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UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK

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**BLACK LOVE RESISTS IN THE RUST, et al.,**  
**individually and on behalf of a class of**  
**all others similarly situated,**

Plaintiffs,

vs.

1:18-cv-00719-CCR

**CITY OF BUFFALO, N.Y., et al.,**

Defendants.

-----

**ORAL EXAMINATION OF THOMAS WHELAN**  
**APPEARING REMOTELY FROM**  
**BUFFALO, NEW YORK**

Tuesday, April 26, 2022  
9:00 a.m. - 5:53 p.m.  
pursuant to notice

REPORTED BY:

Luanne K. Howe

APPEARING REMOTELY FROM CUYAHOGA COUNTY, OHIO

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APPEARING FOR THE PLAINTIFFS:

**NATIONAL CENTER FOR LAW AND ECONOMIC JUSTICE**

**BY: ANJANA MALHOTRA, ESQ.**

50 Broadway, Suite 1500  
New York, New York 10004  
212-633-6967

APPEARING FOR THE DEFENDANTS:

**HODGSON ROSS LLP**

**BY: DAVID SHORT, ESQ.**

140 Pearl Street, Suite 100  
Buffalo, New York 14202  
716-848-1609

ALSO PRESENT:

**KARLI WURPEL, Intern**

National Center for Law and Economic Justice

**ANDREW TIMMICK, ESQ.**

Covington & Burling LLP

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1 REPORTED REMOTELY FROM CUYAHOGA COUNTY, OHIO

2  
3 THE REPORTER: Good morning. My name is  
4 Luanne Howe. I am the stenographic court  
5 reporter. I am not physically present with  
6 the witness and I will be reporting this  
7 deposition remotely.

8 Will the attorneys participating in this  
9 deposition acknowledge that, in lieu of an  
10 oath administered in person, I will  
11 administer the oath remotely and further  
12 consent to waive any objections to this  
13 manner of reporting?

14 Please indicate your agreement by  
15 stating your name, who you represent and your  
16 agreement on the record, starting with the  
17 noticing attorney.

18 MS. MALHOTRA: Yes, we consent. My name  
19 is Anjana Malhotra. I am an attorney for the  
20 plaintiffs. I work with the National Center  
21 for Law and Economic Justice.

22 MR. SHORT: I consent. My name is David  
23 Short, attorney for the defendant.

**T H O M A S W H E L A N,**

254 Canada Street, Holland, New York, having  
been first duly sworn, was examined and testified  
as follows:

EXAMINATION BY MS. MALHOTRA:

Q Good morning, Lieutenant Whelan. My name is Anjana  
Malhotra. I'm an attorney with the National Center  
for Law and Economic Justice. I represent the  
plaintiffs in the case.

And can you please state your full name for the  
record and spell it?

A Thomas Richard Whelan, W-h-e-l-a-n.

Q Okay. Thank you. We are here to conduct your  
deposition. Have you ever been deposed before?

A I have.

Q Okay. And before we begin, we note for the record  
that we uncovered responsive emails from your  
personal email address from TRWgunny@roadrunner.com  
in discovery and served a subpoena on you for such  
emails.

Counsel for the City of Buffalo, Mr. Quinn, has  
stated that you have not been able to locate any

1 responsive documents; is that correct?

2 A That's correct.

3 MS. MALHOTRA: Okay. And in addition,  
4 Mr. Quinn said he would conduct an additional  
5 search among city records. So just for the  
6 record, we reserve the right to bring  
7 Mr. Whelan back specifically to ask any  
8 questions that come up related to subsequent  
9 searches that turn up responsive documents.

10 Q So is this the first time that you participated in a  
11 remote deposition?

12 A Yes.

13 Q Where are you located?

14 A City Hall in the City of Buffalo.

15 Q Okay. Is there anyone in the room with you?

16 A Yes, Mr. Short.

17 Q Okay. Other than your attorney, Mr. Short, is there  
18 anyone else in the room with you today?

19 A No.

20 Q And do you understand you are testifying under oath  
21 today?

22 A I do.

23 Q What does that mean to you?



1 A It means that I'm compelled to tell the truth so help  
2 my God.

3 Q Have you taken any medications or drugs that would  
4 impair your ability to answer completely and honestly  
5 today?

6 A No.

7 Q All right. And you said that you've been deposed  
8 before. In what matters have you been deposed in the  
9 past?

10 A I'm the plaintiff in a civil lawsuit.

11 Q Okay. And what does that civil lawsuit entail?

12 A I'm suing the Buffalo Municipal Housing Authority for  
13 injuries received due to their negligence.

14 Q Is that lawsuit related to your duties as a police  
15 officer?

16 A Yes, it is.

17 Q Okay. We will return to some questions about that.  
18 For now I'd just like to lay out some ground rules  
19 for the deposition. As you know, this deposition is  
20 being conducted by Zoom. What device are you using  
21 to connect to this Zoom deposition today?

22 A An HP laptop computer.

23 Q Other than that device, do you have any other

1           laptops, smartphones, tablets or other electronic  
2           devices with you today?

3       A       I have my cell phone.

4       Q       If you could put that away, we would appreciate that.

5       A       Yeah. I'll turn it off.

6       Q       Okay. Thank you. And if you -- okay.

7                        Do you have any notes or other written documents  
8           with you today?

9       A       No.

10      Q       I'm going to be asking you a number of questions  
11           today. If any of my questions are unclear or  
12           confusing, please let me know.

13     A       I will.

14     Q       Okay. And if you don't understand a question, please  
15           don't answer it. Do you understand that?

16     A       Yes.

17     Q       If you have any questions or information about  
18           clarifications, definitions, explanations of any  
19           words or documents presented in this deposition, you  
20           must present them to me and not your counsel. Do you  
21           understand that?

22     A       I do.

23     Q       Okay. And please answer the question that I ask and

1 speak only in response to the question that I ask.

2 Do you understand that?

3 A I do.

4 Q Your attorney may not direct or request that you not  
5 answer a question unless that question is limited by  
6 privilege or other evidence. Your attorney's  
7 objections must be succinct and cannot be suggestive  
8 of an answer. Even if counsel objects, you must  
9 still answer the question. Do you understand that?

10 A Yes.

11 Q And if you have any questions, you can ask me. Your  
12 attorney cannot initiate or engage in private  
13 off-the-record conferences during the deposition or  
14 during breaks or recesses except for the purpose of  
15 deciding whether to assert a privilege. Do you  
16 understand that?

17 A Yes.

18 Q Please wait until I complete my question before you  
19 begin your answer. That will help the court reporter  
20 and keep the transcript clear. Do you understand  
21 that?

22 A Yes.

23 Q Please speak clearly and give verbal answers for the

1 court reporter only. Do you understand that?

2 A Yes.

3 Q Okay. Thank you. If you need a break at any time,  
4 just let me know. I only ask that you do not ask for  
5 a break right after I ask a question without first  
6 answering the question, okay?

7 A Yes.

8 Q All right. Great. Did you prepare for this  
9 deposition in any way?

10 A No.

11 Q Could -- did you meet with anyone regarding this  
12 deposition?

13 A No -- wait. I mean I met with the Mr. Quinn right  
14 previous to this deposition, right here.

15 Q Okay. When was that?

16 A Ten minutes before we got online.

17 Q And what did you discuss?

18 A Just to expect to be here all day, and we went over  
19 what Mr. Short's role would be.

20 Q Okay. And other than Mr. Quinn, you have not  
21 discussed this deposition with any other person,  
22 correct?

23 A No.

1 Q Okay. Did you review any documents to refresh your  
2 memory for this deposition?

3 A I was shown by Mr. Quinn some daily -- an example of  
4 a daily form and a checkpoint roadway safety form  
5 that we used to use routinely.

6 Q Did you review the complaint, the complaint in this  
7 matter?

8 A Only when I received my subpoena.

9 Q Okay. Any other documents? Did you review any other  
10 documents when you received your subpoena --

11 A No.

12 Q -- or at any other time related to this case?

13 Okay. And you said that you received email  
14 communication with Mr. Quinn about this deposition.  
15 Did you email Mr. Quinn --

16 A I didn't say I received email notification. I spoke  
17 with him on the phone through all communication.

18 Q Okay. So you did speak with him prior to just  
19 speaking with him ten minutes ago on the phone about  
20 this deposition?

21 MR. SHORT: Form.

22 Q Is that correct? You still need to answer the  
23 question.

1 A Okay. Only about scheduling.

2 Q Okay. Okay. All right. Thank you.

3 So where were you born?

4 A Buffalo, New York.

5 Q And what is your date of birth?

6 A 5-16-1963.

7 Q Okay. And are you currently a resident of Buffalo,  
8 New York?

9 A No, I'm not.

10 Q Where do you live?

11 A 254 Canada Street in Holland, New York 14081.

12 Q Thank you. Have you ever been a Buffalo resident?

13 A Yes.

14 Q When is the last time you lived within the Buffalo  
15 city limits?

16 A The year 2000.

17 Q So most of your time with the Buffalo Police  
18 Department, you lived outside the city of Buffalo?

19 MR. SHORT: Form.

20 A I did.

21 Q When did you start working for the City of Buffalo  
22 Police Department?

23 A July 31, 1997.

1 Q Okay. So again during much of your time on the BPD  
2 you lived outside --

3 MR. SHORT: Form.

4 Q -- limits of Buffalo?

5 A Yes, ma'am.

6 Q What is the highest level --

7 MR. SHORT: Mr. Short, if you could wait  
8 until I finish my question before you object,  
9 I would appreciate that.

10 Q What is the highest level of education you've  
11 completed?

12 A I had a lot of technical training after high school.

13 Q Okay. What kind of technical training did you have  
14 after high school?

15 A Aviation maintenance, Marine Corps leadership and of  
16 course police academy, law enforcement courses,  
17 in-service training.

18 Q Okay. And prior to -- where did you receive the  
19 training you received prior to joining the Buffalo  
20 Police Department?

21 A Marine Corps and some -- I don't think online would  
22 be -- correspondence courses.

23 Q Correspondence courses. What are correspondence

1 courses?

2 A It was before the dawn of the internet where they  
3 sent you books.

4 Q Oh, wow. I don't think I have heard of  
5 correspondence courses. That's fascinating.

6 So what were the correspondence courses that you  
7 took?

8 A Aviation maintenance and military police courses.

9 Q And how long did those courses last?

10 A It's self-directed so anywhere from a month to  
11 several months.

12 Q Okay. And you said that you took military policing  
13 courses, correct?

14 A That's correct.

15 Q And did you ever serve as a police officer with the  
16 military?

17 A Yes, I did.

18 Q Okay. We will -- thank you for letting me know that,  
19 and we'll get into that in just a few minutes.

20 You said that you were involved with -- as a  
21 plaintiff in a lawsuit against Buffalo Municipal  
22 Housing Authority regarding an injury that you  
23 received while you were on duty, correct?



1 A That's correct.

2 Q Can you explain more about the details of that  
3 lawsuit?

4 A The lawsuit is generated by an injury that I received  
5 on December 18, 2016, when I walked out the back door  
6 of our -- it's not the police station, but it's where  
7 we worked out of, like substation. And the stairs  
8 were covered with ice, and I fell down the stairs  
9 resulting in injuries to -- the main injury being my  
10 back and also shoulder and hand.

11 Q Okay. Thank you. I'm sorry to hear that. Has that  
12 lawsuit been resolved?

13 A No.

14 Q Okay. It's still ongoing?

15 A Yes.

16 Q Okay. Thank you. And is that injury related to why  
17 you left the BPD?

18 A Yes.

19 Q Thank you. Are you currently employed?

20 A No, I'm not.

21 Q You joined the BPD, you said, in March 1988; is that  
22 correct?

23 A No. I joined the BPD July 31, 1997.

1 Q For the record, when I use the term BPD, you  
2 understand that I'm referring to the Buffalo Police  
3 Department, correct?

4 A Yes, I do.

5 Q All right. Thank you for clarifying that date.  
6 What was your starting salary?

7 A 35,000 -- 36,000 a year maybe.

8 Q Okay. And with -- does that include overtime?

9 A There's no overtime for rookies.

10 Q Got it. So around 36 as your base salary.

11 And why did you decide to join the Buffalo  
12 Police Department?

13 A I was an airline employee, and I was tired of being  
14 forced around the system. I worked at four cities in  
15 the one year. I became a union representative. I  
16 went to one of these union-company rightsizing  
17 meetings in Charlotte.

18 And I came back, told all my represented, "Go  
19 find new jobs because you're never retiring from  
20 here."

21 Q What company was that?

22 A US Air.

23 Q US Air. And what was your position with US Air?

1 A I was a mechanic.

2 Q Okay. Was there anything particular about the BPD  
3 that drew you to police -- Buffalo Police Department  
4 in particular?

5 A I was from Buffalo and I owned a house here. And my  
6 family was here, so I wanted to find something that  
7 would bring me back home.

8 Q Okay. And was there anything that drew you to  
9 policing in particular?

10 A I guess you could say it's -- it's in my blood. My  
11 dad was a retired sheriff. My grandfather was  
12 retired from Buffalo Police Department.

13 Q Okay. He must have been impressive. And where did  
14 you attend police academy training?

15 A The central -- Erie County Central Police Services  
16 Academy. The actual location was in the city of  
17 Buffalo.

18 Q Okay. And how long did that training last?

19 A Six months.

20 Q And what topics did you cover while you were at that  
21 training?

22 A Every topic that's instrumental in the job of being a  
23 police officer, criminal procedure law, vehicle and

1 traffic law, Article 35.

2 Q What is Article 35?

3 A The justification for the use of force under the New  
4 York State Criminal Procedure Law.

5 Q Okay. Thank you. And you said that you attended  
6 military training to be a military police officer,  
7 correct?

8 A That's correct.

9 Q And what did you learn when you were studying to be a  
10 military police officer, what topic?

11 A Many of the same topics, but also covered were  
12 correctional forces.

13 Q Uh-huh.

14 A You don't cover that in the police academy.

15 Q Okay. And when did you serve as a military police  
16 officer?

17 A I was in the reserve unit for military police from  
18 1999 until the end of 2000 and then again from --  
19 after September 11th from -- I don't recall the exact  
20 date, but we'll say November 20th of 2001 for six  
21 months, so that would be about the end of May, I  
22 served as the -- an Air Force safety and security  
23 officer and then again as a reservist the following

1 year, 2003, for 90 days with an MP company attached  
2 to Kaneohe Bay, Hawaii.

3 Q Okay. I will ask you a little bit more about those  
4 duties as -- so strike that.

5 So just to be clear, prior to joining the  
6 police -- Buffalo Police Department, did you serve  
7 with the military or --

8 A I did serve with the military.

9 Q When was that?

10 A I served eight years active duty, 1982 to 1990, at  
11 which point I went into the reserves, and I retired  
12 from the reserves in 2013.

13 Q What were the dates that you served in the military  
14 again?

15 A 1982 to 1990 were active duty. And then from 1990  
16 until 2013 was reserves. During my reserve time, I  
17 had activations on active duty.

18 Q Okay. What does that mean?

19 A That means I was activated in support of Operation  
20 Iraqi Freedom or Enduring Freedom both stateside and  
21 in Iraq.

22 Q Okay. And when you served in the military from 1982  
23 to 1990, what was your position?

1 A I was an aviation maintenance mechanic.

2 Q And what were your responsibilities as an aviation  
3 maintenance mechanic?

4 A The preventive maintenance, repair, structural  
5 repairs, C-130 aircraft and Huey helicopters.

6 Q Okay. Where were you stationed?

7 A My first permanent duty station was Marine Corps Air  
8 Station Cherry Point, North Carolina. I took a  
9 deployment to Okinawa for about -- it was six months,  
10 not about. It was six months. I came back to Marine  
11 Corps Air Station Cherry Point.

12 Then I was permanently transferred to Naval Air  
13 Station Glenview, Illinois. That's where I ended my  
14 active duty service, and I joined -- reenlisted in  
15 the reserve, then came home to Buffalo.

16 Q Okay. And while you were on the reserve, did you  
17 have another position, another -- another position of  
18 employment?

19 A Yes.

20 Q Who was that with?

21 A US Air.

22 Q Okay. And other than US Air and the military, did  
23 you work anywhere else prior to joining the Buffalo

1 Police Department?

2 A Yes. There was a brief period between my Marine  
3 Corps and US Air employment. I worked for a small  
4 sheet metal company called Bosch Mechanical --  
5 something like that, Bosch Mechanical.

6 Q Okay. And so while you were on reserves, you said  
7 that you were deployed; is that correct?

8 A That's correct.

9 Q And did you continue to work as a mechanic when you  
10 were deployed?

11 A Yes, some of the time.

12 Q What other duties did you do besides acting as a  
13 mechanic for the military?

14 A When Desert Storm started, I was recalled, and I  
15 attended the Advanced School of Infantry at Camp  
16 Geiger. By the time we came out of the field, the  
17 war was over, we got discharged.

18 Q Okay.

19 A Then the war starts in 2001. I'm deployed as a  
20 military police safety security officer for six  
21 months to Marine Corps Air Station Kaneohe Bay,  
22 Hawaii. Then I joined a unit locally in Buffalo,  
23 which was called the Peacetime Wartime Support Team,

1 and it's an administrative position that I was  
2 activated for 13 months.

3 I remained right in Buffalo as the infantry unit  
4 went forward to Iraq. Then in 2008, I get activated  
5 again. I was recruited by the First Marine  
6 Expeditionary Force because I was military police and  
7 a civilian police officer.

8 I went forward to Iraq for a year with a  
9 transition team that we were trying to train the  
10 Iraqis to take control of their own country. My  
11 specific mission was along the Syrian border with the  
12 Regional Border Team North.

13 And then I was discharged in 2009. I returned  
14 to Buffalo. And then I joined the Readiness Support  
15 Program in an administrative billet until I retired  
16 in 2013.

17 Q Okay. Thank you for that.

18 And so when you were in Iraq, were you serving  
19 as military police?

20 A We were -- as I stated, we were a transition team  
21 training, but we were training the Iraqi border  
22 police. I wouldn't say I was a military police  
23 billet, but I served as a law enforcement advisor.



1 Q And what were your duties as a law enforcement  
2 advisor?

3 A It was to train, professionalize the Iraqi border  
4 police. Also we would do patrols along the Syrian  
5 border in an attempt to interdict smuggling, look for  
6 corruption conducted by certain border police  
7 battalions. That's really it.

8 Q Okay. Thank you for sharing that. I'm going to ask  
9 you some more questions later, but I appreciate you  
10 sharing that information.

11 Other than in that position in Iraq, did you  
12 serve as military police in another capacity during  
13 your duty?

14 A Not other than what I've already described.

15 Q Okay. Thank you. And what was the first position  
16 that you held with the Buffalo Police Department?

17 A Following the academy, I was assigned to Precinct  
18 Number 11 as a patrol officer on midnights.

19 Q And where was Precinct 11?

20 A Precinct Number 11 was 1141 East -- 1141 Bailey  
21 Avenue in the city of Buffalo.

22 Q All right. And what was the last position you held  
23 at the Buffalo Police Department prior to your

1 retirement?

2 A I was a lieutenant at the Strike Force Unit.

3 Q And did you work with a unit called Emergency  
4 Response Team?

5 A Yes. I was tasked with the forming of the Emergency  
6 Response Team.

7 Q And were you still working with the Emergency  
8 Response Team when you retired?

9 A When I was injured, yes.

10 Q Okay. And why did you leave the Buffalo Police  
11 Department?

12 A Because I had a career-ending injury on December 18,  
13 2016.

14 Q And what was your final salary when you left?

15 A My salary or what did I earn?

16 Q What did you earn? And I'm interested in your salary  
17 and the overtime.

18 A A police lieutenant's salary was I think around  
19 \$81,000 a year at the time, I think.

20 Q Okay. And do you know what you earned with overtime?

21 A My last year, I think I made 153,000.

22 Q So on top of the 81,000, was the remainder made  
23 through overtime?

1 A Overtime and court appearances.

2 Q Okay. So that's considered court compensation for  
3 appearing in court in addition to your regular hours?

4 A That's correct.

5 Q Okay. And what is the court overtime rate?

6 A I didn't understand the question. What is the court  
7 what?

8 Q What is the rate you were paid when you attend court?

9 A Court time is paid straight time for a minimum of  
10 four hours.

11 Q And how about overtime, what is the rate of overtime  
12 pay?

13 A One and a half times.

14 Q Thank you. And was your pension paid based on both  
15 your salary and overtime and court time?

16 A Yes.

17 Q And how was your pension calculated?

18 A How was my pension what?

19 Q Calculated.

20 A My specific pension is -- I received a disability  
21 pension because of my injuries, so I got 50 percent  
22 of my --

23 Q Of your base salary?

1 A -- final three-year average -- not final. It's a --  
2 your best three-year, 36-month average.

3 Q Your best three years. Okay. And would you say that  
4 your best three years were the last three years you  
5 worked at the Buffalo Police Department in terms of  
6 pay?

7 A Probably. Three of the last four.

8 Q Okay. And so do you have any relatives who are  
9 current or former employees of the Buffalo Police  
10 Department?

11 A Do I have any what?

12 Q Any relatives who are current or former employees of  
13 the Buffalo Police Department.

14 A Well, as I stated, my grandfather was a Buffalo  
15 police officer in the '50s, and my sister is a report  
16 technician at E District.

17 Q And have you ever been involved in your sister's  
18 supervision?

19 A No.

20 Q One more question. Where did you attend police  
21 training for the BPD?

22 A Erie County Central Police Services Academy. At that  
23 time, the location was in the city of Buffalo.

1 Q Okay. And where is that located now?

2 A Back then it was at the corner of Sycamore and Oak  
3 Street. I don't know the address.

4 Q And you said your first assignment after you  
5 completed recruit training was at -- in District P-11  
6 on Bailey; is that correct?

7 A We still had precincts, so I was assigned Precinct  
8 Number 11.

9 Q And how long was that assignment?

10 A I was there for six months and as such that I was on  
11 probation, the department was free to move me  
12 wherever they wanted, and I was moved to A District.

13 Q What months were you at P-11?

14 A January of 1998 through July of 19 -- probably not  
15 through July -- through June of 1998.

16 Q And P-11, was that on the east side of Buffalo?

17 A Yes, it was.

18 Q And what were your primary duties in that assignment?

19 A Routine patrol, traffic enforcement, investigations,  
20 answering 911 calls.

21 Q All right. And who did you report to?

22 A My lieutenant was Lieutenant Richard Bartoszewicz.

23 Q And what were the racial demographics of Precinct 11?

1 A Primarily African-American. A lot less so then than  
2 now. It was a more mixed neighborhood 20-some years  
3 ago.

4 Q When did that start to change? When did that change?

5 A It just changes with time, but daily. It wasn't like  
6 all of a sudden. You know, it just changes.

7 Q Okay.

8 A People die. The houses don't get bought.

9 Q Okay. And then you said that you were moved to the A  
10 District?

11 A That's correct.

12 Q And were you told why you were moved to the A  
13 District?

14 A I was a probationary officer, and the city has the  
15 ability to move all its probationary officers at  
16 the -- after six months.

17 Q All right. And what were the racial demographics of  
18 that district?

19 A Primarily white.

20 Q And what were your responsibilities while in the A  
21 District?

22 A The same responsibilities. I worked midnights,  
23 vehicle and traffic, routine patrol, criminal

1 investigations, answering 911 calls.

2 Q Uh-huh. And was there -- was there violent crime in  
3 the A District?

4 MR. SHORT: Form.

5 A Yes.

6 Q Were there gangs in the A District?

7 A Yes. There was pockets of gangs.

8 Q And were there people who abused and sold drugs in  
9 the A District?

10 A Of course.

11 Q Okay. And did you stay with the A District after  
12 your one-month probation period?

13 A The probation period is one year.

14 Q Okay.

15 A And at the end of my probation, I was eligible to put  
16 a transfer in. So I put my transfer to go back to  
17 Number 11, but I did not get there. Instead I was  
18 assigned Precinct Number 12.

19 Q Okay. So you stayed at A District for how long?

20 A Six months.

21 Q All right. And you said while you were in the A  
22 District, you enforced traffic laws, correct?

23 A Yes.

1 MR. SHORT: Form.

2 Q And did you -- what were the range of traffic laws  
3 that you enforced in the A District?

4 A Everything that's in the vehicle and traffic law.

5 Q People who ran red lights?

6 A Of course.

7 Q DWIs?

8 A Yes.

9 Q Seat belt violations?

10 A Yes.

11 Q Tinted window violations?

12 A Yes.

13 Q Child seat safety violations?

14 A Yes.

15 Q And people who were involved with accidents?

16 A Yes.

17 Q Okay. And so who did you report to in the A District  
18 when you were working there?

19 A I can't remember what the title was. It might have  
20 been Ralph Zangara.

21 Q And you said that you put in a transfer to go to  
22 another district. Why was that?

23 A I had made a very good friendship with my field



1 training officer, and I wanted to go back there. He  
2 wanted me to come back there and be partners. And as  
3 I stated, I put my transfer in but I didn't get  
4 there. I was assigned to Number 12.

5 Q And who was that training officer?

6 A Officer Joseph Serwon.

7 Q And then you said you went to Precinct 12. Where is  
8 Precinct 12?

9 A It was located on Genesee Street -- I don't recall  
10 the exact address -- near Martin Luther King Park.

11 Q And what were your -- how long did you stay there at  
12 Precinct 12?

13 A Six months.

14 Q And what were your primary duties in that assignment?

15 A The same duties, same shift, midnights, routine  
16 patrol, investigations of crimes, vehicle and traffic  
17 enforcement, answering 911 calls.

18 Q And what were the racial demographics of the  
19 community that you served?

20 A I would say it was more African-American than any  
21 other.

22 Q Okay. Would you say that that is true of the east  
23 side of Buffalo generally now, that it's

1           predominantly African-American?

2       A       Yeah, absolutely now.

3       Q       And then why did you leave P-12?

4       A       I had the chance to go back to Number 11 and be  
5           partners with my old field training officer.

6       Q       Okay. And do you know what -- around what year that  
7           was?

8       A       1999.

9       Q       And how long did you stay at Precinct 11?

10      A       I stayed at Number 11, which became C District,  
11           Charlie District, when 11 and 12 combined, and then I  
12           stayed at C District until my promotion to lieutenant  
13           in 2011.

14      Q       Okay. And during this time, at some point, you went  
15           on military leave; is that correct?

16      A       That's correct.

17      Q       And while on military duty, did you learn helpful  
18           tactics or strategies for your work at the Buffalo  
19           Police Department?

20      A       When I was a police officer and I was on military  
21           duty, I was assigned administrative duties in the  
22           city of Buffalo 2004 to 2005, so to answer your  
23           question, no, not really.

1 Q Okay. Did any of your work at the military assist  
2 your work at the Buffalo Police Department including  
3 your work while stationed in Iraq?

4 MR. SHORT: Form.

5 A Yes, absolutely. I developed what I like to believe  
6 are very strong leadership skills, organizational  
7 skills that I carried with me to my job with the city  
8 and with -- you know, in life.

9 Q Okay. And how about tactical skills?

10 MR. SHORT: Form.

11 A Marine Corps and police department are way different  
12 tactics.

13 Q Were there any parallels from your work in the  
14 military to your work with the Buffalo Police  
15 Department?

16 A Well, as I stated, the organizational skills. When I  
17 was forming the ERT Unit, of course, I drew on my  
18 experiences. I drew on -- I formed my ERT Unit, two  
19 platoons, same rank structures, the same as I would  
20 have in the Marine Corps.

21 Q And the ERT -- what was the ERT's primary function?

22 A To address civil disorder.

23 Q And why did your experience in the military help

1 inform the way that you developed the ERT structure?

2 MR. SHORT: Form.

3 A The question is in what way did my military  
4 background assist me?

5 Q Yes.

6 A I knew how to organize a unit into platoon squads,  
7 evaluate personnel to put them where they best  
8 fitted -- where they best fit in the structure of the  
9 unit. I knew that I needed an equipment manager. I  
10 knew I couldn't do it all myself, so I had to assign  
11 roles to people and rely on them to do that.

12 Q Okay. Thank you for that. So you stayed with the C  
13 District for -- through 2011 and had these tours  
14 intermittently throughout that period, correct?

15 A That's correct.

16 Q Okay. And when you were in the C District, who did  
17 you report to?

18 A Again, most of the time, it was Lieutenant  
19 Bartoszewicz. Some lieutenants did move around. I  
20 think for a while Joseph Lynch was my lieutenant.  
21 There's usually two lieutenants assigned to a  
22 platoon, so you would have two lieutenants.

23 Q All right. And who was the captain of the C

1 District?

2 A At that time, I think it was Captain Smith -- Captain  
3 Cusella. Captain William Cusella was the captain of  
4 the C District for most of the time I was there.

5 Q Okay. And then when you -- what was the year and  
6 date -- year and month that you became a lieutenant  
7 in the A District?

8 A I was promoted to lieutenant in June of 2001.

9 Q Was that a promotion?

10 A Correct.

11 Q What did the promotion process entail?

12 A Written exam and an oral interview.

13 Q Who did you report to in the A District?

14 A When I was promoted to lieutenant?

15 Q That's correct.

16 A My first assignment as a lieutenant was the relief  
17 circuit. I was assigned to B District but at the  
18 leisure of the shift officer to be moved anywhere in  
19 the city to address manpower shortages.

20 Q How often did you -- how -- for how long did you  
21 serve at the B District as part of the relief  
22 circuit?

23 A About seven months, about.

1 Q Okay. And then you returned to the A District; is  
2 that correct?

3 A That is correct. And then I got transferred to A.

4 Q Okay. So before being on the A District, were you on  
5 the relief circuit?

6 A Before being in A District as a lieutenant, was I on  
7 relief?

8 Q Yes.

9 A Yes, I was.

10 Q Okay. And when you were on relief prior to being  
11 transferred to A, who did you report to?

12 A I had to report to a shift officer which is -- could  
13 be a different person every day. It's usually the  
14 ranking inspector on duty.

15 Q All right. And when you were transferred to the A  
16 District, who did you report to?

17 A Captain Phil Serafini.

18 Do you mind if I get a drink of water?

19 Q Sure. And how many people reported to you when you  
20 were lieutenant in the A District?

21 A A typical platoon is ten police officers.

22 Q All right. And were you working the day shift or the  
23 night shift?

1 A I worked nights, midnights.

2 Q All right. And you said when you were at the A  
3 District, you observed violent crime; is that  
4 correct?

5 A Yes.

6 Q Were there shootings?

7 A Yes.

8 Q And were there gangs?

9 A Yes.

10 Q And as you testified earlier, you observed traffic  
11 violations and infractions in the A District?

12 A Yes.

13 Q Okay. And then when did you become a lieutenant --  
14 what was your next position following your position  
15 as lieutenant on the A District?

16 A I left the A District to be a lieutenant in the  
17 Strike Force Unit.

18 Q Okay. And when was that?

19 A 2013.

20 Q Does April 2013 sound right to you?

21 A Yes, it does. It was springtime.

22 Q And how did you come to be a lieutenant on the Strike  
23 Force?

1 A My partner was a -- my partner on Strike Force was a  
2 very senior day lieutenant in A District, and he was  
3 encouraging me to put in to go there so that we could  
4 be partners at Strike Force. So I put my transfer  
5 in, quite honestly never thinking I would get there,  
6 but I did end up going there.

7 Q And who was your partner?

8 A It was Lieutenant Daniel Burke.

9 Q And what was it about the Strike Force that attracted  
10 you to that unit?

11 A The ability to do some different police work. You're  
12 not tied to the radio for being dispatched, just to  
13 do something different.

14 Q Okay. And how was Strike Force different from the A  
15 District?

16 A For starters, I wouldn't have to work midnights  
17 anymore. I went to afternoons, and as I stated,  
18 you're not -- you're not dispatched calls, 911 calls.  
19 You're out doing proactive police work, being visible  
20 in the community. You're free to do a lot of  
21 different things that you wouldn't normally be able  
22 to do.

23 Q And was -- when you say you were free to do a lot of



1 different things that you weren't otherwise able to  
2 do, what do you mean by that?

3 A Well, a couple things. First you're free -- as a  
4 district lieutenant, every DOA, you're going to it.  
5 I don't have to do that as a Strike Force lieutenant.  
6 I didn't have to do a lot of the menial tasks that a  
7 district lieutenant would have to do.

8 And on the other side, when you work in a  
9 district, if you're being dispatched calls, you're  
10 expected to clear that up in 15, 20 minutes. If I  
11 feel like standing there and talking to a shop owner  
12 and he wants to address his problems in his area, I'm  
13 free to stand there and take notes, you know, things  
14 like that.

15 Q Okay. And what were your primary duties as a Strike  
16 Force officer?

17 A As a lieutenant, it was the supervision of a platoon  
18 of officers, ten different officers in my platoon.  
19 And it was to again investigate crimes, enforce  
20 vehicle and traffic law. We did do some different  
21 type things as -- like the road safety, roadblock  
22 safety initiative.

23 Additionally, we worked a couple times a summer

1 with MADD, Mothers Against Drunk Drivers. Plus we  
2 worked with other agencies, the Sheriff's Department  
3 and the troopers.

4 Q We'll talk about the Strike Force a bit in a minute.

5 What was the geographic focus of Strike Force?

6 A Anywhere in the city.

7 Q Okay. Did you focus on a particular area of the city  
8 while with Strike Force?

9 A The commissioner generally directed a geographical  
10 area, and then the lieutenant on duty would select  
11 specifics.

12 Q And that was on a daily basis?

13 A Correct.

14 Q Who did you report to?

15 A I didn't hear you.

16 Q Who did you report to?

17 A Indirectly we reported to the Housing captain and  
18 then to the -- there was a chief. The chief was in  
19 charge of school resource officers, the Housing  
20 officers, the Strike Force Unit, all stray cats and  
21 dogs, you might say, and then ultimately the  
22 commissioner.

23 Q Okay. And who was the captain of the Housing Unit

1           that you reported --

2           A        The captain when we formed the unit was Captain  
3           Patrick Roberts, and when he retired, Captain Phil  
4           Serafini.

5           Q        All right. And who was the chief of the Strike Force  
6           Unit?

7           A        Chief, when we started, was Chief Kevin Brinkworth  
8           and later on became Chief Aaron Young.

9           Q        Okay. And who was -- did you have a partner while at  
10          the Strike Force?

11          A        Yes.

12          Q        Who was --

13          A        My first partner, as I stated, was Lieutenant Daniel  
14          Burke. We went over together. Danny retired in  
15          2015, June. And then Lieutenant Michael Quinn took  
16          the transfer over.

17          Q        And did you -- you said you also worked with the  
18          Emergency Response Team beginning in 2016?

19          A        No. I believe the Emergency Response Team was formed  
20          in 2013.

21          Q        And when did you start working with the Emergency  
22          Response Team?

23          A        Right from the beginning. I was contacted by the

1 deputy police commissioner in charge of operations,  
2 and we had meeting with herself, the SWAT Team  
3 commander, a lot of key players, a couple captains.

4 And they asked me if I was interested in forming  
5 this unit, doing the research, because we didn't have  
6 following -- following what happened in Ferguson,  
7 Missouri, it was determined that we did not have a  
8 unit that was capable of handling that kind of  
9 response.

10 It's not a SWAT Team mission. It's more of a  
11 crowd control/civil disobedience mission. I told him  
12 that I was interested. And then from there I went --  
13 I was -- had training. I went down to Long Island to  
14 observe how they handled the Mobile Field Force  
15 Organization. I did a week's training with them.

16 I came back, made a presentation to the  
17 commissioner on what I thought based on the size of  
18 the City of Buffalo Police Department, the size the  
19 unit should be. And I told him we would need an  
20 amount of equipment that we would be researching and  
21 people with a lot of arguments about -- a lot of  
22 arguments about ranks that would be eligible for  
23 joining the unit.

1 Q Okay. And so did you get paid additional money to  
2 run the Emergency Response Team?

3 A Did I get paid money? If there was a call out of the  
4 Emergency Response Team, yes, I got paid, if I wasn't  
5 already on duty.

6 Q Would that be overtime?

7 A Yes.

8 Q All right. And how did you juggle your  
9 responsibilities at the Strike Force and the  
10 Emergency Response Team?

11 A I'm pretty good.

12 Q Okay. Was it a lot of additional work in addition to  
13 your work at the Strike Force?

14 A Yes. That was developing a unit that's never existed  
15 before. Yeah, that's a lot of work.

16 Q Okay. And what was your last day at the Buffalo  
17 Police Department?

18 A December 18, 2016. My actual retirement date is I  
19 think September 28, 2018.

20 Q So after December -- I'm sorry. That was December  
21 8th or 18th?

22 A 18th.

23 Q December 18, 2016, you no longer worked at the

1 Buffalo Police Department; is that correct?

2 A I never worked another day, but I was on the payroll  
3 as injured-on-duty officer. I had a couple  
4 surgeries. My disability retirement paperwork was  
5 working its way through New York State, and then it  
6 was approved in September of 2018.

7 Q All right. Thank you. I'm sorry to hear about that  
8 injury.

9 A Everything happens for a reason.

10 MS. MALHOTRA: Okay. Can we take a  
11 quick bathroom break, five minutes?

12 MR. SHORT: Sure.

13 (A recess was taken.)

14 BY MS. MALHOTRA:

15 Q I'm going to share my screen and show Exhibit 1.  
16 Lieutenant Whelan, this is your discipline card,  
17 correct? Have you seen this document before?

18 A I'll be honest, no.

19 Q Just to confirm, at the bottom here, it says that you  
20 transferred April 1, 2013 from the A District to the  
21 Strike Force, correct?

22 A Where does it say that?

23 Q Down here four lines from the bottom.

1 A Yes.

2 Q Okay. Great. And as we discussed, that is the date  
3 that you transferred, correct?

4 A Yes.

5 Q All right. I'm going to show you then Exhibit Number  
6 2. This is COB319449, a document we received from  
7 your counsel indicating the platoons in Strike Force  
8 as of August 16, 2016. Do you see that date on the  
9 bottom?

10 A I do.

11 Q Okay. And does this list represent the -- you'll see  
12 there's two columns here, one to the left, one to the  
13 right, and one it has a list under Lieutenant Quinn  
14 and Lieutenant Whelan. Do you see that?

15 A Yes.

16 Q Okay. And under that list, it lists seven officers.

17 MR. SHORT: Form.

18 Q It lists a number of officers, correct?

19 A Yes.

20 Q Robert Salamone, John Poisson, Michael Martinez,  
21 Joseph Chojnacki, Latasha Howard, Aaron Pariseau,  
22 Bradford Pitts, Scott Culver, Richard Hy; is that  
23 correct?

1 A That's what the form says, yes.

2 Q Are those the officers that you supervised while at  
3 Strike Force in -- as of August 2016?

4 A I wasn't there in August 2016 -- oh, yeah, I was.  
5 I'm sorry. Yes. Okay, yes.

6 Q Okay. Were there other police officers that you  
7 supervised?

8 A Previous to this date?

9 Q Previous or while you were at the Strike Force.

10 A Yes.

11 Q Who were those officers?

12 A Officer -- what -- what was her name, Latasha's  
13 partner? Was --

14 Q Robbin Thomas?

15 A Yes. I'm sorry. Yes, it was Robbin Thomas was  
16 Latasha Howard's partner. She must have retired  
17 before this date.

18 Q And Thomas Zak?

19 A He didn't work for me.

20 Q Robert Danner, did he work for you?

21 A Robert Danner, no, he never worked for me.

22 Q Did you ever have any supervision responsibilities  
23 over the platoon listed on the left?



1 A Yes.

2 Q What were your responsibilities for the platoon  
3 listed on left?

4 A The same responsibilities that I would have had any  
5 other time. Perhaps Lieutenant Wilcox or Lieutenant  
6 McLean were not on duty that day, and then I might  
7 have been on overtime supervising their platoon or  
8 vice versa. Some of the officers may have been on my  
9 platoon on overtime, and I was the supervisor.

10 Q Uh-huh. And for the record, that's Richard Lopez,  
11 Joseph Walters, Debra Strobele, Charles Skipper,  
12 Michael Acquino, Mark Hamilton, Christopher Fields,  
13 Anthony Fanara, Darren McDuffie and Adam Wigdorski,  
14 correct?

15 A That's correct.

16 Q And were there any other Strike Force officers that  
17 you recall at this time supervising?

18 A I didn't understand the question.

19 Q Were there other -- any other Strike Force officers  
20 other than Robbin Thomas that you've mentioned that  
21 you had supervisory responsibility for while serving  
22 as a Strike Force lieutenant?

23 A Occasionally, we would need some extra help, so some

1           Housing officers would be taking Strike Force  
2           overtime. Occasionally, some of the housing officers  
3           would take Strike Force overtime if we had a very  
4           large detail to fill.

5       Q       Okay. Do Housing officers at the top here, when you  
6           had to supervise Housing Unit officers, is this an  
7           accurate list of the Housing officers that you would  
8           sometimes have supervision of when you were working  
9           with them in the Housing Unit?

10      A       Yes.

11      Q       Okay. And how frequently would you have oversight  
12           authority over the officers listed under Lieutenant  
13           Wilcox and Lieutenant McLean's unit?

14      A       During the summer months, probably one or two days a  
15           week. And then during the winter months, virtually  
16           not at all --

17      Q       Okay.

18      A       -- unless it was holiday overtime maybe.

19      Q       Okay. And during the summer days, once or twice a  
20           week was that because you were engaged in overtime?

21                           MR. SHORT: Form.

22      A       Either myself or they were engaged in overtime,  
23           bringing them under my supervision. We worked

1 extended hours through most of the summer also.

2 Q Did you work a lot of overtime in the Strike Force?

3 A As much as anybody else, I would say. Probably  
4 average --

5 Q What --

6 A -- average for lieutenants.

7 Q Average for lieutenants on the Strike Force?

8 A Correct.

9 Q And about how much overtime did you work on the  
10 Strike Force?

11 A Well, I think you pointed it out earlier. I had  
12 about 65,000, 70,000 dollars worth of overtime  
13 earnings one year.

14 Q And was that more than when you worked in the A  
15 District?

16 A Yes.

17 Q About how much overtime did you work in the A  
18 District?

19 A Very little.

20 Q And when you say "very little," about how much is  
21 very little?

22 A I'll say probably 80 to a hundred hours a year.

23 Q I'm sorry. Can you repeat that?

1 A 80 to 100 hours a year.

2 Q Making about 65,000 in overtime while on Strike  
3 Force, about how many hours a year was that?

4 A I don't know. I'd have to have a calculator.

5 Q Okay. Would you say you -- we can talk about that  
6 later. And how often did you work with the Housing  
7 Unit?

8 A How often did the officers from Housing come to  
9 Strike Force Unit or how often did I work for  
10 Housing?

11 Q How often did you supervise officers from the Housing  
12 Unit?

13 A In the summer, a lot of days.

14 Q Okay. And was that because the Housing Unit officers  
15 were working on checkpoints?

16 MR. SHORT: Form.

17 A That's because we had manpower requirements in the  
18 Housing Unit that we couldn't fill within the Housing  
19 Unit, so we would call the Housing officers to work  
20 this overtime.

21 Q You said you had manpower issues in the Housing Unit.  
22 Did you mean you had manpower issues in the Strike  
23 Force and you needed --

1 A I thought I said that. Yes, we had manpower  
2 shortages in the Strike Force Unit that I couldn't  
3 fill using only Strike Force officers, so we could  
4 call the Housing Unit officers.

5 Q Okay. And the Strike Force Unit conducted a fair  
6 amount of checkpoints; is that correct?

7 A Yes.

8 Q And was -- when you needed manpower for the Housing  
9 Unit, was that usually for checkpoints?

10 A No.

11 Q Okay. So a range of duties?

12 A Yes, a range of duties.

13 Q Okay. Did the Strike Force frequently engage in  
14 checkpoints during overtime hours?

15 MR. SHORT: Form.

16 A Yes.

17 Q Okay. All right. Thank you. I'm going to stop the  
18 share.

19 So you met with -- sorry. Did you meet with the  
20 police officers of the Strike Force Unit regularly?

21 A Did I meet with them?

22 Q Uh-huh.

23 A Yes. We started every day with a briefing.

1 Q Okay. And how long would that briefing be?

2 A It could be ten minutes. It could be 30 minutes if  
3 there was more information to disseminate.

4 Q Okay. And were both platoons of the Strike Force  
5 present during those meetings?

6 A Not always. The way the two platoons worked is port  
7 and starboard. When my platoon is working, the other  
8 platoon is off and vice versa.

9 Q Thank you for clarifying that. And if members of the  
10 Housing Unit were working at the time that your  
11 platoon was working, would they attend those  
12 briefings as well?

13 A No. They had their own briefings.

14 Q Okay. So what was the purpose of the daily  
15 briefings?

16 A We would go over any BOLOs, officer safety issues,  
17 any kind of administrative duties that had to be  
18 passed down as far as updating computers or getting  
19 cars to the garage.

20 And then at the beginning of the briefing, if I  
21 was the lieutenant, I would identify the place where  
22 we were going to do the checkpoint. I would have the  
23 checkpoint daily roster in front of me, read through

1           what the initiatives, the purpose of the checkpoint  
2           was, and then I would tell my officers good luck and  
3           God bless and meet them out on the street.

4       Q     Okay. And other than the officers in your platoon,  
5           did anyone else attend these meetings?

6       A     If the sheriff's department or the troopers were  
7           assigned city Strike Force duties, they would attend  
8           the meeting.

9       Q     And did you take minutes of these meetings?

10      A     No. You just went down the checkpoint sheet, and  
11           then we had a binder with all the checkpoints used.  
12           At the top of the sheet -- if I recall, at the top of  
13           the sheet you would put the date, the location of  
14           where you were going to do the checkpoint, and then  
15           as the commanding lieutenant, you would sign at the  
16           bottom.

17      Q     So you would sign these daily checkpoint sheets prior  
18           to these officers going out and conducting  
19           checkpoints?

20      A     Correct.

21      Q     All right. And so how many checkpoints would  
22           officers do a day?

23      A     We did at least one a day.

1 Q Okay. And what was the most that you did?

2 A Two.

3 Q Was there ever a time where you were doing three  
4 checkpoints a day?

5 A I think sometimes in the summer, we would do a third  
6 one, not every day though. It wasn't a popular thing  
7 with the officers.

8 Q Why was that?

9 A Standing around, they -- they just -- they didn't  
10 like it, especially if the weather was bad.

11 Q Yeah. What didn't they like about it?

12 A They felt they could be more productive out doing  
13 patrol.

14 Q Okay. Were there any other reasons they didn't like  
15 doing the checkpoints?

16 A No.

17 Q Okay. So you said you would provide your lieutenants  
18 with the location of the checkpoints?

19 A The officers, yes. I would provide the location and  
20 a time.

21 Q Okay. And was other traffic enforcement activity  
22 ever discussed?

23 A Was other traffic what?



1 Q Like non-checkpoint traffic enforcement.

2 A No.

3 Q Were like statistics discussed, the number of  
4 tickets, tows, impounds?

5 A No.

6 MR. SHORT: Form.

7 Q Okay. Were -- was towing and impounds ever discussed  
8 generally?

9 A No.

10 Q All right. Did you ever discuss complaints brought  
11 by residents of Buffalo at these meetings?

12 MR. SHORT: Form.

13 A I never got any complaints from residents of Buffalo.  
14 If one of my officers had a complaint and it came  
15 down through the captain to look into it, I might  
16 have been told to get the officer to write a P-73  
17 regarding the incident, but not general complaints.

18 Q Okay. How did you communicate with your officers at  
19 the Strike Force outside of these meetings?

20 A On the radio, show up on their calls, talk to them --  
21 not their calls -- whatever incident they were  
22 involved in.

23 Q Okay. Did you use texts?

1 A I'm sure, yes.

2 Q All right. On a Buffalo Police Department issued  
3 phone?

4 A No. I didn't have a department phone.

5 Q Okay. So you used your personal phone to send and  
6 receive texts?

7 A Yes. Also, we would send a lot of messages through  
8 the computer in the car.

9 Q Okay. What was that system called?

10 A I don't know; I really don't.

11 Q Would they be texts, like electronic messages or  
12 voice messages that you would --

13 A No. Electronic, you know, sort of text messages.

14 Q And how frequently would you use that system to  
15 communicate with your officers?

16 A Daily.

17 Q More than once a day?

18 A Maybe.

19 Q Okay. And what kind of information would you  
20 communicate with them through those messages?

21 A Mostly it would be if I had to send a message to all  
22 at once. If it was something that I needed to  
23 communicate with just one officer specifically, then

1 I probably would have called him on the phone. A  
2 good example of what I would send him, "How come  
3 you're not at the checkpoint like I instructed?"

4 Q Okay. And would they respond to you?

5 A Yeah, they'd show up.

6 Q Okay. Got it. So you would use that messaging  
7 system to sometimes provide orders or friendly orders  
8 to your officers?

9 A Friendly orders, yes.

10 Q Got it. Did you use email to communicate with your  
11 officers?

12 A Not really, no.

13 Q Okay. Did you use email to communicate with your --  
14 with officials at your level or above your level?

15 A Yes.

16 Q And how frequently did you -- and at times you used  
17 your personal email address, correct?

18 A I used my personal email to send documents that I  
19 might have been working on for either the Honor Guard  
20 Unit or the ERT Unit, so that I could continue  
21 working on whatever it was, spreadsheet, equipment  
22 list, whatever at home.

23 Q And do you think that you still have those documents

1           that you were working on on your personal computer at  
2           home?

3       A       I know I do.

4       Q       Okay. Okay. Thank you.

5                       MS. MALHOTRA: I just want to note for  
6                       the record that those documents have not been  
7                       turned over by counsel. And we can come back  
8                       to that.

9       Q       So when you would send and receive -- when you would  
10           send and receive documents from your personal email  
11           account, did -- what email address would you use?

12      A       TRWgunny@roadrunner.com.

13      Q       And did you use any other personal email addresses  
14           for business or work?

15      A       I don't think so, but I do have another email  
16           address. It's TRWgunny@yahoo.

17      Q       Okay. And so you said that you mainly worked from  
18           your home computer and sent documents from your home  
19           computer related to the Honor Guard and ERT, correct?

20      A       That's correct.

21      Q       What were the topics of these messages?

22      A       I had -- when I took the Honor Guard Unit over, it  
23           had been neglected for a while and was down to only

1 five members. They were wearing a uniform that  
2 included post office pants. So I had to develop an  
3 equipment list, keep track of which officers had  
4 which equipment, a training syllabus, who made it to  
5 the training, all these type of documents to stay  
6 organized.

7 It didn't always happen. City computers don't  
8 always have the most up-to-date versions of, you  
9 know, spreadsheets or things like that. Plus, I  
10 might be working at midnight in my office, trying to  
11 find some piece of equipment on the internet and I  
12 wouldn't find it.

13 So I would email that spreadsheet or that order  
14 form home so that in the morning when I'm drinking  
15 coffee, I can continue looking for whatever it was I  
16 was looking for.

17 Now, when you get into the ERT Unit, it's Honor  
18 Guard times 20. The size of the unit is five times  
19 larger. It's never existed. I have to create  
20 training syllabus, keep track of which guys have had  
21 the FEMA training, keep -- it's everything.

22 So it just made it easy to email these documents  
23 back and forth. If we had a slow evening at work, I

1           could sit at my computer in my office and work on it.  
2           And then additionally, city computers don't always  
3           allow you to get to some website you want to get to  
4           to look for equipment, so I might have to do that  
5           research at home.

6           Q       Uh-huh. And would you ever do -- take a similar  
7           approach to your work in the Strike Force and use  
8           your personal email and home computer for work  
9           related to your work in the Strike Force?

10          A       No. Because that wasn't my -- that's a unit that I  
11          bid into, and I feel -- I felt that it's the city's  
12          responsibility to develop all those documents or  
13          anything else. Anything that pertained to Strike  
14          Force Unit, that's the command's responsibility to  
15          develop those things.

16                   My personal stamp is on this Honor Guard Unit  
17          and the ERT Unit. I own it. And if it fails, I own  
18          that too. So I'm not going to just rely on somebody  
19          else to take care of things that I'm going to be  
20          responsible for.

21                   MR. SHORT: Again, I just want to note  
22                   for the record that we have not received any  
23                   of the documents Mr. Whelan has created or

1                   sent from his personal email account or using  
2                   his home computer.

3     Q           Thank you for that information.

4     A           Sure.

5     Q           So did the Strike Force lieutenants meet separately  
6                or regularly?

7     A           We had an office that was back off behind the  
8                captain's office, so yeah, we'd meet.

9     Q           Did you meet formally on a daily or weekly basis?

10    A           No. It was not formal -- I'm sorry -- formal  
11                lieutenant meetings. We would just encounter each  
12                other and, hey, what's -- what was going on out there  
13                on the street. We'd discuss things that might have  
14                happened or things that we had to take care of the  
15                following day.

16    Q           Did you talk about checkpoints with the lieutenants,  
17                other lieutenants?

18    A           It wasn't a matter of discussion, but I'm sure we did  
19                talk about checkpoints here or there or whatever.

20    Q           And what would you discuss about checkpoints with  
21                other lieutenants?

22    A           Hey, are we really going to do this? It's pouring  
23                rain outside.

1 Q Anything else?

2 A The wind is coming sideways. I can't see anything.  
3 Are we really going to do this?

4 Q Okay. All right. Did you ever talk about officer  
5 productivity?

6 A No. My officers were all seasoned officers, and they  
7 knew how to do their jobs. They were very good  
8 police officers, better than -- I told people many  
9 times, they were better police officers than I was as  
10 a police officer. They were really intelligent.  
11 They were just really good police officers.

12 Q And did you provide training to your officers?

13 A No. No, we didn't do training. I'm sure when the  
14 unit first started, we had discussions on how we were  
15 going to conduct road safety checkpoints efficiently  
16 and safely.

17 And some of the guys, especially in the evening,  
18 they didn't want to wear the reflective vest or --  
19 it's like any organization. You have pushback to the  
20 rules that the people don't feel they need to follow.

21 Q Do you recall ever providing training on enforcing  
22 vehicle and traffic laws?

23 A No. No, that's not my duty. It's -- they've all had



1 the proper training. They -- it's -- it was up to  
2 each individual or car crews to determine what  
3 vehicle and traffic laws they wanted to, A, write  
4 summonses for or give guidance, show some officer's  
5 initiative, just inform a motorist. I don't need to  
6 micromanage them.

7 Q Uh-huh. Did you provide training on search and  
8 seizure law?

9 A I didn't hear that. You broke up.

10 Q Did you provide trainings on search and seizure law?

11 A No. But we did occasionally have training on search  
12 and seizure law provided by the Erie County District  
13 Attorney's Office.

14 Q And did you provide training on racially biased  
15 policing?

16 A We had -- I did not personally provide the training.  
17 We had in-service training periodically on, I would  
18 say, you know, racial discrimination, as well as  
19 officer safety, as you said search and seizure.  
20 These were routine in-service training topics that  
21 were provided by -- I'm going to use like an umbrella  
22 statement -- the Buffalo Police Training Academy, but  
23 it could have been provided by outside vendors too

1 under the academy.

2 Q And what kind of in-service training on racial  
3 discrimination did you receive?

4 A The same thing that all the other officers received.

5 Q When did you receive that?

6 A I couldn't give you dates. However, I would say  
7 however often the training academy had set up, you  
8 know, and they would keep their records as to what  
9 units, what officers were required to get what  
10 training at what interims.

11 Q Uh-huh. So you don't have any specific recollection  
12 of what racial bias training you received?

13 A No.

14 Q Or that your officers received?

15 A No, I don't know the specifics, no.

16 Q Okay. Would it surprise you if we have not found a  
17 record of any training on racial discrimination --

18 MR. SHORT: Form.

19 Q -- racial bias in particular?

20 A That would surprise me, yeah.

21 Q All right. We will talk about that more in a bit.

22 For now, so while you were at Strike Force, did  
23 you -- actually, let me ask about that. So what do

1           you remember about the substance of the racial  
2           discrimination training that you received?

3       A       It's unacceptable, that we're here to do a job based  
4           on someone's behavior. That is it.

5       Q       And do you have any recollection of when you received  
6           this training?

7       A       No. I already said I don't remember specifically.  
8           And as I stated, it would be something that the  
9           training academy probably -- like in-service pistol  
10          training or pistol range, they keep records on which  
11          officers had training when and when they're due to  
12          have them again.

13      Q       Okay. So you don't remember the specifics of  
14          attending that training; is that right?

15      A       That's correct.

16      Q       All right. So back to Strike Force, did you report  
17          to a Strike Force captain?

18      A       Did I report to a Strike Force captain?

19      Q       Yep.

20      A       No. As I stated, we worked under the Housing  
21          captain. There was no specific Strike Force captain,  
22          at which -- the two when I was on the job were  
23          Captain Patrick Roberts and Captain Phil Serafini.

1 Q So was there anyone who was giving direct orders and  
2 managing your work as Strike Force captain -- as a  
3 captain?

4 A Was he managing our work, the captain?

5 Q Yes.

6 A No. Not really, no. I mean he was just a rank. He  
7 was a captain in the same building, and if he saw  
8 something, I'm sure he made suggestions. And he's a  
9 captain. Of course, I'll take those suggestions to  
10 heart.

11 Q So there was no Strike Force captain. There was only  
12 a Housing Unit captain and that was -- and that was  
13 first Patrick Roberts, correct?

14 A That's correct.

15 Q And would you meet with him on a regular basis?

16 A I saw him every day that we both worked.

17 Q Okay. And did you --

18 A I would walk through his office to get to mine.

19 Q Okay. Did you have a formal meeting with him on a  
20 regular basis?

21 A No, I don't think so.

22 Q Did he evaluate your performance?

23 A No.

1 Q Did anyone evaluate your performance?

2 A I'm sure unofficially we were evaluated, but in the  
3 Buffalo Police Department, in compliance with the  
4 collective bargaining agreement, we do not have  
5 personal evaluations.

6 Q Okay. And so you never evaluated your officers; is  
7 that correct?

8 MR. SHORT: Form.

9 A No. Did I have opinions? Of course, they're my  
10 opinions, but there was no formal evaluation.

11 Q Okay. So if any of your officers ever had a problem,  
12 there was no formal way to address that problem; is  
13 that correct?

14 MR. SHORT: Form.

15 A You could address it. You could bring charges  
16 against an officer, yes.

17 MR. SHORT: Form.

18 Q And did you ever bring charges against an officer?

19 A No -- wait. When I was an A District lieutenant, I  
20 did bring charges against an officer.

21 Q Under what circumstances?

22 A We were in a -- we'll call it a street huddle, a  
23 street -- a big brawl. And all my officers, myself

1 included, were engaged in this street brawl trying to  
2 take a very large suspect to the ground.

3 And one of the officers had a history of not  
4 engaging. And so when it was all over and we'd all  
5 been sprayed with cap spray and clunked each other in  
6 the heads with our nightsticks, I went back to the  
7 station and discussed it with my captain and told him  
8 how upset I was that this officer would not assist  
9 us.

10 And he had me bring charges against the officer,  
11 which went to Internal Affairs, but I don't -- I  
12 never heard another word.

13 Q Okay. So it was your responsibility as a lieutenant  
14 to bring charges when you saw it was appropriate --

15 MR. SHORT: Form.

16 Q -- correct?

17 A Yes.

18 Q Okay. All right. So at the Strike Force, did you  
19 report to a chief, Chief Brinkworth?

20 A The command structure of Strike Force fell under a  
21 chief, Chief Brinkworth.

22 Q Okay. And how -- did you meet with Chief Brinkworth?

23 A Very rarely.

1 Q Okay. All right. Why there any differences in the  
2 way you supervised Strike Force police officers  
3 compared to the way that you supervised officers in  
4 the A District?

5 A I don't think so.

6 Q All right. So now I'm going to show you -- we're  
7 going to talk a little bit more about the Strike  
8 Force. I'm going to show you Exhibit 3. All right.  
9 So Captain Roberts, do you recognize this document?

10 A It's Lieutenant Whelan.

11 Q I'm sorry. It's been a long week.

12 A I understand.

13 Q I apologize.

14 A I'm much better looking than that captain.

15 Q Do you recognize this document?

16 A Yes. It's a section out of the Manual of Procedures.

17 Q Okay. And what is the Manual of Procedures?

18 A That is a document that is produced by the  
19 department, and it's supposed to outlay both daily  
20 and long-term procedures for everything that we do,  
21 what each person in the department is responsible  
22 for. It establishes the chain of command.

23 Q And you're required -- you were required as a --

1 while serving in the Buffalo Police Department to  
2 abide by the rules of the MOP; is that correct?

3 MR. SHORT: Form.

4 A That's correct.

5 Q It starts at COB000247. So this is Exhibit 3. We're  
6 going to turn to page 45 of this document. If you  
7 look at 8.6, it states, "Strike Force Task Force."  
8 And can you read that first line?

9 A "The purpose of the Strike Force Task Force is to  
10 target and eliminate high crime areas throughout the  
11 city."

12 Q And to your understanding, does that accurately  
13 describe the mission and purpose of the Strike Force?

14 A I would say it accurately describes it, yes.

15 Q And how did the mission of the Strike Force differ  
16 from the A District?

17 A Can you repeat the question?

18 Q How did -- so strike that last question.

19 Was this mission of the Strike Force district  
20 unique to -- unique to the Strike Force?

21 A It's every officer's job to, you know, eliminate high  
22 crime areas. But when those officers are assigned to  
23 a district and on a summer night there's a thousand



1 calls, they're busy running call to call to call.  
2 And they don't have -- they drive right past  
3 something that could be going on. When my officers  
4 are not overwhelmed with the radio, they can sit on a  
5 corner with a pair of binoculars and watch  
6 suspicious, nefarious activity, so yes, that -- it  
7 did differ.

8 Q Okay. And how the Strike Force implement this  
9 mission to eliminate high -- target and eliminate  
10 high crime areas throughout the city?

11 A We did our jobs. That's all. We just did our jobs.  
12 We went out there and, you know, looked for criminal  
13 activity, whether it be through the vehicle and  
14 traffic law or through the penal law.

15 Q So when you were enforcing the vehicle and traffic  
16 law, you were trying to target and eliminate high  
17 crime areas in the city, correct?

18 MR. SHORT: Form.

19 A I don't know if that's the proper way to describe it.  
20 But if we saw a vehicle and traffic infraction and  
21 made a traffic stop and that turned into something  
22 more, then yes, I guess so. We were targeting high  
23 crime areas.

1 Q Okay. And the purpose of your activities at the  
2 Strike Force were to advance the Strike Force's  
3 mission; is that correct?

4 A No. I would say it was to provide increased safety  
5 and security for the citizens of Buffalo.

6 Q Okay. I'm now going to show what I will mark as  
7 Whelan Exhibit 4. And this is a document that former  
8 Commissioner Derenda testified to drafting. If you  
9 could please review the mission points.

10 The first point states that the mission of the  
11 Strike Force is to target and eliminate crime  
12 hotspots throughout the city; is that correct?

13 A Yes, it does.

14 Q And remove illegal guns from our streets; is that  
15 correct?

16 A That's what it says.

17 Q And strict enforcement of the mayor's zero tolerance  
18 crime policy; is that correct?

19 A Yes.

20 Q And this would be applied in crime hotspots, correct?

21 A Yes.

22 Q What is the -- what was the mayor's zero tolerance  
23 policy?

1 MR. SHORT: Form.

2 A That if we -- paraphrasing, by stopping small  
3 misdemeanor crimes, that you were essentially  
4 preventing more serious felony crimes from occurring  
5 within the city.

6 Q Okay. So it was the Strike Force's mission to  
7 enforce as many misdemeanor crimes as possible; is  
8 that correct?

9 MR. SHORT: Form.

10 A Our job was to -- the mission was to enforce the law,  
11 whether it involved misdemeanor crimes, felonies or  
12 vehicle and traffic law.

13 Q Uh-huh. But this zero tolerance policy was specific  
14 to the Strike Force; is that correct?

15 MR. SHORT: Form.

16 A No. I think it was for the entire city. That would  
17 have been my understanding.

18 Q Okay. And does this accurately to your understanding  
19 reflect the mission of the Strike Force?

20 A Yes.

21 Q Okay. And this -- in the Strike Force mission  
22 statement, it says nothing about traffic safety, does  
23 it?

1 A No, it doesn't. But any standard operating procedure  
2 doesn't necessarily cover every little detail of what  
3 a mission is. I mean, if you're a police officer and  
4 somebody commits a traffic violation in front of you,  
5 it's certainly your responsibility to go and address  
6 that issue.

7 Q Uh-huh. Okay. But in terms of the primary mission  
8 and goal of the Strike Force, it was focused on  
9 the -- as it says in -- let's turn back to Exhibit  
10 3 -- eliminating -- "target and eliminate high crime  
11 areas throughout the city," correct?

12 A That's what it says in the MOP, and I didn't have any  
13 part in writing that. So maybe the people who wrote  
14 that should have researched what they were writing  
15 better.

16 Q Okay. But that is how the MOP defined the Strike  
17 Force's mission, correct?

18 A That is what the MOP says, yes.

19 Q And this is how Commissioner Derenda defined the  
20 Strike Force's mission, correct?

21 A Who?

22 MR. SHORT: Form.

23 A Who exactly?

1 Q Commissioner Derenda drafted this document.

2 MR. SHORT: Form.

3 A He's the commissioner, and I'm a lowly lieutenant, so  
4 if the commissioner put those words in writing, it  
5 must be.

6 Q So the Strike Force issued a lot of traffic summons,  
7 correct?

8 A I would say so, yes.

9 Q And impounded a lot of cars?

10 A Yes.

11 MR. SHORT: Form.

12 Q And made a lot of traffic-related arrests, correct?

13 A I don't know if --

14 MR. SHORT: Form.

15 A -- they were traffic-related arrests. People we  
16 arrested were arrested for either outstanding  
17 warrants or crimes they committed.

18 Q Okay. Did Strike Force -- how did traffic  
19 enforcement fit into the Strike Force Unit's mission  
20 to eliminate high crime areas and violence throughout  
21 the city?

22 MR. SHORT: Form.

23 A As I've already stated, if someone is committing a

1 traffic violation in front of you, that's an open  
2 invitation to come see what I'm all about. That's  
3 all it is. Is a vehicle and traffic law enforceable,  
4 yes. We are out there to enforce it.

5 Q And how did -- okay. All right. Did the Strike  
6 Force Unit write more traffic summons than the A  
7 District?

8 A I don't know.

9 MR. SHORT: Form.

10 Q Sorry. Can you repeat the --

11 A Yes. I don't know. I don't know the breakdown for  
12 all the numbers in each district, what volume. I  
13 don't know what the Strike Force Unit's numbers were,  
14 the Housing Unit's numbers. I don't know how they  
15 compare to each other.

16 Q Okay. I'm going to show Exhibit 5. This is an email  
17 from Captain Serafini. It -- I realize it's January  
18 6, 2018. And it looks like you are still on the  
19 list. Did you continue to receive emails following  
20 your date of -- your date of disability?

21 A No.

22 Q You didn't. Okay. So this is an email Captain  
23 Serafini created that included Strike Force stats

1 from 2016 -- Strike Force and Housing stats beginning  
2 in 2013 through 2017. And according to this, Strike  
3 Force and Housing engaged -- issued around 20,579  
4 traffic summons in 2013 and about 39,757 summons in  
5 2015, correct?

6 MR. SHORT: Form.

7 A That's what the document says, yes.

8 Q Okay. And then by 2016, it was around 42,930 traffic  
9 tickets, correct?

10 MR. SHORT: Form.

11 A Yes.

12 Q That's a lot of tickets, right?

13 MR. SHORT: Form.

14 A I would say.

15 Q Okay. I'm going to stop sharing my screen and come  
16 back to this.

17 So let's talk a little bit about checkpoints.  
18 So as we discussed, the mission of the Strike Force  
19 was to reduce and eliminate high crime areas of the  
20 city, correct?

21 A Correct.

22 Q And were you proud of the job that you and your  
23 officers did?

1 A I thought we did a great job, yes.

2 Q What do you mean by that?

3 A I think we took a lot of illegal narcotics off the  
4 street, I think a lot of illegal guns off the street.  
5 There's no quantitative measure as to how much crime  
6 you stop. I can't tell you how many homicides were  
7 prevented or -- but we did a great -- we did a very  
8 good job.

9 Q Okay. And how did checkpoints fit into your mission  
10 to -- Strike Force's mission to target and eliminate  
11 hotspots in Buffalo?

12 A You broke up.

13 Q How did running traffic checkpoints fit into your  
14 mission of eliminating hotspots -- crime hotspots in  
15 Buffalo?

16 MR. SHORT: Form.

17 A Okay. So the question is how did the checkpoints  
18 assist us in the mission of eliminating -- when  
19 someone pulls up to the checkpoint and their car is  
20 suspended and we pull them over and inform them  
21 you're going to be -- you're going to be walking from  
22 this point because your car is going to be impounded  
23 because it cannot be operated safely on the streets



1 of the State of New York and they step out of the car  
2 and a gun falls out or a bag of crack cocaine, I'd  
3 say that's a pretty positive outcome.

4 Q Uh-huh. Okay. So the purpose of the checkpoints  
5 were to intercept contraband?

6 MR. SHORT: Form.

7 A That wasn't the mission of the checkpoints. But  
8 sometimes that was a byproduct of the checkpoints.

9 Q Uh-huh. And in circumstances where that would happen  
10 where someone would step out of the car and drop  
11 contraband that -- am I correct in saying that your  
12 testimony is that that is how the checkpoints would  
13 help Strike Force's mission to target and eliminate  
14 crime hotspots?

15 MR. SHORT: Form.

16 A Your question was how did the checkpoints fit into  
17 the mission of the Strike Force eliminating high  
18 crime and hotspot areas. If we're doing a checkpoint  
19 and a car pulls up and the circumstances that I  
20 previously described, that is a byproduct of the  
21 checkpoint.

22 But that's not the checkpoint's mission. When a  
23 car pulls up and they're the second car in line, and

1           the person driving it jumps out and runs, those are  
2           byproducts of just being on the street, being  
3           visible, being proactive.

4       Q       Okay. And did that happen frequently?

5       A       More than you can imagine.

6       Q       That's interesting. How frequently would you -- your  
7           officers obtain contraband at checkpoints?

8                       MR. SHORT: Form.

9       A       Some -- I don't know how frequently, but some nights  
10           in the summer, we would have initiated a checkpoint  
11           and all my officers would have somebody in custody  
12           within ten minutes. The checkpoint would only last  
13           ten minutes because I didn't have any more officers  
14           to continue on. They were busy processing whatever  
15           their circumstances were. It happens a lot.

16      Q       What were the range of criminal activity that your  
17           officers would find during checkpoints?

18                       MR. SHORT: Form.

19      A       Illegal guns, illegal narcotics, people wanted on  
20           felony warrants. Most of the checkpoint things are  
21           initiated by vehicle and traffic law violations. And  
22           at -- later in unit's existence, we got some improved  
23           equipment, one of the plate readers.

1           When you park that plate reader, it's going to  
2           tell you right away which cars have to be pulled over  
3           for insurance lapse, suspended registrations, things  
4           like that.

5       Q     And how would officers find guns or other contraband  
6           during checkpoint stops?

7                       MR. SHORT:  Form.

8       A     Well, as I already stated, if the person's car was  
9           going to be impounded, then there would be an  
10          inventory sheet for the impound.  Now, if you've got  
11          somebody in the back of your police car while you're  
12          writing summonses to that person and the officers  
13          begin to search -- do an inventory search of the  
14          vehicle so that they can log anything that's in the  
15          vehicle so we're not accused of stealing anything and  
16          they look under the seat and find any kind of  
17          contraband or through the trunk and they find this  
18          contraband, that's just part of the job.

19                 And a guy that takes off running, well, he took  
20                 off running.  Of course, that's going to make you  
21                 want to search the vehicle.

22       Q     Uh-huh.  And under what circumstances during  
23           checkpoints were officers permitted to search

1 vehicles?

2 MR. SHORT: Form.

3 A Didn't I just describe that?

4 Q You said when someone was sitting in the back of a  
5 car. Are there any other circumstances than when  
6 someone is detained in a police car that officers are  
7 allowed to search vehicles?

8 A When we are taking custody of a vehicle, I already  
9 stated we have to do an inventory search of the  
10 vehicle. If the person is being arrested pursuant to  
11 a crime, then we have the right to search the vehicle  
12 and his surrounding areas.

13 Q Okay. So it's your testimony that the checkpoints  
14 assisted with obtaining contraband because they would  
15 result in impounds and searches that would reveal  
16 contraband; is that correct?

17 MR. SHORT: Form.

18 A Just repeat it for me.

19 MS. MALHOTRA: Can you read that back,  
20 Luanne?

21 (Record read by reporter.)

22 A Yes. That as a byproduct of what the mission of the  
23 roadway safety checkpoints were, yes, it assists in

1           our mission.

2           Q       Okay. Thank you for that.

3                    I'm going to share an Exhibit 6. This is Bates  
4           Number COB016124. This is an email that you sent to  
5           Captain Serafini on July 1, 2015 where you state,  
6           "For your situational awareness," correct?

7           A       Correct.

8           Q       And I will give you a moment to read this email. It  
9           contains an email from Patrick Roberts to you and the  
10          other lieutenants with a P-73, correct?

11          A       Yes.

12          Q       Okay. So I'll give you a moment to read this  
13          exhibit, and then I'm going to ask a few questions.

14          A       Okay.

15          Q       Thank you. And let me know whether you need me to  
16          scroll.

17          A       Can we stop for a minute?

18          Q       Yep.

19          A       There we go.

20          Q       Would you like me to scroll down?

21          A       Could you, please?

22          Q       Sure.

23          A       That's good. Okay.

1 Q Okay. So in this P-73 that you forwarded from  
2 Captain Roberts to Commissioner Derenda, dated  
3 April 16, 2015, Captain Roberts proposed that the  
4 Strike Force -- requested overtime for a Strike Force  
5 detail that would use checkpoints as a way to combat  
6 gang activity which led to violence in certain areas  
7 of the city, correct?

8 MR. SHORT: Form.

9 A Correct.

10 Q And that was a general policy and procedure, correct?

11 A Yes.

12 MR. SHORT: Form.

13 Q That checkpoints were used to help suppress --  
14 checkpoints were used to help suppress gang activity,  
15 correct?

16 A As I said, the checkpoints -- a byproduct of the  
17 checkpoints, yes. They did help us in high gang  
18 areas. They would give us a lot of visibility, and I  
19 don't know how effective it was. But yes, that was  
20 probably the intent.

21 Q What are high gang areas?

22 A Places where there's a history of a lot of illegal  
23 narcotics dealing, shootings, robberies.

1 Q Okay. And would you say that high gang areas were in  
2 a particular part of Buffalo?

3 MR. SHORT: Form.

4 A Yes.

5 Q What part of Buffalo was that?

6 A I would say the majority of the crime is committed on  
7 the east side of Buffalo.

8 Q So the high gang areas that the Strike Force would  
9 target would be on the east side of Buffalo?

10 MR. SHORT: Form.

11 A Not always. But as a matter of practice, we did  
12 spend the majority of our time on the east side of  
13 Buffalo.

14 Q And you testified earlier that there were gangs in  
15 the A District, correct?

16 A Yes, I did.

17 Q And would the Strike Force ever target gangs in the A  
18 District?

19 A Yes.

20 Q And how much of its -- how frequently would the  
21 Strike Force target the A District?

22 MR. SHORT: Form.

23 A Was the question how frequently? A few times a

1 summer.

2 Q Okay. And the rest of the time the Strike Force  
3 would generally focus in the -- on the east side of  
4 Buffalo; is that correct?

5 MR. SHORT: Form.

6 A We went all across the city. We did checkpoints in  
7 North Buffalo and on the west side also.

8 Q Would you say the majority of the checkpoints were on  
9 the east side of Buffalo?

10 A Yes, they were.

11 MR. SHORT: Form.

12 Q And all right. Further down in this email, Captain  
13 Roberts also explained that the evening details  
14 provide greater presence through high visibility  
15 checkpoints and officers would continue to develop  
16 valuable intelligence, which led to search warrants  
17 generated by both narcotics and the intelligence  
18 squads, correct?

19 MR. SHORT: Form.

20 A That's what it says.

21 Q So you would agree that checkpoints were used to  
22 gather intelligence?

23 MR. SHORT: Form.



1       A       I don't have a -- I really don't have an opinion one  
2               way or another about that.  As I stated earlier in  
3               this interview, the officers that worked for us on  
4               the Strike Force, they were really smart guys.  They  
5               were really good police officers.  Some of them  
6               really had a gift for talking to gang members or just  
7               street element people that were involved in minor  
8               things.

9               And when you catch them with a small amount of  
10              marijuana, it's much more beneficial to gather their  
11              trust than to arrest them over a small amount of  
12              marijuana.  Now, if some of the officers use these  
13              opportunities to speak with known gang members at the  
14              checkpoints, I wasn't really aware of that.  But I  
15              could see it happening.  I mean, they were smart  
16              guys.

17      Q       And you said that -- you said -- you referenced  
18               someone of the street element.  What did you mean by  
19               "street element"?

20      A       Just panhandlers.

21      Q       Okay.  And were -- so your testimony is that officers  
22               would gain intelligence during checkpoints because  
23               your officers were smart and would talk to people

1 during these checkpoints, correct?

2 A I said I didn't know if they collected --

3 MR. SHORT: Form.

4 A -- intelligence at the checkpoint. But I also agreed  
5 that I could see them doing it, that they had the  
6 ability to do it, and I guess to clarify what I meant  
7 by street people, if you have a gentleman who doesn't  
8 work, hangs around in front of the deli drinking 40  
9 malts all day, there's a pretty good chance he sees a  
10 lot of things.

11 He sees a lot of things, and these officers,  
12 they might have been in the habit of interviewing  
13 people that were standing in front of delis or people  
14 they knew were gang members and saw them at a  
15 checkpoint and therefore talked to them at the  
16 checkpoint. That's all.

17 But no, we didn't use the checkpoints to gather  
18 intelligence.

19 Q And I'm going to show you what we've marked as Whelan  
20 Exhibit 7. This is an email from you to Commissioner  
21 Derenda, Chief Brinkworth and Captain Serafini dated  
22 May 10, 2017; is that correct?

23 A Yes.

1 Q I'm going to give you a minute to go ahead and read  
2 this email, and then I'll ask you some questions  
3 about it.

4 A Okay.

5 Q Okay. Are you done reading?

6 A It says the same thing as the captain's letter except  
7 the first paragraph. That's all.

8 Q Okay. Did you use the captain's letter to write this  
9 letter?

10 A I'm guilty of plagiarism.

11 Q I thought so, but thank you for confirming that.

12 A I don't deny it.

13 Q That's okay. All right. So in this email, you agree  
14 with me that in response to an upswing of violent  
15 crime and 20 shootings, you requested and proposed  
16 six additional Strike Force details and to use  
17 checkpoints as a way to combat gang activity and  
18 violence in certain areas of the city, correct?

19 A I did.

20 Q And you requested overtime reinstatement to run the  
21 details for high visibility checkpoints, four details  
22 in a day and two details in the evening, correct?

23 A I did.

1 Q And the balance of the time would be to focus on car  
2 stops and street corners; is that right?

3 A That's correct.

4 Q And you did not mention traffic safety in here in  
5 this request for overtime; is that right?

6 A I didn't mention who?

7 Q Traffic safety.

8 A No, no. You're right I did not mention traffic  
9 safety.

10 Q And so how would checkpoints keep -- yeah, how would  
11 checkpoints keep the most violent criminals guessing?

12 MR. SHORT: Form.

13 A You're going to increase the officer presence and  
14 visibility.

15 Q All right. And how would checkpoints suppress gang  
16 activity?

17 MR. SHORT: Form.

18 A The checkpoints, the roadway safety checkpoints,  
19 would provide us a method to do vehicle and traffic  
20 law and ensure citizen safety. But a large  
21 byproduct -- and I stated earlier it happens a lot  
22 more than you would believe -- you have felons that  
23 will pull right up to the police and they have an

1 outstanding warrant. That's reducing gang activity.

2 Q Okay. And are all gang members felons?

3 A No.

4 MR. SHORT: Form.

5 Q And so in this email, you said that -- strike that.

6 Previously you stated that this suppressing  
7 criminal activity would be a byproduct of  
8 checkpoints, correct?

9 A Sometimes.

10 Q Okay. But this again email mentions nothing about  
11 enforcing vehicle and traffic law, correct, as a  
12 justification for overtime; is that right?

13 MR. SHORT: Form.

14 A It's implied because that is the mission of the  
15 Strike Force roadway safety checkpoint. If that's  
16 the mission of the checkpoint, I believe it's  
17 implied.

18 Q Okay. But it's not stated here when you're  
19 requesting for overtime to run the checkpoint?

20 A You're right, but I'm not talking to a layperson that  
21 has no experience. I'm directing this email to the  
22 commissioner of the police department who formed the  
23 Strike Force Unit and knows what the mission is, what

1 the mission of the roadway safety checkpoint is too.

2 Q I'm just trying to understand --

3 A The checkpoint doesn't say we're going to begin  
4 in the locker room -- this email doesn't say we're  
5 going to begin in the locker room and put our boots  
6 on either, but you know you're going to.

7 Q Okay. I'm going to turn to another -- but there's no  
8 mention here of traffic safety or accidents or --

9 MR. SHORT: Form.

10 Q -- V&T violations, correct?

11 A As I already stated, it's implied.

12 Q I'm going to share another exhibit. So let me just  
13 ask you, Mr. Whelan, the purpose of the Strike Force  
14 was to eliminate crime and hotspots in the city,  
15 correct?

16 A That's what's written in the MOP.

17 MR. SHORT: Form.

18 Q All right. I'm going to move on to this exhibit  
19 where I'll continue this line of questioning. Okay.  
20 This is Exhibit 8. This is Bates Number COB016252.  
21 It's an email from Captain Serafini to you and other  
22 lieutenants. I'll give you a minute to read it.

23 A Okay.

1 Q Okay?

2 A Okay.

3 Q All right. So in this email, Captain Serafini  
4 informs you and other lieutenants that there will be  
5 increased overtime for the daytime detail each  
6 consisting of two lieutenants and two police  
7 officers, correct?

8 A That's correct.

9 Q And he instructs you that as you have all done in the  
10 past, the checkpoint location should be conducted in  
11 and around recent areas of violence, correct?

12 A That's what it says.

13 Q And he cites as an example that if there was a  
14 shooting the previous night at Broadway/Fillmore,  
15 then a traffic checkpoint should be conducted in this  
16 vicinity, correct?

17 A Yes.

18 Q And he does not mention anywhere placing checkpoints  
19 where there have been traffic safety issues, correct?

20 A There's no mention of that, no.

21 Q And he doesn't mention placing checkpoints in areas  
22 where there have been recent accidents, does he?

23 A No, he doesn't.

1 Q And he doesn't mention placing checkpoints where  
2 there have been issues of drunk driving, correct?

3 A That's correct.

4 Q And he doesn't mention placing checkpoints where  
5 there has been unsafe driving, does he?

6 A No.

7 Q He only states and directs you and other lieutenants  
8 to place checkpoints in areas where there was recent  
9 violence; is that right?

10 A That's correct.

11 Q Okay. And I'm now going to show you -- so I'm now  
12 going to show you Exhibit -- I'm going to stop the  
13 share -- Exhibit 9. Okay. This is COB039120. And  
14 this is an email from Captain Roberts to you and  
15 other lieutenants dated July 2, 2013, correct?

16 A That's correct.

17 Q All right. I'm going to give you a moment to read  
18 through this P-73. And just let me know when you're  
19 done.

20 A Okay.

21 Q And so this is a P-73 from Captain Roberts to  
22 Commissioner Derenda in which he requests  
23 reinstatement of 112 hours of discretionary overtime



1 in addition to twice per day full platoon road checks  
2 because the use of roadblocks with zero tolerance was  
3 effective in disrupting the city's most dangerous  
4 individuals and caused them to rethink their next  
5 criminal move; is that correct?

6 MR. SHORT: Form.

7 A That's what it says.

8 Q And that overtime funds would assist the Strike Force  
9 in further dampening the efforts of these would be  
10 criminals; is that right?

11 A That's what it says.

12 Q And he doesn't state that checkpoints would be used  
13 to increase traffic safety; is that right?

14 A He does not.

15 Q And you would agree then that the checkpoints were  
16 used to dampen crime?

17 MR. SHORT: Form.

18 A The question is -- repeat the question, please.

19 Q Would you agree that the checkpoints were used to  
20 dampen crime and the efforts of would be criminals?

21 MR. SHORT: Form.

22 A I can't comment on what the captain was thinking when  
23 he wrote the P-73. But as I've already stated, the

1 mission of the road safety checkpoints was, as  
2 stated, for traffic -- traffic safety and a positive  
3 byproduct -- it is a positive byproduct. If we were  
4 able to disrupt would be criminals or prevent any  
5 type of shootings, violent activity, gang activity,  
6 then that's a positive thing. And if it's through  
7 high visibility checkpoints, well, it's hard to  
8 argue.

9 Q Uh-huh. But when requesting overtime, he does not  
10 mention traffic safety, does he?

11 MR. SHORT: Form.

12 A No, he doesn't. But as stated, this is not a layman  
13 addressing -- it's not a police captain addressing a  
14 layman. The person he's addressing knows what the  
15 unit's mission is and the purpose of the road safety  
16 checkpoints.

17 Q Okay. Just back to Exhibit 7, can you see that?  
18 This is the email that you wrote Commissioner  
19 Derenda?

20 A That's correct.

21 Q And again here, you state that the reinforcement of  
22 Strike Force details would be to saturate an area  
23 with a focus of suppressing gang activity, which

1 leads to violent acts affecting the citizens of  
2 Buffalo, correct?

3 MR. SHORT: Form.

4 A That's what I wrote.

5 Q And you didn't say the purpose of the reinforcement  
6 of Strike Force details were to increase traffic  
7 safety, did you?

8 MR. SHORT: Form.

9 A The -- I think you might have misspoke. When you  
10 said the mission of the Strike Force Unit -- the  
11 mission of the Strike Force unit is to, you know,  
12 disrupt the most violent criminals. If you're -- if  
13 you want to speak specifically to the roadway safety  
14 checkpoints, well, then, the specific mission of that  
15 was traffic safety enforcement as well as visibility  
16 and proactive policing.

17 I don't have to put in there -- in my opinion, I  
18 don't have to put in there we're going to enforce  
19 vehicle and traffic law, we're going to look for  
20 litters. Of course, we're going to do all that.  
21 Those are the duties of a police officer.

22 Q Uh-huh. And you say here, though, that "some of the  
23 allotted overtime would be used during the daytime

1 hours in an effort to switch tactics to keep the most  
2 violent criminals guessing as to where officers would  
3 be conducting police business through implementation  
4 of" the checkpoints, right?

5 A That is what I put.

6 Q And that you've used this tactic with great success  
7 in the past in intercepting the movement of illegal  
8 narcotics and drugs, correct?

9 MR. SHORT: Form.

10 A That is what I put.

11 Q And this is how you define the purpose of checkpoints  
12 in this email, correct?

13 MR. SHORT: Form.

14 A The purpose of the email was to reinstate our daytime  
15 detail because we only worked 3:30 to 1:30.

16 Therefore, the dealers and the gang members, they  
17 know that the Strike Force Unit isn't coming on until  
18 3:30. They know that. Our cars had Strike Force on  
19 the side, and hearsay -- this is hearsay, but they  
20 were afraid.

21 They were afraid to be out and get caught by the  
22 Strike Force Unit. So by bringing in officers in the  
23 middle of the afternoon or early afternoon and

1           setting a checkpoint up, we're doing roadway safety  
2           checkpoints. And you know what, the people who live  
3           in these neighborhoods, they loved it. They stood on  
4           their porches in the summer. They brought us bottles  
5           of water because they wanted us there.

6           Q       Uh-huh.

7           A       So the fact that I didn't put in that I was going  
8           to -- that I expect the officers to write city  
9           ordinances for long grass or abandoned cars or  
10          littering or any of these other small offenses  
11          doesn't mean I didn't expect them to do it.

12          Q       Uh-huh. But you didn't request overtime funds on  
13          those grounds. You requested --

14                       MR. SHORT: Forms.

15          Q       -- funds to reflect Strike Force's primary mission,  
16          correct?

17          A       That's what I put in writing, yes.

18          Q       Okay. All right. I'm going to now show you Exhibit  
19          10, which is an email from -- can you see this  
20          Exhibit 10?

21          A       I can.

22          Q       Okay. It's an email dated June 30th from Brian  
23          Patterson to you and other lieutenants. Who was

1 Brian Patterson?

2 A He was B District chief.

3 Q So was he your chief -- this is dated June 30, 2012.

4 Was he your chief when you worked for the B District?

5 A I was on Relief Unit at the B District, yes, so yes.

6 I kind of answered to multiple hats, so yes, I did

7 answer to Chief Patterson.

8 Q What area did the B District cover?

9 A Downtown Buffalo, a little bit -- it kind of gets up  
10 into the west side a little bit.

11 Q And what's the racial demographic of that area?

12 A Very mixed, Hispanic, Caucasian, some  
13 African-Americans. It includes the Fruit Belt part  
14 of the city so that would be primarily  
15 African-American.

16 Q Okay. Okay. So in this email -- I'll give you a  
17 minute to read it.

18 A Okay. Okay.

19 Q Okay. So in this email Brian Patterson states that  
20 he would like your detail to conduct an underage

21 drinking check of the Social Nightclub and that the

22 Strike Force team will be conducting a roadblock on

23 Pearl near Chippewa, right?

1 A That's what it says.

2 Q And he says that the party at Social will be  
3 affiliated for a gang member of the Bailey Avenue  
4 Gang. What is the Bailey Avenue Gang?

5 A It's a prominent street gang in the city of Buffalo.

6 Q Okay. And what's the predominant race of the members  
7 of the Bailey Avenue Gang?

8 A I would be guessing, but based on the geographical  
9 location, I would say African-American.

10 MR. SHORT: Form.

11 Q Is there -- were members of the Bailey Avenue Gang of  
12 a particular age group?

13 MR. SHORT: Form.

14 A Mostly young.

15 Q So -- and would you say that was the common profile  
16 of gangs in Buffalo --

17 MR. SHORT: Form.

18 Q -- gang members in Buffalo, young and black?

19 MR. SHORT: Form.

20 A Not all black, no. They're young. They're young.

21 Q What's the age range?

22 A I would say the soldiers, the foot guy who's out  
23 there doing the low level peddling of whatever

1 substance they're peddling is under 25 years old.  
2 And there's a certain -- there's a certain group  
3 of -- age group that's a little older that is  
4 benefited from all this.

5 Q And what would you say the youngest age is of --

6 A Very early teens.

7 Q I'm sorry?

8 A Very early teens.

9 Q Okay. So early teens to 25?

10 A Are the majority of the people that are out there  
11 hustling.

12 Q Okay. And that are gang members?

13 MR. SHORT: Form.

14 A They're not all gang members, but the gang -- the  
15 majority of the gang members that we would encounter  
16 on the street would be 25 or under, not as a rule of  
17 course. You're going to catch the older guy too.  
18 You just can't let it go.

19 Q And if your officers were targeting gang members, is  
20 this the age group they would look to, 18 to 25?

21 MR. SHORT: Form.

22 A No. I would say they are targeting behavior.

23 Q Okay. All right. So all right. So in this



1 occasion -- and what kind of behavior -- strike that.

2 What kind of behavior --

3 A Illegal behavior.

4 Q Okay. All right. And so in this email, the -- Chief  
5 Patterson or Captain Patterson? Chief Patterson; is  
6 that right?

7 A He's a chief.

8 Q Chief Patterson said that you will be receiving help  
9 from a Strike Force team which will be conducting a  
10 roadblock near Chippewa; is that right?

11 A That's what it says.

12 Q Okay. And the email does not mention that the Strike  
13 Force will be targeting traffic safety, does it?

14 MR. SHORT: Form.

15 A I'm not a member of the Strike Force Unit at this  
16 time.

17 Q Uh-huh. No. I'm asking --

18 A I'm on relief at B District.

19 Q Uh-huh. And so how would you have -- I'm sorry.

20 Back to my question, Brian Patterson does not  
21 say that the Strike Force team will be conducting a  
22 roadblock in the vicinity due to traffic safety,  
23 correct?

1 MR. SHORT: Form.

2 A He doesn't say that, no.

3 Q He says that the Strike Force team will be conducting  
4 a roadblock near a party -- near a club that's  
5 hosting a party for a gang member affiliated with the  
6 Bailey Avenue Gang, correct?

7 MR. SHORT: Form.

8 A I mean, the email is self-evident as to what he says.  
9 I can tell you this. Before I went to the Strike  
10 Force Unit, the two summers previous, they ran a  
11 90-day or -- I don't know how long it was, but it was  
12 a summertime unit that was called the Strike Force.  
13 It was not a permanent unit.

14 I don't know what their mission was. I don't  
15 know -- I wasn't part of it. I don't even know if I  
16 was working on this given night here. It's an email  
17 to every single lieutenant in the district. So as to  
18 what their mission was or their paperwork or -- I'm  
19 not privy to that. I don't know. I don't know.

20 Q And in terms of Brian's request to you and Mike and  
21 by --

22 A That's not me.

23 Q The request in this email that was sent to you, do

1           you recall responding to it?

2           A        No.

3           Q        Did you ever engage in an underage drinking check of  
4           Social Nightclub?

5           A        No, not that I recall.

6           Q        Okay. Okay. I'm now going to stop the share and go  
7           to what we've marked as Whelan Exhibit 11, COB016262.  
8           And this is an email from Captain Serafini dated  
9           February 7, 2017 to you and other lieutenants,  
10          correct? I'll give you a minute to read it.

11          A        I'm not even on the job at that point. I was  
12          injured.

13          Q        So all right. I will -- I'll keep it on the screen  
14          and have you read it. I'm sorry. Just to clarify,  
15          did you -- you continued to receive emails even  
16          though you weren't on the job; is that right?

17          A        Yes. But they went to my department email that I  
18          didn't have access to, so I never -- this is the  
19          first time I'm seeing this.

20          Q        Okay. All right. Take a look at it, but I will  
21          limit that. All right. So in this email from  
22          Captain Serafini dated February 27, 2017, he states  
23          that Mayor Brown and -- the mayor and DPC Lockwood

1 met with people from Towne Gardens related to the  
2 criminal activity and requests Strike Force officers  
3 to concentrate on that area and conduct checkpoints,  
4 correct?

5 MR. SHORT: Form.

6 A That's what it says.

7 Q And who is the mayor?

8 MR. SHORT: Form.

9 A It's Mayor Byron Brown.

10 Q And at this time, February 7, 2017, did Buffalo have  
11 the same mayor?

12 A Yes.

13 MR. SHORT: Form.

14 Q Who is DPC Lockwood?

15 A It's the first deputy police commissioner, Byron  
16 Lockwood.

17 Q In this email, Captain Serafini indicates that Mayor  
18 Brown and Deputy Lockwood directed Strike Force to  
19 conduct a traffic checkpoint to disrupt criminal  
20 activity in Towne Gardens; is that correct?

21 MR. SHORT: Form.

22 A That's what it says.

23 Q Okay. And Towne Gardens is a predominantly Black

1 BMHA complex; is that right?

2 MR. SHORT: Form.

3 A Yes, it is.

4 Q Did you and Strike Force conduct checkpoints near and  
5 around Towne Gardens prior to this email?

6 MR. SHORT: Form.

7 A Not really because it's a closed off -- like it's got  
8 this open thing in the middle. There's no place to  
9 do it. It's surrounded by parking lot, and it's a  
10 complex that's got an open middle with about six  
11 walkway entrances in. Did we do them across -- in  
12 the neighborhood, yes. Yes, we did, but we really  
13 can't target -- it was very difficult to target  
14 the area effectively.

15 Q Okay. And do you recall receiving other emails or  
16 directions from the mayor --

17 MR. SHORT: Form.

18 Q -- related information from the mayor --

19 MS. MALHOTRA: Can you please wait and  
20 hold off on your objection until I'm done  
21 with the question, Mr. Short? Because you  
22 don't have grounds to object until you've  
23 heard the question.

1 Q So do you recall receiving any other emails or  
2 instructions from the mayor about where to place  
3 checkpoints?

4 MR. SHORT: Form.

5 A No, never -- I never got guidance from the mayor's  
6 office, only the commissioner.

7 Q Okay. I'm now going to go back to Exhibit 3, which  
8 is the MOP which you've testified that you followed  
9 while you were at the Buffalo Police Department. And  
10 on page 329, Section 10.5, is a section on traffic  
11 checkpoints. Do you recall reviewing this,  
12 Mr. Whelan?

13 A Yes.

14 Q Okay. And at the beginning, it says that the  
15 superior officer -- in this paragraph here, the first  
16 paragraph, the superior officer shall document any  
17 activity in his or her checkpoint form and she will  
18 also prepare a Buffalo Police Department Traffic  
19 Checkpoint Form as directed by DPC. Do you see that?

20 A I do.

21 Q In your observation and experience, to what extent  
22 does that opening paragraph accurately reflect the  
23 actual practice of checkpoints?

1 A I believe it's accurate. We -- the superior officer  
2 in this circumstances would have been the lieutenant  
3 and you're going -- at the end of your shift, you're  
4 going to compile this activity report. And then this  
5 is the directive, the roadway safety directive, and  
6 this is the form you would use at a briefing in the  
7 beginning of the tour of duty.

8 Q Okay. All right. So I'm going to now show Exhibit  
9 12, which is a -- entitled Buffalo Police Department  
10 Roadblock Directive, correct?

11 A That's what it is.

12 Q And if you review it, this is dated December 7, 2013,  
13 and it is signed by you; is that correct?

14 A Yes, it is.

15 Q That is your signature?

16 A Yes, it is.

17 Q And is this an example of the checkpoint form  
18 referenced in 10.5 of the MOP?

19 A Yes, it is.

20 Q And this includes the location of the checkpoint,  
21 correct?

22 A Yes.

23 Q And this is -- the location is Cloverdale and Bailey;

1 is that right?

2 A That's correct.

3 Q And Cloverdale and Bailey, is that on the east side  
4 of Buffalo?

5 A Yes, it is.

6 Q While you were with the Strike Force, did you fill  
7 out a traffic checkpoint form every time you  
8 supervised a checkpoint?

9 A I'm going to answer yes, but I'm also going to --  
10 with the caveat did I ever forget, maybe.

11 Q Okay. How often would you forget?

12 A Not often.

13 Q All right. How many checkpoint forms do you think --  
14 you do you estimate that you signed while you were  
15 with the Strike Force?

16 A Three years, 500.

17 MS. MALHOTRA: Okay. And we'll just  
18 note for the record that counsel has not seen  
19 a sizeable number of checkpoint forms signed  
20 by Mr. Whelan and reserve the right to  
21 request those forms following this  
22 deposition.

23 Q So let's go back to the MOP. Give me a second.



1 Turning back to Exhibit 3, which is the MOP, I'm  
2 going to turn to page 329. So the opening paragraph  
3 says, "Members of the Department may establish  
4 traffic checkpoints but only with the express  
5 permission of an Inspector, a Chief, a Deputy Police  
6 Commissioner, or the Police Commissioner," correct?

7 A That's what it says.

8 Q To what extent does this sentence reflect the actual  
9 practice of the Buffalo Police Department?

10 MR. SHORT: Form.

11 A Yes. Because the police commissioner issued an order  
12 that we'd be able to do it daily. He didn't contact  
13 me every day to say do a checkpoint. It was built  
14 into the mission of the Strike Force Unit.

15 Q Uh-huh. And so did you determine the checkpoint  
16 locations that are listed on the Roadblock Directive  
17 forms?

18 A Yes. The commissioner or his designee, whether it be  
19 the chief or deputy police commissioner, would  
20 designate a geographic area of the city. Then the  
21 on-duty lieutenant would designate the specific  
22 checkpoint area based on manpower availability,  
23 safety, weather, other factors. So they're like

1           that.

2           Q       Uh-huh.  Okay.  And did you choose checkpoint  
3                    locations the entire time that you were Strike Force  
4                    lieutenant?

5           A       No.

6           Q       Who else would choose checkpoint locations while you  
7                    were Strike Force lieutenant?

8           A       Any of the other lieutenants.

9           Q       Okay.  I apologize.  Would anyone else other than  
10                   lieutenants choose checkpoint locations while you  
11                   were at the BPD Strike Force Unit?

12                               MR. SHORT:  Form.

13          A       The specific location, no.  Geographical area, yes,  
14                   we were designated from above.

15          Q       What form would the geographical area be designated?

16                               MR. SHORT:  Form.

17          A       It would either come from a -- maybe possibly on --  
18                   probably read an email directly from a commissioner  
19                   where to go or one of the district chiefs would make  
20                   a request to our chief, hey, can we get the Strike  
21                   Force in here for a week.  And so Chief Brinkworth  
22                   might call on the phone or call the captain to tell  
23                   us.

1 Q And when you say "geographical area," what do you  
2 mean?

3 A The districts of the city.

4 Q Okay. Would it be specific street locations or a  
5 district in general?

6 A District.

7 Q Okay. And then within those parameters, you could  
8 select the checkpoint location?

9 A Yes.

10 MR. SHORT: Form.

11 Q Okay. And did Captain Serafini ever choose Strike  
12 Force checkpoint locations?

13 A I didn't understand the question.

14 Q Did Captain Serafini ever choose Strike Force  
15 checkpoint locations?

16 A No, not that I'm aware of.

17 Q Okay. So Chief Brinkworth may sometimes designate  
18 Strike Force checkpoint locations, correct?

19 A Not the checkpoint, just the geographical area.

20 Q Okay.

21 A He might say, hey, A District is requesting the  
22 Strike Force in the Hickory Woods area. That's like  
23 a section within the A District. It's got some

1 criminal activity, and maybe there was a shooting  
2 over there or stabbing. There's a deli on one of the  
3 corners. That poor guy used to get robbed all the  
4 time.

5 So they would give as a geographical area, and  
6 then we would -- and that geographical area sometimes  
7 got narrowed down, but a lieutenant chose the  
8 checkpoint location based on the previous issues that  
9 I already stated.

10 Q So in response to criminal activity that had taken  
11 place in that area; is that correct?

12 A You got me there. In that circumstance, you got me.  
13 The roadblock safety checkpoint, the roadway safety  
14 checkpoints would be used to ensure vehicle safety.  
15 But did it get requested based on criminal activity,  
16 yes, we did.

17 Q Okay. And how frequently would you get requested to  
18 put checkpoints based on criminal activity?

19 MR. SHORT: Form.

20 A Not often, not often at all really.

21 Q Okay. What other criteria would Chief Brinkworth or  
22 others use to request --

23 MR. SHORT: Form.

1 Q -- checkpoint locations?

2 MS. MALHOTRA: Again, Mr. Short, please  
3 wait until I've completed the question before  
4 you object.

5 A Okay. Can you repeat the question? I didn't hear.

6 MS. MALHOTRA: Can you read that back,  
7 Luanne?

8 (Record read by reporter.)

9 A I really don't know. You'd have to ask him. I don't  
10 know what criteria he used, and he didn't request  
11 often at all. We had -- we had our marching orders,  
12 and we followed them. And sometimes I think you  
13 would probably find an email from me to -- or any  
14 lieutenant to the captain or even possibly one of the  
15 deputy commissioners or commissioner requesting that  
16 we go somewhere else, just because it gets old. It  
17 gets old. It gets stale, so we would request also to  
18 go to a different part of the city.

19 Q And at times, those requests would be based on where  
20 criminal activity had taken place?

21 MR. SHORT: Form.

22 A No. I wanted to get some better food. I'm just  
23 being honest. When you drive up and down the same

1 street for three straight weeks, you get tired. And  
2 you're not being effective because now the guy that  
3 you're trying to catch -- and I don't mean at my  
4 checkpoint. I mean just catch in general -- he's too  
5 used to looking for you.

6 Let's go to the other end of the city for a week  
7 or two and switch things up because they're not  
8 expecting us up there because the guy who's dealing  
9 drugs off Hertel Avenue in the Paris projects or  
10 whatever it is up on Hertel Avenue, he's loving the  
11 fact that we're on the east side because nobody is  
12 harassing him. So we would go up there to switch  
13 things up.

14 Q Okay.

15 A I'm just a tiny little cog on a big, big wheel.

16 Q Uh-huh. I understand that. I understand that.

17 Okay. Let's go back to the MOP, and we'll talk  
18 about checkpoint locations more in a few. So did you  
19 typically provide officers in your unit with a copy  
20 of the checkpoint form at the beginning of each shift  
21 when they were going to a checkpoint?

22 A Not every shift. I'm going to believe every single  
23 person was provided a copy of this definitely at the

1 initiation of the unit, but this checkpoint sheet was  
2 brought into the briefing with us every time. And we  
3 would read right down, lieutenant to the officers  
4 involved, and then one of us would take it back to  
5 the log book outside in our offices and sign it and  
6 put it into the three-ring binder.

7 Q And you said checkpoints were run daily, right?

8 A Checkpoints what?

9 Q Checkpoints were run daily?

10 A Yes.

11 Q And at times, multiple times a day; is that right?

12 A In the summer months, yes.

13 Q I'm now going to show Exhibit 13, which is a  
14 checkpoint map. Are you familiar with the complaint  
15 filed in this case?

16 A I wouldn't be here otherwise.

17 MR. SHORT: Form.

18 Q Are you aware that this is an attachment to the  
19 complaint that we filed in this case?

20 A I've never seen this before.

21 Q Okay. So do you see how this depicts checkpoint  
22 locations?

23 A I do.

1 Q Okay. And the light yellow is 10 to 20. The orange  
2 is 20 to 65. The brown is 65 to 150 and the dark  
3 brown is more than 150, correct?

4 A That's what I see, yes.

5 Q And the populations that are greater than 50 percent  
6 Black or Latino are shaded here -- are shaded with  
7 stripes. You see that, right?

8 MR. SHORT: Form.

9 A I see it.

10 Q So where were the majority of the checkpoints taking  
11 place between January 2013 and June 2017 according to  
12 this map?

13 MR. SHORT: Form.

14 A In the vicinity of Delavan, East Ferry, Kensington  
15 Avenue, up and down Bailey Avenue.

16 Q Uh-huh. And would you say the majority of the  
17 checkpoints here were on the east side of Buffalo?

18 A I do.

19 Q Okay.

20 MR. SHORT: Form.

21 Q East side of Buffalo is predominantly Black, correct?

22 MR. SHORT: Form.

23 A Yes, it is. But I don't control where people live.



1 I just go where the crime is.

2 Q And the lower west side, you testified earlier, has a  
3 large Latino population; is that right?

4 MR. SHORT: Form.

5 A Yeah, that's correct.

6 Q And South Buffalo has a predominantly white  
7 population, correct?

8 MR. SHORT: Form.

9 A That's correct.

10 Q And North Buffalo is a predominantly white  
11 population, right?

12 A That's correct.

13 Q Okay. And as you can see from this map, there are  
14 very few checkpoints in South Buffalo, right?

15 A That's correct.

16 MR. SHORT: Form.

17 Q And very few checkpoints in North Buffalo, correct?

18 MR. SHORT: Form.

19 A That's correct.

20 Q And would you be surprised to learn that from 2013 to  
21 2016, 88 to 93 percent of all checkpoints that the  
22 BPD ran were in majority minority areas?

23 MR. SHORT: Form.

1 A I wouldn't be surprised to hear that, but  
2 demographics don't have anything to do with where the  
3 crime is. I mean, it's -- I told you I could go do a  
4 checkpoint in ten minutes. Every officer would be  
5 out of service because they have arrests. I would go  
6 down to South Buffalo and do a checkpoint for 45  
7 minutes, and we wouldn't do anything.

8 Q Uh-huh. What do you mean by that?

9 A The cars coming through all met the vehicle and  
10 traffic law. There was nothing to cite them for  
11 there. There was nothing to pull them over. We're  
12 just standing there waving cars through. They're all  
13 inspected. They all pass. They're all registered.  
14 I don't control that.

15 Q So earlier you testified that when you were a  
16 lieutenant and worked in the A District that you saw  
17 cars with tinted windows; is that right?

18 A Yeah, that's correct. And we pulled them over and we  
19 wrote them summonses for it.

20 Q Uh-huh. And there were sometimes cars where people  
21 were not wearing seat belts; is that right?

22 A That's correct.

23 Q Or that had other equipment violations; is that

1 right?

2 A That's correct.

3 Q So when you were in South Buffalo, would you at times  
4 see those violations?

5 A As a lieutenant or as a Strike Force lieutenant?

6 Q Either.

7 A Yes. But not to the level that you would experience  
8 where the high crime areas are. It was something  
9 that the district officers easily could manage. We  
10 were a stop fill, gap plug for where these violations  
11 were running rampant.

12 One night, I think I was still on the job. I  
13 think this is before I got injured. Me and my wife  
14 were driving to an event in downtown Buffalo. A guy  
15 rams into the side of my car. We pull over at.

16 B District officers come. No insurance,  
17 unregistered, suspended. Guess who had to pay for  
18 all that, me. There was no repercussions for him, so  
19 I'm trying to stop that from happening to the  
20 citizens of Buffalo.

21 Q And you said that was downtown and downtown is a  
22 mixed race district; is that right?

23 A This was the -- the accident was right on the corner

1 of Oak and Genesee Street, I believe.

2 Q And what was the race of the driver?

3 A He was African-American.

4 MR. SHORT: Form.

5 Q And so are you testifying that more -- there are more  
6 checkpoints because more African-Americans committed  
7 traffic and safety violations?

8 MR. SHORT: No.

9 A No, I'm not stating that at all. I'm stating that  
10 I'm trying to prevent the same thing that happened to  
11 me from happening to anybody else, that -- I don't  
12 control people's behavior. I don't control where  
13 people live. I'm just there to enforce the law.

14 Now, if you're going to drive around with an  
15 uninspected, unregistered, uninsured vehicle with 15  
16 suspensions on your driver's license, you shouldn't  
17 be behind the wheel of a car. You should probably  
18 walk or take public transportation.

19 Why are you driving -- if you aren't breaking  
20 the law, I would never interact into your life.

21 Q And would you say that in South Buffalo there were  
22 drivers who have unregistered cars?

23 A I absolutely believe there is, but not to the extent

1           where we did the bulk of our roadway safety  
2           checkpoints.

3                           MR. SHORT: Form.

4       Q       And what's your basis for knowing that?

5       A       Common sense.

6       Q       What do you mean by that?

7       A       Of course I believe there's unregistered, uninsured  
8           drivers in A District. But I did do -- I personally,  
9           we did checkpoints in South Buffalo, and we didn't  
10          yield any of the results that you would get at other  
11          locations in the city.

12      Q       Uh-huh.

13      A       So now it becomes what is the -- how is the success  
14           of the unit measured when we just stood there for 45  
15           minutes and wrote three people for an expired  
16           inspection sticker.

17      Q       According to this map, you didn't conduct very many  
18           checkpoints in South Buffalo; is that correct?

19                           MR. SHORT: Form.

20      A       It's called live and learn. But we did do the  
21           checkpoints in South Buffalo.

22      Q       But very frequently; is that correct?

23      A       Infrequently, yes. Infrequently, yes.

1 Q So -- but you've seen drivers in South Buffalo with  
2 tinted windows, correct?

3 A Yes.

4 Q And you've seen drivers in South Buffalo who have not  
5 worn their seat belts, correct?

6 A Yes.

7 Q And you've seen DWIs occur in South Buffalo, correct?

8 A Yes.

9 Q And you've seen drivers not fasten their children  
10 into their cars appropriately in South Buffalo,  
11 correct, child safety violations?

12 A Yes.

13 Q So there were traffic safety violations in South  
14 Buffalo; is that right?

15 A That's correct.

16 Q Okay. So your testimony -- okay. All right. I'm  
17 going to strike that.

18 So you testified that there was a point where  
19 you were choosing checkpoint locations, right?

20 A I didn't hear you.

21 Q You testified that -- strike that. You testified  
22 that you chose checkpoint locations for most of the  
23 time that you worked with Strike Force; is that

1 right?

2 MR. SHORT: Form.

3 A If I'm on duty, it's about a 50 percent chance that I  
4 chose the location. I have a partner. He might have  
5 chose the location.

6 Q Okay. And did you receive some instructions or maps?

7 MR. SHORT: Form.

8 A No. Just the general instructions and things that we  
9 already talked about that some -- a chain of command  
10 chose a geographic location. I chose a street,  
11 whatever.

12 Q Okay. I'm going to show you Exhibit 14. This is  
13 COB041690. And this is an email from Captain  
14 Serafini to you and other lieutenants dated November  
15 4, 2016?

16 A Okay.

17 Q And in this email, Captain Serafini requests that you  
18 choose checkpoints in the vicinity of the latest  
19 shooting on Sherman and the Broadway area, right?

20 A Correct.

21 Q So when you said earlier that you would sometimes  
22 receive instructions on where to -- on placing  
23 checkpoints in areas of violence, is this what you

1           were referring to?

2                           MR. SHORT: Form.

3       A       Repeat the question. I was reading the email at the  
4           same time. I'm sorry.

5       Q       So in this email, Captain Serafini states to you that  
6           there's no specific location at this time, but you  
7           can start operating in the vicinity of the latest  
8           shooting on Sherman and in the Broadway area,  
9           correct?

10      A       That's what it says.

11      Q       And do you recall how you responded to this email?

12                           MR. SHORT: Form.

13      A       No, not specifically, I don't recall.

14      Q       Okay. If you -- when receiving an email like this,  
15           how would you typically respond?

16                           MR. SHORT: Form.

17      A       If the captain has given an order to begin where the  
18           last shooting is, we're going to begin where the last  
19           shooting was.

20      Q       Okay. Were there other reasons that Captain Serafini  
21           or anyone else would provide to you for setting up a  
22           checkpoint in a certain location?

23      A       No. Just criminal activity.



1 Q Okay. What other materials did you rely on in  
2 setting up a checkpoint location?

3 A I didn't rely on any other materials.

4 Q Okay. So you didn't rely on traffic safety reports?

5 A No.

6 Q Or accident reports?

7 A No. Accidents are sporadic. There's no way to  
8 identify where an accident is going to happen.

9 Q Okay. All right. So were you aware that there were  
10 members of the Black community in Buffalo who were  
11 angry about checkpoint locations?

12 MR. SHORT: Form.

13 A I'm sure I heard rumblings, yes.

14 Q What kind of rumblings?

15 A Just hearsay.

16 Q What did you hear?

17 A I think some of the loudest people were the people  
18 who ended up going to jail or their family members  
19 were upset that we were doing these checkpoints in  
20 their neighborhood.

21 As I already stated, the citizens that lived in  
22 these communities, they liked us. They loved  
23 watching from their porches and bringing us water.

1 Q And what basis do you have to say that it was only  
2 people who were criminals that were -- or that were  
3 going to jail that were concerned about checkpoints?

4 A I didn't say that.

5 MR. SHORT: Form.

6 Q Can you repeat --

7 A I said the squeaky wheel gets oiled.

8 MS. MALHOTRA: Luanne, can you repeat  
9 what Mr. Whelan said?

10 (Record read by reporter.)

11 Q So my question was what was your basis for your  
12 understanding, your statement?

13 MR. SHORT: Form.

14 A I said it was hearsay, and my statement I said, "I  
15 think," which means it's my opinion.

16 Q Uh-huh. Did you hear --

17 A I don't have a basis to form my opinion.

18 Q No. Did you ever have to -- did you ever receive  
19 complaints about checkpoints while you were a  
20 lieutenant?

21 A Not formal, not a formal complaint, no.

22 Q Informal complaints?

23 A I refereed plenty of complaints on the street with

1 the person who was getting their cash impounded, and  
2 they didn't think it was fair or they had to go to  
3 work the following morning, but this is not about  
4 emotion. This is about you're driving a car that's  
5 not permitted to be operated on the New York State  
6 highway or, you know, a street system.

7 Q Uh-huh. And did anyone who was not a criminal  
8 complain to you?

9 MR. SHORT: Form.

10 A I'm not calling everybody a criminal, and certainly  
11 there was probably people caught in circumstances --  
12 circumstances they created that led to some  
13 unpleasant experience with the Strike Force officers.

14 But nonetheless, we did our jobs and they  
15 weren't criminals. Some of the people weren't  
16 criminals. They're just caught in circumstances, but  
17 they're circumstances of their creation, not mine.

18 Q What do you mean by "circumstances of their  
19 creation"?

20 A Well, when a young lady or man lends their car to  
21 somebody or is permitting them to drive their car  
22 routinely and that person is unlicensed and they have  
23 the misfortune of showing up in one of our road

1 safety checkpoints and, you know, he gets cited and  
2 her car gets impounded or his car, she's not the  
3 criminal. She's not a criminal.

4 And they -- we would often, if they got there,  
5 we would tell the person that was operating the  
6 vehicle, "Call right now. You better call this  
7 person right now and get them down there and we will  
8 give them the vehicle."

9 But if the person is at work or in some other  
10 circumstances that they can't get there, I'm not  
11 leaving the vehicle on the side of the road because  
12 now I'm responsible for it. When I say "I," I mean  
13 rhetorically the officer is responsible for that  
14 vehicle parked on the side of the road.

15 And I'm not about to hand the keys back to the  
16 guy or woman that was just operating that illegally  
17 because common sense will tell you they're getting  
18 right back in the car and driving away.

19 So their car ends up at the impound lot, and  
20 five hours later, they end up at the door of our  
21 substation and they want their car back. Once that  
22 car goes to the impound lot, I don't have the  
23 authority to release the vehicle from the impound

1 lot.

2 They don't like hearing that, and they're just  
3 stuck in circumstances. And many times, not  
4 exclusively but many times, when you ask did you know  
5 he doesn't have a license, their answer is yes.  
6 Those are circumstances that they're creating.

7 Q Okay.

8 A They're angry. They're very angry, and I don't blame  
9 them, but I can't help them at that point.

10 Q And were the people that made complaints about  
11 checkpoints of a particular race?

12 MR. SHORT: Form.

13 A I wouldn't know. On the street, no. It's anybody.  
14 It's anybody. Listen --

15 Q You were primarily in Black neighborhoods, correct?

16 A That's correct, yes.

17 Q And so would the people who would lodge complaints to  
18 you on the street generally be Black?

19 MR. SHORT: Form.

20 A Sometimes, yes.

21 Q The majority of them?

22 A So since the demographic is it's predominantly an  
23 African-American community, well, I'm going to say

1           yes, historically they would -- most of the  
2           complaints would be by them. Now, as far as formal  
3           complaints that went to the department, I don't know  
4           anything about that. It's above my pay grade.

5       Q       Okay. And would you say any of the complaints that  
6           were raised to you during the checkpoints had to do  
7           with your officers engaging in any misconduct?

8       A       No.

9                               MR. SHORT: Form.

10      Q       So you never received any complaints about Strike  
11           Force officers engaging in misconduct when conducting  
12           checkpoints?

13      A       I had complaints about officers. I don't know the  
14           specifics as far as during the checkpoint.

15      Q       Did you ever observe any of your officers engaging in  
16           misconduct or violating the procedure during the  
17           checkpoints when you were out in the streets?

18      A       The question is did I witness officers engaging in  
19           misconduct? No, I never witnessed officers engaging  
20           in misconduct.

21                               I witnessed some officers whose dialogue might  
22           have been a little bit too strong with the person.

23           As I already stated, not everybody is a criminal

1 here. There's just some people who are driving down  
2 the road, and I would correct the officer.

3 Q And when you say -- was that harsh language?

4 A Inappropriate dialogue.

5 Q Inappropriate dialogue. What do you mean by  
6 "inappropriate dialogue"?

7 A Harsh language.

8 Q What do you mean by "harsh language"?

9 A I like you. Come on, cussing, you know,  
10 nonprofessional language or you're speaking to some  
11 64-year-old grandmother inappropriately. Listen, I  
12 always believe you get a lot more with honey than you  
13 do with vinegar.

14 If you treat people with respect, they're going  
15 to treat you with that same respect. My goal as a  
16 police officer, no matter if I was arresting you or  
17 not, was that you thank me at the end, and you know  
18 what, I had plenty of people in handcuffs thank me.

19 Q Uh-huh. So when you did -- when you had an officer  
20 that used harsh language, what would you -- how would  
21 you counsel them?

22 A Hey, cut it out. Calm down. Everybody shows up, and  
23 it's their best day in the world. Cops have bad days

1           too, you know.

2           Q       And what kind of harsh language did you hear officers  
3           using while you were running checkpoints?

4           A       I already stated, you know, unprofessional language,  
5           inappropriate cussing at a person, using an elevated  
6           tone of voice when it just wasn't necessary. Just  
7           explain what's going on. Most people just want to  
8           have it explained as to what's going on right now,  
9           why am I being pulled over.

10          Q       Were there any particular officers that you had to  
11          speak with about using harsh language?

12                           MR. SHORT: Form.

13          A       No, not really. If I had a talk with somebody, they  
14          took it to heart. Now, if I wasn't working with that  
15          person, did they think, well, Lieutenant Whelan is  
16          not here, I don't have to watch my Ps and Qs, I don't  
17          know.

18          Q       Did you ever receive complaints from individuals  
19          about any other misconduct of officers other than  
20          harsh language?

21                           MR. SHORT: Form.

22          A       I don't know. I mean, I already stated if an officer  
23          had a complaint filed against him, not always, but



1 sometimes, the Internal Affairs would ask the captain  
2 to get a statement from that officer. And if that  
3 officer was on my platoon, the captain would say,  
4 hey, Lieutenant get so-and-so to fill out a P-73 and  
5 send it to Internal Affairs and CC me. As far as  
6 investigating inappropriate behavior by officers,  
7 it's not my job.

8 Q Okay. And did you ever hear any officers use any  
9 language that you would consider racially biased?

10 MR. SHORT: Form.

11 A Listen, I was a cop for 22 years. The only answer to  
12 that is yes. Obviously, I heard people say things  
13 they shouldn't have been saying.

14 Q What kind of things would you hear people say that  
15 they shouldn't?

16 A Come on.

17 MR. SHORT: Form.

18 Q This is a deposition, Mr. Whelan. You have to answer  
19 the question.

20 A Using the N word, degrading people. That's it.

21 Q Okay.

22 A You know what, I'll just answer your next question.  
23 Have I ever said it? Yes, I have, obviously. I'm a

1 human being.

2 Q Okay. Have you said it towards other individuals --  
3 towards individuals during checkpoints or traffic  
4 stops?

5 A Have I, no. It's beneath me.

6 Q In what circumstance -- okay. In what circumstances  
7 have you heard officers use those terms?

8 A I couldn't even tell you. Situations where there's a  
9 ton of street commotion and there's been a shooting  
10 and there's people running, screaming and cops are  
11 yelling foul language and we're getting it right back  
12 in our faces too.

13 Q And how would you respond when you heard an officer  
14 use that kind of language?

15 A Probably not strongly enough.

16 Q What do you mean by that?

17 A Well, first off, it was mostly when I was a police  
18 officer, and you know, I'm not in a position of  
19 authority so to speak. But we all have regrets in  
20 life, I guess.

21 Q What do you mean by that?

22 A I probably should have spoken up, but I didn't when I  
23 heard other officers using this kind of language.

1 But once I became a lieutenant, everybody knows the  
2 standard which I hold my people to. People flocked  
3 to get on my platoon whether it was A District or the  
4 Strike Force Unit. I like to say that that was a  
5 credit to myself.

6 Q Uh-huh. Okay. Okay. So have you ever heard of  
7 anyone within the BPD being reprimanded for using  
8 that kind of language?

9 A Probably. But I can't name specifics, and it  
10 probably did occur a lot above my pay grade.

11 Q And did you ever reprimand anyone for using that kind  
12 of language?

13 A No. Because the people who worked for me knew  
14 better. First off, half my platoon were  
15 African-Americans, and they were great police  
16 officers. So no. And the rest of my platoon treated  
17 them with the same respect they knew they deserved.

18 Q Okay. Is it your position that officers who are  
19 African-American can't have racial bias --

20 MR. SHORT: Form.

21 Q -- or make racially derogatory --

22 A We won't drag anybody else into this, but one of my  
23 very good friends, a Black lieutenant, he was really

1 good at dishing it out. That's all I'll say.

2 Q What do you mean by that?

3 A He had a unique personality, and he meant no harm,  
4 but he was really good at dishing it out.

5 Q Okay. By "dishing it out," do you mean that he would  
6 use racially offensive language?

7 A Sometimes.

8 Q And what kind of --

9 A And to all involved. He was an equal opportunity  
10 hater.

11 Q And what kind of racially offensive language would he  
12 use?

13 A He would use racially insensitive language towards  
14 both whites and Blacks.

15 Q Uh-huh. And what kind of language would he use?

16 A If we were on the street and there was people who  
17 needed a good thrashing verbally, he had no problem  
18 calling them the N word and if they were white  
19 calling you honkies, you know, whatever.

20 And you know what, getting a good verbal  
21 thrashing beats going to jail any day, so I doubt  
22 there was very many complaints.

23 Q And when he would use the N word, would he use it in

1 a demeaning way?

2 A Is there any other way?

3 Q So I take it your answer is yes?

4 A So it's -- there's a way to use the word that it's  
5 acceptable?

6 Q I'm not asking that. I'm taking from your testimony  
7 that the use of the N word is always --

8 A It was demeaning; it was demeaning.

9 Q And why was it demeaning?

10 A It's not appropriate. It's something that brings up  
11 a tragic past history of our country.

12 MS. MALHOTRA: Okay. Okay. I think  
13 it's 12:23. Is everyone okay taking a  
14 15-minute break for lunch?

15 THE WITNESS: Sure.

16 MS. MALHOTRA: Does that work, 15  
17 minutes?

18 MR. SHORT: I'm going to ask for 30  
19 minutes. I do not work in this building. It  
20 will take me a little longer.

21 MS. MALHOTRA: Okay. 30 minutes. So  
22 let's circle back at 12:53.

23 (A recess was taken.)

1 BY MS. MALHOTRA:

2 Q Okay. So let's talk a little about the mechanics of  
3 the checkpoint. While you were a lieutenant at the  
4 Strike Force, were you present at all the checkpoints  
5 that your platoon conducted?

6 A 99 percent of them. There might have been some  
7 reason I was detained at the beginning of the tour of  
8 duty.

9 Q Okay. And were checkpoints operated by your entire  
10 platoon?

11 A Were they conducted by the entire platoon?

12 Q Right. Would the whole platoon be at each  
13 checkpoint?

14 A It was scheduled to begin with the whole platoon.  
15 Some of the more ingenuitive officers could find  
16 their way out of it by making some type of arrest  
17 before the checkpoint, so therefore, they would be  
18 out of service. But yes, they were supposed to be  
19 conducted by everybody that was on duty.

20 Q Okay. So how many officers would be present on each  
21 checkpoint?

22 A The platoon consisted of two lieutenants and ten  
23 officers at full manpower.

1 Q Okay. And how many police vehicles would be at each  
2 checkpoint?

3 A Six.

4 Q And would there be tow trucks?

5 A Not at the checkpoint, no. You had to call for a tow  
6 truck.

7 Q All right. And would -- both lieutenants would be at  
8 the checkpoint, correct?

9 A Unless there was some unknown circumstances to detain  
10 you.

11 Q And was the captain ever at the checkpoint?

12 A Not routinely. But did he ever show up there, yeah,  
13 probably.

14 Q Okay. How often?

15 A Very rarely.

16 Q All right. And what was your role in conducting the  
17 checkpoints?

18 A Supervision, answering questions that an officer may  
19 have or possibly interacting with questions of the  
20 person who was being detained at that moment.

21 Q Uh-huh. And --

22 A I wrote summonses also if the other officers were  
23 busy doing other duties.

1 Q Okay. And what were the police officers' duties  
2 during the checkpoint?

3 A As a vehicle approached, it was to look for any  
4 obvious vehicle and traffic violations. And if any  
5 were noticed, then they would request the driver's  
6 license of the operator.

7 Q Okay. And how many officers would be at kind of like  
8 the initial stop of the checkpoint?

9 A One car crew would not be right at the checkpoint.  
10 They might be a block away in case someone tried to  
11 turn around.

12 Q Okay. And then so as cars were approaching the area  
13 where the police officers were, how many officers  
14 were at that initial stop?

15 A Two to a car, one on each side.

16 Q Two officers, okay. And then how many would be  
17 writing tickets?

18 A I guess that would depend on the day and  
19 circumstances, you know, what did we encounter early  
20 in the checkpoint.

21 Q All right. And so there would be two officers at the  
22 primary -- one or two officers in case anyone tried  
23 to leave the checkpoint area?



1 A There would be two officers, one car crew in some  
2 location in case someone tried to turn around and  
3 flee the checkpoint area.

4 Q Okay. And were the rest of the officers writing  
5 tickets?

6 A They would be conducting the checkpoint, so let's  
7 just say the first car crew is -- they're the initial  
8 approach to the checkpoint. They're going to stay as  
9 the first officers unless they're pulling a car over  
10 for some violation. Now, they stay with the car, and  
11 then the next two officers become the primary.

12 Q Okay. And are those two officers just kind of  
13 waiting until they're called to be the next officers  
14 to do the checkpoint?

15 A Yes. They're, you know, an officer presence.  
16 They're out. They're visible. Additionally, if we  
17 chose to do the checkpoint in a more high volume  
18 traffic area, we would be doing two, three cars at a  
19 time to keep the traffic clear.

20 Q And so by two or three cars at a time, you mean that  
21 some officers would be checking cars that were  
22 waiting in line to go through --

23 A Correct.

1 Q And how many cars would typically pass through a  
2 checkpoint?

3 A Again, it depends on the location and the time of  
4 day. Sometimes a couple hundred or 150 if we were up  
5 on Walden, and if we were on a side street, maybe  
6 only 20.

7 Q Uh-huh. And so was there a line sometimes of cars  
8 waiting to go through the checkpoint?

9 A Sometimes there was.

10 Q And how long would that line be? What's the range?

11 A Five, six cars deep, seven cars deep.

12 Q Okay. And how long would that initial stop take  
13 when -- the initial stop at the checkpoint take?

14 A If everything was -- there was no obvious violation,  
15 seconds.

16 Q Okay.

17 A 10 seconds, 15.

18 Q All right. I'm going to ask some questions about  
19 that. And in your experience in working with Strike  
20 Force, how long did checkpoints usually last?

21 MR. SHORT: Form.

22 A They were directed to last an hour. I'm not going to  
23 lie. We usually cut them off at about 45 minutes.

1 Q Okay.

2 A And sometimes out of necessity a lot less based on  
3 manpower getting taken up.

4 Q After the checkpoint ended, would there still  
5 sometimes be cars waiting to receive tickets?

6 A Sometimes.

7 Q All right. So did drivers have the option to drive  
8 by the checkpoint?

9 A You mean not go through the checkpoint?

10 Q Yes.

11 A No, they did not.

12 Q So when it came to the checkpoint, you did not pick  
13 and choose the drivers that went through the  
14 checkpoint, right?

15 A No. Everybody has got to go through the checkpoint.  
16 Once in a blue moon, somebody didn't understand what  
17 was going on and they would turn around. And the car  
18 that I described earlier would chase them down and  
19 they were just a confused motorist that thought the  
20 road was blocked. And then we did have legitimate  
21 turn-arounds to evade also.

22 Q And so you stopped everyone at that first stop  
23 regardless of if they were -- seemed suspicious?

1 A Yes. Everybody gets stopped.

2 Q All right. And so in your experience were -- sorry.

3 Let me rephrase that. In your experience were  
4 vehicles selected -- they were not selected to go  
5 through checkpoints because they may have committed a  
6 traffic violation, correct? Everyone had to go  
7 through the checkpoint?

8 A Everybody has got to go through the checkpoint, yes.

9 Q I'm going to turn back to the Manual of Procedures.  
10 So if we take a look at Section 10.5 -- let's see,  
11 Section C says, "Set the traffic checkpoint  
12 (roadblock) in a way that minimizes the possibility  
13 of avoiding it," correct?

14 A That's correct.

15 Q In your observation and experience, to what extent  
16 does Section C reflect the actual practice at  
17 checkpoints?

18 A We did our very best to do that, which really kind of  
19 limits the location because -- this is -- you're in a  
20 city block. There were certain days I had a lot more  
21 manpower and I could afford to put -- or any  
22 lieutenant. When I say "I," I mean the lieutenant  
23 could afford to put additional chase cars on some of

1 the streets that were turn-offs coming up to the  
2 checkpoint.

3 But most of the time, you're there with six  
4 officers, three cars, and a lieutenant -- two  
5 lieutenants. So you have to conduct your checkpoint  
6 in an area that your manpower is going to facilitate  
7 that. So some of the locations became very redundant  
8 because we were doing the best we could with the  
9 manpower we had.

10 Q Uh-huh. And so you would try to avoid areas where  
11 there were turn-offs; is that right?

12 A Tried.

13 Q Was there anything else you did to try to make sure  
14 that you avoided the possibility of drivers avoiding  
15 the checkpoint?

16 A No, I don't think so.

17 Q Did you block off streets or intersections so people  
18 would be funneled through the checkpoint?

19 A No.

20 Q So 10.5(D) says, "Conduct a traffic stop on any  
21 vehicle that attempts to avoid the traffic  
22 checkpoint. Officers are permitted to check the  
23 motorist."

1           Okay. So I'm going to focus on that first  
2 sentence. So in your experience, was that consistent  
3 with your -- sorry. Strike that.

4           Was it consistent with your experience that you  
5 would conduct a traffic stop on any vehicle that  
6 attempted to avoid a checkpoint?

7           A     Absolutely.

8           Q     Okay. In your experience, why would drivers  
9 sometimes try to avoid the checkpoint?

10                   MR. SHORT: Form.

11           A     People who are trying to evade, they know there's  
12 something wrong with the vehicle or they are afraid  
13 that they have some contraband and we'll find it or  
14 they have a warrant. They've got some reason to  
15 avoid contact with the police.

16                   And then the other reason, like I stated  
17 already, is it's just somebody confused and they're  
18 trying -- they think the road is blocked.

19           Q     How did you determine whether a vehicle was  
20 attempting to avoid a checkpoint or was just  
21 confused?

22           A     Well, the term I use is the "chase car." They would  
23 go down and conduct a traffic stop. And then they

1           might just determine that when they look at the  
2           vehicle or run the registration or whatever they did  
3           in the traffic stop, there's nothing wrong or  
4           nefarious and it's just a motorist that's confused.

5                     Or they might call me on the radio or call the  
6           lieutenant on the radio and say, hey, there's nothing  
7           here, this guy is just confused. Honestly, they can  
8           decide that on their own.

9       Q       Okay. Did you -- how did you differentiate whether a  
10       driver was taking a turn before a checkpoint or  
11       trying to --

12      A       Again, we would try to select these areas that were  
13       natural bottlenecks so that you couldn't -- if you're  
14       going to do, you know, this checkpoint on a street  
15       with eight side streets leading up to it, there's no  
16       way to do that. You know, you're just going to put  
17       your chase car one street back. So it's all about  
18       manpower and choosing some type of natural  
19       bottleneck. One-way streets worked great.

20      Q       Okay. And all right. So if we turn to 10.5(F), it  
21       says, "During the traffic checkpoint, check all  
22       vehicles for proper registration and vehicle  
23       inspection stickers affixed to the windshield;" is

1           that right?

2           A       That's what it says.

3           Q       And is that -- is it consistent in your experience  
4           that that is what police officers did during the --  
5           during the checkpoint, the initial stop?

6           A       We did that, also additional -- additional immediate  
7           inspections.

8           Q       What are additional immediate inspections?

9           A       Tinted windows, both license plates affixed to the  
10          vehicle, and license plate covers.

11          Q       Okay. And would officers walk around the car to  
12          determine whether those -- the car was in compliance  
13          with those laws?

14                       MR. SHORT: Form.

15          A       That's correct. One officer engaged the operator of  
16          the motor vehicle. The other officer walked to the  
17          back and see that the license plate was there and  
18          didn't have a cover on it.

19          Q       Okay. Did the officers engage every driver that went  
20          through a checkpoint?

21          A       Yes.

22          Q       How did the officer engage the driver?

23          A       They would hold their hand up in the universal sign



1 to stop. They would walk up. If they didn't  
2 automatically roll the window down, they would ask  
3 them to roll the window down. I encouraged the  
4 officers to just volunteer this is a roadway safety  
5 checkpoint and if there was nothing visible wrong by  
6 this point, just in seconds, the other officer would  
7 give them a thumbs-up, and then we would wave them  
8 through.

9 Q Would the officer ask for the driver -- driver's  
10 license and registration?

11 A Registration is affixed to the window and no, they  
12 didn't ask for a license.

13 Q Okay. And then so if you look at 10.5(E), during the  
14 traffic checkpoint, check all drivers for proper  
15 wearing of seat belts, is that consistent with your  
16 experience with how officers ran checkpoints?

17 A Yes.

18 Q And 10.5(G) says act upon all probable cause  
19 situations arising from information obtained from a  
20 mobile plate reader and/or from an officer initiated  
21 safety observation; is that correct?

22 A That's correct.

23 Q In your observation and experience, does Section G

1 reflect the practice of BPD officers during  
2 checkpoints?

3 A That's correct.

4 Q And would officers inspect the entire car for  
5 anything in plain view that could give rise to  
6 probable cause?

7 MR. SHORT: Form.

8 A No. If it's in plain view, it's in plain view and  
9 believe it or not, you'd be surprised how many of  
10 these cars roll up -- and are you familiar with old  
11 Cheech and Chong movie where they roll down the  
12 windows and marijuana smoke comes billowing out?  
13 They actually do that. That's probable cause in my  
14 world.

15 Q Why is that probable cause?

16 A Operating under the influence.

17 Q And how would officers verify it was marijuana smoke?

18 A Through their experience and training.

19 Q Okay. And so there were some vehicles where there  
20 was marijuana smoke coming out of the car.

21 What other circumstances did officers encounter  
22 that would lead to probable cause to pull over the  
23 car?

1 A Aside from the vehicle and traffic stuff that we've  
2 already discussed?

3 Q Yes.

4 A Things that are sticking out in plain view, a  
5 bottle -- a bag of pills on the seat next to the  
6 person, possibly underage people under the influence  
7 of narcotics or alcohol. I mean, a lot of things.

8 Q Why would a bottle of pills give rise --

9 A I corrected myself. I said a bag of pills, like a  
10 baggy.

11 Q All right. So during the initial examination, did  
12 officers have license plate readers?

13 A Not when the unit was initially formed, but we did  
14 get two plate readers later on.

15 Q Okay. When was that?

16 A I don't know the exact dates, but I'll say 2014,  
17 middle of 2014.

18 Q Okay. And in your experience, was there anything  
19 else that officers looked for when examining vehicles  
20 like tires, mirrors, bulbs, headlights?

21 A We did do that. If we were conducting a checkpoint  
22 at night, we would check all the lighting. We did  
23 not ask people to turn on their blinkers like a

1 safety inspection. But if they pulled in with a  
2 headlight or a taillight out, that was enough to  
3 warrant further investigation, you know, write them a  
4 summons for that.

5 Also there was plenty of situations where we did  
6 take people's cars for bald tires with the cord  
7 sticking through them.

8 Q Okay. And you said that you instructed your officers  
9 to ask drivers to roll down their windows?

10 A If they did not roll down the window when they were  
11 approached, the officers did ask them to roll down  
12 their window.

13 Q Would the officers ask any -- the drivers any  
14 questions?

15 A Not that I'm aware of.

16 Q And so the purpose of asking them to roll down their  
17 windows was to inform them that there was a  
18 checkpoint?

19 A Correct.

20 Q Okay. All right. And to your recollection, did the  
21 officers for the Strike Force Unit have window tint  
22 readers during this initial stop?

23 A Many of the officers did, and I personally had one

1           also.

2           Q       Okay.  And did they check the tint on the windows  
3           during this initial stop?

4           A       If the windows were tinted, yes.

5           Q       Okay.  So during the initial primary stop before  
6           asking someone to pull over for a ticket, would an  
7           officer measure the tint on the windows if it was  
8           tinted to determine whether they should receive a  
9           ticket for that violation?

10          A       Okay.  The legal point of window tint in New York  
11          State is 35 percent of light transmittancy.  That  
12          equates to basically what your windshield is.  So in  
13          New York State, if you put almost anything on your  
14          windows, it's illegal.  If you come through a  
15          checkpoint and your windows are limo tints if the  
16          guy -- yes, the officer -- if he had it in his  
17          hand -- and one of my officers always had it in his  
18          hand -- he would tell the person your windows are  
19          tinted illegally.

20                   And he would put the tint meter on the window  
21          and tell them what the reading was and ask them to  
22          pull over.  Now, if I was doing the thing right  
23          there, I didn't have the thing in my hand.  I would

1 say to them -- I always asked the person, do you know  
2 what the legal tint limit is in New York State to see  
3 if they knew what it was.

4 Whatever their answer was, I would inform them  
5 of what it was and that their windows obviously  
6 exceeded that. Then I would ask them to pull over,  
7 and I would get my tint meter out of the car, test  
8 the tint on their windows and tell them what it was.

9 Q Okay. And you would do that at the primary stop, the  
10 first stop?

11 A Right when they're coming into the checkpoint?

12 Q Yes.

13 A I already stated one of my officers had the tint  
14 meter in his hand. And if it was him, he did. He  
15 did; I did not. And many of my other officers didn't  
16 either. I didn't want to stand there with a tint  
17 meter in my hand. I had it in my car.

18 I experienced -- I would observe the windows and  
19 tell them, hey, your windows appear to be in  
20 violation. I would ask them if they knew what the  
21 tint limit was. Then we would go from there. I  
22 would ask them to pull over, please get their  
23 driver's license out. I would go to my car. I'd get

1 the tint meter, go back, read it, and tell them, hey,  
2 this is the reading.

3 Q Okay. So did officers had discretion to not pull  
4 over cars that appeared to be tinted windows that  
5 were too dark?

6 MR. SHORT: Objection.

7 A Officers had discretion, yes. And not every person  
8 that got pulled over for tints got a ticket for  
9 having tinted windows. There's always extenuating  
10 circumstances, I bought this car like this, whatever.

11 Take -- sometimes it's a lot easier to tell  
12 them, "Just take the stuff off the windows. If I  
13 catch you again, you're getting a ticket."

14 Q Okay. Now, did -- in this initial stop, did officers  
15 ask -- let me strike that.

16 So sometimes, as we discussed, that you were  
17 instructed to put checkpoints in the areas of  
18 shootings, correct?

19 A Yes.

20 Q And if there was a shooting, would officers ask  
21 drivers during this initial stop anything related to  
22 that shooting or any other criminal activity?

23 MR. SHORT: Form.

1 A I can't testify as to what every officer asked at the  
2 checkpoints. And I did say earlier that some of the  
3 officers may have used checkpoints to develop  
4 intelligence, which that would in my world be  
5 considered intelligence. So I don't know what they  
6 asked them specifically.

7 Q Okay. So did you ever observe officers using this  
8 preliminary stop to develop intelligence?

9 A I answered that already. I don't know. No, I don't  
10 know -- I never specifically witnessed officers  
11 developing intelligence at our roadside safety  
12 checkpoints. But I also said that it wouldn't  
13 surprise me because they knew who a lot of the  
14 players were in the neighborhood. So if they  
15 recognized somebody, they might ask them some  
16 questions.

17 Q How would they know who the players were in the  
18 neighborhood?

19 A Good police work.

20 Q Okay. Anything else? Did you ever train officers on  
21 players in the neighborhood?

22 A Did I ever train officers about players in the  
23 neighborhood? No. We shared information amongst



1           each other and said, hey, this guy here says that  
2           these guys here might be up to something. You fill  
3           in the blanks.

4       Q     Well, I might be able to help you with this next  
5           exhibit. But before I ask this next question, so  
6           just to be really clear on these primary stops,  
7           officers would do visual inspections, check insurance  
8           and registration, ask drivers to roll down the  
9           window?

10      A     We didn't ask for insurance information. We didn't  
11           ask that.

12      Q     I apologize. So just to be clear, let me rephrase  
13           that. So officers would inspect the vehicle stickers  
14           for registration, ask drivers to roll down the  
15           window, inspect the cars for license plates and bald  
16           tires and then there -- is that correct?

17                           MR. SHORT: Form.

18      A     Correct.

19      Q     Okay. And how -- what's the range of time that  
20           this -- these activities would take?

21      A     Fifteen seconds or less. They're just making a  
22           visual observation. And when you say they would ask  
23           them to roll down their windows, 95 percent of the

1 time, that person rolls their window down on their  
2 own. They're going to ask the officers what's going  
3 on.

4 But sometimes, the officer would ask someone who  
5 didn't roll the window down to roll the window down.  
6 And other times you wouldn't even ask them to roll  
7 the window down. If everything appeared okay, they  
8 would just wave them through and keep traffic going.

9 Q Okay. And then sometimes officers would use this  
10 primary stop to gather intelligence, correct?

11 MR. SHORT: Form.

12 A I already stated that I don't know for a fact that  
13 they did that, but it would not surprise me if they  
14 did do that.

15 Q Okay. All right. I'm now going to show you  
16 Exhibit -- I understand.

17 A It's okay. I'm just getting my spectacles on so I  
18 can read.

19 Q Great. Thank you. I'm going to show you Exhibit 15.  
20 It's Bates Number COB039344. This is a June 11, 2015  
21 email from Joseph Gramaglia to you and other Strike  
22 Force lieutenants, correct?

23 A Yes.

1 Q Okay. Who's Joseph Gramaglia?

2 A Today Joseph Gramaglia is the commissioner of the  
3 police department.

4 Q Okay. And what was his position then?

5 A He was -- there's a captain that's assigned to fill  
6 in -- as he puts here, Investigative Services,  
7 Homicide.

8 Q Okay. I'm going to scroll down to the end of this  
9 email and give you a chance to read it. In this  
10 email, he's forwarding an email from Mary Evans.  
11 He's forwarding an email from Mary Evans dated June  
12 6, 2014.

13 A Okay.

14 Q So this is an email from -- who is Mary Evans?

15 A She was a detective with the Homicide Unit.

16 Q Okay. And in this email, Mary Evans is making a  
17 request of the Strike Force to concentrate on the  
18 Central Park area and to document all traffic stops  
19 with regard to vehicle location, date, time and  
20 occupants where they suspect gang members are  
21 involved, correct?

22 A Correct.

23 MR. SHORT: Form.

1 Q And I will give you a second to read Joseph  
2 Gramaglia's email to you.

3 A Okay.

4 Q So this is an email to Joe -- from Joseph Gramaglia  
5 to you and Chief Brinkworth and other lieutenants  
6 forwarding Mary Evans' email stating that -- or  
7 requesting your assistance with Mary Evans' request  
8 to build this case up against Central Park. All  
9 right. So what is the Central Park area?

10 A It's an area up near Jefferson. It's kind of  
11 cordoned off by Kensington Avenue to the south and  
12 East Amherst to the north, and I think it's --  
13 Jefferson and Main come together on the west side of  
14 it. And then over on the east side -- there's not  
15 really a defined line on the east side -- Comstock  
16 Avenue maybe. There used to be a big plaza there,  
17 Central Park Plaza. It's a big area. So the gang  
18 members or -- they were called the Central Park  
19 area -- Central Park Crew.

20 Q And did you comply with this request to document  
21 traffic stops of suspected gang members?

22 MR. SHORT: Form.

23 A I'm sure we did.

1 Q How did you go about doing that?

2 A I'm sure that significant interactions probably  
3 detailed in the report at the end of the night that  
4 was forwarded up the chain of command. There may  
5 have been other reports, either P-73s or emails  
6 written by officers to Detective Evans, Detective  
7 Maiola, or even Captain Gramaglia.

8 Just so we're clear, the area we're talking  
9 about is pretty large, 20, 30 blocks, so it's a big  
10 area.

11 Q Okay. So Mary Evans specifically asked Strike Force  
12 to use -- to document all traffic stops where they  
13 suspect gang members are involved, correct?

14 A That's what she asked.

15 Q And how did officers implement that request?

16 MR. SHORT: Form.

17 A I would say we just did routine patrol and traffic  
18 stops that were warranted by the operator's behavior.  
19 They committed some type of vehicle and traffic  
20 infraction. And then if it turned out there was gang  
21 members in the car, that's how they would determine,  
22 you know, and send this information back to Detective  
23 Evans.

1 Q How would officers determine whether there were gang  
2 members in the car?

3 A Ask their names. Some of them have tattoos that are  
4 visible on their hands or arms that identify them as  
5 different gang members.

6 Q Uh-huh. And other than tattoos, were there other  
7 identifying characteristics of gangs?

8 MR. SHORT: Form.

9 A I -- I'm sure there probably are, but I don't know  
10 exactly. Not that they are --

11 Q Clothes?

12 A Yes, sometimes clothes, the blue and the red thing.  
13 Sometimes they had the -- more on the west side, they  
14 would have the -- I don't want to use the word Latin  
15 Kings, but they like their flashy gold attire.

16 Q What is flashy gold attire?

17 A You know, the hat, the flashy insignia on it, and  
18 these are the Hispanic gang members that were on the  
19 west side.

20 Q So if the officer saw someone with a flashy gold  
21 attire who's Hispanic, would they identify them as a  
22 gang member?

23 MR. SHORT: Form.

1 A We would ask them.

2 Q Okay.

3 A And they don't deny it. They'll proudly tell you  
4 they are.

5 Q Okay. And what -- you said you -- you would  
6 sometimes identify gang members by name. Was there a  
7 database of gang members that the BPD maintained or  
8 that you maintained?

9 A I can tell you that individual officers kept  
10 extensive gang history notebooks. And probably not  
11 in the beginning of the Strike Force Unit's inception  
12 there was not a database. But when I got hurt, it  
13 was certainly along the way, I think. The Intel Unit  
14 was developing a database.

15 Q Okay. And this is what Mary Evans was requesting,  
16 right, like documentation of all traffic stops and  
17 information about the cars, where they suspect gang  
18 members are involved, correct?

19 A That's what she's asking for, yes.

20 Q And so when you -- what other kinds of questions  
21 would officers ask to determine if someone was in a  
22 gang member -- was in a gang?

23 MR. SHORT: Form.

1 A I don't have an answer for that. I wasn't privy to  
2 every conversation. I don't have an answer.

3 Q All right. And so during checkpoints, would officers  
4 comply with this directive and document traffic stops  
5 where they suspect gang members are involved?

6 A If there was a traffic stop, yes, not just part of  
7 the road safety checkpoint, no.

8 Q Okay. So if there was -- so if someone was pulled  
9 over to a secondary stop, would officers document  
10 whether they believed that the car was associated  
11 with a gang member?

12 MR. SHORT: Form.

13 A I'm going to say yes.

14 Q Okay. And at that point, during the secondary stop,  
15 they would ask questions to ascertain whether someone  
16 was potentially a gang member, correct?

17 A Yes.

18 MR. SHORT: Form.

19 Q And were there any attributes of Central Park gang  
20 members that your officers would use to identify  
21 drivers who may be associated with the Central Park  
22 Gang?

23 A Not clothing-type things like you said earlier; more



1           like tattoos, and some of them are just known to the  
2           Buffalo Police Department.

3       Q       How are they known to the Buffalo Police Department?

4       A       Well, they've been arrested before and documented as  
5           gang members. As I said, they don't deny it. They  
6           are proud to, you know, tell you their affiliation.

7       Q       And you said that some of them have tattoos. What  
8           kind of tattoos?

9       A       CP.

10      Q       CP. Any other tattoos?

11      A       I'm sure they do, but I don't know exactly what.

12      Q       And earlier you testified that gang members were  
13           usually under the age of 25 -- you know, early to  
14           mid-teens to the age of 25; is that correct?

15      A       I did.

16      Q       And would you say Central Park Gang members were of  
17           that age group?

18      A       No.

19                           MR. SHORT: Form.

20      A       No. They were the exception. They were a little bit  
21           older. They were established.

22      Q       What was their age range?

23      A       I would say a good many of them into their 30s, even

1 40s.

2 Q Okay. And were they primarily men?

3 A I would say yes. My involvement involved mostly  
4 men -- all men. I don't remember grabbing any women.

5 Q Okay. And were members of the Central Park Gang  
6 predominantly Black?

7 A Yes.

8 Q Okay. So when officers were questioning individuals,  
9 they were looking for -- who may be associated with  
10 the Central Park Gang, they were trying to look for  
11 Black men into their 30s and 40s?

12 MR. SHORT: Form.

13 A I don't think there's a -- there's not a descriptive  
14 one size fits all for gang members. If we're looking  
15 for Central Park Gang members, we're going to know --  
16 first off, we're going to know where some of them  
17 live. And maybe some of the older ones will have a  
18 little discussion with you that you can glean a  
19 little information from.

20 We're not looking for anybody particular. And  
21 then in any street gang I feel -- it's my feelings  
22 only, not backed up by evidence, but there's always  
23 the new crew that's -- they want to get involved and

1 not necessarily with the Central Park Gang, but they  
2 think they are.

3 Q Uh-huh.

4 A And quite honestly, it's the younger ones that are  
5 more violent.

6 Q What do you mean by that?

7 A They are more violent. They shoot people. They're  
8 the ones that do the shootings in the bar over some  
9 perceived grudge or, you know, you've done me wrong.  
10 The older ones, they don't do that.

11 Q And by "younger," you mean what you referred to  
12 earlier as under 25?

13 A Yes.

14 Q Okay. So you -- so your testimony is you complied  
15 with this directive, and in secondary stops, officers  
16 would attempt to obtain this information in response  
17 to the directive from now Commissioner Gramaglia --

18 A Yes.

19 MR. SHORT: Form.

20 Q -- is that right?

21 A Yes, Commissioner Gramaglia.

22 Q All right. So all right. Let's talk about secondary  
23 stops then. I'm going to go back to Exhibit 3, the

1 MOP. We're at Section H. It says, "Prepare and  
2 issue traffic summonses for any violations of law  
3 observed during the traffic checkpoint," right?

4 A That's what it says.

5 Q In your observation and experience, to what extent  
6 does Section H accurately reflect the actual practice  
7 at checkpoints?

8 A Yes. We did what we were -- we did what we were to  
9 do. We did issue traffic summonses for violations.  
10 Did officers ever use discretion? Yes, they did.  
11 We'd have to write -- if a person had more than one  
12 violation and you felt like only writing one  
13 violation, you could do that too.

14 Q Okay. So officers did not necessarily write  
15 violations for any violations of law observed during  
16 the checkpoint?

17 A Prepare and -- did an officer ever use discretion?  
18 I'm sure they did. I would testify that I certainly  
19 did.

20 Q Okay. And did you instruct your officers to use  
21 discretion?

22 A They're grown men and women. They know what to do.

23 Q Okay. So is that a no?

1 A No. I didn't tell them what to do, no. That's  
2 micromanaging.

3 Q Okay. So the drivers would get pulled over for  
4 violations of law including illegal tints from the  
5 visual inspection, the license plate readers; is that  
6 correct?

7 A Correct.

8 Q Were there other reasons drivers would get pulled  
9 over for a secondary stop other than vehicle and  
10 traffic violations?

11 MR. SHORT: Form.

12 A Plain view contraband offenses. That's all I can  
13 think of.

14 Q Okay. And you mentioned seeing a bag of pills or  
15 smelling marijuana. Were there any other plain view  
16 observations that would cause BPD officers to pull  
17 over a driver for a secondary stop?

18 A In the course of my three years as a Strike Force  
19 lieutenant, I'm sure there was.

20 Q Can you give me some examples?

21 A The butt of a handgun sticking out from between the  
22 seats, any kind of contraband like that. And I will  
23 tell you also lack -- failure to comply, failure to

1           comply. There's some little -- maybe inspection --  
2           there's some visual thing that we want to talk to  
3           this person about and they don't want to comply --  
4           they don't want to pull over. They're berating us,  
5           this is nonsense, are you familiar with the free  
6           traveling laws of the United States of America, I'm a  
7           sovereign citizen, just keep on going. That's going  
8           to make me want to pull you over.

9           Q       Uh-huh, uh-huh. Why would that make you want to pull  
10           them over?

11          A       Because they're not complying with my lawful order.

12          Q       Okay. I see. So all right. So what proportion of  
13           drivers that went through the checkpoint were pulled  
14           over for secondary stops?

15                       MR. SHORT: Form.

16          A       I don't even have a -- any kind of basis to -- I  
17           don't know. There was plenty of times we did the  
18           checkpoint and pulled three cars over in an hour.  
19           And there were times, as I already stated, we had six  
20           cars in ten minutes.

21          Q       Okay. And then what would happen during the  
22           secondary stop?

23          A       The officers would approach the car, ask them to

1 produce. Now they're asking them to produce their  
2 driver's license and proof of insurance. There may  
3 be a discussion about whatever the violation is, and  
4 it would go from there.

5 Q Okay. And how would -- walk me through the process  
6 of what it means for someone to get a ticket. So  
7 officers would approach a driver and -- sorry.

8 Tell me about the procedure. Yeah, tell me  
9 about the procedure during the secondary stop. So  
10 officers would approach a driver for their license  
11 and registration.

12 A Officers are going to --

13 MR. SHORT: Form.

14 A At the initial stop at the road safety checkpoint,  
15 you're going to tell the person -- you may or may not  
16 tell them your inspection is expired, your  
17 registration is expired or whatever, or you may just  
18 say I need you to pull over to the side of the road.

19 So they pull over. Now you and your partner are  
20 going to follow that car. For officer safety, the  
21 other officer would be on the passenger side of the  
22 car, whether it's a single occupant or it's got five  
23 people in it.

1           Now, the officer who's initiating the stop, he's  
2 going to ask for the operator's driver's license and  
3 proof of insurance. Now if -- we'll just say that  
4 there's no extenuating circumstances. Now the  
5 officers are going to go back to their car and use  
6 the mobile computer terminal. By the way, that's the  
7 computer terminal we send the messages on, the MCTs,  
8 mobile computer terminals.

9           You would go back, and you would use the New  
10 York State Department of Motor Vehicles website,  
11 database to run both a vehicle registration and a  
12 driver's license.

13 Q       And how long would that process take?

14 A       That really was dependent on your computer speeds.  
15 And in the early days when we were first getting  
16 these MCTs, we would have a lot of hiccups. And a  
17 lot of times, you just had to give the person back  
18 their driver's license and let them go because you  
19 would be waiting ten minutes for it to come back, or  
20 it wouldn't come back in ten minutes. So I would  
21 tell them, "Just give the guy his driver's license  
22 back and get him out of here."

23           If there was -- well, they had to have some



1 reason to pull them over, so if there was an  
2 equipment violation, I would tell them, "Just write  
3 the equipment violation and let them go."

4 Q And what information would be generated by the MCT?

5 MR. SHORT: Form.

6 A On a registration end, it would come back and tell  
7 who the car was registered to, whether it was valid  
8 or not. If it was suspended, it would list the  
9 suspension dates and what it was suspended for.

10 Then -- and then let's just say the operator is  
11 not the owner of the car. It would also give a  
12 warrant status of the owner of the vehicle.

13 Now you're going to run the driver's license.  
14 It's going to give you the same information but for  
15 your license, is his license valid or not; if it's  
16 suspended, what it's suspended for and if there's any  
17 warrants for that person.

18 Q And would the driver's license be run through the MCT  
19 as well?

20 A That's what I just stated. You would punch in the  
21 driver's license numbers on a different screen, and  
22 it would give you all that information for the  
23 driver.

1 Q Okay. And what's the range of time that this  
2 verification process would take?

3 A The range of time for what?

4 Q The -- what's the range of time it would take an  
5 officer to go through this process of checking a  
6 driver's license and registration?

7 A If things were running smoothly, one minute,  
8 probably -- sometimes less. If things weren't  
9 running smoothly, it was not uncommon for it to take  
10 several minutes to come back, but you knew it was  
11 operating correctly. I don't recall how we knew.  
12 Like maybe if a little wheel is spinning in the  
13 corner or something, it was still working on it,  
14 getting the information from the state.

15 The times that, you know, you were waiting five,  
16 ten minutes and you didn't have the wheel spinning,  
17 it was some kind of internet disconnect.

18 Q And what was involved in writing a traffic summons?

19 A In the beginning, we used to write them right on the  
20 paper summonses, you know, just like you see on  
21 television. And then later on, we got upgraded  
22 mobile computer terminals with the things called  
23 TraCS, TraCS ticket system maybe, and they would

1 print off in the car.

2 Q Okay. And how long would it take to write a traffic  
3 summons?

4 A The handwritten ones as fast as you could write, so  
5 you know, it would take you five minutes to fill out  
6 all this information on one summons. So now if  
7 you're going to write this person multiple summonses,  
8 it's five minutes a ticket.

9 Once we got the upgraded computer things, it's a  
10 computer-generated summons and it just prints them  
11 all off. You only have to put the information for  
12 the driver and the car once, and then you hit  
13 replicate, replicate, and you fill in the vehicle and  
14 traffic charges, and then it prints them all at once,  
15 so it's a lot quicker.

16 Q So was it easier to write more tickets once you got  
17 the TraCS system?

18 A You didn't have writer's cramp. I would say yes. It  
19 was easier to write more summonses, yes.

20 Q Did the officers write more summonses after you got  
21 the TraCS system?

22 MR. SHORT: Form.

23 A Technology did improve our efficiency.

1 Q What did you mean by that?

2 A Well, I guess the simple answer is I saw the numbers  
3 that you had up there earlier. Yes, we wrote a lot  
4 more summonses because, one, we had the plate reader.  
5 We were initiating stops that we never had the  
6 ability to do before.

7 You're just driving down the street, and the  
8 plate reader goes off on a stolen car, you spin the  
9 car around and chase it. You know, so now that,  
10 accompanied with the improved summons system, you  
11 know, printing them off by the computer, yes, it  
12 resulted in more summonses.

13 Q Okay. And do you know when the BPD adopted the TraCS  
14 system?

15 A I don't know. Probably 2014. I think -- actually,  
16 do you want to know the truth? I think we tried it  
17 in the mid-2000s, maybe around 2010, but we bought  
18 the equipment secondhand, something like that. It  
19 just never -- I'm not a computer guy. They couldn't  
20 get the computer systems to talk to each other right.

21 So then it got scrapped for a while. And then  
22 when they brought it back, they bought way improved  
23 equipment. We got a media guy, and it's his position

1 to do all these media job -- media, you know,  
2 programs.

3 Q Okay. So around 2014, you got TraCS. And it was a  
4 better system and that allowed you to write more  
5 tickets?

6 A Yeah. The system that really worked came in to us at  
7 the Strike Force around 2014.

8 Q Okay. In TraCs, were officers supposed to record  
9 that they issued tickets at a checkpoint in a  
10 particular way?

11 A You mean did -- whether they wrote them or got them  
12 off TraCS?

13 Q When they wrote the tickets on TraCS, were they  
14 supposed to enter any particular code indicating they  
15 had issued the ticket at a checkpoint?

16 A I don't think so. I don't know. I don't know that  
17 answer. I don't have an answer to that.

18 Q Are you familiar with the code Arrest Type 3?

19 A Arrest pick three?

20 Q Arrest Type 3.

21 A Yes. Okay. You're right. Yes, you were supposed to  
22 put it in, yes.

23 Q Officers had to --

1 A They had the ability to indicate that it was done at  
2 a checkpoint.

3 Q And were they trained on how to enter Arrest Type 3  
4 for checkpoints?

5 MR. SHORT: Form.

6 A We all had formal TraCS training conducted by the  
7 police academy. I can't comment on the specific  
8 content of the training.

9 Q Did you review whether officers entered Arrest Type 3  
10 for their checkpoint stops?

11 A I don't think reviewing the summonses was part of --  
12 I don't believe the lieutenants were required to  
13 review each summons for accuracy.

14 Q Okay. And how soon after writing a ticket were  
15 officers required to enter the ticket information on  
16 TraCS? Was that immediate?

17 A Yeah, I believe it's immediate. Once it's in TraCS,  
18 it's there.

19 Q And did officers have to inform dispatch when they  
20 were conducting a checkpoint?

21 MR. SHORT: Form.

22 A The lieutenant would inform. The lieutenant on duty  
23 would inform the dispatchers that we would be

1           conducting a checkpoint and where.

2           Q       Are you familiar with ENTCAD?

3           A       Yes.

4           Q       Did you use ENTCAD to inform dispatch where you were  
5           conducting the checkpoint?

6           A       Sometimes. If you want to know the truth, I just  
7           called them on the phone and said, "Hey, I'm doing a  
8           check point here." I don't know what the other  
9           lieutenants did, but I would just call dispatch.

10          Q       Okay. And any of these systems, ENTCAD when you used  
11          it or TraCS, did officers or you record the race of  
12          the driver?

13                               MR. SHORT: Form.

14          A       Yes. I'm only speaking for myself. I did.

15          Q       Where did you record the race of the driver?

16          A       It's right at the top. There was a box there to  
17          select.

18          Q       On the TraCS system or on ENTCAD?

19          A       TraCS.

20          Q       Okay. And were you instructed to check the box of  
21          the race of the driver?

22          A       I think it was just common sense as far as my own  
23          decision to do that.

1 Q And did you ever instruct your officers to indicate  
2 the race of the driver during -- on TraCS when they  
3 issued tickets?

4 A I don't recall ever doing that. I just think it's  
5 something they again -- they did it on their own.

6 Q Okay. So you never verified whether or not they  
7 entered the race of the driver on TraCS?

8 A No, because when we came back to the station, the  
9 summonses went into a box, and then the box was  
10 processed by the report technician. The report went  
11 downtown. The lieutenant -- at the end of the night,  
12 we had a lot of paperwork already. I wasn't looking  
13 for more.

14 Q Okay. All right. So I am going to show you -- all  
15 right. First I'm going to ask you a few more  
16 questions about the secondary stops.

17 So you testified earlier that when someone had  
18 tinted windows, that you would use tint meter at the  
19 secondary stop to verify the tint of the car; is that  
20 correct?

21 A Correct.

22 Q Okay. Were -- was there a point at which -- I'm  
23 going to show you -- please strike that. I'm going



1 to show you an exhibit.

2 Did Strike Force officers always have tint  
3 meters during the entire time that you worked with  
4 the Strike Force?

5 MR. SHORT: Form.

6 A It was not a piece of equipment that was issued. It  
7 was up to you to buy it yourself.

8 Q Okay.

9 A Many of the officers had tint meters, and I did too,  
10 and I purchased it myself.

11 Q And who did you purchase it from?

12 A I don't know. There's a name of a company that sells  
13 tint meters. I don't remember what it was. And when  
14 I retired or got hurt, I sold mine to another police  
15 officer.

16 Q And so not all officers had tint meters, correct?

17 MR. SHORT: Form.

18 A That's correct. And it was not uncommon to hear a  
19 car crew come on the radio and say anyone with a tint  
20 meter can come by their location.

21 Q Okay. So if someone did not have a tint meter, they  
22 would use a visual inspection to determine -- if  
23 someone did not have a tint meter, they would use a

1 visual inspection to determine whether the tint was  
2 illegal?

3 MR. SHORT: Form.

4 A It was acceptable in Buffalo traffic court that if  
5 you held a person's driver's license behind the glass  
6 and could not read it through the glass, that was  
7 sufficient to give testimony that the windows are  
8 tinted too dark for the New York State vehicle and  
9 traffic law.

10 Q Did anyone at the BPD train you on that technique to  
11 determine whether -- whether windows were illegally  
12 tinted?

13 A Yeah, this old cop named Jerry Stover, but I did -- I  
14 did use that method to testify in traffic court, and  
15 the judge accepted that testimony.

16 Q And did you train your officers to detect tinted  
17 windows in this manner?

18 A We probably talked about it.

19 Q Okay.

20 A I wouldn't call it training. I would call it station  
21 house discussion.

22 Q Okay. Sounds good. I'm just going to share my  
23 screen to confirm your testimony. So this is an

1 email from Captain Serafini to Captain Brinkworth.  
2 You're not included on it. It's dated August 20,  
3 2015 where he informs captain -- Chief Brinkworth  
4 that Housing and Strike Force lieutenants said that  
5 they don't have tint meters and made a request,  
6 correct?

7 A Correct.

8 Q And that's consistent with your understanding?

9 A Yes. I never saw any city-owned tint meters.

10 Q Okay. All right. So the secondary stop, you  
11 testified earlier that sometimes officers would ask  
12 questions about gang affiliation. Would they ask any  
13 other questions about criminal activity during the  
14 secondary stop?

15 A Yeah.

16 MR. SHORT: Form.

17 Q What kind of questions would they ask?

18 A If we were looking for a suspect, hey, have you seen  
19 this guy, or if there was a recent homicide, we would  
20 ask them do you know anything -- I personally -- I've  
21 asked these questions, hey, did you hear about that  
22 homicide over on Delavan Avenue, did you know that  
23 guy. No, I didn't know him. Or seems to be some

1 kind of feud going on between Central Park and the  
2 Bailey Boys, did you hear anything about that, just  
3 banter.

4 Q Uh-huh.

5 A Most people want to tell you their life story.  
6 Some -- the smart ones, they don't talk.

7 Q And so would you sometimes get intelligence from  
8 this -- these stops?

9 A Yes.

10 Q Okay. And would you --

11 A They weren't necessarily from the roadblock safety  
12 checkpoints. That was every traffic stop. You're  
13 just making small talk with the person to put them at  
14 ease too.

15 Q Okay. And any other specific questions that you or  
16 other officers would ask with regard to criminal  
17 activity during these vehicle stops?

18 A No.

19 Q What about to ascertain whether the driver was  
20 engaged in criminal activity, would you ever ask any  
21 questions to determine whether the driver or any of  
22 the passengers were engaged in criminal activity  
23 during these traffic stops?

1       A       Possibly.  But I can't think of any specific  
2               circumstances involved in that.  I asked plenty of  
3       motorists have you been smoking weed, have you -- you  
4       know, have you been drinking tonight, even if they  
5       weren't exhibiting the -- if I pulled them over for  
6       something unrelated, you know, to tell them, hey,  
7       maybe it's a good idea to park your car over there  
8       and walk home without getting involved in the whole  
9       DWI field sobriety thing because I knew I didn't have  
10      the probable cause for a stop.  I pulled a guy over  
11      because his taillight is out.

12     Q       Okay.  So sometimes these stops would result in  
13               arrests or intelligence related to criminal activity,  
14               correct?

15     A       Yes.

16     Q       Okay.  And so -- when -- at the checkpoints when  
17               officers were giving out tickets and -- strike that.  
18               During the secondary stop when officers were --  
19               during secondary stops, were there cars waiting to  
20               receive tickets?

21     A       Often.

22     Q       What are the range of cars that would be waiting to  
23               receive tickets?

1 MR. SHORT: Form.

2 A Well, that would depend on how many officers I had.  
3 I mean, I can't pull more cars over if I don't have  
4 any more officers to address each individual vehicle.

5 So if I ran -- if we were running a checkpoint  
6 and all the officers were involved with a traffic  
7 stop, myself and the other lieutenant, we would  
8 continue to do the checkpoint. And then if I had to  
9 stop somebody and pull them over, that would be the  
10 end of the checkpoint and/or somebody who was just  
11 writing an equipment violation would be done in five  
12 minutes, and they would come back to the line for the  
13 checkpoint.

14 But as I said early on, sometimes we would have  
15 six cars pulled over in ten minutes, and that's the  
16 end of the checkpoint because these people are going  
17 to be involved for 30 minutes or more in dealing with  
18 the circumstances surrounding their individual's  
19 traffic stop.

20 Q And so what might be the longest that someone might  
21 have to wait for a ticket after they've been pulled  
22 over for a secondary stop?

23 A Someone who's getting four or five summonses because

1           it's -- you know, you're involved in unclassified  
2           misdemeanors and their car is getting impounded,  
3           they're going to be waiting 30 minutes.

4           Q           And did some cars wait upward of 30 minutes?

5           A           In those circumstances, yes.

6           Q           And could some drivers wait up to an hour?

7                           MR. SHORT: Form.

8           A           I'm not going to say nobody ever waited an hour, but  
9                       we did our very best to mitigate those circumstances.  
10                      And the people who were waiting an hour, I'm going to  
11                      guess might have been people who were going to be  
12                      detained and going downtown under arrest.

13          Q           Okay. All right. So when you were doing  
14                      checkpoints -- let me be clear.

15                      So the two officers at the initial stop, would  
16                      they be responsible for then giving the drivers the  
17                      ticket and then new officers would come and do the  
18                      stop, or did that vary?

19          A           Yes. If they stopped the vehicle for any purpose,  
20                      they walked right with the vehicle to wherever  
21                      staging area we had designated in that situation, and  
22                      they wrote the summonses. If the car was required to  
23                      be impounded, if the driver or any of the occupants

1           were going to be arrested, it was all on them. They  
2           took care of all.

3       Q       I see. And then at times, were there multiple cars  
4           pulled over waiting for tickets?

5       A       Yes.

6       Q       And what are the range of -- what's the number of  
7           cars that could be waiting -- the range -- what's the  
8           range of the number of cars that could be waiting for  
9           tickets?

10                           MR. SHORT: Form.

11      A       There was no limit as long as I had officers. So if  
12           I had -- I don't know -- once every 15 days, we have  
13           a thing called double-up crew. That's where our  
14           schedules overlap. Now you've got both platoons  
15           working, 20 officers, 4 lieutenants. How many cars  
16           can I manage with 20 officers and 4 lieutenants? A  
17           lot, like 10 cars.

18                   So did we ever have 10 cars? I'm going to say  
19           yes. And that's only my platoon. That's only the  
20           Strike Force Buffalo City employees. That doesn't  
21           include when I had the State Troopers and the  
22           Sheriff's Department with me too.

23      Q       Okay. Great. That's helpful. We're next going to



1 discuss impounds.

2 MS. MALHOTRA: Would everyone mind if I  
3 took just a two-minute bathroom break?

4 THE WITNESS: No, not at all.

5 MS. MALHOTRA: Okay. Great. Does  
6 anyone need longer than that, or is two  
7 minutes okay?

8 (A recess was taken.)

9 BY MS. MALHOTRA:

10 Q All right. So Strike Force officers sometimes  
11 impounded cars at checkpoints, correct?

12 A I didn't hear your question.

13 Q Strike Force officers sometimes impounded cars at  
14 checkpoints, right?

15 A Yes.

16 Q How often did Strike Force officers impound cars at  
17 checkpoints?

18 MR. SHORT: Form.

19 A Every day.

20 Q And what's the range of cars that would be impounded  
21 at checkpoints each day?

22 A One or two.

23 Q Okay. And was it ever more than that?

1 A Yes.

2 Q All right. What's the most cars that would be  
3 impounded?

4 MR. SHORT: Form.

5 A I don't have that information, but at the -- just at  
6 the checkpoint, I would say maybe even four or  
7 five --

8 Q Okay.

9 A -- would probably be the most.

10 Q Did you have to call a tow truck to come and impound  
11 the vehicle?

12 A Yes.

13 Q Okay. Under what circumstances would officers tow or  
14 impound a car?

15 MR. SHORT: Form.

16 A If the vehicle had a suspended registration, no  
17 insurance, if the vehicle -- the operator is being  
18 arrested for either contraband or a warrant or the  
19 driver -- the operator of the vehicle's driver's  
20 license was suspended, these would all be causes for  
21 impounding the vehicle.

22 Q Did you ever talk about -- or discuss the impound  
23 policy with your subordinates?

1 A I don't -- not really. I mean, we all knew what the  
2 policy was and -- no, not really.

3 Q Were there limitations on when the BPD could not tow  
4 a car?

5 MR. SHORT: Form.

6 A Not under the circumstances that I already described.

7 Q Was it BPD policy that officers could not tow a car  
8 when the registration was expired?

9 MR. SHORT: Form.

10 A I'm not going to say that I know of every single  
11 circumstance, but we didn't tow cars for expired  
12 registration, and sometimes -- this was near the end  
13 of my time with the department -- as internet  
14 capabilities got better, we would let people renew  
15 their registration right there on the phone.

16 Q Okay. I'm going to show you Exhibit 3, MOP Chapter  
17 2, 6.3. Can you see this MOP? I'll direct you to  
18 6.3(E), which states that "Vehicles may not be  
19 impounded for the following reasons: Solely for an  
20 expired Driver's License; Solely for an expired  
21 Registration; Solely for an expired Inspection  
22 Sticker," correct?

23 A That's what it says, and as I stated already, I

1 never -- it was not my policy to impound cars for  
2 those reasons. Those are easily fixed things and  
3 it's not something that you impound cars for.

4 Q Okay. And was it your experience that officers under  
5 your command did not impound cars for those reasons?

6 MR. SHORT: Form.

7 A I would say yes.

8 Q Did you -- strike that.

9 All right. So I am going to show you -- sorry.  
10 Sometimes you said that you would tow cars incident  
11 to arrest, correct?

12 A That's correct.

13 Q If we look at 6.3(D)(3), it states that "Vehicles  
14 shall not be routinely towed incident to arrest,"  
15 correct?

16 A It does say that, yes.

17 Q So would you ever abide by this provision of the MOP  
18 and not tow vehicles incident to arrest?

19 MR. SHORT: Form.

20 A I'm going to say yes. We did adhere to that, but if  
21 there were circumstances that the vehicle was going  
22 to be impounded incident to arrest, that the -- your  
23 question was under what authority did we search the

1           vehicle. And the authority was to do an inventory  
2           search of the vehicle prior to it going to the  
3           impound lot.

4       Q     Okay. But what about -- so would you impound the  
5           vehicle of everyone that was arrested?

6       A     No.

7       Q     Okay. On what occasions would you not impound a  
8           vehicle when someone was arrested?

9       A     If the vehicle was -- if the vehicle was legitimate,  
10          you know, it didn't -- none of the previously  
11          discussed issues were at hand, you know,  
12          registration-wise, insurance and all that and the  
13          person owned the vehicle and he was giving us  
14          authority to just leave it there.

15      Q     Okay. But in other circumstances, you would impound  
16          the vehicle and search it, correct?

17                           MR. SHORT: Form.

18      A     Under most circumstances, yes.

19      Q     Okay. So you would --

20      A     As I stated earlier, if you're driving my car and,  
21          you know, you're going to be arrested -- if you  
22          notice, I said you're being arrested, not me --  
23          you're going to be arrested and they can't get a hold

1 of me -- the police cannot get a hold of me and I'm  
2 at work and they don't know -- and we're not related  
3 in any way and you're telling them just leave the car  
4 there, well, I'm going to tell the officers no,  
5 impound the car because we're responsible for it.

6 Q Okay. So would you say you regularly towed vehicles  
7 incident to arrest?

8 MR. SHORT: Form.

9 A I'm going to say, yes, the majority of the time.

10 Q Okay. All right. So I'm going to show you  
11 COB591930, which is a June 29, 2014 email from you to  
12 Captain Roberts dated June 29, 2014. And I will give  
13 you a moment to read it. Do you need it to be  
14 bigger?

15 A No. I'm good. I've got these spectacles here.

16 Q Okay. Sounds good.

17 A Okay.

18 Q Okay. In this email, you state that you  
19 enthusiastically endorse the aggressive manner in  
20 which Strike Force approaches police work, correct?

21 A Correct.

22 Q An by "aggressive manner," what did you mean?

23 A We're very proactive.

1 Q What do you mean by "proactive"?

2 A Proactive in our patrol duties, proactive in  
3 investigating things.

4 Q Okay. And then you note that you would be remiss if  
5 you did not bring to his attention that to enforce  
6 V&T, you might be violating BPD MOP Chapter 2,  
7 6.3(D), correct?

8 A Yes.

9 Q I'm going to show you 6.3(D) again. And this is  
10 where it says that -- here "Vehicles shall not be  
11 routinely towed incident to arrest." Is this what  
12 you were referring to?

13 A Well, it's in print right there, so yes.

14 Q Okay. Following writing this email or making this  
15 realization, did you continue to instruct your  
16 officers to tow vehicles incident to arrest?

17 MR. SHORT: Form.

18 A Repeat the question, please.

19 Q Following writing this email, did you continue to  
20 both tow vehicles incident to arrest and instruct  
21 your officers that they can tow vehicles incident to  
22 arrest?

23 MR. SHORT: Form.

1       A       We -- not every vehicle was towed incident to arrest.  
2               The vehicles that were towed either met a certain  
3               criteria with the vehicle traffic law or incident to  
4               arrest they were going to be kept as evidence, or as  
5               I stated, if the person had no legal claim to a  
6               vehicle -- the operator had no legal claim to the  
7               vehicle, the owner -- we could not reach the owner,  
8               then the vehicle was towed to the impound lot for  
9               safekeeping reasons.

10              And it was more than one occasion that we had  
11              these vehicles towed under these circumstances that  
12              when we finally did reach the owner of the vehicle,  
13              they wanted to press charges for someone stealing  
14              their car, family members. We did not encourage -- I  
15              personally, nor my counterparts, the lieutenants, did  
16              not encourage officers to tow every single car  
17              incident to arrest.

18       Q       Uh-huh.

19       A       But some of the officers were very aggressive and  
20               thought that it was within their duties to do that.  
21               Now, I went to my captain and wrote him an email  
22               saying we could be in violation of the Manual Of  
23               Procedures here. I wanted some clarification from



1            basically above. I'm following my chain of command.

2            Q            And so -- here you stated that you did not intend to  
3                          inform your officers to perform their duties any  
4                          differently than the way they have, correct?

5            A            I wrote it, yes.

6            Q            So -- but that -- you -- so -- but that you requested  
7                          Captain Roberts to provide his opinion on this  
8                          policy, correct?

9            A            I did.

10          Q            Do you recall if Captain Roberts responded to your  
11                          email?

12          A            A long time ago. Honestly, I don't remember if he  
13                          replied or we had a discussion about it or not. I  
14                          wrote the email. I own it.

15          Q            Okay. And was -- so did you routinely -- was it a  
16                          normal way for you to act that violated the MOP?

17                          MR. SHORT: Form.

18          A            No.

19          Q            All right. So you don't recall making any changes to  
20                          the instructions that you provided your subordinates  
21                          following this email, do you?

22                          MR. SHORT: Form.

23          A            I didn't provide any written guidance, but I did

1 always bring to the attention that the impound thing  
2 was a hot issue for a lot of -- much of the time of  
3 the impound issue. So we tried to -- the vehicles  
4 that didn't require to be impounded, we tried not to  
5 impound them.

6 Q Uh-huh. And here you stated that there's political  
7 fallout resulting from complaints citizens might  
8 file. What kind of complaints did citizens file  
9 about the impound policy?

10 MR. SHORT: Form.

11 A Again, it says here -- it says "might file." I  
12 didn't have any official -- I did not have any  
13 official complaints file that I was aware of, but I  
14 saw the potential for it, and I didn't want my  
15 officers to be the fall guy on a misunderstanding in  
16 the MOP.

17 Q Okay. But here you stated that you don't intend to  
18 inform your officers to perform their duties any  
19 differently, correct?

20 MR. SHORT: Form.

21 A I did say that, and I also said that we did not  
22 routinely impound cars incident to arrest. But some  
23 of the officers, they saw -- let's see, they saw

1 merit, I guess, in impounding cars that maybe could  
2 have -- you could have used some officer discretion.

3 Q Why did they see merit in impounds --

4 MR. SHORT: Form.

5 A You would have to ask them that, and I didn't go to  
6 every scene where a car was being impounded to  
7 intervene on someone's judgment. But when I did have  
8 the opportunity, I would bring it to their attention  
9 that some sounder judgment was necessary here.

10 MS. MALHOTRA: Okay. By the way,  
11 Mr. Short, I just want to remind you again to  
12 not object until I've completed a question.  
13 Thank you.

14 Q So I'm now going to show you Exhibit 18. I  
15 apologize. It's Bates Number COB042024, which is a  
16 November 19, 2015 email from Captain Serafini to you  
17 and other lieutenants, correct?

18 A Yes.

19 Q Okay. And in this email, Captain Serafini states  
20 that "And below is an email from Inspector McLellan  
21 relaying that the Commissioner stated Housing and  
22 Strike Force were told that if an owner of a vehicle  
23 shows up with a valid operator's license, prior to

1           that vehicle being impounded, the vehicle is to be  
2           released to the owner," correct?

3       A       That's what it says.

4       Q       Okay. Who is Inspector McLellan?

5       A       He was the rank of inspector, and he was the Internal  
6           Affairs chief at that time.

7       Q       Okay. And does this sound like an accurate  
8           description of the BPD policy at the time?

9       A       Yes.

10      Q       Okay. I'm now going to show Document Number  
11           COB040533. Okay. This is an email from Captain  
12           Serafini to the lieutenants in the Strike Force,  
13           correct?

14      A       Yes, it is.

15      Q       And it's dated one day after the previous exhibit we  
16           just viewed, which was dated November 19. This  
17           exhibit is dated November 20, 2015, correct?

18      A       It is.

19      Q       And in this email, Captain Serafini states to the  
20           lieutenants of the Strike Force to disregard this  
21           email concerning towed vehicles because you had a  
22           conversation with the commissioner today and that  
23           they should continue -- can continue to tow away

1 vehicles as in the past with the only exception being  
2 if the owner is a passenger in the vehicle and has a  
3 valid driver's license, then the vehicle should be  
4 released to the owner unless a contracted tow truck  
5 has already been called or other extenuating  
6 circumstances; is that correct?

7 A That's what it says.

8 Q Do you recall having a conversation with Commissioner  
9 Derenda about impounds?

10 A I had many conversations with Commissioner Derenda  
11 that would routinely start out with the issues  
12 surrounding the Emergency Response Team, and then  
13 near the end of the discussion would turn towards how  
14 things are going in Strike Force Unit. Do I remember  
15 exactly the contents of our discussion that day, no,  
16 I can't recall.

17 I can't recall, and I said previously that if  
18 the person showed up -- the owner of the vehicle with  
19 a valid driver's license before we towed it, we'd  
20 give them the car.

21 Q Why would you -- why would you try to persuade  
22 Commissioner Derenda to change the policy from -- to  
23 change the policy from -- the policy that Captain

1           Serafini articulated the day prior to this policy?

2           A       The policy is the same.  I mean, I don't understand  
3           why the captain would have wrote this email because I  
4           said that we give them the car -- if the owner shows  
5           up with valid license, we would give them the car.

6                     And he says that in this email, and then he says  
7           it in the next email too.  It's the same thing.

8           Q       Here Captain Serafini says the vehicle should be  
9           released to the owner unless a contracted tow truck  
10          has already been called or extenuating  
11          circumstances --

12          A       Okay.  The contracted tow, that's -- that was  
13          something we went through because the city couldn't  
14          hire enough -- keep the tow truck position manned  
15          because they don't pay anything.  They want to pay  
16          their tow truck drivers \$14 an hour, and we pay our  
17          mechanics \$14 an hour.  You couldn't get me to wheel  
18          my toolbox out of the garage for that.

19                     So for a while, we were short on tow truck  
20          drivers.  And the tow truck driver was also  
21          responsible for changing flat tires on police  
22          vehicles -- these knuckleheads would fail to make it  
23          to the gas pump in time and run their car out of

1 gas -- and taking care of the police fleet.

2 So he didn't have time to be running around  
3 doing impounds, not just for Strike Force, citywide.  
4 This was a citywide policy. So now we contracted  
5 with several civilian companies to do our impound  
6 work. It went on for about two or three years. Once  
7 the contracted tow has been called, the city's got to  
8 pay them.

9 Q Okay. And so it was your opinion that that should  
10 take precedence over whether the owner of a car was  
11 available to take the vehicle?

12 A That's a decision made way above my pay grade, and  
13 that's like a -- that's a City of Buffalo law office  
14 issue as far as who's going to pay for this tow truck  
15 when the person shows up with their license.

16 Q Uh-huh.

17 A That's not a lieutenant -- you know, I'm instructed  
18 that once the contracted tow has been notified --  
19 once the contracted tow has been notified that the  
20 vehicle was going to impound -- and the procedure for  
21 that was the officers on the street would contact  
22 dispatch that they needed a tow. The dispatcher  
23 would call whatever company -- they were on a

1 rotation.

2 Whatever company was on for that day, they would  
3 come back on the radio, and they would tell the car  
4 crew that the tow truck had been notified and it was  
5 an estimated 30-minute wait, 50-minute wait,  
6 10-minute wait.

7 Q Okay. Well, what I'm asking here is that Captain  
8 Serafini indicates that you talked to Commissioner  
9 Derenda, and as a result of that conversation, that  
10 the policy was now that a car should not be towed if  
11 the owner is a passenger in a vehicle and has a valid  
12 license unless a contracted tow truck has been called  
13 or other circumstances exist.

14 So it sounds -- according to this email, the  
15 commissioner and captain changed their policy so --  
16 to not allow valid owners to drive the car if the tow  
17 company had been called; is that correct?

18 MR. SHORT: Form.

19 A If you're asking me if a valid owner showed up and  
20 the tow company had been contacted, could they take  
21 their car -- is that what you're asking me?

22 Q It appears from this email that Captain Serafini  
23 instructed that the car should not be taken if a



1 valid owner was present but a tow truck company had  
2 already been called.

3 A Yes, that was the policy.

4 Q Right.

5 MR. SHORT: Form.

6 Q According to this email, you supported and advocated  
7 for this policy.

8 A The policy is the same as the previous email you  
9 showed me. I don't know why the captain chose to  
10 word it this way. I didn't persuade the commissioner  
11 to do anything. I've already stated if the  
12 registered owner showed up with a license, we would  
13 give them the car.

14 We would give them the car if -- whether it was  
15 the city tow or -- not the contracted tow. The  
16 contracted tow is getting paid on a contract, and  
17 once he's called, he's getting paid for that money.

18 Now, he's got to -- he's got to show that he  
19 performed a service to bill the city, and that's  
20 going to be impounding this car and taking it to the  
21 impound lot. And the city -- I'm getting in the  
22 weeds here, but I assume the city recovers some of  
23 that money by charging the person for the tow and an

1           impound.

2                           MR. SHORT:   Form.   Didn't mean to  
3                           interrupt you.

4                           THE WITNESS:   That's okay.

5    A        So I think there's a -- there's common confusion by  
6            the way the captain worded this email that we're  
7            seeing here because I didn't change the  
8            commissioner's mind about anything.  That was the  
9            policy.  That was the policy that we did, that we  
10           had.  If the owner showed up with a license, he could  
11           have his car as long as he got there before it was  
12           impounded.

13   Q        And as long as he was there before a tow truck -- a  
14            contracted tow truck had already been called,  
15            correct?

16   A        Correct.  I didn't have anything to do with that.  I  
17            don't have anything to do with the contracted tow or  
18            any of that.  That's way above my pay grade.  We were  
19            just told once the contracted tow has been called, we  
20            had to let them take the car.

21   Q        Okay.  But you agree there's a difference between the  
22            policy Captain Serafini announced the day before on  
23            November 19th where he instructs the lieutenants that

1 if an owner of a vehicle shows up with a valid  
2 operator's license prior to that vehicle being  
3 impounded, it is to be released, correct?

4 A And that's what we did.

5 MR. SHORT: Form.

6 Q On the 21st, he changed that order to state that if a  
7 contracted tow truck has already been called that the  
8 owner -- the vehicle should not be released to the  
9 owner, correct?

10 A Can you go back --

11 MR. SHORT: Form.

12 A -- to the last one so I can read it again?

13 Q Sure.

14 A Okay. I'm really just winging it here because I'm  
15 not going to tell you that I remember the  
16 conversation. But during the conversation, I might  
17 have brought it to the commissioner's attention, hey,  
18 if you're going to give this vehicle back to this  
19 person and the contracted tow has been called, who's  
20 paying for the tow.

21 That's going to fall on the taxpayers' back, the  
22 City of Buffalo. Now, if the person's car was slated  
23 for tow, those are the -- as I stated earlier, those

1 are circumstances of their creation. They put their  
2 car in the hands of somebody who didn't have a  
3 license, who had a warrant for their arrest, whatever  
4 we've already discussed. Now because we've fallen  
5 into this circumstance where vehicles -- where we  
6 need a contracted tow truck service, someone has got  
7 to pay for that.

8 Why should that fall on the taxpayers of the  
9 city of Buffalo and not on the person who put  
10 themselves in that position? That's all I can --  
11 that's all I can glean out of these two emails. I  
12 didn't convince the commissioner -- first I'm only a  
13 lieutenant. I don't have the authority or the  
14 ability to convince anybody, the commissioner, to  
15 change his policies.

16 But I just probably pointed it out that, hey,  
17 the contracted tow is still going to get paid, and if  
18 the licensed driver shows up and the contracted tow  
19 has confirmed that they're on their way, he has the  
20 right to bill the city for his manpower, his gas and  
21 his services. And how is the city going to recover  
22 that money if not from the person who's supposed to  
23 get it towed?

1           And as a matter of fact, you can look it up.  
2           There's McMahon's towing or something on Bailey. Ten  
3           years ago, they got jammed up with the city parking  
4           service for putting the boot on people's cars in  
5           public parking lots overnight when they were down  
6           partying on Chippewa, and then they'd sit in the tow  
7           truck waiting and then make the people pay in cash to  
8           take the boot off their car.

9           So you've got all these things going on too at  
10          the same time. My guys are going to get accused of  
11          giving a payoff -- or let's say the person shows up  
12          and says I'll pay for the tow and you give me the  
13          car, well, the cops got a cut of that. No, no, no.

14        Q          So you were concerned about the impact of -- on the  
15          city's revenue when you --

16                   MR. SHORT: Form.

17        A          At this point, I'm pointing out the common sense take  
18          on this. Someone is going to pay for this tow truck.  
19          I was a city guy my whole life. Why should the --  
20          why should the homeowners of the city of Buffalo have  
21          to pay this tow truck because you lent your car to  
22          somebody who didn't have the right to drive it?

23        Q          All right. So I appreciate that. I appreciate that.

1           So I'm going to show you what's marked Bates  
2           Number COB040355. This is an email from Lieutenant  
3           Wilcox to Captain Roberts and Chief Brinkworth dated  
4           March 17, 2014. And you were not on this, but I want  
5           to ask you a few questions about it.

6           And who's David Wilcox?

7           A       He was -- excuse me. He was a Strike Force  
8           lieutenant that worked opposite me, the port and  
9           starboard platoons. Lieutenant Wilcox was a  
10          lieutenant who worked opposite me, the port and  
11          starboard thing. He was on duty when I was off on my  
12          regular days off.

13          Q       Okay. Great. So if you could take a moment to read  
14          this email --

15          A       Okay.

16          Q       So I want to direct your attention to the second  
17          paragraph of the email. In this email, Lieutenant  
18          Wilcox stated "our unit impounds more cars and writes  
19          more summons (by a wide margin) than any district or  
20          unit in the city," correct?

21          A       That's what it says. That's Dave.

22          Q       Is that consistent with your understanding of the  
23          Strike Force's productivity?

1 MR. SHORT: Form.

2 A We were very productive, yes. I think one year, we  
3 took more guns off the street than the rest of the  
4 city combined.

5 Q How about with regard to impounds?

6 A It wasn't my priority. Maybe it was Dave's. You  
7 know, I wasn't privy to this email. I think the  
8 point he's trying to make is the City of Buffalo  
9 doesn't purchase a lot of new equipment. And as we  
10 were purchasing new equipment, I think he was trying  
11 to make a play for getting some of this new equipment  
12 because we're out there using it.

13 MR. SHORT: Form.

14 A I'll ask you a question. Are all lawyers as good as  
15 the last one? It's the same in every profession. So  
16 some officers aren't -- what's the point of giving  
17 somebody a brand new piece of state-of-the-art  
18 equipment if they're not going to go out and use it  
19 to the best benefit of the police department? They  
20 want the car because it's got the best air  
21 conditioning unit in it.

22 Q So my question is that -- is whether you agree that  
23 your unit impounded more cars and writes more summons

1 than any other district in the city?

2 MR. SHORT: Form.

3 A I don't see why Dave would misrepresent it, so I'll  
4 say yes.

5 Q And that a single plate reader has been paid for many  
6 times over, do you agree with that?

7 MR. SHORT: Form.

8 A It's just a statement to point out that we use our  
9 plate reader out there for what it's intended to be  
10 used for.

11 Q And so would you agree that Strike Force's impounds  
12 and ticket activity brought in revenue for the city?

13 MR. SHORT: Form.

14 A I don't think we ever generated revenue. That's not  
15 the goal of any police agency.

16 Q Okay. We will talk about that in just a few minutes.  
17 For now, I'm going to show you another exhibit which  
18 is a -- it's marked COB592452. And let me share my  
19 screen. And this is an email exchange between Joseph  
20 Panus and you and some other individuals. Who is  
21 Joseph Panus?

22 A Joe was a lieutenant who was the quartermaster. He  
23 wore a lot of hats, but he was quartermaster.



1 Q He was what?

2 A Quartermaster.

3 Q What does that mean?

4 A He's in charge of all the ordering supplies and  
5 oversees chunks of the budget and things like that.  
6 It's an administrative position.

7 Q All right. Thank you. And on page 4 of this exhibit  
8 is a P-31, correct?

9 A Correct.

10 Q All right. Have you seen this document before?

11 A Well, I've seen this document many, many times in my  
12 career. This specific one, I think this was the  
13 guy's attorney tried to get his car released for a  
14 long time.

15 Q Okay. What is a P-31 used for?

16 A That's an impound paperwork.

17 Q And who filled it out?

18 A The officer that's initiating the impound.

19 Q Were officers required to fill out a P-31 form every  
20 time they impounded a car?

21 A Yes.

22 Q And were they required to get the supervisor to sign  
23 the P-31 form for impounds?

1 A I didn't hear your question. You were broken up.

2 Q Were officers -- to your recollection, were officers  
3 required to get a supervisor to sign the P-31 form  
4 for all impounds?

5 A Not the entire time that I was on the department.  
6 That came into being later on.

7 Q Did you review the completed P-31 forms for your  
8 subordinates?

9 A Yes.

10 Q Have you ever noted that a P-31 form was improperly  
11 filled out?

12 A It's paperwork, and we're all human. I'm sure that I  
13 did find things that were filled out incorrectly.

14 Q And what did you do when saw that a P-31 was filled  
15 out incorrectly?

16 A Correct it.

17 Q All right. And did you give officers P-31 forms  
18 prior to checkpoints?

19 A They were available in a general area of -- like a  
20 pigeonhole thing with all the forms. They just took  
21 them themselves.

22 Q And to your recollection, did you review the P-31  
23 form either before or after a vehicle was impounded?

1 A Have I reviewed one?

2 Q Did you review them before a vehicle was impounded?

3 A Not always.

4 Q Okay. So did anyone else review them before your  
5 subordinates impounded a vehicle?

6 A I can't -- I don't know that. I don't know the  
7 answer to that question.

8 Q Okay. So if we look at pages 1 through 3 of this  
9 exhibit, is an email exchange between Joseph Panus,  
10 Mary Pat Kaempf from -- and Laurie Fitzgerald. Do  
11 you know who Mary Pat Kaempf is?

12 A Yes.

13 Q Who is she?

14 A She was a detective that was -- I don't know what her  
15 official title was, but she was involved in asset  
16 seizures.

17 Q All right. And Laurie Fitzgerald, do you know who  
18 she was?

19 A If you stop moving it around, I'll -- Laurie, I'm  
20 going to guess that she's probably the report  
21 technician that worked for Mary Pat Kaempf.

22 Q Let's start at the bottom here. So this is dated  
23 November 13, 2013, and Joe Panus informs you that

1           there's a vehicle that's been at Seneca Street since  
2           May 2013, correct?

3           A       That's what it says.

4           Q       And asks you about the status of that vehicle, right?

5           A       That's what he did.

6           Q       And then you respond that you're running the case to  
7           the ground and pretty sure that -- you respond that  
8           you're running the case to the ground and that you're  
9           pretty sure the guy took a plea; is that right?

10                   MR. SHORT:   Form.

11          A       Yes.

12          Q       And "If so, I will let you know and as far as I'm  
13           concerned the car belongs to the city;" is that  
14           right?

15          A       Correct.

16                   MR. SHORT:   Form.

17          Q       Okay.  Why would the car belong to the city in this  
18           circumstance?

19          A       Under asset seizure laws because it was recovered  
20           with a large amount of narcotics and the person --  
21           it's not my job to prove this, but it's somebody else  
22           to prove it -- that the gentleman used money from his  
23           nefarious narcotics dealings to purchase the car.

1 Q But at this point, the person had not yet taken the  
2 plea, correct?

3 A I would have to find -- at the moment I replied, I  
4 have to find that out from the district attorney's  
5 office.

6 MR. SHORT: Form.

7 Q And so why would the city not look for another  
8 relative to return this car to?

9 A The car was not being held in the standard impound.  
10 It was being held as evidence in the Buffalo City  
11 police garage.

12 Q But here you represent that the car belongs to the  
13 city. Is that routine for cars that are held as  
14 evidence in the --

15 A It's just -- it was just a term. I chose -- it was a  
16 bad choice of words, meaning that we were going to  
17 pursue asset seizure on it.

18 MR. SHORT: Form.

19 Q And how frequently did the city take possession of  
20 cars that it impounded?

21 A I don't have an answer for that.

22 Q In your experience, would the Buffalo Police  
23 Department and City of Buffalo take possession of

1 cars at times, of cars impounded?

2 A I don't know that. I just felt that this case here,  
3 he had met the criteria for asset seizure because of  
4 the large amount of narcotics that we recovered in  
5 it.

6 Q So you felt that the City had the right to the car  
7 because of the asset seizure; is that right?

8 A Correct.

9 MR. SHORT: Form.

10 Q Then if we look on page 2 of this email, you indicate  
11 more than a month later -- on the -- more than a  
12 month later on June 19th -- I'll give you a second to  
13 read it.

14 A I read it.

15 Q Okay. So here you indicate that Mr. Goss is taking a  
16 scheduled plea in January for six years and three  
17 months -- three from parole, and the plea includes  
18 the forfeiture of the vehicle they seized, correct?

19 A Correct.

20 Q All right. All right. So if you look at the bottom  
21 of page 1 from Laurie Fitzgerald -- I'll give you a  
22 minute to read that email.

23 A Which part am I reading, the top, bottom, all of it?

1 Q The email from Laurie Fitzgerald to you.

2 She states to you that the car is not seizable;  
3 is that correct?

4 A That's what she says, yes.

5 Q All right. And then you respond that before you sign  
6 the release, you wanted to touch base because the guy  
7 is on parole, gets pinched with felony weight and has  
8 no legal source of income, correct?

9 A Yes.

10 Q And then you note that the car is registered to him  
11 and you can't seize it, correct?

12 A That's what I said.

13 Q Then you said "baby momma that he was living with has  
14 also been implicated in the arrest and she is taking  
15 a plea deal in all this" as well; is that right?

16 A That's what it says.

17 Q Okay. And then in the email above, Mary Pat then  
18 responds to you, and then she says that it's not  
19 seizable because it has to be -- there has to be an  
20 investigation that is done to determine if there's  
21 probable cause and submitted within 25 days of the  
22 seizure, correct?

23 MR. SHORT: Form.

1 A I'm still kind of reading it, but okay.

2 Q Do you want to read it? Go ahead. Take a minute.

3 A Okay.

4 Q Okay. And then above you state that -- I'm going to  
5 give you a moment to read his response.

6 So in this email, you state -- you email Mary  
7 Pat Kaempf and let her know you were totally unaware  
8 of the procedures involving seizures, correct?

9 A That's what it says.

10 Q And in the same email, you state that it pains you  
11 greatly to release this turd's car to him, correct?

12 A Yep.

13 Q All right. Prior -- what did you mean by that?

14 A He's a turd.

15 Q What do you mean?

16 A That's what I mean by that.

17 Q What do you mean by that?

18 A He's not a person of high moral standing. He makes  
19 his living dealing dope to kids. And the money he  
20 makes from that, he bought this car, and I felt that  
21 the car should have been seized.

22 And according to Detective Kaempf's email, we  
23 did do everything right except we didn't file



1 paperwork in a timely manner.

2 Q Why do you think the car -- the city is entitled to  
3 his car because he is, in your terminology, a turd?

4 MR. SHORT: Form.

5 A I don't care if the city gets the car or not as long  
6 as it's taken away from him.

7 Q Why do you think it's important to be taken away from  
8 him?

9 MR. SHORT: Form.

10 A Because it's ill gains of his criminal activity.

11 Q So you believe the city has a right to his car  
12 because he committed a crime?

13 MR. SHORT: Form.

14 A That it is the -- it is the benefit of his crime.

15 Q How do you know that?

16 A I already told you, it's not my job to investigate  
17 all that. I impounded the car. I filled out the  
18 paperwork, and I sent it forward.

19 He already made a statement that he has no  
20 legitimate means of income, neither did his  
21 girlfriend, and that their means of income is  
22 illegal -- I don't have all the paperwork, his  
23 7-10-30 and everything else in front of me.

1           But he ends up taking a plea for six years.  
2           Guilty people don't take pleas -- I'm sorry.  
3           Innocent people don't take pleas. So he's admitting  
4           his guilt in his narcotic trafficking and his  
5           girlfriend is complicit. I don't care if they take  
6           the car and crush it, but he shouldn't have it.

7           Q       Is that a city policy that the city is entitled to  
8           the property of individuals who are charged with such  
9           crimes?

10                       MR. SHORT: Form.

11          A       I don't think it's a city policy at all. I think  
12           it's more of a federal narcotics law, asset seizures.  
13           Those aren't city -- those aren't even, I don't  
14           think, state policy -- they probably are state  
15           policy.

16          Q       So do you believe there's federal authority to allow  
17           the city in this circumstance to take possession of  
18           his car without --

19                       MR. SHORT: Form.

20          A       I think there's legal grounds to take somebody's  
21           assets that were gained through illegal activity,  
22           yes.

23          Q       Okay.

1 A Go sell his car and give the money to the City  
2 Mission.

3 Q Go give his car --

4 A Sell his car and give the money to the City Mission.

5 Q What is the City Mission?

6 A It's a, you know -- it's a mission. It's a -- it's  
7 for men and women that -- homeless people.

8 Q And was this your --

9 A The City Mission provides meals and a place for these  
10 people to sleep.

11 Q Was this your practice to advocate for seizing the  
12 cars of individuals who have been charged with  
13 crimes?

14 MR. SHORT: Form.

15 A This is probably the only one I ever did.

16 Q Okay. And why did you -- why did you refer to his  
17 girlfriend as a baby momma?

18 A That's a politically incorrect statement.

19 Q What do you mean by that?

20 A They're not married and they have a child together,  
21 and she's the momma of the child.

22 Q How do you know that?

23 A Through interviewing them both.

1 Q And are you aware that "baby momma" is a derogatory  
2 term?

3 A Yes.

4 Q Why did you use it in the circumstance?

5 A Poor judgment.

6 Q Is her status as a single mom relevant to whether the  
7 car should be released?

8 A No.

9 MR. SHORT: Form.

10 A Her status is she's complicit in the crime is why the  
11 car should be taken, and not race.

12 Q Are you aware that -- strike that.

13 Okay. So were officers encouraged to impound as  
14 many vehicles as possible?

15 MR. SHORT: Form.

16 A I don't think they were encouraged to impound as many  
17 cars as possible. I think they were encouraged to  
18 impound cars as the situation dictated.

19 Q All right. I'm going to show another exhibit. It's  
20 COB040275. This is a February 25, 2014 email from  
21 Captain Roberts to you and other Strike Force  
22 lieutenants. And in -- I'll take you -- I'll give  
23 you a moment to review this email.

1           So in this email, Captain Roberts states that  
2           Strike Force was averaging ten impounds a day, but  
3           that they had fallen off that number, correct?

4           A       Correct.

5           Q       And that he informs you and other lieutenants to  
6           stress to the troops to continue to impound vehicles  
7           when warranted, correct?

8           A       That's true.

9           Q       And what is your understanding of why impounding  
10          vehicles -- as many vehicles as possible was  
11          important to Captain Roberts and the Strike Force?

12                   MR. SHORT:   Form.

13          A       I think you would have to -- I'm going to take a stab  
14          at your question, but I think that's really for  
15          Patrick Roberts to answer.

16                   But I think it's just a -- it's a measure of our  
17          productivity, that we are out there doing a job, and  
18          if we encounter these vehicles that should be  
19          impounded that we are -- we should be out there doing  
20          it.

21          Q       And how did you respond to Captain Roberts' directive  
22          to impound more vehicles to get up to ten a day?

23          A       I'm not sure that we ever reached the ten a day

1 thing, again, you know, right after this email. But  
2 I probably responded by taking the email, printing it  
3 out, walking into the briefing that I discussed at  
4 the beginning of every tour, and along with the road  
5 safety checkpoint briefing, I probably read this  
6 email to all the officers and told them that the  
7 commissioner and captain would like to see the  
8 impounds.

9 Q Okay. How did impounded vehicles advance Strike  
10 Force's mission to eliminate crime in hotspots  
11 throughout the city?

12 A I didn't hear your question. It was broken up a  
13 little.

14 Q How did impounding vehicles advance Strike Force's  
15 mission to eliminate hotspots -- crime hotspots  
16 throughout the city?

17 A Well, it slows down transportation of illegal  
18 narcotics and firearms from one location to another.

19 Q Okay. All right. So I'm going to show you another  
20 exhibit.

21 A I can't wait.

22 MS. MALHOTRA: And Luanne, could you  
23 just repeat Mr. Whelan's response?

1 (Record read by reporter.)

2 Q And so would you say that that was -- strike that.

3 I'll just keep going. So I'm going to ask a  
4 question. So were all the cars that you impounded on  
5 Strike Force involved with narcotics?

6 A No.

7 Q How did impounding cars slow down the flow of  
8 narcotics in Buffalo?

9 MR. SHORT: Form.

10 A If you take the drug dealer's car away, he's either  
11 got to walk, ride a bicycle or get on a bus.

12 Q Okay. Okay. Thank you. So I'm now going to show  
13 another email from Brian Patterson to you dated May  
14 25, 2012. And this was while you were in the B  
15 District, correct?

16 And in this email, Brian Patterson instructs you  
17 and other lieutenants to call in overtime for four  
18 different dates, right, correct, 5-25-12, 5-26-12,  
19 5-27 and 5-28-12, correct?

20 MR. SHORT: Form.

21 A Yes. But I will --

22 Q Do you want to take a look?

23 A No. I'm going to preface it by saying I wasn't in

1 the district at this time. I was an A District  
2 lieutenant at this time. And this is the simple  
3 administrative things that the department -- when he  
4 sent an email, there's a tab on his email that says B  
5 District lieutenants. He hits it and it fills in all  
6 the names for him. But I'm not there. I'm not  
7 working anymore. I'm in A District.

8 Q Okay. So --

9 A This kind of goes back to the thing when you asked  
10 me, even though I was injured and not going to work,  
11 I was still getting the emails. Yeah, they're still  
12 sending me emails, but I don't have access to them.

13 Q All right. So --

14 A I'll answer any question you want about this  
15 directive, but I wasn't there.

16 Q Thank you for your clarification of that.

17 So you would not have responded to his request  
18 for overtime on the following dates; is that right?

19 A No, ma'am.

20 Q Okay. Okay. So just to finish up some questions  
21 about checkpoints -- I'll stop the share.

22 So under what circumstances would officers  
23 arrest individuals at checkpoints?



1 A As I stated, if they were found with contraband or  
2 they had an outstanding arrest warrant, if they were  
3 acting suspiciously and their suspicious behavior led  
4 to an investigation to uncovering something illegal.  
5 Like bailing out of a car, running through the yards  
6 as they're approaching a checkpoint, that will get  
7 your attention.

8 Q Was there any other suspicious activity that would  
9 lead to an arrest during a checkpoint?

10 A I'm sure there probably was. I can't recall any  
11 particulars.

12 Q How frequently would people get arrested at  
13 checkpoints?

14 MR. SHORT: Form.

15 A It's the same circumstances that I said with a car  
16 accident. They're random. I could go two days and  
17 no one get arrested, and then the next day, five  
18 people are getting arrested. I can't control who is  
19 driving through the checkpoint.

20 Q All right. Did police officers need your approval  
21 before arresting individuals at checkpoints?

22 A No.

23 Q And would these arrests include arrests for vehicle

1 and traffic violations?

2 A If they committed vehicle and traffic violations and  
3 there was a crime to be arrested for, those vehicle  
4 and traffic violations would be included in the  
5 arrest paperwork.

6 Q Okay. And what kind of violations are arrestable  
7 violations under V&T law?

8 A Arrestable, is that what you're asking me?

9 Q Yes.

10 A There's only one arrestable V&T violation that we  
11 enforced in the city of Buffalo, and that was  
12 unlicensed -- aggravated unlicensed operation first,  
13 which is an E class felony. That's more than 15  
14 suspensions on more than 15 days -- or 15 days  
15 minimum. We didn't arrest people for vehicle and  
16 traffic violations other than that, and even that was  
17 very rare, because the city police department,  
18 there's just too much going on.

19 It's not a -- it's a nonviolent thing. So in  
20 those circumstances, the lieutenant would likely call  
21 the shift officer for permission to give an  
22 appearance ticket on the street. We went through  
23 administrative things. There was a time when the

1           lieutenants could just give an appearance ticket.  
2           They removed that from our authority and you had to  
3           call the shift officer.

4       Q     Thank you for that.  We're going to move on to  
5           another topic.  So are you aware that in the first  
6           fiscal year after the Strike Force was created,  
7           Buffalo Police Department issued 92 percent more  
8           tickets than the previous year?

9                           MR. SHORT:  Form.

10      A     The question is am I aware that after the Strike  
11           Force was created, we issued 92 percent more tickets  
12           at the city?

13      Q     Uh-huh.

14      A     I wasn't aware of that, but common sense would tell  
15           me that now you've got this unit that is not tied to  
16           radio dispatch, and they're out there looking.  They  
17           are looking for anything.

18                           And as I stated earlier, if you weren't  
19           conducting -- if you weren't busy conducting your --  
20           you would never invite me into your life.  So my  
21           officers are out there looking for these violations,  
22           for an opportunity to pull you over and talk to you.  
23           So it makes sense to me that yes, the summonses would

1 go up.

2 Q So I'm going to now share Exhibit 24, which is an  
3 email from -- dated July 9, 2013 from you to  
4 Brinkworth. And I'll give you a second to read it.

5 In this email, you describe how it was a  
6 double-up night but that you do not have enough cars  
7 which left -- which left Strike Force officers on  
8 foot patrol, correct?

9 A That's what it says, yes.

10 Q And you state that "I am sure the visual presence was  
11 appreciated --" the last line is "I am sure the  
12 visual presence was appreciated but this unit is  
13 numbers driven and some of my best officers were left  
14 on foot patrol;" is that correct?

15 A That's correct.

16 Q What did you mean by that?

17 A What did I mean by what?

18 Q That the unit is numbers driven.

19 A Again, it's -- the numbers that we are submitting in  
20 the Strike Force Daily Report, that is a measure of  
21 our productivity. And now I've got 20 officers, four  
22 lieutenants and the city is not getting the  
23 productivity out of the unit that they could have had

1 we been able to borrow -- these cars are simply  
2 sitting two blocks away locked up.

3 Q By "numbers," you mean tickets and impounds?

4 A That's how you measure productivity, yes.

5 Q Okay. And how did the numbers advance Strike Force's  
6 mission to eliminate hotspots throughout the city?

7 A You were broken up again. How did you what?

8 Q How did those numbers and high productivity advance  
9 Strike Force's mission to eliminate hotspots  
10 throughout the city?

11 A When you're making arrests in the high crime areas of  
12 any city, your visibility is reassuring to the  
13 citizens that are trying to live a normal life there  
14 and you're taking criminals off the street in those  
15 areas.

16 Now, their criminal activity is what brought me  
17 over there, and the numbers are generated by their  
18 criminal activity, not my officers' desire because  
19 every cop's desire is to sit there and watch the  
20 football game on television and eat pizza.

21 Q So the numbers are what brought you to Strike Force,  
22 is that what you said?

23 A No, that's not what brought me to Strike Force.

1 MR. SHORT: Form.

2 Q Can you repeat that again?

3 A No, that's not what brought me to Strike Force.

4 MS. MALHOTRA: Luanne, can you read back  
5 what Mr. Whelan said prior to "pizza"?

6 (Record read by reporter.)

7 Q So by engaging in high levels of traffic enforcement,  
8 your intent was to reduce criminal activity; is that  
9 correct?

10 A Yes. Yeah, that's accurate. When you do traffic  
11 enforcement, it opens up other avenues.

12 Q All right. Are you aware of any studies that showed  
13 that traffic enforcement reduced criminal activity?

14 A No.

15 Q What's your basis for saying that?

16 A I didn't hear you.

17 Q What's your basis for saying that traffic enforcement  
18 reduces criminal activity?

19 A My firsthand experience in the city of Buffalo. And  
20 if those results don't permeate outside the city of  
21 Buffalo, I can't speak to that. But in the city of  
22 Buffalo while Strike Force Unit was out doing routine  
23 patrol and traffic enforcement, we often encountered

1 people involved in criminal activity.

2 You don't make arrests sitting in the station  
3 house. You go out and drive around and you hear  
4 gunshots shots fired the next block over, you respond  
5 to that.

6 Q So checkpoints and traffic enforcement were intended  
7 to reduce criminal activity in the city of Buffalo;  
8 is that right?

9 MR. SHORT: Form.

10 A Well, I've already stated the road safety checkpoints  
11 that we performed were there to enforce the vehicle  
12 and traffic law, give us exposure and improve the  
13 quality of life for the citizens of Buffalo.

14 Now, if a byproduct of that is arresting someone  
15 involved in criminal activity, then that's a win.  
16 That's a win it my book. Now, the mission of every  
17 police department is to reduce crime, to go out and  
18 reduce criminal activity within their assigned areas.

19 Q Okay. And were there ever any studies done of how  
20 checkpoints might increase traffic safety in the city  
21 of Buffalo?

22 MR. SHORT: Form.

23 A None that I'm personally aware of.

1 Q So what's your basis for saying that traffic  
2 checkpoints increased traffic safety in the city of  
3 Buffalo?

4 A Again, based on my own personal experience and  
5 observations. When you're on Broadway Avenue, which  
6 is a pretty much straight shot out to Chippewa after  
7 let's say a hockey game and they see the police  
8 sitting there with a car pulled over and red lights  
9 flashing -- when people encounter the police with the  
10 red lights flashing, they have a tendency to go the  
11 speed limit and stop at the traffic signal at  
12 Memorial and Broadway. It's visibility, so yes, it  
13 does improve the traffic safety.

14 Q And what about suspended licenses, how do -- how does  
15 enforcing laws regarding suspended licenses improve  
16 traffic safety?

17 A Driving in the state of New York is not a right.  
18 It's a privilege. That privilege comes with rules  
19 and laws that you have to -- that you're required to  
20 perform in order to keep a valid driver's license.

21 Now, if you get issued a summons for failure to  
22 stop for a stop sign, red light, speeding and you  
23 just take it home and throw it in the garbage, great,



1           you're Mr. Anti-government, but guess what, in 60  
2           days your license is suspended because you didn't  
3           respond to the license -- the summons. So you  
4           forfeited your privilege to drive in the state of New  
5           York.

6       Q     Okay. But at checkpoints, you don't -- at  
7           checkpoints you don't identify and issue traffic for  
8           drivers that didn't stop at stop signs or red lights,  
9           correct?

10                           MR. SHORT: Form.

11    A     No. That's their past history on their license.

12    Q     So are unpaid tickets the only reason that an  
13           individual's license can be suspended?

14    A     No. Scofflaw too.

15    Q     What is scofflaw?

16    A     Child support, you didn't pay child support, unpaid  
17           park -- suspended registrations are often attached to  
18           scofflaw for unpaid traffic tickets.

19    Q     What if someone could not afford to pay the tickets  
20           that they were issued, how -- and their license is  
21           suspended, how does that impact traffic safety?

22                           MR. SHORT: Form.

23    A     That's an issue for the New York State legislature,

1 not me. They're the ones that wrote the laws and  
2 then they gave me the tools to enforce those laws.

3 Q But enforcing driver's suspension laws which have  
4 recently been amended to -- against drivers who  
5 weren't able to pay for their tickets, does that have  
6 an impact on traffic safety?

7 MR. SHORT: Form.

8 A Not every person's suspension has an influence on  
9 traffic safety, but some do. What about the person  
10 who's got a suspended license for a DWI? He's behind  
11 the wheel and uninsured, unlicensed, aggravated  
12 operation and he hits your car and then drives away  
13 too, because they do that. They drive away after  
14 they do these things.

15 Q Are you aware that prior to last year when your state  
16 law changed that the majority of drivers who had  
17 suspended licenses had suspended licenses because  
18 they were unable to pay for the tickets that were  
19 issued to them?

20 A No.

21 MR. SHORT: Form.

22 A No, I wasn't aware of that.

23 Q And what about tinted windows, how did tinted windows

1 enforcement increase traffic safety?

2 A That's an officer safety issue.

3 Q How is that?

4 A Imagine it's you walking up in a bad neighborhood on  
5 a traffic stop to a car that's got blacked-out  
6 windows and you don't know who's behind that window.  
7 They could be pointing a gun at you and you can't  
8 even see it.

9 That's 100 percent officer safety, and I'll tell  
10 you what else. I've driven those same cars back to  
11 the station when we were unable to leave them on the  
12 street. You can't see out the windows to drive, so  
13 it's definitely a traffic safety issue.

14 Q Are you aware that tinted windows are among the  
15 lowest ranked reason for traffic accidents in New  
16 York State?

17 A No, I wasn't aware of that.

18 MR. SHORT: Form.

19 Q All right. So I'm now going to turn to an exhibit  
20 where the Bates number is COB040614, dated June 23,  
21 2014. And this is an email chain between you and  
22 Former Commissioner Derenda, and it is in response --  
23 Derenda in response to an email about a new Strike

1 Force daily response -- report dated June 23, 2014  
2 sent in an email, correct?

3 A Yes.

4 Q Okay. What is a Strike Force Daily Report?

5 A You showed me it earlier in this interview. It's a  
6 form that we fill out, a column of numbers that we  
7 fill in at the end of the night. And then there's a  
8 block for the narrative for any significant action  
9 that may have occurred that evening -- that shift.  
10 That's it.

11 Q So this is an exhibit, Bates Number COB026995. And  
12 so this is a Strike Force Daily Report, correct?

13 A That is correct.

14 Q So in response to a Strike Force Daily Report dated  
15 June 23, 2014, Commissioner Derenda writes you --  
16 writes Captain Roberts an email dated June 23rd  
17 stating, "Numbers have not been good. Are we doing  
18 roadblocks? I need Officers to stay in target area,"  
19 correct?

20 A That's what he says.

21 Q And then Captain Roberts forwards this email to you  
22 as well as other lieutenants on the Strike Force the  
23 same day. So you received this email that

1 Commissioner Derenda sent, correct?

2 A Yes, he forwards it, yes.

3 Q All right. Was there an expectation that Derenda  
4 reviewed the citation, impound and other production  
5 numbers of your unit?

6 A There was an expectation that we would be productive.

7 Q And how was that --

8 A Now, he -- and I'm -- I can't tell you what he was  
9 thinking, but you've taken 20 officers and four  
10 lieutenants out of the districts. That doesn't sound  
11 like a lot, but when summer comes and the districts  
12 are all short of manpower and they're calling  
13 overtime like crazy to just meet the bare minimum  
14 manpower, you have to justify why there's 20 officers  
15 and four lieutenants assigned to the special units.

16 Now, the unit is expected to go out and be  
17 productive. If we're not going to be productive,  
18 then do away with the unit and send the officers and  
19 lieutenants back to their districts and maybe you'll  
20 knock down some of the overtime in those districts.  
21 That's the way I read it. That's all. That's just  
22 the way I read this.

23 Q And so Derenda communicated his expectations to you

1 through email, correct?

2 A He sent them to Captain Roberts, which was forwarded  
3 to us, yes.

4 Q Okay. Did he convey them to you in any other way?  
5 In person?

6 A Did he ever convey them to me personally? Yes, I  
7 said that. We would have meetings at his discretion  
8 about mostly the ERT Unit. But no meeting ever went  
9 without discussion about the Strike Force Unit also.

10 Q Uh-huh. Checkpoints were used in part to obtain the  
11 numbers that Derenda is referring to, correct?

12 A Not specifically checkpoints. I mean, the whole  
13 unit, our routine patrol, our, you know,  
14 investigations, things to that nature, those are the  
15 numbers he's talking about.

16 You know, there was a shooting last night on  
17 Delavan Street. You know, did we go over there? How  
18 many people did we interview? Did we glean any  
19 information?

20 Q But when he says "Numbers have not been good," he's  
21 referring to the Strike Force report?

22 A He's talking to -- yeah, daily Strike Force report.

23 MR. SHORT: Form.

1 Q Is he -- if we turn to -- back to COB026995, this is  
2 an example of daily Strike Force report, correct?

3 A That is correct.

4 Q And there are fields where there are numbers,  
5 correct?

6 A That's correct.

7 Q And what does IMP stand for?

8 A Impounds.

9 Q And there's a field for cash?

10 A Yes.

11 Q And a field for guns?

12 A Yep.

13 Q And a field for tag. What is a tag?

14 A Parking tags.

15 Q And why are the parking tags issued?

16 A For illegal parking.

17 Q Okay. And what is CO?

18 A City ordinance.

19 Q And what is V&T?

20 A Vehicle and traffic law.

21 Q What is V?

22 A Violations.

23 Q Violations of what?

1 A Penal law.

2 Q Okay. And what is VTM?

3 A Vehicle traffic misdemeanor.

4 Q Okay. And so -- and what is M?

5 A Misdemeanors.

6 Q And what is F?

7 A Felonies.

8 Q So when Commissioner Derenda was referring to  
9 numbers, he was referring to the numbers that you  
10 were producing in -- with each of these columns,  
11 correct?

12 A Correct.

13 MR. SHORT: Form.

14 Q All right. So you received this -- Commissioner  
15 Derenda wrote this email on June 23rd, and if we turn  
16 to the Strike Force Daily Report on June 23rd, with  
17 numbers, you will see that on -- that there were 36  
18 vehicle and traffic ticket summons issued, correct?

19 A That's what it says.

20 Q And three impounds?

21 A Yes, ma'am.

22 Q Five tags?

23 A Yep.



1 Q And three VTMs, correct?

2 A Yes.

3 Q And these are the numbers Derenda considered low,  
4 correct?

5 MR. SHORT: Form.

6 A Is he referring to this specific daily report?

7 Q Yes. This is dated June 23rd.

8 A Okay. Well, I guess so. I guess he considered them  
9 low for that time of the year for the amount people  
10 on.

11 Q And do you consider this amount low?

12 A I just consider it average. I can't really comment.  
13 A lot of things are weather driven. Was it raining  
14 that night? Because if it's raining, there's no  
15 gangsters standing around on the corner getting wet  
16 and selling dime bags.

17 You know, people aren't out doing things if it's  
18 raining. To me it just looks like an average day.  
19 What day of the week was that, you know, 6-23-14?  
20 What day of the week? If it's a Tuesday night,  
21 that's probably average. If it's a Saturday night,  
22 these guys didn't do nothing.

23 Q Why would Derenda consider these numbers to be low?

1 MR. SHORT: Form.

2 A Because he's the boss.

3 Q And then he asks, "Are we doing roadblocks," correct?

4 A That's what he asks.

5 Q So he was saying that numbers have not been good.

6 He's referring to traffic enforcement numbers,

7 correct?

8 MR. SHORT: Form.

9 A I don't know what he's referring to. You'd have to  
10 ask him. There are some people -- there are some  
11 people no matter how hard you work, you just can't  
12 please them --

13 Q Well --

14 A -- which is not a knock on the commissioner  
15 because -- but he was a hard man to please.

16 Q Okay. When you received this email from Captain  
17 Roberts that the numbers have not been good and  
18 inquiring about whether we are doing roadblocks, did  
19 you understand this to mean that the number of  
20 tickets were not high enough?

21 A I understood it to mean the commissioner views our  
22 productivity not to what he had in mind.

23 Q Okay. All right. So on June 22nd, it indicates that

1 the Strike Force received 31 tickets, correct?

2 A Correct.

3 Q And four impounds?

4 A Correct.

5 Q And two vehicle and traffic misdemeanors, correct?

6 A Yes.

7 Q And then on June 21st, he indicates that Strike Force  
8 got 57 tickets, correct?

9 A Correct.

10 Q And five impounds?

11 A Correct.

12 Q Five tags?

13 A Yep.

14 Q And seven VTMs?

15 A Yes, ma'am.

16 Q And would you -- how would you characterize these --

17 A How would I characterize these numbers?

18 Q Uh-huh.

19 A They're just numbers. They're just indicators of  
20 what we did that night.

21 Q Okay. And did your superiors -- did other superiors  
22 other than Derenda convey the expectation of how many  
23 tickets you should generate?

1 A No.

2 Q Would you produce -- when you received an email like  
3 the one that Captain Roberts forwarded to you from  
4 Derenda, would you try to increase numbers?

5 A I'd forward the information to the officers and tell  
6 them, hey, commissioner -- he's not pleased with our  
7 productivity.

8 Q Okay. And would your officers then generally follow  
9 your command and try to obtain more traffic tickets?

10 MR. SHORT: Form.

11 A They wouldn't -- they wouldn't go out and try to  
12 write more traffic tickets. They would go out and  
13 try to be more productive. If that means covering  
14 down a district on a gun call, that's what I really  
15 want, and they do that. I could care less how many  
16 tickets we get, and my people could care less.

17 It's just a byproduct of doing police work.  
18 You're out there. You see a car. It's got tinted  
19 windows and no front license plate. You're going to  
20 pull that car over just to investigate what's going  
21 on with that.

22 I don't care if they write no tickets, but  
23 there's a little base rule in police work. You have

1 to justify every stop you do, every interaction. And  
2 when you make a habit of just pulling people over and  
3 not writing summonses, just using your officer  
4 discretion to let them go, then they go around  
5 telling people I got stopped for no reason and they  
6 go down and file a complaint, I got stopped for no  
7 reason, with Internal Affairs.

8 So you know what, we encourage our officers to  
9 provide -- you need to provide in writing why you  
10 stopped this person. I didn't tell them to go write  
11 ten tickets, but you better write them one ticket for  
12 what you initially stopped them for.

13 Q To avoid a complaint to IAD?

14 A I want my officers covering down the districts on gun  
15 calls.

16 Q But here Commissioner Derenda was specifically  
17 talking about numbers not being good and roadblocks,  
18 correct?

19 A Yes.

20 Q So Commissioner Derenda was conveying that  
21 traffic-related numbers were not good, correct?

22 MR. SHORT: Form.

23 A I'm going to assume yes, but on that form are also

1 felony arrests and guns are covered. And some of the  
2 same people he's complaining about on this particular  
3 form, he also gave them commissioner awards for  
4 heroism because they were there on that day during  
5 that shooting.

6 So I stated he was a difficult man to please.  
7 But when we -- I don't care if that V&T column says  
8 zero. It was a night where we recovered two handguns  
9 and grabbed four dangerous criminals. He would have  
10 been happy, as any police commissioner should be.

11 Q Okay. On -- I'm going to show you another exhibit  
12 that's marked COB039366. And this is an October 7,  
13 2015 email from -- exchange between you and  
14 Commissioner Derenda, correct?

15 A Yes.

16 Q October 6th -- again, this is in regard to a new  
17 Strike Force Daily Report that has been submitted,  
18 correct?

19 A Yes, ma'am.

20 Q Okay. And in response to this new Strike Force Daily  
21 Report, Commissioner Derenda writes you directly on  
22 October 6, 2015 and says, "Not much production,"  
23 correct?

1 A Yes.

2 Q And then in response -- if you want to take a moment  
3 to read the email.

4 So you state that "The numbers represented are  
5 not indicative of unit performance," and you provide  
6 several reasons that you had -- the platoon had  
7 vacancies and some cops have the flu and that there  
8 was interest in training.

9 So what did you mean by the fact that the  
10 numbers represented are not indicative of unit  
11 performance?

12 A It's not that we weren't out there trying to do our  
13 jobs. I didn't have any people to do it. I only had  
14 three police officers. That means two officers rode  
15 in one car and the third officer was likely riding  
16 with me, the lieutenant.

17 So it's not that there's a lack of morale or  
18 lack of desire to do the job. It's just we didn't  
19 have any people. You know, he says "not much  
20 production." What am I supposed to do with one car?  
21 I don't care if you're a district car, a traffic car  
22 or Strike Force Unit, you're one car. Sometimes  
23 these things take coordinated efforts between a

1 couple car crews.

2 Q And why did you feel the need to justify what -- that  
3 there was not much production in response Derenda's  
4 email?

5 MR. SHORT: Form.

6 A The commissioner of the police department sends me a  
7 one-liner. That's fishing for a response.

8 Q Okay.

9 A My response is professional and informative.

10 Q Okay. And when you sent your officers for training,  
11 was it -- was it -- was it routine for you to inform  
12 Commissioner Derenda in advance?

13 A Like the FEMA training that is indicated? When I was  
14 going to perform training, I would notify the deputy  
15 police commissioner of operations. She would approve  
16 it. She always approved it. She just sometimes had  
17 questions.

18 It didn't go directly to the commissioner, so he  
19 may not have even been aware of that. That's why I'm  
20 making him aware of it now.

21 Q Uh-huh. And informing the deputy commissioner  
22 would -- would you indicate that there would be less  
23 performance when your officers were on training?



1 A She didn't care. She didn't -- that's not -- it's  
2 not her ball of wax.

3 Q So it's the commissioner --

4 A She had a lot of other things going on. But one of  
5 the things was I had to report my specialized unit  
6 and training schedule to the deputy police  
7 commissioner.

8 Q And was it routine for Derenda to express concern  
9 about lower production in times when you had depleted  
10 manpower?

11 MR. SHORT: Form.

12 A I think so, yes.

13 Q Okay. And was the -- so was this the reasoning to  
14 increase manpower, to increase production?

15 MR. SHORT: Form.

16 A We never increased manpower. We started our unit  
17 with four lieutenants and 20 officers, ten on each  
18 side. That was the base size of the unit. As a  
19 matter of fact, as the years went on, we actually  
20 lost people because -- through promotion. This guy  
21 is getting promoted to detective or lieutenant or  
22 they were transferred out. They wouldn't get  
23 replaced.

1           And I think you showed me an email earlier  
2           written by Lieutenant Wilcox. There was no -- since  
3           there was no minimum manpower on the Strike Force  
4           Unit, there was no obligation for the department to  
5           backfill those manpower losses. And we only got  
6           backfilled a couple times, and they sent new people  
7           over.

8           Q     But you would get additional manpower to run --  
9           through requesting overtime to run checkpoints,  
10          correct?

11          A     That's correct because the -- we were only one  
12          platoon, so one shift from 3:30 to 1:30 in the  
13          morning. If they were going to bid more officers in,  
14          they would have had to initiate another shift. And  
15          that means it would run year-round. And policing,  
16          police work -- crime is sort of a seasonal hobby.

17                 There's a need for these additional people,  
18                 manpower. There's -- yes, in the summer months,  
19                 there's a need for this additional manpower, and then  
20                 in the winter months, it's cold outside. People  
21                 aren't outside ticking each other off and shooting  
22                 each other. So the man -- the crime slows down in  
23                 the winter months, so therefore, we don't need all

1           these additional manpower details. I hope I answered  
2           your question.

3       Q     Yes, you did. And I apologize. I am just going  
4           to -- I'm just going to mute so I can blow my nose.

5           Thank you for that explanation and for the  
6           minute.

7           So here as we were discussing in this exhibit,  
8           COB039366, Derenda indicated on October 6, 2015 that  
9           there wasn't much production.

10          And then we're going to look at an exhibit that  
11          begins with Bates Number COB029956. And this is a  
12          Strike Force Daily Report dated October 5, 2015,  
13          correct?

14       A     I don't see anything.

15       Q     Do you now see it?

16       A     I do.

17       Q     So let me make sure -- hold on one second.

18          So this is marked COB029956, and this is a  
19          Strike Force Daily Report dated October 5, 2015,  
20          correct?

21       A     Yes, it is.

22       Q     Okay. And the numbers of V&T summons issued are 28;  
23           is that right?

1 A Yes.

2 Q And the number of impounds are two, and the number of  
3 VTMs are five, and there are no tags for that day,  
4 correct?

5 A Yes.

6 Q So let's take a look at 10-6. On 10-6, this is a  
7 Strike Force report for 10-6, and here the V&T  
8 numbers are 50 tickets, correct?

9 A Correct.

10 Q Three impounds, two tags, and six VTMs, correct?

11 A Correct.

12 Q So is this the report that Commissioner Derenda was  
13 referring to when he said "not much production"?

14 MR. SHORT: Form.

15 A I would say yeah, he was referring to the report from  
16 the 5th.

17 Q Oh, from the 5th. Thank you.

18 A From October 5th because if you look at the time  
19 stamps, we haven't even come on duty yet for the 6th.

20 Q Okay. Thank you for that clarification. So he was  
21 referring to October 5th where there are 28 tickets  
22 issued, correct?

23 A Yes.

1 MR. SHORT: Form.

2 Q And two impounds and five VTMs, correct?

3 A Correct.

4 Q And zero tags?

5 A Correct.

6 Q And then as we noted on the 6th, the numbers  
7 increased to 50, correct?

8 A Yep.

9 Q And if we go to the October 7th Strike Force Daily  
10 Report, it indicates that the Strike Force issued 80  
11 vehicle and traffic summons, correct?

12 A Correct.

13 Q Six impounds, correct?

14 A Yes.

15 Q Two tags?

16 A Yep.

17 Q And 25 VTM, correct?

18 A Yes.

19 Q All right. And then if we take a look at October  
20 8th -- and you authored this Strike Force Daily  
21 Report, correct?

22 A Yes.

23 Q And on the day you authored this report, there were a

1           hundred V&T summons, correct?

2       A       Yes.

3       Q       And 12 impounds?

4       A       Correct.

5       Q       Eighteen tags?

6       A       Yes.

7       Q       And 26 VTMs; is that right?

8       A       Correct.

9       Q       And then on October 9th, the Strike Force Daily  
10       Report issued -- indicates that there are 183 V&T  
11       issued, correct?

12      A       Yes.

13      Q       Sixteen impounds?

14      A       That's correct.

15      Q       53 VTMs?

16      A       Yes.

17      Q       And 18 tags; is that right?

18      A       Yes.

19      Q       And then on October 10th, the Strike Force Daily  
20       Report indicates that the Strike Force produced 202  
21       vehicle and traffic summonses, correct?

22      A       Correct.

23      Q       And 14 impounds?

1 A Correct.

2 Q And 24 tags?

3 A Yes.

4 Q Okay. And 38 VTMs, correct?

5 A Yes.

6 Q All right. And on the 11th of October 2015, the  
7 Strike Force Daily Report indicates that the Strike  
8 Force issued 193 vehicle and traffic summons,  
9 correct?

10 A Correct.

11 Q And seven impounds?

12 A That's correct.

13 Q And 39 vehicle and traffic misdemeanor arrests?

14 A Yes.

15 Q Okay. And then on -- this is 10-11 as well. It  
16 indicates another 83 vehicle and traffic summonses,  
17 correct?

18 A That's correct.

19 Q And another eight impounds?

20 A That's correct.

21 Q Another 13 parking tags?

22 A Yes.

23 Q And 23 vehicle and traffic misdemeanor arrests,

1 correct?

2 A Yes.

3 Q So this is a big increase from the day Derenda  
4 commented that the Strike Force had low numbers,  
5 correct?

6 A From the manpower.

7 Q Yeah.

8 A Some of those very high production days, there's a  
9 lot more manpower.

10 Q Yeah. So when you received emails from Captain --  
11 from Commissioner Derenda that you had low  
12 production, was it common for you to try to focus  
13 your troops on increasing production?

14 A Yes.

15 Q Okay. And so do you think Commissioner Derenda would  
16 have considered these numbers good?

17 MR. SHORT: Form.

18 A Which numbers specifically are you talking about? Do  
19 you mean the numbers as they increased over time?

20 Q Yes.

21 A Yes.

22 Q Okay. So he conveyed to you a range of -- he  
23 conveyed to you that he wanted a high number of



1 tickets from your platoon, correct?

2 A No, he didn't convey that he wanted a high number of  
3 tickets. He conveyed that he wanted production,  
4 whatever form that production takes form of. As I  
5 said, if my guys grab two illegal firearms and three  
6 robbery suspects, that's production. That's real  
7 production right there.

8 But in the absence of those circumstances  
9 happening on that night, then production is measured,  
10 I guess, by the vehicle and traffic summonses that  
11 were issued. It's a matter of production. It's not  
12 production at writing tickets. It's production by  
13 the unit in all manners, in all areas.

14 Q If we go back to this June 23rd email, Captain --  
15 Commissioner Derenda ties numbers to a question about  
16 whether you're doing roadblocks, correct?

17 A He does put that question in there, yes.

18 Q By questioning whether you're doing roadblocks, he's  
19 referring to traffic and enforcement numbers,  
20 correct?

21 MR. SHORT: Form.

22 A It would appear that he is.

23 Q Okay. And there's no mention here of how many guns

1           that you produced, correct?

2       A       The road safety checkpoints produced gun arrests too.

3       Q       Okay. All right. So why was it important for you to  
4           have an explanation when you had low numbers?

5                           MR. SHORT: Form.

6       A       The explanation I can give you is Captain Patrick  
7           Roberts was sort of like the liaison in the  
8           commissioner's office for this unit. The date of  
9           this -- that's why I was laughing. The date of this  
10          email where he says, "Just FYI do with info what you  
11          wish" is probably the day before he retires. There's  
12          a little bit of I don't care any longer in his -- in  
13          Captain Roberts' email. For you guys to deal with.

14                        Now, I was the only one in the station among the  
15          lieutenants that had a rapport with the commissioner  
16          so -- because of my involvement with the ERT Unit and  
17          the Honor Guard Unit, so I drew the short straw and  
18          the other lieutenants threw me under the bus and said  
19          you're going to be the guy who's got to liaison to  
20          the commissioner's office now. And it took some  
21          months before the new captain came in.

22      Q       Okay. And the captain was Captain Serafini?

23      A       That's correct.

1 Q And did you get an official increase in pay?

2 A No.

3 Q Or a title?

4 A No. I got an increase in heartburn. My email to the  
5 commissioner is probably driven out of my Marine  
6 Corps experience of knowing when the boss is ticked  
7 off. And some well-worded documents, in this case an  
8 email, is going to get him off our backs. Kill him  
9 with kindness. Come on, my email is pretty kind to  
10 him. Look at this.

11 Q Well, you also increased production, correct?

12 A I what? I also increased production. Again, I said  
13 look at the manpower on some of those days. This  
14 date that you have in front of us, there's two New  
15 York State police cars. That frees my guys up to do  
16 some more stuff.

17 Q And would it have been your responsibility to try to  
18 get more manpower?

19 A You mean find these troopers?

20 Q Yes.

21 A No, no. We're getting into the fall. It's October.  
22 So the summer rush on the thruways is going to be  
23 reduced because we are into the fall months. Every

1 agency, whether it's an airline, a police department,  
2 in the summer, they suffer manpower issues.

3 People want to go on vacation. They don't want  
4 to come to work overtime. Nobody wants to show up.  
5 So now we're getting into the fall. The crime is  
6 slowing down because people are not on the streets as  
7 much. It's not summertime, but I've also got  
8 increased manpower because these troop cars have come  
9 back.

10 Q And so was it within your responsibilities to  
11 organize more resources, to obtain more resources to  
12 meet those production levels that Derenda was  
13 speaking about?

14 MR. SHORT: Form.

15 A Did you say pay more resources?

16 Q No. I meant -- I was referring to your Marine Corps  
17 talents to organize more resources to --

18 A You're giving me way more credit than I deserve. The  
19 State Troopers and the Sheriff's Department, they  
20 showed up whenever they felt like it. Their  
21 organization said we have an agreement with the City  
22 of Buffalo -- I'm not even sure it's an agreement in  
23 writing -- but we are supposed to send some guys down

1 to the Strike Force Unit. We have extra manpower  
2 tonight. You guys are going.

3 Q Okay. But --

4 A I didn't even know they were showing up. They would  
5 just show up at 3:30 in the briefing, and then they  
6 wouldn't be there the next day.

7 Q And you would communicate to your officers that  
8 Derenda was upset about production, correct?

9 A Of course. I'm not going to keep that to myself.  
10 I'm getting yelled at by the boss. They're going to  
11 get yelled at by me, their boss. It all rolls  
12 downhill.

13 Q Okay. I'm going to return to what we marked as  
14 Exhibit 7. This is Bates Number COB016098. It's an  
15 email that you wrote on May 10, 2016 to Commissioner  
16 Derenda requesting overtime details. And do you  
17 recall reading this previously?

18 A Yes. It's a captain's letter that I plagiarized.

19 Q So in this email, as we discussed earlier, you're  
20 requesting reinstatement of overtime for checkpoints  
21 so the Strike Force can combat gang activity and  
22 violence, correct?

23 A Correct.

1 Q All right. And at the end of this email, you state  
2 that you're going to make the best use of allotted  
3 hours in an effort to reach the goals that the  
4 commissioner of police has set forth; is that right?

5 A That's what I put.

6 Q Okay. And then here you also noted that when fiscal  
7 shortfalls --

8 A Where are you?

9 Q I believe it's in the second paragraph where fiscal  
10 shortfalls -- let's see -- all right. I'm going to  
11 strike that question.

12 Oh, right here. I'm sorry. "In the past, and  
13 when fiscal shortfalls have necessitated, the Strike  
14 Force has used discretionary overtime to achieve  
15 these goals in the following manner: One lieutenant  
16 and six officers for five hour segments a total of  
17 six times per pay period. Four of the details would  
18 be run during the MP-2 shift --" okay.

19 When you stated "fiscal shortfalls," what were  
20 you referring to?

21 A When they cut the overtime.

22 Q All right. And so when they cut overtime, the Strike  
23 Force used discretionary overtime?

1 A Correct. They called it that. I don't know what the  
2 difference was quite honestly. Bean counter stuff.

3 Q All right. So there was discretionary overtime, and  
4 then there was other overtime, another category of  
5 overtime; is that right?

6 A Like I said, it's a bean counter thing. You know,  
7 it's for the -- for the fiscal people that --  
8 different codes on the overtime slips. I'm -- I'm  
9 going to read into what I think it means, but don't  
10 take my word as gospel.

11 There may have been federal grant money that we  
12 were using for summer, you know, upping the manpower,  
13 so those overtime hours needed to be documented a  
14 certain way so that they can request reimbursement  
15 from the federal government. And they just use  
16 different terms, discretionary or whatever.

17 Q Okay. I'm going to turn to another exhibit, which is  
18 marked COB018533. That is the Bates number, and this  
19 is a July 17, 2016 email from -- it's a 2017 email  
20 from you to then Deputy Commissioner Lockwood,  
21 Derenda and other -- and Aaron Young, who was then  
22 the chief, correct?

23 A Correct.

1 Q And in this email, you discuss how in the current  
2 climate across the nation and law enforcement being  
3 made targets that you'd like to request a temporary  
4 suspension of the roadway safety checkpoints,  
5 correct?

6 A I did.

7 Q And that during these checkpoints that you were a  
8 target rich environment by placing a large number of  
9 officers unprotected in the street in a very small  
10 and concentrated area, correct?

11 A Correct.

12 Q And that it isn't a secret shortly after we set up  
13 the checkpoint, our location is spread across social  
14 media by people who have passed through the  
15 checkpoint program, thus providing anyone with ill  
16 intent an opportunity to inflict damage, correct?

17 A That's what I wrote.

18 Q And that your aggressive patrol of whatever the  
19 identified area is will continue and Strike Force  
20 officers will continue to provide the results you've  
21 come to expect; is that right?

22 A Yes.

23 Q Okay. So what did you mean about the current climate



1 when you wrote this email?

2 A This email was written following several sniper  
3 attacks on different -- on police officers in  
4 different cities. I think this specific email was  
5 written after those five officers were killed in  
6 Dallas by a sniper.

7 I didn't want my guys or myself standing out  
8 with an orange roadway vest on with a big arrow over  
9 my head that says shoot me here. I mean, it's  
10 something for real consideration during, you know --  
11 for what was going on nationally.

12 Q And were you also concerned about the protests of the  
13 Minneapolis Police Department shooting of  
14 African-American motorist Philando Castile?

15 A It was going on everywhere. As I said, the one that  
16 I called to mind was the officers in Dallas, but of  
17 course.

18 Q Why was there anger directed at officers during this  
19 time?

20 MR. SHORT: Form.

21 A I guess you'd have to ask the people.

22 Q What was your understanding of why --

23 A What is my understanding?

1 MR. SHORT: Form.

2 Q Yes. What was your understanding of why there was --

3 A Perceived injustices.

4 Q What do you mean by "perceived injustices"?

5 A That first off, when a police officer tells you to  
6 stop and put your hands in the air, you don't have  
7 the right to deny that legal request. You have to  
8 comply. You get your day in court.

9 And if the officer acted inappropriately, you'll  
10 have recourse later. People who think that they're  
11 going to take matters into their own hands and fight  
12 with the police because they don't want to be placed  
13 under arrest are wrong.

14 Now, there was situations that evolved in  
15 different areas of the country involving minorities  
16 where those individuals ended up dead at the hands of  
17 the police. Anyone's life that is lost is tragic.  
18 That's tragic.

19 My wife would tell you that I would come home  
20 and tell her some of the greatest tragedies I saw on  
21 the east side of Buffalo over the fact that these  
22 kids don't have a chance. One of these kids has the  
23 answer to cancer in his head, but we're never going

1 to know because he didn't get the chance to go to  
2 school and have parents who really cared.

3 He's up at midnight watching porn or playing  
4 video games at age eight. Nobody cares if he does  
5 his homework or anything else.

6 So now, with the environment that was going  
7 around with the nation at that time following the  
8 Ferguson, Missouri riots, Minneapolis, the incident  
9 that you said -- pointed out in Minneapolis, I  
10 thought that it would be prudent to not allow ten  
11 officers to stand around in the middle of the street  
12 and provide ample targets for somebody who's going to  
13 take out their own perceived injustice.

14 Q Uh-huh.

15 A If you're going to seek revenge for something that  
16 happened halfway across the country by shooting one  
17 of us, that's not changing things or that's not  
18 justice.

19 Q Uh-huh. And at this time, was there violence  
20 directed towards police officers?

21 A Some officers had received individual threats, yes.  
22 And I don't mean just within the Strike Force Unit.  
23 I mean in Buffalo City Police Department in general

1           too.

2           Q       And do you think that an unjustified shooting of a  
3           Black man who's -- without justification during a  
4           traffic stop is a perceived injustice?

5                       MR. SHORT:   Form.

6           A       An unjustified shooting of anybody is an injustice.  
7           But rioting afterwards isn't changing that either.

8           Q       Uh-huh.

9           A       Or shooting the police, that's not changing that  
10          injustice.

11          Q       And what did checkpoints have to do with this  
12          dynamic?

13          A       I felt that us standing out in the middle of the  
14          roadway is putting our safety at risk.

15          Q       Uh-huh. Did checkpoints create anger against  
16          officers, towards officers?

17                       MR. SHORT:   Form.

18          A       I don't know that they -- that they created anger  
19          towards officers, but we already discussed there were  
20          some people in the community that were unhappy about  
21          it. But there was at least as many people that were  
22          happy to see us out there.

23          Q       And so for the people that were unhappy, what

1 concerns did they have about the checkpoints?

2 A You'd have to ask them.

3 MR. SHORT: Form.

4 Q You mentioned that there were a -- that there was  
5 social media about the checkpoint locations; is that  
6 correct?

7 A Yes, that is correct.

8 Q What social media was that?

9 A By the time that this email is written, now both  
10 social media has taken off and Buffalo Police  
11 Department has stepped out of the rock century, you  
12 know, where we used a tablet and chisel to send  
13 messages.

14 So we actually had a couple detectives and  
15 civilian employees that would monitor social media  
16 sites for this type of stuff and then forward us the  
17 information. I personally never saw what they were  
18 talking about. But it was provided to me by a couple  
19 detectives in this form. I don't do Twitter. I  
20 don't do all those things. I have a FaceBook  
21 account.

22 Q And what do you recall reading about -- what do you  
23 recall that those social media posts -- social media

1 posts that you were forwarded stated about the  
2 checkpoints?

3 A They would just give the location of where the  
4 checkpoint was so people would know to avoid them.  
5 That's the bulk of what I saw.

6 Q Okay. Do you recall reading any concerns that people  
7 on -- that FaceBook expressed on social media about  
8 checkpoints?

9 A I didn't see that. I didn't go -- I didn't go  
10 searching for FaceBook posts about the checkpoints or  
11 anything like that. Some -- some of the officers in  
12 the unit, they were doing it.

13 Q Uh-huh. And did you ever consider whether traffic  
14 stops put Black and Latino drivers at risk of death  
15 or violence?

16 MR. SHORT: Form.

17 A Do I consider them what?

18 Q Did you ever consider whether traffic stops of Black  
19 and Latino drivers put them at risk of death or  
20 violence?

21 A No.

22 Q Okay. Are you aware of the shooting of a motorist,  
23 Philando Castile?

1 A I am.

2 Q What do you know about his death?

3 MR. SHORT: Form.

4 A I don't really know the specifics. I know that it  
5 was a minority who was detained and beaten and killed  
6 by the Minneapolis Police Department. I can't -- I'm  
7 not sure if it was Minneapolis Police Department, but  
8 in the vicinity of Minneapolis law enforcement.

9 Q Are you aware that the officers who shot Philando  
10 Castile were convicted of murder charges?

11 MR. SHORT: Form.

12 A I believe -- I'm aware of that.

13 Q Okay. So did that incident or any other incident  
14 make you concerned or consider whether traffic stops  
15 put Black or Latino drivers at risk of death or  
16 violence?

17 A As I stated with you earlier, every profession has  
18 its percentage of people who maybe aren't in the --  
19 what they should be doing in life. And there's  
20 bad -- there's bad police officers, but I didn't feel  
21 like the motorists involved in the traffic stops with  
22 my officers should feel that they were being put at  
23 risk of their life because my people were well

1 grounded and well -- experienced, trained. A lot of  
2 them had military backgrounds. I feel like they were  
3 very professional people.

4 Q Okay. You spoke earlier about how people on the east  
5 side of Buffalo left their children to watch  
6 television late at night. What did you mean by that?

7 A Just what I said. When I was a patrol officer at C  
8 District, I would answer calls. It's midnight.  
9 There's four children under the age of ten. None of  
10 them are in bed. They're wandering around. There is  
11 no adult supervision. The mother is high on some  
12 illegal narcotic substance or drunk. And one of the  
13 kids would have porn on television and another one is  
14 playing video games.

15 And that's not any way to raise your children to  
16 get them into -- get education and get them ahead in  
17 life. It's just a fact-based statement of things  
18 that I've witnessed.

19 Q But were all the people in the C District like that?

20 A Of course not.

21 MR. SHORT: Form.

22 A Of course not.

23 Q So --



1 A I didn't have the opportunity to interview anybody in  
2 the house where the people lived as a family and had  
3 to get up and go to the work in the morning because  
4 they were busy sleeping.

5 Instead, I'm over at this house because one of  
6 the kids is calling or CPS is calling us to do a  
7 welfare check or any one of a myriad of things.

8 Q And did you ever do welfare checks in the A District?

9 A I'm sure probably, yes. Not me specifically. That  
10 would be an officer's role. But I'm sure while I was  
11 a lieutenant there, plenty of welfare checks  
12 happened.

13 Q And people in the C District are predominantly Black;  
14 is that right?

15 MR. SHORT: Form.

16 A Yes, ma'am.

17 Q And so what did that -- that dynamic you referenced  
18 about kids being left alone at night have to do  
19 with -- have to do with the risk that police officers  
20 faced -- potentially faced due to checkpoints?

21 MR. SHORT: Form.

22 A I don't think it had anything to do with it. I think  
23 I was just describing the fact that some of these

1 children don't have a chance and it's society's loss  
2 because as I said one of them has the answer to  
3 cancer in his head, but we'll never know because he  
4 didn't get to go to school. He wasn't given the  
5 opportunities to succeed in life.

6 Q Uh-huh. Okay. All right. I'm -- are you aware of  
7 the May 2017 death of Jose Hernandez-Rossy resulting  
8 from a traffic stop by two Buffalo police officers?

9 MR. SHORT: Form.

10 A I am.

11 Q Okay. Was -- was it -- all right. That's all I have  
12 on this question. That's all I have on this question  
13 for now. I may return to this line of questioning,  
14 but for now, this is all I have.

15 I have one follow-up right now. And that is are  
16 you aware that Jose Hernandez-Rossy died following a  
17 traffic stop by two Buffalo police officers?

18 A Was it a traffic stop? I'm not sure it was a traffic  
19 stop.

20 Q Okay. Are you aware that there were -- there was  
21 excessive force used during a traffic stop conducted  
22 by the Buffalo Police Department?

23 MR. SHORT: Form.

1 A Not under my command.

2 Q Okay. Did you ever fill out use of force reports?

3 A Yes.

4 Q Related to traffic stops at the Buffalo Police  
5 Department?

6 A I don't know if they were related to traffic stops,  
7 but I filled out use of force forms.

8 Q Okay. And did you ever find that any officer had  
9 engaged in excessive force?

10 MR. SHORT: Form.

11 A No, I did not.

12 Q Okay. We are going to go to another topic. So are  
13 you aware that at some point the city created the  
14 Buffalo Traffic Violations Bureau?

15 A Yes.

16 Q Okay. I have to close a couple windows to open a new  
17 one. I'm going to show an exhibit marked 304 --  
18 COB3 -- COB039785.

19 Okay. This exhibit contains an email from David  
20 Wilcox, Lieutenant Wilcox to you and other  
21 lieutenants as well as Patrick Roberts and Kevin  
22 Brinkworth dated March 30, 2015. And in this  
23 email -- do you want to take a second to read it?

1 A It's not up on the screen.

2 Q Oh, it's not? I apologize.

3 A Can I have one second to read it?

4 Q Uh-huh.

5 A Okay. Good old Dave.

6 Q So this email contains -- this email chain contains  
7 an email from Lieutenant Wilcox to you and the other  
8 Strike Force lieutenants as well as Chief Brinkworth  
9 and Captain Roberts, correct?

10 A Yes.

11 Q In this email, Lieutenant Wilcox says that the city  
12 was starting the traffic -- it was taking over the  
13 Traffic Violations Bureau and that in *The Buffalo*  
14 *News* article that referenced it, the article that  
15 referenced it, the article clearly states the  
16 financial benefits the city will reap from handling  
17 some matters. Do you see that?

18 MR. SHORT: Form.

19 A I do.

20 Q What did you understand Lieutenant Wilcox to mean by  
21 that statement?

22 MR. SHORT: Form.

23 A David wanted to know why everybody didn't have a

1 million dollars in their deferred comp by the time  
2 they were 40. He was a very money-driven person.  
3 Great guy, very money-driven. He's pointing out the  
4 fact that if they take away the Traffic Violations  
5 Bureau, every officer used to have a traffic day in  
6 court, so you as asked me and I responded, we would  
7 get paid four hours pay for going to traffic court.

8 And that's the gist of his email here. He wants  
9 to know if we're still going to get called for the --  
10 whatever they're calling it -- Traffic Violations  
11 Bureau because he wants to know if he's going to get  
12 paid his court time.

13 That's really everything that is behind this  
14 email -- this email right here. And the answer  
15 here -- he already knows the answer. The answer is  
16 no. No, we're not because now the City of Buffalo  
17 has gained the privilege that all the towns in the  
18 state of New York have that they can plea out their  
19 traffic violations for parking tickets and get to  
20 keep more of the money than under the old system  
21 where the state kept 90 percent of the money.

22 So Dave thinks that by sending this email that  
23 Captain Roberts and Chief Brinkworth are going to

1           somehow change all that from happening at the city  
2           government level.

3       Q       Okay. Thank you.

4       A       I'm going to call him when I get done here and thank  
5           him for all this.

6       Q       Well, he -- so when he says city taking over -- the  
7           city will reap financial benefits from the Traffic  
8           Violations Bureau, he's saying that the city will  
9           keep the money from the Traffic Violations Bureau,  
10          correct?

11      A       That's correct.

12      Q       And are you aware that the revenue for the BTVA went  
13          into the city's general fund?

14      A       I don't know where the money went.

15                           MR. SHORT: Form.

16      A       As I stated, I just knew that they had won the same  
17          right that the towns had, so they got to keep more of  
18          the revenue. I don't know where it went.

19      Q       Officer Skipper, do you know who he is, Officer  
20          Skipper?

21      A       I know who he is. Charlie Skipper, yes.

22      Q       Okay. Officer Skipper testified that after the BTVA  
23          was created, that he wrote more tickets. Does this

1 surprise you?

2 A Kind of, yeah. I don't know. I guess I'm  
3 indifferent about it.

4 Q Okay. All right. So I'm going to show Exhibit 31  
5 again. All right. So I'm showing another exhibit.  
6 It's COB042316, which is an email from Captain  
7 Serafini after you left the BPD but it contains  
8 statistical information.

9 A Okay.

10 Q All right. So would you be surprised that after the  
11 BTVA was created, the number of tickets increased  
12 from 25,000 in 2014 to 39,757 in 2015?

13 MR. SHORT: Form.

14 A Well, I stated that I believe a lot of the increased  
15 productivity was also tied to increased availability  
16 to technology, the TraCS system, the plate reader  
17 cars, things like that.

18 Q And it increased again in 2016 to 42,930 traffic  
19 tickets that year?

20 MR. SHORT: Form.

21 A Okay.

22 Q And are you -- were you ever given any instructions  
23 as to the -- as to your responsibilities with the

1 creation of the BTVA?

2 A No. No, we never got -- no.

3 Q Okay. All right. Okay. So that is all I have here.

4 So I want to show Exhibit 30 again. So at the  
5 end of this email, Lieutenant Wilcox said, "Rest  
6 assured that the officers assigned here will continue  
7 to be diligent in their traffic enforcement. We have  
8 taken a great deal of pride in the numbers that the  
9 units have generated" and that "This will not  
10 change," correct?

11 MR. SHORT: Form.

12 A That's what he says.

13 Q And that the Housing and Strike Force will continue  
14 to deliver what is asked of us, correct?

15 A That's correct.

16 Q What did you understand him to mean by these  
17 statements?

18 MR. SHORT: Form.

19 A If you're asking me to read his mind, he didn't  
20 want -- these units -- this unit, the Strike Force  
21 Unit, it's existed in one form or another for 40  
22 years, technical patrol, this, that, whatever name.  
23 They all have an expiration date. It's about four



1 years or five years.

2 If they do away with the unit because they feel  
3 like we're not doing -- being productive enough, Dave  
4 is going to have to go back to working midnights, you  
5 know, in some district, and so are all these police  
6 officers too.

7 So when he says no matter what happens we are  
8 going to continue to be the most productive ever,  
9 he's trying to assure people that don't have any dog  
10 in the fight, that don't have the ability to change  
11 anything that we're going to keep on working hard no  
12 matter what, but he still wants to know what's going  
13 on with the traffic court time. He's a very  
14 self-serving person. It's all different  
15 personalities, come on.

16 Q And Strike Force would still continue to generate  
17 tickets, right?

18 A He says that. I didn't say that. I said continue to  
19 be productive.

20 MR. SHORT: Form.

21 A As I said, I can't read into what his -- he meant by  
22 that statement.

23 Q Okay.

1 A He doesn't want his -- we had a very nice thing. We  
2 had our own little station house. We had -- it was  
3 nice.

4 Q Yeah. And at some point did you -- when you began at  
5 the Strike Force, what was the condition of the  
6 Strike Force offices?

7 A Not very good.

8 Q Did that improve over time?

9 A Yeah. We improved it ourselves. We painted. We did  
10 the touch-up stuff.

11 Q Did you get more resources for the Strike Force  
12 office over time?

13 A Not really. We had to beg, borrow and steal to get  
14 toilet paper. That's not a joke.

15 Q Did you eventually get more cars for the Strike  
16 Force?

17 A We did get -- we did receive upgraded vehicles when  
18 we got -- when the city got a new lot of vehicles in,  
19 yes.

20 Q And when was that?

21 A Late 2014 maybe --

22 Q Okay.

23 A -- '15.

1 Q And did you receive iPads?

2 A We did.

3 Q And around when did you receive iPads?

4 A Maybe '15.

5 Q Uh-huh. And what were the iPads used for?

6 MR. SHORT: Form.

7 A The iPads were linked to technology that I don't know  
8 how to describe, but we had -- it was -- you could  
9 pull up basically a desktop in my office or at any  
10 desktop computer screen, so you could look up mug  
11 shoots, things to that nature, answer emails.  
12 Anything you could do from a desktop, you could do  
13 from this iPad. And I think you could do -- I think  
14 you could access the NYSDIN and RIC1 to look up  
15 criminal records.

16 Q And then did you also receive license plate readers?

17 A Well, we had those, I think from the moment -- we had  
18 one when the unit was formed that was always broke  
19 down. But we did end up getting two new plate  
20 readers.

21 Q And did you receive any other additional resources as  
22 your time at the Strike Force went on?

23 A Not that I recall. I mean cars, the computers, the

1 iPads. They didn't do anything to the building for  
2 us because the building was owned by the BMHA. And  
3 there was always this argument over who was supposed  
4 to maintain the building, so most of the time, we  
5 just fixed everything ourselves.

6 Q But you received computers?

7 A We had desktop computers in our office, yes.

8 Q And did you receive more computers as time went on?

9 A No, not that I know of. I'm pretty sure the junk we  
10 had when we moved in was the junk we had when I got  
11 hurt.

12 Q And according to the MOP, Strike Force was originally  
13 supposed to be located in the traffic unit  
14 headquarters, right?

15 A That's correct.

16 MR. SHORT: Form.

17 Q Why did it end up being located in the Housing Unit?

18 MR. SHORT: Form.

19 A Since we were going to fall under Captain Roberts as  
20 the Housing captain, he wanted us to be co-located  
21 and there was room to do that over at the BMHA  
22 building.

23 Q Okay. We're going to go back to Exhibit 8. All

1 right. This is the June 5, 2016 email from Captain  
2 Serafini to you and the other Strike Force  
3 lieutenants dated July 5th. And in this email, he  
4 discusses Strike Force daytime details.

5 Those are overtime details that worked during  
6 the daytime with the Strike Force, correct?

7 MR. SHORT: Form.

8 A That is correct.

9 Q Were the primary purpose of these details to run  
10 checkpoints?

11 MR. SHORT: Form.

12 A It was officer visibility, and we did -- on every  
13 overtime detail during the day, we did do one roadway  
14 safety checkpoint.

15 Q Okay. And in this email, Captain Serafini says, "DPC  
16 Lockwood also wants two traffic checkpoints run  
17 during the Daytime Detail, one of them at  
18 approximately 12:00 noon," correct?

19 A Yes.

20 Q And that the checkpoints should be conducted in and  
21 around the areas of recent violence, correct?

22 A That's what it says.

23 Q And it then says "if there was a shooting during the

1 previous night at Broadway/Fillmore" as an example,  
2 "then a checkpoint should be conducted in that  
3 vicinity," right?

4 A Yes, ma'am.

5 Q Okay. And in this email, Captain Serafini says that  
6 Lockwood wants results from the daytime detail and  
7 that the daytime deal has always yielded good  
8 results, correct?

9 A Yes.

10 Q And by "results," do you understand DPC Lockwood and  
11 Serafini to be referring to traffic tickets and  
12 intels?

13 MR. SHORT: Form.

14 A He is referring to any of the issues on that daily  
15 report. He's referring to productivity.

16 Q Okay. And how did you assign overtime?

17 A I'm sorry. What was the question?

18 Q How did you assign overtime?

19 A It's all by seniority.

20 Q So -- and you said the overtime rate was one and a  
21 half times salary?

22 A That's correct.

23 Q And how much overtime could officers do each month?

1 A Well, as much as they want, but we had a fifteen-hour  
2 rule for a daily. So in combination with your  
3 regularly scheduled shift, which was ten hours,  
4 you -- if you were scheduled to work that day, you  
5 could only work another five hours of overtime. If  
6 it was your day off, you could come in and work a  
7 full fifteen hours overtime if it was available.

8 Q Okay. And so could you do that seven days a week,  
9 work another five hours a day seven days a week?

10 A Yeah. There was some -- during the summer, there was  
11 some pretty sick people who just couldn't get enough.

12 Q So there were some officers that were working 35  
13 hours of overtime a week?

14 MR. SHORT: Form.

15 A Let me think about your question for a minute. Let  
16 me think. I'm not sure that that amount of overtime  
17 would have been available to them. But  
18 hypothetically, they could have worked 60 -- they --  
19 yes.

20 Q So 75 hours.

21 A Yeah, 75 hours a week.

22 Q And so would overtime be a big part of Strike Force  
23 officers' salaries?

1 A Absolutely.

2 MR. SHORT: Form.

3 Q All right. And was that a common reason that people  
4 took overtime, to increase their salary?

5 MR. SHORT: Form.

6 A Well, I don't go to work because I have nothing else  
7 to do. I go to work to make money to improve my  
8 family's quality of life.

9 Q Okay. All right. So turning back to this email,  
10 Captain Serafini -- detail would operate from 11:30  
11 to 3:30, correct? 1130 to 1530, correct?

12 A Correct.

13 Q I have no military experience. And then he says  
14 so -- so that is four hours a day; is that right?

15 A That's correct.

16 Q So every day six police officers and two lieutenants  
17 could get four hours of overtime each day; is that  
18 right?

19 MR. SHORT: Form.

20 A Yes. The way I'm reading it, yes, that's what it  
21 means, four hours a day, seven days a week.

22 Q Okay. And then two -- and then during that overtime  
23 detail, officers were expected to run two traffic



1 checkpoints during the detail; is that right?

2 A During this time frame --

3 MR. SHORT: Form.

4 A -- it appears that Deputy Commissioner Lockwood  
5 ordered two checkpoints to be conducted.

6 Q Okay. Sounds good. All right. So I'm going to show  
7 you Exhibit 7 again, which is Bates Number COB016098.  
8 And we're going to do a little math.

9 So in this email, as you recall, you requested  
10 additional overtime due to the upswing in violent  
11 crime in the city; that's correct, right?

12 A That's correct.

13 Q And then you state in the second paragraph that "The  
14 Strike Force has used discretionary overtime to  
15 achieve these goals in the following manner: One  
16 lieutenant and six officers for five hour segments, a  
17 total of six times per pay period;" is that correct?

18 A That's correct.

19 Q And so this would be five hour segments, six times  
20 per pay period times -- so that would be 300 hours of  
21 overtime; is that right?

22 MR. SHORT: Form.

23 A Combined for all officers?

1 Q Yes.

2 A Yes. Yes, 300 hours.

3 Q All right. Great. And you requested this overtime  
4 detail in part because four of the -- please strike  
5 that.

6 So in this email, you said, "Four of the details  
7 would be run during the MP-2 shift to provide  
8 visibility through vehicle and traffic checkpoints  
9 and area saturation, especially during early  
10 afternoon hours;" is that correct?

11 A That's correct.

12 Q And what's the MP-2 shift?

13 A Day shift.

14 Q And then you said, "The other two would run during  
15 later evening hours to supplement regular MP-4  
16 officers to provide greater presence through high  
17 visibility checkpoints," correct?

18 A Correct.

19 Q So you tied this request for overtime to run  
20 checkpoints; is that right?

21 A I put it in there, yes, that would be part of our  
22 duties.

23 Q And Captain Serafini testified that this request was

1 granted. Is that consistent with your recollection?

2 A Yeah, I would say so.

3 MR. SHORT: Form.

4 Q All right. So now we are going to talk a little bit  
5 about traffic stops outside of -- are you doing okay?  
6 Do you need --

7 A No. I'm fine.

8 Q Okay. All right. So at safety checkpoints, your  
9 platoon engaged in other traffic enforcement stops,  
10 correct?

11 A Correct.

12 Q How frequently did your platoon engage in  
13 non-checkpoint vehicle stops?

14 A I mean, multiple times a day every day.

15 Q Okay. Officer Skipper testified that outside of  
16 checkpoints, he spent a lot of his time looking for  
17 traffic violations. Was that true of most Strike  
18 Force officers?

19 MR. SHORT: Form.

20 A Every car crew has their own way of doing the job,  
21 their own personalities, their own whatever. One of  
22 my officers had a summer and a winter ghillie suit  
23 and he would crawl through a field with binoculars

1 and watch the drug dealers and then radio to us who  
2 was handing off to who. That's what he loved to do.  
3 Summer and winter, he wanted to be out there, you  
4 know, doing this, you know, narcotics.

5 Office Skipper and his partner had one of their  
6 plate readers, and they would drive around with the  
7 LPR in the car and allow the car to essentially do  
8 their job for them. They're just driving around  
9 fishing.

10 As long as he's productive, I'm not going to  
11 question what he had been doing all night. You know,  
12 my guy with the ghillie suit, he calls me on a radio  
13 and they got four in custody with felony await crack  
14 cocaine. That's what he wanted to do.

15 Q And who is Officer Skipper's partner?

16 A Officer Joseph Walters.

17 Q And you said that they would go around with the LPR  
18 and go fishing. What did you mean by that?

19 A I mean you're just driving around letting the LPR do  
20 your work for you. You're just waiting for it to go  
21 off on a suspended registration or, you know, a  
22 stolen car, stolen plates.

23 Q And how did traffic enforcement, like Officer

1 Skipper's outside of checkpoints, further the Strike  
2 Force's mission?

3 MR. SHORT: Form.

4 A How did it further the Strike Force mission?

5 Q Uh-huh.

6 A They're out there -- they're out there enforcing the  
7 law. If they're choosing to enforce vehicle and  
8 traffic law and if it leads them to something else,  
9 which it often did, they're doing police work.

10 Q And so by enforcing traffic laws, they were -- they  
11 were advancing Strike Force's mission to eliminate  
12 hotspots because it might lead to something else?

13 A I think that's accurate.

14 Q All right. So I'm going to show Exhibit 18 (sic)  
15 again, which for the record is COB039565. Okay. And  
16 this is again a memo written by Captain Roberts that  
17 was sent to you as well as Commissioner Derenda and  
18 other lieutenants on April 16, 2015.

19 And in this he requests additional area and he  
20 said "to saturate an area with a focus on suppressing  
21 the gang activity which leads to violent acts --" so  
22 in this email, he says that he requests additional  
23 detail to saturate an area with a focus on

1 suppressing gang activity; is that right?

2 A That's what he writes, yes.

3 MR. SHORT: Form.

4 Q And we discussed this gang activity enforcement  
5 earlier, correct?

6 A Yes.

7 Q And you said that Strike Force would accomplish the  
8 suppression of gang activity through both checkpoint  
9 and non-checkpoint vehicle stops; is that right?

10 MR. SHORT: Form.

11 A I think it was successful, yes.

12 Q How was it successful?

13 A I believe that we did suppress gang activity. As I  
14 stated in the beginning, there's no quantitative  
15 measure of what didn't happen due to your presence,  
16 your visibility and enforcement. I believe we were  
17 out there doing really good work in high crime areas.

18 Q And how did you know this suppressed gang activity?

19 MR. SHORT: Form.

20 A It's subjective. It's my opinion.

21 Q Okay. And at the end of this email -- let's see, the  
22 third paragraph -- last sentence of the third  
23 paragraph of this email, Captain Roberts states that

1 "The officers would use the balance of time to focus  
2 on car stops and street corners as well;" is that  
3 correct?

4 A That is correct.

5 Q And would it be accurate to say that Strike Force's  
6 non-checkpoint saturation and vehicle enforcement was  
7 also concentrated on the inside of Buffalo?

8 A That's correct.

9 Q All right. So I'm going to show COB039544, which I  
10 may already have up, but let me look.

11 Okay. This is an email from you dated July 1,  
12 2016 to Chief Young, Captain Serafini and other  
13 lieutenants of the Strike Force, correct?

14 A Yes, ma'am.

15 Q If you want to take a minute to read it, you can go  
16 ahead and read it.

17 All right. In this email, you request that --  
18 in this email you state that Detective Maiola from  
19 the FBI Safe Street Task Force requested Strike Force  
20 lieutenants to support ongoing investigations, to  
21 conduct directed traffic stops and intercept  
22 contraband, correct?

23 A Yes.

1 Q And you requested two officers of the day detail to  
2 meet this objective and still cover your existing  
3 mission directed by the commissioner, correct?

4 A Yes.

5 Q To your recollection, this request for overtime was  
6 approved?

7 A Yes.

8 Q Okay. What are directed traffic stops?

9 A The FBI task force already had suspects that they  
10 were looking at and informants and they didn't want  
11 to -- they didn't want to grab the suspect  
12 themselves.

13 So they wanted a marked patrol unit to initiate  
14 a traffic stop, and from there -- I wasn't physically  
15 there to do it. If you see the email, it says two  
16 officers so -- but the -- they would initiate a  
17 traffic stop and do whatever the FBI asked them to  
18 do.

19 Q Uh-huh. And how did they accomplish these directed  
20 traffic stops?

21 MR. SHORT: Form.

22 A You would wait around the corner from where the FBI  
23 told us the person was and, you know, the FBI had



1 already figured out the person's pattern. And they  
2 would tell -- they would call them on the radio or on  
3 the phone, probably on the phone and say, hey, the  
4 suspect is moving.

5 And the officer would follow them and just wait  
6 for an opportunity for him to make some type of  
7 vehicle and traffic infraction and then pull him  
8 over.

9 Q Okay. And did these cars always commit a vehicle and  
10 traffic infraction?

11 A I couldn't tell you.

12 MR. SHORT: Form.

13 A I wasn't there. And as a matter of fact, the person  
14 didn't always come out and follow the routine that  
15 the FBI said they were going to, so the guys would  
16 just sit around for hours waiting.

17 Q And so would there be circumstances where the Strike  
18 Force officers might pull over an individual if there  
19 wasn't a traffic violation at the FBI's request?

20 MR. SHORT: Form.

21 A I can't comment on that. I don't have an answer.

22 Q Okay. So to your -- okay. But these Strike Force  
23 officers would specifically target these cars based

1 on FBI intelligence; is that right?

2 MR. SHORT: Form.

3 A Yes. They were -- Strike Force was used because the  
4 officers weren't tied to the radio. You couldn't ask  
5 a district officer to do it because as soon as the  
6 guy was going to come out of the house, dispatch  
7 would send them somewhere. The FBI was on duty  
8 supervising the operation. Our car crew, the Strike  
9 Force guys, they just were the tool used to pull the  
10 guy over.

11 Q Okay. And how do you intercept contraband through  
12 such directed stops?

13 A If it's in relation to the FBI thing, I don't know.  
14 I wasn't there. But on a regular traffic stop, the  
15 contraband is either in plain view or the person is  
16 going to be taken out of the car for legal reasons  
17 and then a search of the vehicle, you know, turn --  
18 presents the contraband. But the direct -- the  
19 directed stop part, that was all conducted by the  
20 FBI's Safe Streets Task Force.

21 Q All right. So I'm going to show you exhibit --  
22 another exhibit with Bates Number COB275147, and this  
23 is an email from you to Commissioner Derenda dated

1 July 6, 2015. I'll give you a minute to read it.

2 A I remember the day well.

3 Q Okay.

4 A Okay.

5 Q Why do you remember this day well?

6 A Well, as the first paragraph describes, it's the 4th  
7 of July on Montana Street. We're just on routine  
8 patrol, myself and Lieutenant Quinn.

9 And we've -- we're only driving down the street.  
10 The party goers had the street blocked off. They're  
11 shooting off fireworks in the middle of the street.  
12 There's about 20 cars backed up. Now, Montana is  
13 kind of a prevalent country street, so a lot of cars  
14 are trying to use it.

15 So now me and the other lieutenant are out of  
16 the car trying to instruct people behind us to back  
17 up. We're also trying to get through up to these  
18 people to tell them, hey, get out of the street, blow  
19 your fireworks of somewhere else, you know, on the  
20 property.

21 We're not trying to stops the fireworks. You're  
22 not going to do that. It's not possible. But having  
23 a whole street blocked off, somebody could become

1 injured and then the fire department can't get down  
2 there and provide treatment.

3 So I remember the night very well. I mean,  
4 there were a lot of people, 200 people in the street.

5 Q And was it -- is it common in Buffalo that folks  
6 throughout the city on July 4th deploy fireworks?

7 MR. SHORT: Form.

8 A Yes.

9 Q In all parts of Buffalo?

10 MR. SHORT: Form.

11 A Yes.

12 Q Okay. And on the west side?

13 A Yes.

14 MR. SHORT: Form.

15 Q And in South Buffalo?

16 A Yes.

17 Q And in Buffalo as well?

18 A Yes.

19 Q I used to live in Buffalo, so I know that's a very  
20 festive 4th of July celebration.

21 Okay. So in this email, you note at the end  
22 of -- in the last paragraph, some information about  
23 gang activity. How is this related to what you

1 observed on July 4th?

2 A Montana Street is located very close in proximity to  
3 this address on Genesee, 1671, so it's kind of an  
4 all-encompassing thing that the civil disorder is  
5 really prevalent. And in the summer months, this  
6 property at 1671, the Zulus' clubhouse, provided a  
7 lot of problems for C District officers.

8 Q Okay.

9 A Part of my email here is to point out that the  
10 location is a formidable block building structure in  
11 hopes that somebody will pick up on that and send  
12 maybe the city permit department over there to make  
13 them take down fencing if it's illegal -- I don't  
14 know that it is -- or see that they have a permit to  
15 operate whatever they're operating there.

16 Q Okay. So you wrote this email in part to alert the  
17 city to taken enforcement action against this  
18 building?

19 A Yes. The Zulus, they're blowing off fireworks as bad  
20 as they are over on Montana Street, and there's some  
21 pretty dangerous characters that are known to all  
22 police officers that are hanging out there.

23 Q How are they known to police officers?

1 A Previous arrests, gun arrests, narcotics arrests.  
2 And Larry Burts is known to not come peacefully.

3 Q And who are the Zulus?

4 A Motorcycle -- this is like a motorcycle gang. This  
5 hangout is a motorcycle clubhouse.

6 Q And are the members of the Zulus predominantly Black?

7 MR. SHORT: Form.

8 A Yes, they are.

9 Q And are they in the same age range that you had  
10 mentioned earlier, like under 25?

11 A The Zulus themselves are, but some of these other  
12 people here, the Soul Snatchers and Larry Burts and  
13 the Jacobs Brothers, they're a little older. They're  
14 pushing 40.

15 Q And that's unusual, you said, for gang members, that  
16 they're older?

17 A As I said earlier, it's like a pyramid. You got all  
18 these people working on the street, and then they're  
19 funneling this money up and the guy at the top is  
20 usually a little older.

21 Q All right. Did you monitor any white gangs in  
22 Buffalo?

23 A We got intelligence -- I wouldn't even say reports.

1           There was a detective. He handled gang intelligence,  
2           Detective Mahoney. We would ask him for some gang  
3           stuff. Being primarily assigned to the east side of  
4           Buffalo, I monitored the gangs within the east side  
5           of Buffalo.

6                        But on Delavan Avenue, there's a predominantly  
7           white motorcycle club called -- and they're not a  
8           club. It's a gang. They are associated with the  
9           Outlaws, but they're called something else. They are  
10          pretty dangerous.

11        Q           And so while at the Strike Force, did you ever target  
12          members of the Outlaws?

13        A           Not, the outlaws; the members of this other  
14          organization that was affiliated with them.

15        Q           Delavan gang?

16        A           What?

17        Q           Did you call it the Delavan gang?

18        A           No. Their clubhouse was on Delavan Avenue.

19        Q           Okay.

20        A           I'm trying to remember what the name of them was.

21        Q           And while you were on Strike Force, did you ever  
22          target members of this gang?

23        A           Yes, we did.

1 Q Okay. Frequently?

2 A If they -- they would have a couple large parties on  
3 their clubhouse property each summer, and we would be  
4 all around there for the duration of their party.

5 Q Uh-huh. And would you say that the majority of the  
6 gang members that Strike Force targeted were Black?

7 MR. SHORT: Form.

8 A Well, the demographic of the community of that area  
9 is primarily Black, so yes, the answer is yes.

10 Q And so when your officers were requested to make  
11 these directed traffic stops by the FBI's task force,  
12 were those directed stops usually of men who are  
13 Black?

14 MR. SHORT: Form.

15 A I wasn't there. I don't know who the suspects were,  
16 so I can't answer.

17 Q Earlier you talked about the Central Park Gang and  
18 Mary Evans and now Chief Gramaglia's request to  
19 target the Central Park -- members of the Central  
20 Park Gang. And were members of -- and you testified  
21 earlier that members of the Central Park Gang were  
22 largely Black, correct?

23 A That's correct.



1 Q And so that enforcement would involve targeting and  
2 recording the traffic stops of Black gang members,  
3 correct?

4 MR. SHORT: Form.

5 A Yes.

6 Q Okay. All right. So did -- we'll now talk a little  
7 bit about multiple tickets. Did officers also issue  
8 multiple tickets as a matter of course to drivers as  
9 they did in checkpoint stops?

10 A If there was multiple offenses, yes.

11 Q Okay. And would tinted windows -- was there a formal  
12 policy on how many tickets an officer can issue for  
13 illegal tints in a single traffic stop?

14 A There's not a policy, no.

15 Q Okay. Was there a former policy that required  
16 officers to write a ticket for every tinted window  
17 during a stop -- illegally tinted window during a  
18 stop when they observed multiple violations?

19 MR. SHORT: Form.

20 A No, there was not. It was something I looked down  
21 on, but I didn't order anybody not to do it.

22 Q Okay. What criteria did you or Strike Force officers  
23 use in deciding whether to issue multiple tickets for

1 tinted windows?

2 MR. SHORT: Form.

3 A I can't speak to the thoughts of other officers, but  
4 myself, I just wrote one ticket for tinted windows.  
5 I didn't write one for every window.

6 Q Uh-huh. And you never provided instruction to your  
7 officers to do the same; is that right?

8 A I made it clear that it was not necessary to do that,  
9 but I didn't order anybody not to do it.

10 Q Okay. All right. I'm going to show you an exhibit  
11 from *The Buffalo News*. It's an article entitled,  
12 "Buffalo's most issued traffic tickets is tinted  
13 windows." And down here, it indicates that over the  
14 four-year period between 2014 and 2017, Buffalo  
15 police averaged on average between 23 tinted window  
16 tickets a day compared to three speeding tickets a  
17 day, correct?

18 A Yes, ma'am.

19 MR. SHORT: Form.

20 Q Have you read this article?

21 A I don't think so.

22 Q Okay. And that -- okay. So does it surprise you the  
23 number of tinted window tickets that were issued a

1 day?

2 MR. SHORT: Form.

3 A Not really because it's an officer safety issue to  
4 me. It's an officer safety issue, and I don't like  
5 them. I don't like the dark tinted windows. I don't  
6 turn my police car around and chase down vehicle and  
7 traffic people. You get away today.

8 But if you're going the same direction as me and  
9 you've got tinted windows, I'm going to pull you  
10 over. And it's a pretty good chance I'm going to  
11 write you a summons for having your windows illegally  
12 tinted because especially in nighttime, it's an  
13 officer safety issue. It's very dangerous. It  
14 presents a dangerous situation.

15 Q Okay. You testified that -- so -- okay.

16 By "dangerous," you mean dangerous to police  
17 officers; is that right?

18 A Yes.

19 Q Okay. You testified that you have seen tinted  
20 windows in South Buffalo, correct?

21 A Absolutely.

22 Q Does it surprise you that white motorists are rarely  
23 ticketed for tinted window violations in South

1 Buffalo?

2 MR. SHORT: Form.

3 A I don't have -- I don't know how to answer that.  
4 First off, if the windows are tinted, you can't see  
5 who's driving the car anyway until you pull them over  
6 and ask them to roll down the window.

7 Q Uh-huh. I'm asking about South Buffalo, the region,  
8 not who's in the car. And my question is are you  
9 aware that white motorists are rarely ticketed for  
10 tinted windows violations in South Buffalo?

11 MR. SHORT: Form.

12 A I guess I'm surprised by that.

13 Q Okay. And are you surprised that when they are  
14 ticketed, they receive about 23 percent fewer tinted  
15 window tickets per incident than Black motorists?

16 MR. SHORT: Form.

17 A I guess I do. I find that surprising.

18 Q Okay. Why do you think East Buffalo residents are  
19 ticketed more frequently than South Buffalo residents  
20 for ticket tinted windows?

21 MR. SHORT: Form.

22 A For the officers who work in both C and D Districts,  
23 they're motivated police officers, so they're to do

1 police work. And I'm not disparaging my brothers and  
2 sisters in blue that work in A District, but there  
3 are some people who aren't going out to break the  
4 land speed record in police work.

5 They're happy to just go along and -- I don't  
6 want to use -- nothing but -- there's some people who  
7 are at the top of their profession, no matter what  
8 the profession, and there's some people who are not  
9 performers in their profession. It's just the way of  
10 the world.

11 Now, the fact that the South Buffalo police  
12 officers didn't write a lot of summonses, that's --  
13 they either didn't encounter a lot of crime or they  
14 used a lot of officer discretion. I can't answer  
15 that.

16 But I can answer to what the officers of the  
17 Strike Force Unit did, and combined with the officers  
18 of C District and E District who worked in the east  
19 side of Buffalo, they were out there being proactive  
20 every night and day.

21 Q But Strike Force -- but you testified earlier that  
22 Strike Force officers did less traffic enforcement  
23 than the A District; is that right?

1 A We were assigned to go to the A District less than  
2 other parts of the city, but when we were there, we  
3 did our job. If there was illegally tinted windows,  
4 you got a ticket.

5 Q All right. And you testified earlier that you've  
6 seen seat belt violations in South Buffalo; is that  
7 right?

8 A Yes.

9 Q And that you've seen child restraint violations in  
10 South Buffalo; is that correct?

11 A Yes.

12 Q Would you be surprised to learn that residents in  
13 South Buffalo get ticketed far less frequently for  
14 seat belt and child restraint violations than  
15 residents in East Buffalo?

16 MR. SHORT: Form.

17 A Again, I can't comment on the circumstances  
18 surrounding individual traffic stops performed in A  
19 District when I'm not there. I wasn't there.

20 Q Okay. All right. I'm going to show you another  
21 exhibit, which is COB228659. And then this is an  
22 email that included you, and I believe you were not  
23 here, but I'm going to ask you whether you heard

1 about this policy.

2 So if you look down -- this is an email from  
3 Captain Serafini to Strike Force lieutenants, which  
4 at the time you were included in this email, although  
5 I understand you did not work there at the time. And  
6 it's dated March 9, 2017.

7 And in this email, Captain Serafini says that he  
8 is looking for results in the third line. "Please  
9 stress to your officers that we are looking for  
10 production in the form of arrests, summonses, et  
11 cetera, et cetera," correct?

12 A Yeah, I see it.

13 Q And it says to advise your officers on overkill on  
14 the issuing of multiple traffic summons for the same  
15 one motorist, meaning that they should not be issuing  
16 six separate traffic summons for window tints,  
17 correct?

18 A I read that, yes.

19 Q Two tint summons for motorists is enough, correct?

20 A That's what he writes, yes.

21 Q Okay. And so did you ever receive any directive  
22 while you were a Strike Force lieutenant?

23 A No. I don't recall ever receiving any kind of

1 directive like this. I can tell you that there was  
2 hearsay about people -- that the issuing of the  
3 summonses to every window was overkill.

4 Q Okay. So since you were not there, we'll move on.

5 This is an email that you received on March 15,  
6 2016 from -- it's an email chain between you and  
7 Chief Brinkworth. And I'll let you go ahead and read  
8 from the bottom. It begins with an email from  
9 Captain Serafini.

10 A Okay.

11 Q All right. So in this email, Captain Serafini -- on  
12 March 14th, Captain Serafini informs you and the  
13 other lieutenants that the commissioner and deputy  
14 commissioner restricted Strike Force and the Housing  
15 Unit from writing traffic tickets for obstructed  
16 license plates, correct?

17 A That's correct.

18 Q All right. And any understanding of why this was the  
19 case?

20 MR. SHORT: Form.

21 A No. It just was an order that came down upon -- from  
22 high.

23 Q All right. And in response, you write an email to



1 Chief Brinkworth and CC Captain Serafini and the  
2 other lieutenants and you respond with questions  
3 demanding to know why the Strike Force is being  
4 ordered to ignore the New York State vehicle and  
5 traffic law.

6 A That is correct. I drafted this email.

7 Q Okay. Why did you draft it?

8 A Because --

9 MR. SHORT: Form.

10 A -- license plate covers, clear or tinted, only exist  
11 for one reason, and that's to defeat law enforcement  
12 initiatives.

13 Q Is that the only --

14 A They prevent the LPR readers from working  
15 effectively, and they prevent the citywide camera  
16 system from possibly identifying the license plate of  
17 a vehicle driving away from a crime scene, which is  
18 technology that came in near the end of my career,  
19 the final two years of my career.

20 Why is the city going to spend all this money on  
21 this technology to assist in crime enforcement when  
22 we're going to allow something so simple as a V&T law  
23 to be thrown aside? And it's very simply changed.

1           Take the thing off your license plate. Why do you  
2           have this on your license plate when it's illegal to  
3           have it and it doesn't do anything except prevent the  
4           police from doing their job?

5       Q     Uh-huh. Okay. And at the end here, you say that you  
6           feel you are being ordered to not do your jobs -- you  
7           feel that if you are being ordered to not do your  
8           job, an explanation needs to be provided, especially  
9           when everything we do is being so closely scrutinized  
10          by the public, correct?

11       A     That's correct.

12       Q     What did you mean when you stated that everything  
13           that you do is being so closely scrutinized by the  
14           public?

15       A     There was a -- this is one example. There was others  
16           too. There was this Housing commissioner, which is  
17           an unpaid position by appointment, I think of the  
18           mayor, or some are appointed by the mayor and others  
19           are elected by the people who live in the housing  
20           units.

21                    He wrote an article to *The Buffalo News* that the  
22           Buffalo Housing and Strike Force building unit acts  
23           like a frat house with unsubstantiated claims because

1           there's no public entrance into the building -- into  
2           our area of the building. We don't act as a police  
3           station.

4           You can't walk up there and file a report like  
5           you can at a police station. There's no public  
6           service there. We are just housed there, our police  
7           cars and our equipment. He felt that he should have  
8           a key to just -- to do these unannounced inspections  
9           on our work area.

10           There was additional scrutiny going on as to the  
11           performance and duties of the Strike Force and the  
12           Housing Units. Some were written articles in  
13           "Everybody's Column" in *The Buffalo News*. That's  
14           what I was presenting there.

15           So now we're being -- I'm a little frustrated.  
16           We're being scrutinized on all these issues that  
17           are -- they have nothing to back these accusations up  
18           with.

19           And now we are being told, just our unit, Strike  
20           Force and Housing, not to enforce this section of the  
21           vehicle and traffic law. When the city police  
22           department wishes to issue an order citywide, they  
23           issue what's called a general or special order, and

1           it goes out to everybody. This wasn't sent out to  
2           everybody. It was just an email to us.

3       Q       And who was this commissioner that you're referring  
4           to with BMHA?

5       A       I think his name was Ray or Ralph Mascia,  
6           M-a-s-s-c-i-a. I never encountered him personally,  
7           never had any interaction with him at all. And  
8           ultimately, he ended up getting fired or relieved  
9           from his position as a commissioner for the Housing  
10          Authority.

11      Q       Are you aware of complaints by BMHA residents about  
12          illegal stops on BMHA property?

13                               MR. SHORT: Form.

14      A       No, I'm not aware of anything like that, no.

15      Q       Okay. Is it true at some point that the Strike  
16          Force's checkpoint program also came under public  
17          scrutiny?

18      A       I'm sure it was scrutinized publicly, yes.

19      Q       When did you first hear about such scrutiny?

20      A       I don't know. The first disgruntled motorist on the  
21          first day of the day when we did the first checkpoint  
22          probably. I don't know. As far as formal complaint,  
23          I'm unaware of any formal complaint about us doing

1 the checkpoints.

2 Q Okay. Are you aware of any complaints made publicly  
3 about the checkpoint program?

4 A Official formal complaints, no.

5 Q How about informal complaints about the checkpoints?

6 A Again, when I was still working, hearsay or rumors or  
7 officers who would come back to the station and say  
8 they were very unhappy, meaning the motorists, why  
9 are we doing this, general banter, nothing specific.

10 Q Okay. I'm going to share an exhibit which is a  
11 July 13, 2016 article by Justin Sandel, Aaron  
12 Lowinger that appeared in *The Public*, which is an  
13 alternative media source covering Western New York,  
14 and *City & State New York*, which is a state news  
15 publication.

16 Do you ever recall seeing this article?

17 A No.

18 Q Okay. And what is the title of the article?

19 A "Checkpoint Buffalo: Are the BPD's traffic stops  
20 unconstitutional?"

21 Q That's right. Okay. I will give you a minute to  
22 read this article and direct you to a couple of  
23 areas.

1 A Can you go back up? I was just reading that last --  
2 right there. Okay. You can scroll down.

3 Q Let's look at this first page. This is an anecdote  
4 about a man named Thomas Lovelace who went through a  
5 checkpoint, correct?

6 A That's what it says.

7 Q And then he stated that -- that someone said  
8 something -- that they said something about it being  
9 a suspicious vehicle and that it might be  
10 transporting drugs, correct?

11 A They said -- yes, that's what it says.

12 MR. SHORT: Form.

13 Q Okay. And it also says that he said his status as a  
14 good driver was in good order but he was asked to  
15 pull over anyways, correct?

16 A Correct.

17 Q And then he said that "They literally ripped my car  
18 apart looking for drugs. They broke my laptop. Just  
19 happened to be in my trunk and they just threw it to  
20 the ground," correct?

21 A Correct.

22 Q And that he started a FaceBook group to raise  
23 Awareness and track the kind of checkpoints that

1           ensnared him, correct?

2           A        That's what it says.

3           Q        Do you recall hearing complaints like this while you  
4           were with the Strike Force?

5           A        Not firsthand, no.

6                           MR. SHORT:   Form.

7           Q        How about secondhand?

8           A        I'm not even sure I heard complaints like that  
9           secondhand.  I can't say -- I'm not denying that I  
10          was at the scene.  I'm not saying that I was at the  
11          scene.  I can't recall the circumstances of me being  
12          there.  I don't know what initiated the officers to  
13          search his vehicle or any of the surrounding  
14          information.

15          Q        All right.  Are you aware that the state attorney  
16          general opened an investigation into Buffalo's  
17          checkpoint program in December 2017?

18          A        I wasn't aware of that, no.

19          Q        Okay.  I'm going to show another article that is  
20          dated December 6, 2017 which is, I understand, after  
21          you left the Strike Force that's entitled "State  
22          attorney general's office investigating Buffalo  
23          police checkpoints."  Did you read *The Buffalo News*?

1 A Sometimes.

2 Q Do you recall reading this article?

3 A No, I don't.

4 Q Okay.

5 A The negativity in the -- the negativity on the news  
6 in general is a little redundant. I try to distance  
7 myself these days.

8 Q Okay. And this is an article -- I'll just have you  
9 read the first couple of paragraphs.

10 A Okay.

11 Q So this article reports that members of Black Lives  
12 Matter Buffalo and other community groups filed a  
13 complaint with the Attorney General's Office accusing  
14 the BPD of engaging in a repeated, persistent and  
15 widespread pattern of unconstitutional policing that  
16 targets people of color through traffic checkpoints  
17 and enforcement sweeps, correct?

18 A That's what it says.

19 Q And that the AG's office sent a letter to the Buffalo  
20 Police Department on Wednesday requesting a series of  
21 documents as part of this investigation --

22 MR. SHORT: Form.

23 Q -- correct?



1 A Correct.

2 Q All right. Okay. So are you aware that the City  
3 Council began investigating the use of Buffalo Police  
4 Department checkpoints at some point?

5 A No.

6 Q Sorry?

7 A No, I'm not aware of that.

8 Q Okay. All right. And so Strike Force was disbanded  
9 in March 2018, correct?

10 A That's my understanding, yes.

11 Q And you were no longer with the police department at  
12 that time; is that correct?

13 A I was in an injured-on-duty status, and in that  
14 status, you're assigned to the commissioner's office,  
15 so I wasn't part of the unit anymore either.

16 Q Okay. And what is your understanding of why the  
17 Strike Force was disbanded?

18 MR. SHORT: Form.

19 A I don't have an understanding of why it was  
20 suspended.

21 Q Okay. I'm going to show you an exhibit with Bates  
22 Number COB -- well, let me go back a minute.

23 Do you have an opinion on why the Strike Force

1 was disbanded?

2 MR. SHORT: Form.

3 A I have an opinion.

4 Q What is your opinion on why the Strike Force was  
5 disbanded?

6 A I think that --

7 MR. SHORT: Form.

8 A -- ultimately -- well, first off, I stated earlier  
9 these units all have a shelf life. They all die out  
10 after about four years. That's been the history with  
11 all these specialized units that the city is going to  
12 use to address what -- these issues, quality of life,  
13 high crime, violence, whatever. So it ran its  
14 course.

15 The way they all die is because they all  
16 generate complaints by the people that are being  
17 arrested or, you know, receiving the enforcement end  
18 of the unit. Once the complaints start to get filed,  
19 they're not just complaining to -- it's my opinion.  
20 I don't know this to be factual.

21 Once those complaints get filed with the police  
22 department, then they move on and they -- when there  
23 are not enough results of filing with the police

1 department, they move on and they contact the  
2 councilman or the mayor's office directly. And I  
3 believe that the political part of the city decides  
4 okay, we're going to do away with this because it's  
5 generating too many complaints.

6 Q Okay. So you believe that the Strike Force may have  
7 been disbanded because of the complaints?

8 A Part of the reason, yes, part of the reason.

9 MR. SHORT: Form.

10 Q Did those complaints -- do you believe those  
11 complaints were all made by people who violated  
12 criminal laws?

13 MR. SHORT: Form.

14 A No, not all of them.

15 Q Some of them?

16 A I believe some of them were, and some of them are  
17 filed by people who were simply inconvenienced. They  
18 didn't like being inconvenienced by these traffic  
19 checkpoints in their neighborhoods.

20 And as I stated earlier, we were directed  
21 geographically where to go, and the lieutenant, based  
22 on manpower, picked the actual checkpoint location.

23 And I sympathize with some of the citizens. As I

1 stated, you try to find a natural bottleneck to  
2 complete this task with officer safety involved.

3 So that means that I'm doing a checkpoint at  
4 this location frequently based on manpower. If I  
5 live on that street, I can understand, yes, the  
6 people who are out supporting us, they're happy. But  
7 the guy who's got to go to work and he's leaving five  
8 minutes after we set up the checkpoint, he's sick of  
9 it and he wants us off his street.

10 And I sympathize with that, but that doesn't  
11 change the fact that I've got a mission to accomplish  
12 and I only have six guys to do it with. On the days  
13 where that manpower is very high, I'm doing them in a  
14 location that I wouldn't be able to do otherwise  
15 because I didn't have the manpower.

16 Q So you're saying that the mission of the Strike Force  
17 outweighed the citizens' concerns about their  
18 inconvenience?

19 MR. SHORT: Form.

20 Q Is that right?

21 A No, that's not exactly what I'm saying. I said I  
22 understood how some citizens could become aggravated.  
23 They didn't come down the street and complain to me

1 and say, "Why, why every day? Why can't you come  
2 here a half hour later? I've got to go to work." So  
3 then the complaints, they didn't come to me either  
4 through the person or from the command.

5 Q Okay. I'm going to share my screen again and this is  
6 a -- an exhibit with Bates Number COB592425 and in  
7 this email -- this is an email dated November 4, 2015  
8 from you to Colin Fitzgerald, correct?

9 A Yes.

10 Q Do you know who Colin Fitzgerald is?

11 A He was an ADA when I was a police officer. I think  
12 he's still there.

13 Q All right. And do you recall receiving this email?

14 A Yeah, vaguely I remember this.

15 Q All right. And do you -- so in this email, he  
16 informs you that he has a hearing to determine the  
17 legality of a checkpoint that he believes you set up  
18 for the above-named defendant, Christian Saddler, on  
19 Olympic and Kensington, correct?

20 A That's what it says.

21 Q Do you know the circumstances -- do you know what the  
22 circumstances were for the legal challenge to the  
23 checkpoint?

1 MR. SHORT: Form.

2 A No, I do not.

3 Q Okay. Are you -- you testified earlier that you  
4 received training on stops and seizures, correct?

5 A That's correct.

6 Q Do you ever recall learning about the Supreme Court  
7 case entitled City of Indianapolis versus Edmond?

8 MR. SHORT: Form.

9 A Maybe if you refresh my recollection as to the  
10 content of the case, but I don't remember by the name  
11 of the case.

12 Q Okay. Are you -- were you trained in any  
13 constitutional limitations around the use of  
14 checkpoints?

15 MR. SHORT: Form.

16 A We did have training on the use of checkpoints and it  
17 was -- I don't know who conducted training, but it  
18 did raise -- we as a unit had questions about the  
19 legality of the checkpoints. And we were verbally  
20 told that they met the standard for constitutionality  
21 based on the fact that we made everybody go through  
22 the checkpoint, that we followed the checkpoint  
23 checklist, that we gave the briefing with it at the

1 beginning of every tour of duty.

2 Q Okay. And who provided this training?

3 A I stated already I can't recall who provided it.

4 Q When was the training?

5 A Probably near the beginning of the start of the unit  
6 in 2013.

7 Q Okay. And you were informed at that training that  
8 checkpoints were constitutional?

9 A As long as --

10 MR. SHORT: Form.

11 A -- we conducted them in the manner we were conducting  
12 them, they were constitutional.

13 MR. SHORT: Form.

14 Q Were you informed of any circumstances in which  
15 checkpoints were not constitutional in that training?

16 MR. SHORT: Form.

17 A I can't recall.

18 Q Okay.

19 A I think basically it would be unconstitutional if we  
20 were selective in our enforcement of the road safety  
21 checkpoints stated.

22 Q I'm sorry. Can you repeat that? I could not hear  
23 you.

1 A It would be unconstitutional if we were selective in  
2 our enforcement at the checkpoint based on what the  
3 road safety checkpoints checklist said. As long as  
4 we were uniformly enforcing the law and uniformly  
5 treating people -- that everybody goes through the  
6 checkpoint and receives the same treatment, it's  
7 constitutional.

8 Q Earlier you testified that you would use your  
9 discretion on when to issue tickets at checkpoints,  
10 correct?

11 A Sometimes, yes.

12 Q Would you consider your use of discretion or your  
13 officers' use of discretion to be uniform?

14 A Yes. I would expect it to be uniform.

15 MR. SHORT: Form.

16 Q Okay. If officers are using their discretion in  
17 different ways, how is that uniform?

18 MR. SHORT: Form.

19 A You'd have to give me an example of how they use  
20 their discretion in different ways. Not every -- and  
21 I'm not saying every officer has to use discretion.  
22 If they want to follow the letter of the law, okay.

23 Q Okay. Okay. All right. So I'm now going to show



1           you --

2                   MR. SHORT: This might be a good  
3                   opportunity to discuss scheduling. We are at  
4                   the eight-hour mark, I think.

5                   MS. MALHOTRA: Okay. I would say that I  
6                   have probably like about an hour to an hour  
7                   and a half. I can do that now if you like or  
8                   we can come back another day. It's up to  
9                   you.

10                  THE WITNESS: I say we go for it.

11                  MS. MALHOTRA: Okay. Hold on one  
12                  second. I'm going to use the bathroom too.

13                  (A recess was taken.)

14                  (Discussion held off the record.)

15                  MS. MALHOTRA: So I'm going to finish up  
16                  with a couple of questions now, and then we  
17                  can resume for an extra hour, hour and a half  
18                  on the remaining questions after the search  
19                  is done and wrap up the deposition. Does  
20                  that work? So I'm going to ask a few -- one  
21                  last set of questions, and we will be set for  
22                  today.

23                  BY MS. MALHOTRA:

1 Q So I'm now sharing an exhibit, which is a news  
2 article dated July 5, 2016, entitled "Buffalo Police  
3 unveil specialized team for mass demonstrations." Do  
4 you see that?

5 A I do.

6 Q Have you read this article before?

7 A I think it's a video, isn't it?

8 Q There is a video as well. So do you want to take a  
9 minute to read this article?

10 A I read it every night before I go to bed. I couldn't  
11 help it.

12 Q Do you really?

13 A No.

14 Q I'm just making sure. So I'll let you go ahead and  
15 read this article. Let me know when I should scroll.

16 A Yeah, you can scroll. Okay.

17 Q Let me just make sure -- all right.

18 A Yep.

19 Q All right.

20 A Okay.

21 Q Are you done?

22 A Yes.

23 Q In this article, you state that there is -- oh, my

1           goodness. The statement that I was going to ask you  
2           about is not on -- did not get translated, so let me  
3           just pull this up.

4           Okay. So if you draw your attention to the  
5           second paragraph, which got cut off in the printed  
6           version, you state, "There is a very fine line  
7           between policing and honoring people's civil rights;"  
8           is that right?

9           A        I said that, yep.

10          Q        And later you say, "To move people, keep avenues open  
11          and remove protesters that are there to disrupt other  
12          people's rights," correct?

13          A        That's correct.

14          Q        And what did you mean when you said that there's a  
15          very fine line between policing and honoring people's  
16          civil rights?

17          A        You exercising your civil rights does not give you  
18          the right to infringe on another person's civil  
19          rights. And you showing up to protest -- by all  
20          means, I spent my entire life in the defense of the  
21          Constitution of the United States. By all means, you  
22          have the right to be there, but you don't have the  
23          right to disrupt other people.

1           You don't have the right to initiate violence,  
2           and you are required to comply with officers' lawful  
3           orders. You have the right to protest, but I have  
4           the right to tell you within reason where you're  
5           going to protest at. If we set up a section over  
6           here to keep avenues open for emergency response  
7           vehicles, for police safety, for civilian safety, you  
8           have to comply with my requests.

9           And quite honestly, everybody did comply. The  
10          first thing I would do is go find the guy in charge  
11          and just lay down the ground rules with him. I'm  
12          happy you're here, but respect our position too. We  
13          have a job to do. And I can't ever recall one time  
14          having a single problem.

15        Q        Okay. So when you --

16        A        The key is communication.

17        Q        Okay. So when you say that there's a fine line  
18          between policing and honoring people's civil rights,  
19          do you mean that there were times when the police may  
20          have to violate people's civil rights while they're  
21          engaging in policing?

22                   MR. SHORT: Form.

23        A        No, that's not what I mean at all. I mean that

1 people believe that they can scream at the police, "I  
2 know my rights, I know my rights," but you're over  
3 the line. You're not exercising your rights anymore.  
4 You're violating, one, the law or, two, another  
5 person's rights because there's almost always  
6 counter-protesters.

7 So it's a perception that people have that we  
8 are violating the rights. I'm actually there to make  
9 sure you have the right to safely exercise your  
10 rights.

11 Q Uh-huh. And so what do you think the line is between  
12 policing and honoring people's civil rights?

13 A I think I've already described it. I think that  
14 people have the right to protest. People have the  
15 right to exercise their First Amendment rights within  
16 a legal reason as long as they are not destroying  
17 property or putting other people at risk.

18 Q Uh-huh. And how do protesters disrupt people's  
19 rights?

20 MR. SHORT: Form.

21 A Not all protesters do. Some protesters do. They  
22 violate other people's rights by becoming violent  
23 with the opposing view.

1 Q And were you trained on this line between policing  
2 and honoring people's civil rights?

3 A I don't know if the accurate term is that we were  
4 trained in that. Those were my words taken in an  
5 interview. But we did receive the full FEMA Homeland  
6 Security training, both for mobile field force,  
7 myself for supervision, and some of us were the -- I  
8 can't recall what the name of the course was. It's  
9 to defeat some of the tactics of more aggressive  
10 protesters that like chain themselves to buildings  
11 and stuff.

12 Q And did -- during that training, were you trained on  
13 the civil rights of citizens?

14 A Yes. And I would say that was part of the training,  
15 yes.

16 Q Okay. And what were you trained on with regard to  
17 the civil rights of citizens?

18 MR. SHORT: Form.

19 A The issue that we are required to honor people's  
20 civil rights and their right to protest and gather  
21 peacefully.

22 MS. MALHOTRA: Okay. That is all I have  
23 for right now. And so we will continue this

1 deposition soon. And after the completion of  
2 that -- of Mr. Quinn and the city's search of  
3 Buffalo's records, but regardless I want to  
4 make clear that I -- independent of that  
5 search, I still have about an hour to an hour  
6 and a half of questions remaining.

7 Are we on the same page, Mr. Short?

8 MR. SHORT: Yes.

9 MS. MALHOTRA: So we'll get you dates on  
10 finalizing this deposition. Thank you so  
11 much for your time today, Mr. Whelan. I  
12 really appreciate it.

13 THE WITNESS: You're welcome.

14 MS. MALHOTRA: And I look forward to  
15 seeing you again soon.

16 THE WITNESS: Okay.

17

18 (Deposition adjourned at 5:53 p.m.)

19 \* \* \* \* \*

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23

1 STATE OF OHIO )

2 COUNTY OF CUYAHOGA )

3 I, Luanne K. Howe, Notary Public, in and for the  
4 County of Cuyahoga, State of Ohio, do hereby certify:

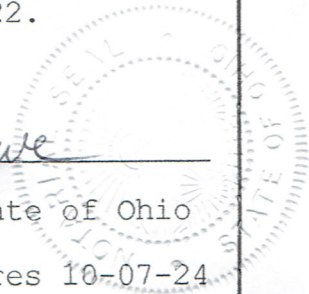
5 That the witness whose testimony appears  
6 hereinbefore was, before the commencement of his testimony,  
7 duly sworn to testify the truth, the whole truth and nothing  
8 but the truth; that said testimony was taken remotely  
9 pursuant to notice at the time and place as herein set  
10 forth; that said testimony was taken down by me and  
11 thereafter transcribed into typewriting, and I hereby  
12 certify the foregoing transcript is a full, true and correct  
13 transcription of my shorthand notes so taken.

14 I further certify that I am neither counsel for  
15 nor related to any party to said action, nor in any way  
16 interested in the outcome thereof.

17 IN WITNESS WHEREOF, I have hereunto subscribed my  
18 name and affixed my seal this 2nd day of May, 2022.

19  
20  
21  
22  
23

*Luanne K. Howe*  
Luanne K. Howe  
Notary Public - State of Ohio  
My commission expires 10-07-24





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