover 84 and Detective Del Toro in the
23 past, in which officer individuals, not Mr. Fraser, but other
24 people, alleged that these officers had fabricated evidence in
25 order to arrest them without probable cause and secure a false

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1 conviction.

2 Now, police officers involved in a criminal case, as
3 officers of the state, have a constitutional duty of their own
4 to disclose to the prosecutors any evidence that is favorable
5 to the accused, that is, any exculpatory or impeaching evidence
6 in their possession, so that the prosecutor can in turn
7 disclose it to the defendant.

8 In order to establish that the defendant officers in
9 this case violated their *Brady* obligations, the plaintiff must
10 demonstrate three things by a preponderance of the evidence.
11 First, that the evidence that was not turned over is favorable
12 to the accused; second, that the evidence was suppressed by the
13 state; and third, that the evidence was material to the
14 prosecution.

15 So let's talk first about what evidence favorable to
16 the accused is at issue in this lawsuit.

17 The information that the two defendant officers are
18 alleged to have withheld from the prosecutor in Mr. Fraser's
19 case is information about lawsuits in which they were named as
20 defendants. Because Mr. Fraser was charged and tried in a
21 state court, not a federal court, I need to tell you a little
22 bit about New York State law concerning what constitutes
23 impeaching evidence.

24 The New York Court of Appeals, which is the highest
25 court in the State of New York -- the Supreme Court, by the

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1 way, is the lowest court in the State of New York, it is all
2 very confusing -- but the highest court in the State of New
3 York has held that the mere fact that a police officer was
4 named as a defendant in a lawsuit has little to no probative
5 value as impeaching evidence. That is, as evidence that could
6 impact on the officer's credibility. Unless the lawsuit
7 resulted in an adverse finding against the officer, or if the
8 case was settled with an admission of wrongdoing.

9 I believe there is a typo in there. I think we can
10 all agree. Sorry about that.

11 So the mere fact that an officer was sued cannot be
12 used to impeach him. That is, he may not be asked on
13 cross-examination were you sued on such-an-such a date by
14 so-and-so? Unless the lawsuit resulted in either a finding or
15 an admission of wrongdoing.

16 Now, for the subtle distinctions. A prosecution
17 witness, including a police officer, can be cross-examined
18 about whether, on a prior occasion, he engaged in specific
19 criminal, vicious, or immoral conduct, as long as the nature of
20 such conduct or the circumstances in which it occurred bear
21 logically and reasonably on the issue of credibility. It is
22 the nature of the alleged wrongdoing, not the fact of a lawsuit
23 about that alleged wrongdoing, that can be used to undermine
24 the witness's credibility.

25 So the rule in New York is that defendants are

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Charge

1 permitted to cross-examine an officer about specific prior
2 instances of alleged misconduct if those allegations are
3 relevant to his credibility. Because it's the underlying
4 factual obligations that are made in a lawsuit that are fair
5 game for cross-examination, only if they bear on a witness's
6 credibility, the relevant rule for *Brady* purposes is that a
7 police officer witness is required to disclose to the
8 prosecutor, in advance of a criminal trial at which they will
9 be testifying, the existence of any lawsuits they know about in
10 which they were accused of lying or bad acts that reflect on
11 their honesty.

12 Put otherwise, lawsuits against a police officer may
13 contain evidence favorable to the accused, and so must be
14 disclosed, if the underlying factual allegations in the lawsuit
15 accuse the officer of conduct that would have a bearing on his
16 believability.

17 Put in the specific context of this case, an officer
18 who was sued for lying or fabricating evidence in connection
19 with a prior criminal case can be asked on cross-examination
20 whether in fact he lied or fabricated evidence in connection
21 with that prior criminal case. But the officer may not be
22 asked if he was sued for lying or fabricating evidence, unless
23 the lawsuit resulted either in a finding against him or an
24 admission of liability.

25 Now in this case, the parties have stipulated that

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1 eight civil lawsuits for money damages, four against Undercover
2 Officer 84 and four against Detective Del Toro, allege
3 underlying facts about which Mr. Fraser's lawyer could have
4 cross-examined the officers, that is, the complaints contain
5 evidence favorable to the accused, but the prosecutor did not
6 disclose the existence of those lawsuits to the criminal
7 defendant. It is the existence of those eight lawsuits that
8 the officers in this case are alleged to have withheld in
9 violation of their *Brady* obligations. The fact that the
10 complaints in these cases alleged facts that fall within the
11 phrase "evidence favorable to the accused" is stipulated. You
12 don't need to worry about that.

13 The second prong of a *Brady* violation is that the
14 evidence was suppressed by the state. Police officers are
15 officers of the State of New York. So if an officer knowingly
16 failed to disclose the existence of lawsuits in which
17 allegations were made against him that could have been used to
18 impeach his credibility, then the impeaching evidence was
19 suppressed by the state. I emphasize it does not matter
20 whether the officer believed the allegations were true or not.

21 Now, you heard me use the word "knowingly." The word
22 "knowingly" means to act intentionally and deliberately, either
23 with actual knowledge or with reckless disregard for the truth,
24 and not because of a mistake, accident, negligence or some
25 other innocent reason.

1 Actual knowledge encompasses both actually knowing
2 that a fact exists, and consciously avoiding knowing whether a
3 fact exists. In determining whether a defendant acted
4 knowingly, you may consider whether the defendant deliberately
5 closed his eyes to what would otherwise have been obvious, that
6 he acted with a conscious purpose to avoid learning the truth.
7 A defendant who deliberately shields himself from clear
8 evidence of critical facts is considered just as liable as one
9 who has actual knowledge of those facts.

10 The United States Supreme Court has set out a two-part
11 test for determining whether a defendant has consciously
12 avoided knowing a critical fact: The defendant must
13 subjectively believe that there is a high probability that a
14 fact exists, and the defendant must deliberately do or omit to
15 do something to avoid learning of that fact.

16 Now, someone acts with reckless disregard for the
17 truth if he either knows of a particular risk for harm, or if
18 it's obvious that a reasonable person under the circumstances
19 would have recognized the risk of harm. And in either event,
20 he fails to take care to avert the harm that is likely to
21 follow. Recklessness is more than mere negligence. It
22 represents conduct that's grossly unreasonable, rash or
23 intemperate.

24 Now, evidence is not suppressed for *Brady* purposes if
25 defense counsel knew or should have known of the essential

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1 facts that would have permitted him to take advantage of it at
2 the criminal trial. However, this only applies to facts that
3 are already within the purview of the defendant. Defense
4 counsel are allowed to rely on the completeness of the state's
5 disclosure of *Brady* evidence, because the state's duty to
6 disclose such evidence is absolute.

7 A defendant's lawyer is not required to take
8 affirmative steps to seek out and uncover impeaching evidence
9 that the prosecution has an obligation to disclose and of which
10 he is, the defense lawyer, is unaware. In particular, defense
11 counsel is not required to conduct a blind search of public
12 records to see whether an officer was ever named as a defendant
13 in a lawsuit, or to try to unearth the existence of lawsuits
14 that are unknown to him. Only if defense counsel independently
15 possesses facts that alert him to the existence of a lawsuit
16 does he have any obligation to conduct his own investigation.

17 Now, the third and last thing the plaintiff must
18 establish in order to prove that the defendant officers, or
19 either of them, violated their *Brady* obligations is evidence
20 the suppressed evidence was material to the prosecution.

21 As I've already told you, evidence is material when
22 there is a reasonable probability that the result of the
23 criminal trial would have been more favorable to the defendant
24 if the evidence had been disclosed. Put otherwise, evidence is
25 material if, had it been disclosed to and used by the defense

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1 during the trial, it would have put the case in so different a
2 light as to undermine your confidence in the verdict reached by
3 the jury.

4 In a criminal case, the prosecution has to convince
5 all 12 jurors of the defendant's guilt beyond a reasonable
6 doubt. If even one juror out of 12 entertained a reasonable
7 doubt about the defendant's guilt, the jury cannot convict him.
8 So either an acquittal, which requires the vote of all 12
9 jurors, or a hung jury, at least one but fewer than 12 jurors
10 votes for acquittal, qualifies as an outcome of the trial that
11 is more favorable to Mr. Fraser.

12 I'm now going to put a throat lozenge in my mouth for
13 a minute. I told you last week I didn't have COVID. I had a
14 grandson. And I'm still getting over what my grandson gave me
15 as a present.

16 I remind you that the mere fact that someone made
17 allegations against an officer, and even that he sued an
18 officer, has minimal probative value and is not impeaching
19 evidence, according to the highest court in the State of New
20 York. So for evidence of the factual allegations of the
21 misconduct underlying a lawsuit to be material, the jury would
22 have to believe that those allegations were true, either
23 because the officer admitted them while on the stand, or one or
24 more jurors had a reasonable doubt about the officer's denial
25 of the allegations.

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1 If the officer would have denied the allegations on
2 the witness stand and you, the jury, conclude -- you, my jury,
3 conclude that the jury in Mr. Fraser's trial would have
4 believed that denial, then the evidence could not have had an
5 impact on the outcome of the trial.

6 If you conclude that either or both Undercover 84 or
7 Detective Del Toro suppressed material impeachment evidence,
8 you must decide whether that officer did so intentionally or
9 recklessly. In making that decision, use the same definition
10 of the words "intentional" and "reckless" that you used to
11 decide whether the defendants falsified evidence. You'll find
12 those definitions on page 21 of this charge.

13 Finally, if you conclude that either or both of
14 Undercover 84 and Detective Del Toro knowingly or intentionally
15 or recklessly suppressed material impeachment evidence, you
16 must consider whether that suppression of evidence proximately
17 caused the plaintiff to suffer some injury. In making that
18 decision, use the same definition of proximate cause that I
19 gave you earlier. It's on page 22.

20 As I told the whole panel during the voir dire, on
21 December 6, 2019, a state court judge granted Mr. Fraser's
22 motion to vacate his conviction for robbery in the third
23 degree, on the basis that his constitutional right to
24 disclosure of information favorable to the defense under *Brady*
25 *v. Maryland* had been violated. Specifically, the Court found

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1 that the District Attorney's Office had failed to disclose
2 information about certain lawsuits that had been brought
3 against Detective Regina, which required that the conviction be
4 overturned.

5 It is because the state court vacated Mr. Fraser's
6 conviction that we're here today. However, and this is very
7 important, the state court did not decide any of the issues
8 that you are being asked to decide in this case. There is no
9 suppression of *Brady* evidence claim against Detective Regina in
10 this lawsuit, only against Detective Del Toro and Undercover
11 84. And you are not to speculate about why that's the case.
12 It's none of your business. Okay? That's just the way it is.
13 Nor did the state court decide anything about fabrication of
14 evidence. That issue was not before the state court. So you
15 must not draw any inference from the fact of the state court
16 judgment that any of the claims in this lawsuit either do have
17 merit or don't have merit. In connection with the claims
18 asserted here, you all are working on a clean slate.

19 In addition to the three individual defendants, the
20 City of New York is also a defendant in this case. I will now
21 instruct you on the law related to the potential liability of
22 the City of New York.

23 The plaintiff contends that the City of New York is
24 liable for the alleged failure of the individual defendants to
25 disclose evidence favorable to the plaintiff to the prosecutor

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1 under the *Brady* rule. Okay? So the claim against the City is
2 limited to the non-disclosure of *Brady* material.

3 And it alleges that the City of New York is liable for
4 that non-disclosure for one of two reasons. Either because the
5 City had a policy about the disclosure of *Brady* material that
6 was itself unconstitutional, or because the City, as a matter
7 of policy and practice, failed to give adequate training to its
8 officers about their *Brady* obligations.

9 Now, the first thing you need to know is you cannot
10 hold the City liable merely because a person it employs
11 violated Mr. Fraser's right to a fair trial by withholding
12 *Brady* material from the prosecutor. In other words, this is
13 not like these cases where the employer is automatically liable
14 if the employee is liable. Can't hold the City liable on that
15 basis.

16 You may only hold the City liable if it, the City, had
17 some policy or practice that resulted in the police officers'
18 failure to turn over material as required by *Brady*. Put
19 otherwise, a municipality, such as the City of New York, may be
20 held liable for the violation of the plaintiff's federal
21 constitutional rights if that violation is caused by a policy,
22 custom, or practice of the municipality.

23 So, if you find that one or more of the eight lawsuits
24 that are at issue in this case qualify as *Brady* material --
25 that is, they contain information favorable to the accused --

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1 and if you find that the failure to disclose that lawsuit, or
2 those lawsuits, was material to the outcome of Mr. Fraser's
3 trial, then you may find the City liable for the failure to
4 disclose, as long as you conclude that the failure to disclose
5 was substantially caused by some policy or practice of the New
6 York City Police Department.

7 Plaintiff contends that as a matter of City policy,
8 officers were told to disclose to the prosecutors only
9 exculpatory evidence that tends to clear someone's guilt. He
10 contends that this policy was unconstitutional because it
11 defined evidence favorable to the accused as including only
12 exculpatory evidence, but not impeaching evidence.

13 Plaintiff alleges that, because the City's alleged
14 policy failed to comport with the constitutional obligation,
15 the officers in his case did not disclose to the prosecution
16 the lawsuit materials that could have been used to impeach
17 their credibility.

18 To establish a claim against the City based on an
19 official policy, the plaintiff must show that the City actually
20 adopted an unconstitutional policy, and that a policymaker made
21 a deliberate choice to adopt that policy for the municipality.

22 A policymaker is an official or a body to whom the
23 City has given final policymaking authority. The actions of
24 that official or that body represent a decision by the City
25 itself, and the City is responsible for them.

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1 I instruct you that the New York City police
2 commissioner is a policymaker for the City, and that the police
3 commissioner has the authority to delegate his responsibility
4 to establish policy in a particular area or areas to
5 subordinates, such as legal affairs or training officers.

6 If you find that the New York City police
7 commissioner, or subordinate to whom he delegated policy making
8 authority, set City policy in an unconstitutional manner, such
9 that City policy only required police to disclose exculpatory
10 and not impeachment evidence, then the City's policy was
11 unconstitutional and the plaintiff has proved this element.

12 Alternatively, plaintiff may establish City liability
13 by showing that a constitutional violation was caused by a
14 policymaker's deliberate indifference to the need to give its
15 employees adequate training so that they would not violate the
16 constitutional rights of citizens.

17 Plaintiff's specific claim here is that NYPD
18 policymaking officials inadequately trained police officers and
19 detectives about their obligation to disclose impeachment
20 evidence to prosecutors, including specifically about
21 disclosing their own history of being sued for misconduct that
22 could reflect on their credibility.

23 To establish liability for inadequate training,
24 plaintiff must establish that the NYPD's training program was
25 not adequate to allow its officers to understand what *Brady*

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1 required them to do and to carry out that obligation. He
2 must -- he the plaintiff -- must also show that this inadequate
3 training resulted from the deliberate indifference of the
4 policymaker who had responsibility for such training.

5 Now, deliberate indifference is more than simple or
6 even heightened negligence. It is a conscious disregard on the
7 part of the City for the known or obvious consequence of its
8 actions. In other words, in order to establish conscious
9 disregard, the plaintiff must show that a City policymaker knew
10 or should have known that the failure to train its officers
11 adequately about their *Brady* obligations created a high risk
12 that the officers would deprive citizens of their
13 constitutional rights, and that the City consciously
14 disregarded that risk.

15 If you find that the City had an unconstitutional
16 policy limiting the disclosure obligation of police officers
17 under *Brady* to exculpatory evidence, or that City policymakers
18 inadequately trained police officers about their obligation to
19 disclose impeachment information, and did so with deliberate
20 indifference, you should go on to consider whether the unlawful
21 policy or the inadequate training was a proximate cause of the
22 violation of Mr. Fraser's rights.

23 In making that decision, use the same definition of
24 proximate cause that I gave you earlier on page 22 of the
25 charge.

1 I'm now going to talk to you about damages. You
2 should draw no inference from my instruction that I have
3 concluded that the defendants are liable to plaintiff. That is
4 your decision to make. If you find that plaintiff has not
5 sustained his burden of proof on his claims against a given
6 defendant, then there is no need even to consider damages as to
7 that defendant. You will report a verdict in favor of that
8 defendant on that claim.

9 But if, and only if, you find that the plaintiff has
10 proved all the necessary elements of a claim against a
11 defendant, you will then consider the question of damages
12 against that defendant for that claim.

13 Whether damages are actually to be awarded in this
14 case, against whom, and if so, in what amount, are matters for
15 you, the jury, to decide in accordance with my instructions.

16 Now, if you decide to award damages, they must be
17 reasonable. If you should find that the plaintiff is entitled
18 to a verdict, you may award him only such damages as will
19 reasonably compensate him for such injury and damage as you
20 find, from a preponderance of the evidence, resulted in whole
21 or in part from the unlawful conduct of the defendants.

22 If you conclude that any defendant violated
23 plaintiff's constitutional rights under Section 1983, you must
24 award him such sum of money as you believe will fairly and
25 justly compensate him for any injury you believe he sustained

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1 as a direct consequence of that violation. Injury may include
2 direct economic losses and out-of-pocket expenses resulting
3 from the effect of the defendants' conduct on the plaintiff.
4 But compensatory damages are not limited to economic injuries.
5 They may also include damages for loss of liberty, pain and
6 suffering to date, any future pain and suffering, mental
7 anguish, and any shock or discomfort that you find the
8 plaintiff has suffered because of the defendants' conduct.
9 Pain and suffering can relate to physical pain and suffering or
10 to emotional distress that results directly from, or as a
11 natural consequence of, the alleged wrong.

12 You may award actual damages only for those injuries
13 that you find the plaintiff has proven by a preponderance of
14 the evidence to have been a direct result of conduct that
15 violated his constitutional rights under color of state law.

16 Now, if you find that the plaintiff suffered injury,
17 but those damages resulted from an act that did not violate his
18 constitutional rights, you may not award damages to compensate
19 plaintiff for the injury.

20 Computing damages for Mr. Fraser's pain and suffering
21 need not be done with mathematical precision, but compensatory
22 damages must not be based on speculation or sympathy.

23 Remember, plaintiff's counsel are not witnesses, and any
24 statements that were made by counsel are not evidence.

25 Therefore, damages should not be based simply on the arguments

1 of counsel, but must be based on a fair assessment of the
2 evidence presented at the trial, and only on that evidence.

3 If you find that the plaintiff failed to prove by a
4 preponderance of the evidence that he suffered any actual
5 damages from the deprivation of his rights, then you must
6 return an award of damages in some nominal amount not to exceed
7 one dollar.

8 That is, if you find that he was deprived of his
9 rights, but he didn't suffer any damages as a result, then he
10 gets a dollar.

11 Nominal damages must be awarded whenever the plaintiff
12 has been deprived by the defendant of a constitutional right,
13 but has suffered no actual damage as a natural consequence of
14 that deprivation. And that's because the mere fact that a
15 deprivation of rights occurred is an injury to a person who is
16 entitled to enjoy those rights, even if no actual damage flowed
17 from the deprivation.

18 Okay. Now, remember, you must be careful to impose
19 damages only on defendants who you find to be liable on a
20 claim. I told you earlier that although there were four
21 defendants in the case, it does not follow that if one is
22 liable, the other is liable. Each defendant is entitled to a
23 fair, separate, and individual consideration of the case
24 against him or it, without regard to your decision about the
25 other defendants. If you find that only one defendant is

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1 responsible for a particular injury, then you'll impose damages
2 for that injury only for that defendant.

3 You will have a separate verdict sheet for each of the
4 four party defendant to write about liability.

5 However, Mr. Fraser is entitled to receive damages if
6 he proves one or more of his claims and proves that he suffered
7 damages therefor. But he's not entitled to receive twice or
8 three times for the same damage, even if those damages were
9 caused by two or three or more different actors. You may not
10 award him double or triple damages just because more than one
11 actor was involved. If you find that more than one actor
12 caused the plaintiff to suffer the same damages, then those
13 actors are what we call jointly and severally liable for those
14 damages, and the plaintiff's injury will be compensated by a
15 single award of damages against all defendants who are liable
16 for causing that damage.

17 We've set up the verdict sheet so there is a separate
18 verdict sheet for damages.

19 Okay. Finally, if the plaintiff prevails on any or
20 all of his federal constitutional claims against the individual
21 officers, then you may, but you are not required to, make a
22 separate and additional award of punitive damages against the
23 defendants who are so liable. Punitive damages are awarded at
24 the discretion of the jury to punish a specific defendant
25 individually for conduct that is extreme, outrageous, or

1 shocking, or to deter similar conduct by others.

2 You may award punitive damages against Undercover
3 Officer 84, Detective Regina, and/or Detective Del Toro, only
4 if you find that their acts were done either wantonly or
5 maliciously. An act is malicious if it is prompted by ill will
6 or spite toward the injured person. An act is wanton if it is
7 done in reckless or callous disregard of or indifference to the
8 rights of the injured person.

9 The plaintiff has the burden of proving by a
10 preponderance of the evidence that a defendant acted
11 maliciously or wantonly with regard to his rights.

12 You should consider whether a defendant may be
13 adequately punished by an award of actual damages only, or
14 whether the conduct is so extreme and so outrageous that actual
15 damages are inadequate to punish it. You should also consider
16 whether actual damages, standing alone, are likely to prevent
17 the defendant from engaging in similar conduct in the future,
18 or whether punitive damages are necessary to provide
19 deterrence.

20 Punitive damages are always individual to the
21 defendant; they are never awarded jointly and severally. So
22 it's punitive damages as to this one, punitive damages as to
23 that one. And you are never required to award them. It's
24 entirely within your discretion.

25 Punitive damages may only be awarded against an

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1 individual defendant. They may not be awarded against the City
2 of New York.

3 All right. Ladies and gentlemen, the verdict that you
4 reach must represent the considered judgment of each juror. In
5 order to return a verdict, it is necessary that you all agree.
6 You must be unanimous. And that's all eight of you. Because
7 as I think I told you at the beginning, our view of extra
8 jurors above six in a civil case in federal court is if you've
9 made it all the way to the end of the trial, you get to
10 deliberate. Okay? We aren't sending anybody home. You're all
11 going to deliberate.

12 It is your duty as jurors to consult with each other
13 and to deliberate with a view to reaching an agreement, as long
14 as you can do that without violence to your individual
15 judgment. Each of you has to decide the case for yourself, but
16 only after an impartially considering the evidence in the case
17 with your fellow jurors.

18 Now, at this point I always like to stop and tell a
19 story from when I was a really young judge over in state court.
20 And we had a trial, and I gave the charge about deliberation.
21 And within an hour, I got a note from the jury telling me that
22 they weren't going to be able to reach a verdict because one of
23 the jurors simply would not deliberate. He had gone to the
24 back, he had announced his view of the evidence, he said I
25 don't care what the rest of you think. And when they tried to

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1 engage him in conversation, he turned his chair to the wall,
2 and took out his newspaper. This jury, as you might imagine,
3 did not reach a verdict, because we had a juror who was not a
4 deliberating juror.

5 You have to be a deliberating juror. You have to tell
6 people what you think, and then listen to what they think. And
7 reexamine your own views, and change your opinion if somebody
8 convinces you that maybe that person's way of looking at the
9 evidence is better than my initial read of the evidence.

10 On the other hand, do not surrender your honest
11 conviction as to the weight or the effect of evidence, just
12 because other jurors think differently, or merely for the
13 purpose of returning a verdict.

14 Remember at all times that you are not partisans. You
15 are judges. You are judges of the facts. Your sole interest
16 is to decide this case, decide the facts in this case. Your
17 task is to determine whether the plaintiff has proven by a
18 preponderance of the credible evidence each of the elements of
19 each of the claims against each of the defendants.

20 So when you go back to the back, first thing you
21 should do is elect somebody to be the foreperson of the jury.
22 It could be anybody you want. The foreperson is not a super
23 juror. The foreperson will preside over your deliberations. I
24 don't know what that means. It means whatever you want it to
25 mean. But the foreperson will be hopefully the organizer back

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1 there. And the foreperson will speak for you here in open
2 court. Maybe you're shy, you don't want to be the foreperson.
3 I don't know. The foreperson's vote is not entitled to any
4 greater weight than that of any individual juror. Just
5 remember that.

6 You should not try to communicate with me during your
7 deliberations by any means other than that sending out a signed
8 writing. And we're going to give you pieces of paper that say
9 "we, the jury" and it will have lines on it, and you can write
10 a message if you want to talk to me.

11 I won't communicate with you on any subject touching
12 on the merits of the case, except in one of two of ways. I'll
13 bring you out, I'll sit you in your seats, and I'll talk to you
14 and the lawyers will all be here. Or, I'll send back a note,
15 and if I send you back a note, it will have my initials on the
16 bottom and it will have the initials of one of the plaintiff's
17 lawyers, and it will have the initials of one of the
18 defendants' lawyers, so you know we're all on board. We've all
19 seen what you're hearing and what you're seeing.

20 Now I'm about to administer an oath to Josie. She's
21 being deputized. She is forbidden to communicate in any way or
22 manner with any members of the jury on any subject touching on
23 the merits of the case. So don't try to talk to her about the
24 case.

25 (Law clerk sworn)

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1 THE COURT: That does not mean you are going to be
2 sequestered in a hotel.

3 If you send me out a note, do not tell me what the
4 vote is. "We're considering whether Officer Del Toro
5 suppressed evidence and we're five to three on that." But, no.
6 No. Please. I can't know that. I'm not supposed to know
7 that. We could screw everything up if you tell me that. Don't
8 tell me.

9 The only time I want to know what your vote is when
10 you send me out a note, signed by your foreperson, that says we
11 have reached a verdict. Then I will know what your vote is,
12 that it's eight to nothing. Okay? And that's the only time
13 I'm supposed to know, so don't enlighten me on where you are
14 during the course of your deliberations.

15 All of the exhibits that were admitted into evidence
16 will be with you in the jury room. A few of them -- there are
17 not a lot of exhibits in the case. A few of them may not be
18 terribly familiar to you. I'm not sure they were all thrown up
19 on the screen during the course of the trial. But as I told
20 you, the parties and I met before the trial, and we dealt with
21 all the objections to the exhibits and we got everything
22 admitted, which saved us probably about a half a day. And for
23 which we are all grateful. And you will have copies of all
24 those exhibits in the jury room. And you'll have a copy of the
25 charge. Actually, you will have several copies because we've

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1 learned that jurors like to have more than one. We are going
2 to send that back so you can review the charge if you want.

3 But -- and this is very important. If you don't
4 understand something that I said, don't sit there and, like,
5 puzzle over the page. Send me out a note. I've been known to
6 be clearer the second time around, quite possibly because you
7 focus my mind on something. Okay? So if you're confused, if
8 you're puzzled, you have a question, don't assume just because
9 you have a copy of the charge that you can't ask me for
10 clarification. Because you can always ask me for
11 clarification. I have nothing better to do except teach a
12 class at Columbia Law School this afternoon. I have nothing
13 better to do from now until the time you reach your verdict
14 than to help you out. Okay?

15 So, if you need to hear testimony, hear back testimony
16 from any of the witnesses, we can do that. So, you send me a
17 note, you say we'd like to hear the testimony of Mr. Green from
18 the time he heard the dog bark until the shot rang out. Okay?
19 Be as specific as you can about what you want to hear. We'll
20 do this in one of two ways. We'll either bring you out and
21 we'll read the testimony, or thanks to the miracle of
22 computers, we actually can generate a copy of the testimony and
23 send it back to you. But in either event, we have to get
24 together, we have to find it in the transcript, with the court
25 reporter, we have to make sure we've got everything you want.

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1 So, that's not a note that gets answered in five minutes.
2 Usually such notes are sent out, like, just before they've gone
3 to lunch or something like that. Anyway, give us some time to
4 answer one of those notes, okay?

5 Now I'm going to ask you to stay seated for one
6 minute. I am going to ask one lawyer for each side to come to
7 sidebar.

8 (At the sidebar)

9 THE COURT: Mr. Rudin, to the charge as delivered?

10 MR. RUDIN: No objection.

11 THE COURT: Ms. McGuire?

12 MS. MCGUIRE: No objection.

13 THE COURT: Okay.

14 You guys have been great.

15 (In open court)

16 THE COURT: They really have been great. Okay.

17 Deliberate only when you're all together in the room.
18 That's because -- I'm not suggesting anyone should go for a
19 walk, but deliberate only when you are all together in the
20 room. If someone happens to be in the restroom or someone's
21 taking a break, just cease deliberations. You can never tell
22 when someone's going to say, "oh, right." So we want you all
23 together.

24 Do not get it into your head to take a break on your
25 own. If you need a break from each other, send us out a note,

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1 we'll arrange for you to go on break. It really only did
2 happen to me once that the jurors decided they could just walk
3 out, because they were fighting as a matter of fact, that
4 particular jury, but they wanted to get away from each other
5 for a while and they left. It was like the ants were out of
6 the ant farm. We didn't know where they were. It was one of
7 the bad moments in my life as a judge, so don't do that to me
8 again.

9 I meant what I said. I'm here to help you if you need
10 me. Now, I am really sorry I am going to cut this short this
11 afternoon, but I have no choice.

12 In the next few minutes we'll be sending back copies
13 of the charge and copies of the verdict sheets, and they are
14 going to have my initials on the bottom, one of the lawyer for
15 the plaintiff and the lawyer for the defendant, so you know
16 that everybody has seen them. Nobody's trying to put anything
17 over on anybody.

18 All right? Ladies and gentlemen, you may discuss the
19 case. You may make up your mind. Please retire.

20 (Jury begins deliberations. Time noted 2:56 p.m.)

21 THE COURT: Okay. Sit down.

22 I complimented Mr. Francolla so I need to compliment
23 Mr. Rudin too, because I didn't do that before lunch. Very
24 nice job.

25 Actually, a very well-tried case. We've had a lot of

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Charge

1 cases this year fold just before trial, and this is the first
2 time my clerks have gotten a chance to see a case tried. And
3 it's been a really, really good one. It's been a very
4 well-tried case and they have learned a lot. And they are
5 grateful to you and I am grateful to you for the educational
6 experience that you have given them.

7 The verdict form for damages, I don't know, do you
8 want economic damages broken out separately? Do you just want
9 a number for compensatory damages? Did you get a copy of this?

10 MR. RUDIN: Yes, your Honor.

11 THE COURT: The City's damages I assume are on the
12 City's --

13 MR. RUDIN: Your Honor, we're fine with the way it is.

14 THE COURT: Okay, Mr. Francolla. Ms. McGuire? She's
15 the law person.

16 MS. MCGUIRE: Defendants have no objection to the way
17 it is.

18 THE COURT: Great. So this will go back like this. I
19 need a clean copy I can initial and a clean copy of each of the
20 verdict sheets that I can initial. And I caught two hideous
21 typos while I was reading the charge. So we're going to get
22 rid of those.

23 Is this the one with the typos?

24 LAW CLERK: No typos.

25 THE COURT: Typos gone?

N3k3frab

Deliberations

1 LAW CLERK: Yes.

2 (Discussion off the record).

3 THE COURT: A very well-trying case.

4 MR. FRANCOLLA: Thank you, your Honor.

5 (Recess pending verdict)

6 (In open court; jury not present)

7 LAW CLERK: Case on trial continued. Lawyers present,
8 judge is present, jurors are not present.

9 THE COURT: Hi. What's up?

10 MR. BLOCH: Judge, one issue regarding jury notes.

11 They are not in the set of exhibits that have gone back to the
12 jury. Mr. Francolla referenced it in his closing. I believe
13 we agree that they should be included and go back.

14 THE COURT: Send them back. Consider them admitted.
15 Send them back.

16 MR. BLOCH: That's it. Thank you, Judge.

17 THE COURT: Okay. We've got another five minutes.
18 Jim O'Neill wants it on the record that the set of exhibits
19 that went back to the jury, you all agree are the full and
20 complete set of exhibits?

21 MR. BLOCH: Yes, we agree.

22 MR. FRANCOLLA: We agree.

23 THE COURT: Good. Thank you.

24 (Jury present. Time noted 3:33 p.m.)

25 THE COURT: I don't know if you're tired, but I'm

N3k3frab

Deliberations

1 tired. Okay. So, again, I apologize for having to cut things
2 short today.

3 Here's the deal with tomorrow. When you arrive,
4 report to the jury room. When you are all there, I would
5 suggest that you aim for 9:30. When you're all there, stick
6 your head out, Josie will be around. Say "we're here." And
7 then you may begin deliberating. You don't have to wait to see
8 me or anything like that. I'll see you if you have a note or
9 I'll see if you have a verdict. And otherwise, I'm here,
10 around and available.

11 Safe home tonight. You're going to work hard
12 tomorrow. Don't discuss the case tonight, keep an open mind.
13 All right. And I'll see you some time tomorrow. Okay.

14 (Jury excused. Time noted 3:34 p.m.)

15 THE COURT: Okay. Go rest.

16 (Adjourned until March 21, 2023, at 9:30 a.m.)

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N3L3FRAF

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 JAWAUN FRASER,

4 Plaintiff,

5 v.

20 CV 4926 (CM)

6 CITY OF NEW YORK, et al.,

7 Defendants.

Trial

8 New York, N.Y.
9 March 21, 2023
11:30 a.m.

10 Before:

11 HON. COLLEEN McMAHON,

12 District Judge

13 APPEARANCES

14 JOEL B. RUDIN
15 Attorneys for Plaintiff
-and-

16 BLOCH & WHITE LLP
BY: MICHAEL L. BLOCH
17 BENJAMIN D. WHITE
CRISTINA ALVAREZ

18 SYLVIA HINDS-RADIX
19 Corporation Counsel for the City of New York
Attorney for Defendants
20 BY: BRIAN C. FRANCOLLA
CAROLINE McGUIRE

1 (Trial resumed; jury not present)

2 THE COURT: Court Exhibit 1, which is dated 3/21/22 --
3 that's clearly a mistake -- says: We, the jury, respectfully
4 request digital transcript of Undercover 84's testimony,
5 defense and plaintiff, from days one and two of the trial.

6 Which is to say, all of it. Okay. So, his testimony
7 includes anything as to which there was an objection overruled,
8 but not an objection sustained.

9 If we were to send back the transcript, we would
10 redact the transcript to remove the question to which the
11 objection was sustained. I don't know what can be done
12 digitally. I don't know if you all want this done digitally.
13 We don't have to respond to the jury in exactly the way they
14 ask. I don't like to insult them. But, this is not my thing.
15 I'm an old woman.

16 So, I don't know what Rebecca is capable -- Rebecca
17 capable of doing anything in the world, but if she can make a
18 separate digital file that has redactions in it. I just don't
19 know. Okay. So, I'll hear from the parties, I'll hear from
20 the court reporter who is probably the most important person in
21 this conversation.

22 MR. RUDIN: I think it's possible there are a number
23 of issues that they want to try to go to without having to hear
24 the whole transcript read back.

25 THE COURT: I would never read it back. I would only

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Deliberations

1 send it back.

2 MR. RUDIN: I see.

3 THE COURT: We don't do readback here anymore. We
4 send back a physical transcript.

5 MR. RUDIN: Okay. Probably from their point of view,
6 it would be a lot faster if they can do it digitally since they
7 are more competent at that than I know I am.

8 THE COURT: But what does that mean?

9 MR. RUDIN: If the court reporter can do what your
10 Honor suggested, then we could do it that way.

11 THE COURT: They have just begun looking at the
12 transcript. It is long testimony. We would have to identify
13 all the objections sustained, all the colloquy. There was
14 colloquy during his testimony. All that would have to come
15 out. It is not a lot.

16 MR. RUDIN: We are doing that right now. We're making
17 a list. It's not that long.

18 THE COURT: Mr. Francolla or Ms. McGuire?

19 MR. FRANCOLLA: I think I had this on a similar trial
20 where we had to do this. And they didn't request a digital
21 copy, but because we had one, we were able to scan it, search
22 it, and apply redactions in the PDF copy, because counsel had
23 already gotten one. For efficiency's sake, that's probably the
24 fastest. And then the only question would be once we have it
25 taken care of, how do we transmit it to the jury.

N313frac

Deliberations

1 THE DEPUTY CLERK: That we can do. They currently
2 have the exhibits on a dead computer back there. We give it to
3 our computer folks.

4 THE COURT: What record will I have of exactly what
5 they see, exactly what's been sent back to them, for the court
6 of appeals in case you're ever there?

7 THE DEPUTY CLERK: We'll print it out.

8 THE COURT: We'll print out what's sent back to them?
9 What does Rebecca have to do, if anything?

10 MR. FRANCOLLA: I think nothing.

11 THE COURT: Because she's already provided a digital
12 copy to counsel?

13 MR. FRANCOLLA: Yes.

14 THE COURT: Okay. I'm up for it, if that's what you
15 guys can do and can do it fairly quickly. Let's get it done.

16 Folks, folks, I'm going to have Jim pop his head into
17 the room and just say we're working on getting you your digital
18 copy. Keep deliberating. Boom. That's it. Okay?

19 MR. RUDIN: Yes.

20 THE COURT: Let them know we're not ignoring them.

21 (Pause)

22 (A note was received at 12:40 p.m.)

23 THE COURT: I understand there is another note and
24 they want some portion of Detective Del Toro's testimony?

25 This is Court Exhibit 2. Court Exhibit 2. 3/21/23.

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Deliberations

1 We, the jury, respectfully request digital transcript of the
2 plaintiff's questioning of Detective Jason Del Toro.

3 They want the direct.

4 MR. RUDIN: They say plaintiff's questioning, so we
5 construe that as direct and redirect.

6 THE COURT: It would be direct and redirect.
7 Plaintiff's questioning, yes. I had forgotten there was
8 redirect.

9 MR. RUDIN: Brief redirect.

10 THE COURT: Okay.

11 MR. RUDIN: We're working on removing the objections.

12 THE COURT: Objections and colloquy.

13 Has UC 84's testimony gone back?

14 LAW CLERK: Computer system's working on it now.

15 THE COURT: They don't have it yet. So I guarantee
16 you that this is not the fastest way to do things. But, okay.
17 All right.

18 MR. RUDIN: I think Del Toro will be faster.

19 THE COURT: It is a lot shorter. Okay.

20 MR. RUDIN: We were also learning the rules of the
21 court much better.

22 THE COURT: I'll see you after lunch.

23 (Recess pending verdict)

24 (At 1:22 p.m. a note was received from the jury)

25 (In open court; jury not present. Time noted)

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Verdict

1 1:57 p.m.)

2 LAW CLERK: Case on trial continued. Lawyers are
3 present, judge is present from, jurors are not present.

4 THE COURT: We have a note. Court Exhibit 3, also
5 dated March 21, 2022. We should send them back a calendar.

6 The jury respectfully requests more jury sheets and
7 more envelopes.

8 They obviously anticipate sending out more notes so we
9 will get them more supplies. They also want the digital
10 transcript of plaintiff's questioning of Detective Regina.

11 Okay? So, what's the status of the first two requests
12 for transcript?

13 LAW CLERK: They are back there.

14 THE COURT: Good. Okay. So, he's the last officer.
15 So let's get his direct and any redirect back there. All
16 right? Okay? Great. Thank you.

17 (Recess pending verdict)

18 (At 2:30 p.m. a note was received from the jury)

19 LAW CLERK: Case on trial continued. Lawyers are
20 present, judge is present, jurors are not present.

21 THE COURT: I gather there is a note. The jury has
22 reached a verdict.

23 Would you please bring in the jurors. They got the
24 year right this time.

25 (Jury present. Time noted 2:30 p.m.)

N313fra2

Verdict

1 THE COURT: Have a seat. I guess you've been working
2 very hard, because I hear that you've reached a verdict. Could
3 we have the verdict envelope from the foreperson.

4 Phil, can you please get that envelope and bring it to
5 me. It's not in an envelope. It's just paper. We're glad to
6 know you guys finally figured out it was 2023.

7 Okay. Will you return these to the foreperson. I
8 checked them and will the foreperson please rise. Will you
9 take the verdict, please.

10 LAW CLERK: As to the denial of Jawaun Fraser's right
11 to a fair criminal trial due to --

12 THE COURT: Which one are we doing first? Can we
13 announce first?

14 LAW CLERK: For Undercover Officer 84.

15 THE COURT: Let's make sure we are all on same page.

16 LAW CLERK: As to the denial of Jawaun Fraser's due to
17 evidence fabrication claim against Undercover 48, how does the
18 jury find?

19 THE FOREPERSON: We the jury find Undercover Officer
20 84 liable for denial of a fair criminal trial due to evidence
21 fabrication.

22 LAW CLERK: As to the denial of Jawaun Fraser's right
23 to a fair criminal trial due to withholding of *Brady* material
24 claim against Undercover Officer Number 84, how does the jury
25 find?

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Verdict

1 THE FOREPERSON: We the jury find Undercover Officer
2 Number 84 liable for denial of a fair trial due to withholding
3 of *Brady* material.

4 LAW CLERK: As to Detective Jason Del Toro.

5 As to the denial of Jawaun Fraser's right to a fair
6 criminal trial due to evidence fabrication claim against
7 Detective Jason Del Toro, how does the jury find?

8 THE FOREPERSON: We the jury find Detective Del Toro
9 liable for denial of a fair trial due to evidence fabrication.

10 LAW CLERK: As to the denial of Jawaun Fraser's right
11 to a fair criminal trial due to the withholding of *Brady*
12 material claim against Detective Del Toro, how does the jury
13 find?

14 THE FOREPERSON: We the jury find Detective Del Toro
15 liable for denial of a fair trial due to withholding of *Brady*
16 material.

17 LAW CLERK: As to Detective Matthew Regina. As to the
18 denial of Jawaun Fraser's right to a fair criminal trial due to
19 evidence fabrication claim against Detective Matthew Regina,
20 how does the jury find?

21 THE FOREPERSON: We the jury find Detective Regina
22 liable for denial of a fair trial due to evidence fabrication.

23 LAW CLERK: As to the City of New York. As to the
24 claim against the City of New York that it had a policy,
25 custom, and/or practice that was a substantial cause of the

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Verdict

1 withholding of *Brady* material at Jawaun Fraser's criminal
2 trial, how does the jury find?

3 THE FOREPERSON: We the jury find the City of New York
4 liable for a policy, practice, and/or custom that was a
5 substantial cause of the withholding of *Brady* material.

6 LAW CLERK: Having found that some or all of the
7 defendants are liable to Mr. Fraser for any of the claims
8 asserted in this case, what amount of compensatory damages does
9 the jury find Mr. Fraser is entitled to?

10 THE FOREPERSON: \$1,500,000.

11 LAW CLERK: Does the jury find that Mr. Fraser is
12 entitled to punitive damages against Undercover Officer Number
13 84?

14 THE FOREPERSON: Yes.

15 LAW CLERK: In what amount?

16 THE FOREPERSON: \$200,000.

17 LAW CLERK: Does the jury find that Mr. Fraser is
18 entitled to punitive damages against Detective Matthew Regina?

19 THE FOREPERSON: Yes.

20 LAW CLERK: In what amount?

21 THE FOREPERSON: \$125,000.

22 LAW CLERK: Does the jury find that Mr. Fraser is
23 entitled to punitive damages against Detective Jason Del Toro?

24 THE FOREPERSON: Yes.

25 LAW CLERK: In what amount?

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Verdict

1 THE FOREPERSON: \$100,000.

2 THE COURT: Okay. Can we bring these back.

3 Ms. McGuire, do you want the jury polled?

4 MS. MCGUIRE: Yes, your Honor.

5 THE COURT: Ladies and gentlemen of the jury, harken
6 to your verdict as it stands recorded.

7 You and each of you find that Undercover Officer 84
8 denied Mr. Jawaun Fraser, the plaintiff, a fair trial due to
9 both evidence fabrication and the withholding of *Brady*
10 material.

11 You find the same as to Detective Jason Del Toro.

12 You find that Detective Matthew Regina denied Jawaun
13 Fraser a fair trial due to evidence fabrication.

14 You find that the City is liable for a policy,
15 practice, and/or custom that was a substantial cause of the
16 withholding of *Brady* material.

17 And you find for the plaintiff in the amount of
18 \$1,500,000 in compensatory damages, punitive damages in the
19 amount of \$200,000 against Undercover Officer 84, \$125,000 in
20 punitive damage against Detective Regina, and \$100,000 in
21 punitive damages against Detective Del Toro.

22 Juror No. 1, is that your verdict?

23 JUROR NO. 1: Yes.

24 THE COURT: Juror No. 2, is that your verdict?

25 JUROR NO. 2: Yes.

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Verdict

1 THE COURT: Juror No. 3, is that your verdict?

2 JUROR NO. 3: Yes.

3 THE COURT: Juror No. 4, is that your verdict?

4 JUROR NO. 4: Yes.

5 THE COURT: Juror No. 5, is that your verdict?

6 JUROR NO. 5: Yes.

7 THE COURT: Juror No. 6, is that your verdict?

8 JUROR NO. 6: Yes.

9 THE COURT: Juror No. 7, is that your verdict?

10 JUROR NO. 7: Yes.

11 THE COURT: Juror No. 8, is that your verdict?

12 JUROR NO. 8: Yes.

13 THE COURT: So say you and so say you all.

14 Okay. Well, this is hard to believe it's really only
15 been a little over a week since we gathered here. So much has
16 transpired, and now it's time to say good-bye.

17 And I am always at this moment reminded of one of the
18 greatest judges who ever sat on this court. His name was
19 Edward Weinfeld. He was brilliant and he was judgely and he
20 was in every way the embodiment of what I think every citizen
21 would hope a federal judge would be. And I admired him, we all
22 admired him, we all revered him, still do, even though he's
23 been dead now for many years.

24 But at this moment, Judge Weinfeld did something in
25 every trial that I didn't exactly admire. Because when he said

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Verdict

1 good-bye to the jurors he said, I suppose you are waiting to be
2 thanked. Well, you will wait in vain for thanks from me,
3 because you must take your satisfaction from knowing that you
4 have done your duty to the best of your ability.

5 Eh. I mean, that's right. But that doesn't mean we
6 don't say thank you. Because you know and I know and all of us
7 here know that there are so many people who could be sitting in
8 this box, who have found one way or another -- not this
9 particular venire panel. This was an extraordinary venire
10 panel. But people who have found one way or another to evade
11 performing this vitally important civic function. You did not.
12 You have given up a week of your life to adjudicate disputes
13 among people you've never met, you'll never see again, to learn
14 some pretty arcane areas of law, and you have done it willingly
15 and cheerfully.

16 And I thank you, really, on behalf of myself, and
17 Josie and Philip and Jim, and all of our staff, from the bottom
18 of my heart for your having served on this jury today. And I
19 know that I speak for the parties as well.

20 So, you are now discharged, which means you're free to
21 go. It also means that you are free to talk to anybody that
22 you want to about the case. I don't know if the lawyers are
23 going to want or try to talk to you about the case. That's
24 something you don't have to do. This is very much in the news
25 these days with this grand juror down in Atlanta who has been

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Verdict

1 on 50 or 60 television shows, to the general horror of those of
2 us who are in this line of work.

3 And so, all I can say is there is a reason why jurors'
4 deliberations are private. You have a constitutional right to
5 talk to anybody you want to talk to. But, some things are
6 better left unsaid. Okay? That's my personal opinion. You
7 have your rights.

8 I'm going to come back and say good-bye before you
9 leave so I'll be back in a minute. You are discharged.

10 (Jury excused. Time noted 2:40 p.m.)

11 THE COURT: Anything anybody wants to say?

12 MR. FRANCOLLA: Just for the record purposes, we'll
13 just renew the motions that we had previously put on the
14 record. And to the extent we pursue any of them, we will do so
15 in accordance with the rules.

16 THE COURT: Okay. You have your rights. Be my guest.
17 Okay. As I said, well-trying case, everybody.

18 MR. RUDIN: Thank you.

19 THE COURT: As you know, I happen to think that the
20 verdict is correct. I don't say that very often because the
21 jury's verdict is always my verdict, therefore they're always
22 correct, even on those occasions when I don't think they're
23 correct. Okay.

24 Mr. Fraser, best of luck to you.

25 MR. RUDIN: Thank you.

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Verdict

1 MR. FRASER: I wanted to thank you for being fair
2 throughout the duration of this trial. And I appreciate it.

3 THE COURT: You're no different than any other citizen
4 and I wish you all the best.

5 MR. FRASER: Yes, Judge. Thank you.

6 (Adjourned)

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