

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

Civil Action No. 1:12-cv-11908-FDS

* * * * *

EURIE A. STAMPS, JR. AND NORMA *

BUSHFAN STAMPS, Co-Administrators *

of the Estate of Eurie A. Stamps, *

Sr., *

Plaintiffs *

vs. *

THE TOWN OF FRAMINGHAM, AND PAUL *

K. DUNCAN, individually and in *

his Capacity as a Police Officer *

of the Framingham Police *

Department, *

Defendants *

* * * * *

VIDEOTAPED DEPOSITION OF SERGEANT VINCENT E. STUART

Kreindler & Kreindler LLP

277 Dartmouth Street

Boston, Massachusetts

October 9, 2013 10:08 a.m.

Maryellen Coughlin, RPR/CRR

Sergeant Vincent E. Stuart

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|--------|--|--------|---|
| 1 | APPEARANCES: | 1 | INDEX |
| 2 | Representing the Plaintiff Norma Bushfan Stamps: | 2 | |
| 3 | KREINDLER & KREINDLER L.L.P. | 3 | WITNESS: SERGEANT VINCENT E. STUART |
| 4 | 277 Dartmouth Street | 4 | EXAMINATION: Page |
| 5 | Boston, Massachusetts 02116 | 5 | BY MR. MUSACCHIO 7 |
| 6 | BY: Joseph P. Musacchio, Esq. | 6 | |
| 7 | (617) 424-9100 | 7 | EXHIBITS FOR IDENTIFICATION: |
| 8 | jmusacchio@kreindler.com | 8 | No. Description Page |
| 9 | | 9 | 45 Diagram of 26 Fountain Street 20 |
| 10 | Representing the Plaintiff Eurie Stamps, Jr.: | 10 | |
| 11 | BARDOUILLE and FUGATE | 11 | |
| 12 | 22 Broad Street | 12 | |
| 13 | Lynn, Massachusetts 01902 | 13 | |
| 14 | BY: Anthony W. Fugate, Esq. | 14 | |
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| 18 | BRODY HARDOON PERKINS & KESTEN, L.L.P. | 18 | |
| 19 | One Exeter Place | 19 | |
| 20 | 699 Boylston Street | 20 | |
| 21 | Boston, Massachusetts 02116 | 21 | |
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| 23 | 617-880-7100 | 23 | |
| 24 | tdonohue@bhpklaw.com | 24 | |
| Page 3 | | Page 5 | |
| 1 | FURTHER APPEARANCES: | 1 | PROCEEDINGS |
| 2 | | 2 | |
| 3 | Also Present: Lucille Sharp, Paralegal | 3 | THE VIDEOGRAPHER: We are now on |
| 4 | Christina Graziano, Law Clerk | 4 | the record. My name is Wesley Hicks. I am a |
| 5 | | 5 | videographer for Golkow Technologies. Today's |
| 6 | Videographer: Wesley Hicks | 6 | date is October 9, 2013, and the time is 10:08 |
| 7 | | 7 | a.m. |
| 8 | | 8 | This video deposition is being held |
| 9 | | 9 | in Boston, Massachusetts in the matter of Eurie |
| 10 | | 10 | A. Stamps, Jr. and Norma Bushfan Stamps, |
| 11 | | 11 | Co-Administrators of the Estate of Eurie A. |
| 12 | | 12 | Stamps, Sr., Plaintiffs versus the Town of |
| 13 | | 13 | Framingham, and Paul K. Duncan, individually and |
| 14 | | 14 | in his Capacity as a Police Officer of the |
| 15 | | 15 | Framingham Police Department for the United |
| 16 | | 16 | States District Court, District of Massachusetts, |
| 17 | | 17 | Civil Action Case No. 1:12-cv-11908-FDS. |
| 18 | | 18 | Counsel please voice identify |
| 19 | | 19 | yourselves. |
| 20 | | 20 | MR. MUSACCHIO: My name is Joseph |
| 21 | | 21 | Musacchio. I represent the plaintiff Eurie |
| 22 | | 22 | Stamps, administrator of the -- I'm sorry -- |
| 23 | | 23 | Eurie Stamps, Jr. administrator of the Estate of |
| 24 | | 24 | Eurie Stamps, Sr. |

Sergeant Vincent E. Stuart

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1 MR. DONOHUE: Tom Donohue for the
2 defendants.
3 THE VIDEOGRAPHER: Would all others
4 present please state your name for the record.
5 MS. SHARP: Lucille Sharp,
6 paralegal for the plaintiff.
7 MS. GRAZIANO: Christina Graziano
8 Walker for the plaintiff.
9 THE VIDEOGRAPHER: The deponent is
10 Sergeant Vincent E. Stuart, and the court
11 reporter is Maryellen Coughlin and will now swear
12 the witness.
13
14 SERGEANT VINCENT E. STUART,
15 having been first duly sworn, was examined
16 and testified as follows:
17
18 MR. MUSACCHIO: We'll have the
19 usual stipulations: All objections, except to
20 the form of the question, are reserved until the
21 time of trial; all motions to strike are reserved
22 until the time of trial.
23 I assume he wants to read and sign?
24 MR. DONOHUE: He'd like the

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1 opportunity to, please.
2
3 EXAMINATION
4 BY MR. MUSACCHIO:
5 Q. Would you please state your name
6 for the record?
7 A. Sergeant Vincent E. Stuart.
8 Q. And, sir, what town do you
9 presently live in?
10 A. Framingham, Massachusetts.
11 Q. And where are you presently
12 employed?
13 A. The Framingham Police Department.
14 Q. And what is your position there?
15 A. I am a patrol supervisor on the
16 evening shift, a sergeant.
17 Q. And do you have any plans to leave
18 the Framingham Police Department at any time in
19 the near future?
20 A. No, I don't.
21 Q. There's been some changes at the
22 department recently; is that correct?
23 A. Yes, there has.
24 Q. Chief Carl has left; is that

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1 correct?
2 A. He took a different job, yes.
3 Q. And also Deputy Chief Davis has
4 taken a different job as well?
5 A. Yes, sir, that's true.
6 Q. And who is now the acting chief?
7 A. The acting chief right now is Chief
8 Ken Ferguson.
9 Q. And do you know of the candidates
10 out there who will be taking over as the
11 permanent chief?
12 A. It's between the Acting Chief,
13 Ferguson, and another deputy chief within our
14 department, Trask, Steven Trask.
15 Q. Steven Trask. And do you know when
16 that decision will ultimately be made?
17 A. I hear rumor the 16th is when
18 they're suppose to come up with it but . . .
19 Q. Of this month, October?
20 A. Yes, yes.
21 Q. Can you briefly describe your
22 educational background?
23 A. I went to public schools in
24 Framingham. I went to Keefe Tech Vocational High

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1 School in Framingham. After high school, I went
2 up to Bridgton Academy up in Maine, North
3 Bridgton, Maine for a year.
4 Q. Is that high school?
5 A. Yeah, it's a preparatory school
6 after high school.
7 Q. Okay.
8 A. To boast the grades to get into
9 college. I went to Northeastern for a year, and
10 I have my associate's degree.
11 Q. And what is your associate degree
12 in?
13 A. Criminal justice.
14 Q. And that's from Northeastern?
15 A. No, that is actually from Westfield
16 State.
17 Q. Okay. And I understand the SWAT
18 team has just been disbanded; is that correct?
19 A. Yes, that's correct.
20 Q. So you no longer have any official
21 capacity relating to the SWAT team?
22 A. Not as of right now, no.
23 Q. And what was the date the SWAT team
24 was disbanded?

Sergeant Vincent E. Stuart

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1 A. The exact date I'm not sure.
2 Within a week or two.
3 Q. I'll ask you some more questions
4 about that later. Now, you were a -- now, you
5 were a member of the SWAT team prior to a couple
6 weeks ago; is that correct?
7 A. Yes.
8 Q. And you were a member of the SWAT
9 team on January 5, 2011, correct?
10 A. Yes.
11 Q. And your position with the SWAT
12 team on January 5, 2011, was as a team leader?
13 A. Correct.
14 Q. And can you explain what a team
15 leader does?
16 A. The team leader is in charge of
17 training personnel. The team leader is also in
18 charge of organizing raid plans, operations.
19 It's more of a leadership role on a team.
20 Q. Now you understand that you're here
21 today to discuss your involvement in the planning
22 and execution of a search warrant at 26 Fountain
23 Street in Framingham on January 5, 2011; is that
24 correct?

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1 A. Yes, sir.
2 Q. And you understand that Eurie
3 Stamps, Sr. was killed in his home during the
4 execution of that warrant by a bullet discharged
5 from the gun of Framingham police officer Paul
6 Duncan; is that correct?
7 A. I do understand that, yes.
8 Q. In preparation of your deposition
9 today, did you review your interview that you
10 gave as part of the state police investigation
11 into the Stamps shooting?
12 A. Yes, I did.
13 Q. And that interview was done
14 sometime around January 6th of 2011; is that
15 correct?
16 A. I believe so. I believe so. Yeah,
17 that night.
18 Q. And you reviewed it --
19 A. I did.
20 Q. -- before coming here today?
21 A. Yes, sir.
22 Q. Was there anything in your
23 testimony that you gave during your interview
24 that was incorrect or that you would wish to

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1 change in terms of what occurred and what you saw
2 on January 5, 2011, relating to the shooting of
3 Mr. Stamps?
4 MR. DONOHUE: Objection to form.
5 A. Not that I can recall, no.
6 Q. So there's nothing in there that
7 was incorrect that you would like to correct
8 today?
9 A. I'm not sure I understand. On my
10 part or?
11 Q. What I mean by -- the content of
12 your testimony in the interview.
13 Was there anything in the content
14 of your testimony in the interview that you read
15 and reviewed before coming here that was
16 incorrect?
17 A. No. I don't think so, no.
18 Q. So you stand by what you said in
19 your interview as the facts as you understand
20 them to be?
21 A. Yes.
22 Q. Okay. Did you review any other
23 material before coming here today?
24 A. I did, yes.

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1 Q. What did you review?
2 A. I reviewed old policy. I reviewed
3 the revised policy. I reviewed my suggestions
4 for policy. I reviewed my training that I
5 conduct. I reviewed the Ijames or Iames report.
6 I'm not sure how you pronounce his name. I
7 believe that was it. I'm not sure.
8 Q. When you say you reviewed documents
9 relating to your suggestions for policy, what are
10 you referring to?
11 A. The older policy had a line saying
12 handling of firearms, or something to that
13 effect, will be in line with your training, and
14 there was no written outline exactly what the
15 training was, so my suggestions added that.
16 Q. Is there a document that states
17 what your suggestions were?
18 A. Yes.
19 Q. What is that document?
20 A. I believe I titled it -- well, one
21 of them is my training outline that I've been
22 using all along. And the suggestions, I just
23 changed the title to say "Definitions for Updates
24 and a Policy Change," or something else.

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1 Q. Can you describe what these
2 documents look like? What are they memoranda?
3 A. I believe it's a two-page with a
4 number of definitions and a policy suggestion on
5 contact/cover.
6 Q. And that document is not the final
7 protocol that was reduced to actual policy; is
8 that right? It's a different kind of document?
9 A. It's different. I didn't -- I
10 don't actually make or implant the policy. I
11 just make suggestions, and then someone else
12 actually turns it into policy.
13 MR. MUSACCHIO: For the record, I
14 don't believe I have that document. If I do, I'm
15 mistaken, but I don't believe I have it, so I
16 would ask that that document be produced that he
17 just described.
18 We'll get into that a little bit
19 more later.
20 A. Okay.
21 Q. Did you discuss your deposition
22 here today with Officer Paul Duncan?
23 A. No.
24 Q. Did you discuss your deposition

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1 here today with any other law enforcement
2 personnel employed by Framingham?
3 A. Other than telling them I was
4 coming here, no.
5 Q. So you didn't discuss the substance
6 of what your deposition might be or might not be
7 with any other person?
8 A. No. Just with Tom here.
9 Q. Right, your attorney.
10 A. Right.
11 Q. So the only thing -- the only
12 conversations you've had with any other law
13 enforcement personnel in Framingham about your
14 deposition is the fact that you're coming here
15 today?
16 A. Correct.
17 Q. Have you discussed your deposition
18 with any administrative personnel employed by the
19 Town of Framingham excluding your lawyer?
20 A. Other than I'm coming here today,
21 no.
22 Q. Now, you know that several other
23 officers have already been deposed in this case;
24 is that correct?

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1 A. Yes, sir.
2 Q. Have you discussed your -- have
3 they ever discussed their testimony with you?
4 A. They said they went, and they were
5 wondering when I was going to go. Other than
6 that, no. Nothing in detail about what was
7 discussed.
8 Q. Was any substance of their
9 deposition discussed whether in detail or
10 briefly?
11 A. No. I've been out for five months.
12 Q. Oh, you have been?
13 A. Yes. I've been out of work with an
14 injury.
15 Q. But you're back now?
16 A. Back now.
17 Q. And you haven't had any
18 conversations with anybody who's previously been
19 deposed in this case about the content of your
20 testimony today or the content of their prior
21 testimony?
22 A. Other than me coming here today,
23 no.
24 Q. Now, I want to take you back to

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1 January 5, 2011, that was in the early morning
2 hours when Mr. Stamps was shot and killed in his
3 home.
4 Now, you reported to the station at
5 about 9:30 p.m. on the evening of January 4,
6 2011; is that correct?
7 A. Yes.
8 Q. And part of your duties when you
9 reported to the station was to prepare a tactile
10 plan for the execution of the search warrant at
11 26 Fountain Street; is that correct?
12 A. Yes, sir.
13 Q. Now, during that meeting,
14 information was provided by certain police
15 officers regarding the layout of the first floor
16 apartment on 26 Fountain Street, the location
17 where the search warrant was going to be
18 executed; is that correct?
19 A. Yes, it is.
20 Q. I'm going to show you what's been
21 previously marked as Exhibit No. 28. Have you
22 seen that document before?
23 A. I have.
24 Q. And do you know who prepared it?

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1 A. I'd say it was a combination.
2 There's different handwritings in here. These
3 two names here were corrections, that's my
4 handwriting. I'm not sure who wrote the rest.
5 Q. So this was a collaborative effort
6 between you and who else?
7 A. Myself, Lieutenant Downing and
8 Deputy Chief Davis usually sit in a conference
9 room and come up with the operational plans, the
10 raid planning, but narcotics detectives will come
11 in and give us their information and other
12 additions such as interior layouts or diagrams
13 such as this.
14 Q. I'm going to show you a diagram of
15 a floor plan that was prepared in this case by
16 experts for the plaintiff, and I just want you to
17 take a look at that. And after you do -- and I'm
18 going to represent to you that this is the floor
19 plan for the first floor apartment on 26 Fountain
20 Street where the warrant was executed.
21 A. It looks like it to me, yes.
22 Q. Okay. Is this a fair and accurate
23 depiction based on your memory of what the layout
24 of the floor plan was at 26 Fountain Street on

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1 January 5, 2011?
2 A. It looks like it, yes.
3 Q. Now, I want to go over with you the
4 tactile plan that was put together by you, Deputy
5 Chief Davis and Lieutenant Downing. And as I
6 understand it, the plan was that the officers
7 would make entry into the first floor apartment
8 at 26 Fountain Street through the front entry, is
9 that correct, that's marked here on -- that's
10 marked here on the diagram I've showed you?
11 A. I'm not sure I understand. This
12 front entry doesn't actually get into the
13 apartment. This is kind of a common hallway.
14 Q. Into the house?
15 A. Into the actual structure, yes.
16 Q. So the plan was for the officers to
17 make front entry into a common hallway on the
18 first floor of the house; is that correct?
19 A. One part of the plan, yes.
20 Q. Right. And one other part of the
21 plan was that there was going to be an officer
22 stationed at the stairwell in that front entry
23 that leads up to the second floor apartment; is
24 that correct?

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1 A. Correct.
2 Q. Why don't we mark that as
3 Exhibit 45, if we could. If you could just hand
4 that to the stenographer. Thank you.
5 (Exhibit No. 45 was marked
6 for identification.)
7 Q. (By Mr. Musacchio) Does it help you
8 to turn the document this way -- it's entirely up
9 to you -- to have a view of the front of the
10 house?
11 A. No. This is definitely the front
12 of the house, no, but everything is written the
13 other way. I'll be reading it sideways, I guess.
14 Q. All right, that's fine. And part
15 of the plan was that a group of three officers,
16 Officer Stuart -- I mean yourself, Sergeant
17 Stuart, Officer Duncan and Officer Sebastian
18 would make entry into what is labeled the living
19 room off a doorway on the right side of the
20 hallway; is that correct?
21 A. That was my entry team's assignment
22 once a bunch of other things fell into place.
23 Q. And the plan in part -- and part of
24 the plan was that a second team of officers would

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1 make entry into the apartment through the kitchen
2 door at the end of the front entryway; is that
3 correct?
4 A. Correct. Yeah, I believe, there
5 was three other officers there.
6 Q. And they were Officer O'Toole,
7 Officer Sheehan and Lieutenant Downing; is that
8 correct?
9 A. I'm not positive about the three.
10 I know that Sheehan was the breacher, and I know
11 that Downing was in charge of the team, but I'm
12 not exactly positive who the third person was.
13 Q. And part of the plan was that you
14 would knock on the door that leads into what is
15 labeled the living room; is that correct?
16 A. Once I knew that our perimeter was
17 set up and all the teams were in place, then I
18 would conduct a knock and announce. The intent
19 is to knock on the door, but I knocked on the
20 wall.
21 Q. So you knocked on the wall and
22 repeated several times "Framingham Police
23 Department, search warrant;" is that correct?
24 A. Not exactly. I knocked on the wall

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1 three times. I said, "Framingham Police. We
2 have a search warrant. Open the door."
3 Q. And the plan was at that point that
4 you, Duncan and Sebastian would make entry into
5 the living room area that's identified here on
6 the right side of the front entry, right?
7 A. Not exactly. The plan was to wait
8 and find out whether they actually were going to
9 open the door, 'cause if they did then we don't
10 have to knock it down, or to assess if there was
11 any other type of threat or movement coming from
12 inside the house. That's before anything else
13 happens.
14 Q. And part of the plan was that if no
15 one answered the door that the team that was
16 going to make entry into the kitchen would go
17 through the door at the end of the hallway and
18 make entry into the kitchen; is that correct?
19 A. I would give the command. Once I
20 determined that there was going to be no
21 compliance with opening the door, I would give
22 the command, and then the window breachers, as
23 well as both door breachers, at the same time on
24 my command would start working to make entry.

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1 Q. Okay. And now on the outside of
2 the building, you had two break-and-rake teams;
3 is that correct?
4 A. Correct.
5 Q. Okay. And one break-and-rake team
6 was stationed -- the plan was to have them
7 stationed at the kitchen window, is that correct,
8 on the left side of the house as you're facing
9 it?
10 A. One of the teams, yes.
11 Q. And that was Officer Langmeyer and
12 Officer Casey; is that correct?
13 A. Yes.
14 Q. And the break-and-rake team on the
15 left side of the house would have somebody who
16 actually would break the window with an
17 instrument of some kind that had a flashbang at
18 the end of it and to extend the flashbang into
19 the kitchen; is that correct?
20 A. Correct.
21 Q. And the other officer would provide
22 cover with a semiautomatic rifle pointing into
23 the kitchen; is that correct?
24 A. His intent was -- there's a contact

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1 and -- I mean a breacher and a cover officer as
2 well, so the cover officer would provide any
3 security for the team outside here trying to come
4 in.
5 Q. Right. So the cover officer
6 actually would look inside the kitchen after the
7 window was broken, see if there's anybody there
8 and do the necessary cover to protect the
9 officers entering the kitchen; is that correct?
10 A. Yes.
11 Q. And there was also a break-and-rake
12 team on the window what is labeled here on the
13 diagram as the living room; is that correct?
14 A. That is correct.
15 Q. Okay. We now know that what has
16 been marked here as the living room was actually
17 a makeshift bedroom; is that correct?
18 A. That's true, yes.
19 Q. So I'm going to refer to it as the
20 living room only for purposes of the diagram, but
21 we all recognize that it was more of a bedroom;
22 is that correct?
23 A. That is correct, yes.
24 Q. And at the window into the living

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1 room, there was a second break-and-rake team
2 consisting of Officer Riley and Officer Sibilio;
3 is that correct?
4 A. Riley and Sibilio, yes, sir.
5 Q. Sibilio. And their obligations
6 were essentially the same as the obligations of
7 the other break-and-rake team that was stationed
8 at the kitchen window; is that correct?
9 A. Yes.
10 Q. Okay. Can you mark with a circle
11 the two windows that the break-and-rake teams
12 were stationed at?
13 A. (Witness complies.)
14 Q. So part of the overall plan here
15 was that you would knock and announce; is that
16 correct?
17 A. Yes.
18 Q. And that another officer at the
19 kitchen door would also knock and announce?
20 A. No, just me.
21 Q. Just you. And if you did not hear
22 a response, the next part of the plan was that --
23 was to execute the warrant; is that correct?
24 A. If we didn't get compliance, no one

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1 opened the door, yes, that's correct.
2 Q. And who gave the order to execute
3 the warrant?
4 A. Me.
5 Q. And how was that order conveyed to
6 all these officers?
7 A. Via radio.
8 Q. And once the execution order was
9 given, the first thing that was going to happen
10 was the break-and-rake teams would go into
11 operation; is that right?
12 A. No, sir.
13 Q. What was the first thing that was
14 going to happen after that?
15 A. The plan is simultaneous. All of
16 them start at the same time. The windows start
17 coming out at the same time that the doors start
18 getting worked on.
19 Q. Okay. So simultaneously with the
20 execution -- with the command to execute the
21 warrant, the break-and-rake teams would break the
22 windows, and at the same time the two teams of
23 officers would make entry into the apartment
24 through their respective doors; is that right?

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1 A. Correct, yes.
2 Q. And there was a flashbang as part
3 of the break-and-rake team; is that correct?
4 A. The intent originally was that both
5 teams, both break and rakes, would have the
6 flashbang, but only one was deployed.
7 Q. The only one that was deployed was
8 in the kitchen; is that correct?
9 A. Yes, sir.
10 Q. And why wasn't the one deployed in
11 the living room?
12 A. It wasn't needed. The door opened
13 easily.
14 Q. Okay. And after both teams made
15 entries through the door, what was the next step
16 in the plan? Just in terms of what the planning
17 was.
18 A. Once both teams -- I'm not sure I
19 understand your question there.
20 Q. Okay. What was the operational
21 plan for your team once they made entry into the
22 living room?
23 A. My team's primary assignment was
24 the makeshift bedroom, which we're referring to

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1 as the living room, initially and what's labeled
2 the den.
3 Q. And the second team that entered
4 the kitchen, their primary responsibility was to
5 enter and secure the kitchen, enter and secure
6 the hallway and the back bedroom and the back
7 bathroom; is that correct?
8 A. They pretty much had the remainder
9 of that apartment.
10 Q. Okay. We can put that aside for
11 just a moment.
12 Now, during the planning meeting on
13 January 4th, information was provided regarding
14 the suspects and other individuals that may or
15 may not have resided in the house; is that
16 correct?
17 A. Yes, sir.
18 Q. And there was information provided
19 about the suspects, and one of those suspects was
20 Dwayne Barrett; is that correct?
21 A. He was one of them, yes, sir.
22 Q. And the other one was Joseph
23 Bushfan; is that correct?
24 A. It sounds familiar, yes, sir.

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1 Q. And the other one was Deandre
2 Nwaford, does that name ring a bell?
3 A. I'm not positive about that name.
4 I'm not positive.
5 Q. But you received information about
6 the so-called targets of the search warrant in
7 terms of the individuals they believed they had
8 probable cause were distributing drugs; is that
9 correct?
10 A. Yes.
11 Q. [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 A. [REDACTED]
15 [REDACTED]
16 Q. And you also became aware during
17 the planning meeting that other individuals might
18 have resided at the apartment, including an
19 individual named Eurie Stamps, Sr. who was
20 approximately 68 years old; is that correct?
21 A. Yes, sir.
22 Q. And you knew and the other officers
23 on the SWAT team knew that he was a relatively
24 elderly man approximately 68 years old; is that

1 correct?
 2 A. I don't think anyone referred to
 3 him as elderly, but they did brief that he was in
 4 the apartment.
 5 Q. Okay. And did they brief about who
 6 his -- what his age was?
 7 A. I believe they did, yes.
 8 Q. And did they tell you that he was
 9 68 years old?
 10 A. I believe it was written down.
 11 Yes, I believe so.
 12 Q. So the officers knew of Eurie
 13 Stamps, that he was a resident of the apartment,
 14 that he may be in the apartment at the time of
 15 the execution of the search warrant, and that he
 16 was a gentleman approximately 68 years old; is
 17 that correct?
 18 A. Roughly, yes.
 19 Q. And you were also informed that
 20 other individuals might be in the apartment as
 21 well. Mr. Bushfan's uncle and aunt, do you
 22 recollect that?
 23 A. They gave us a rough estimate of
 24 who could be there. They told us there was a lot

1 of traffic coming in and out of there. There
 2 could be as few as three to five or there could
 3 be more.
 4 Q. But in terms of people who actually
 5 resided there, were you told that Mr. Bushfan's
 6 uncle and aunt may have resided there as well?
 7 A. I believe in the briefing they
 8 weren't sure about the uncle, but the aunt they
 9 said yes.
 10 Q. And were you aware that Norma
 11 Bushfan Stamps, the mother of Joseph Bushfan,
 12 also resided in the apartment?
 13 A. I believe during the briefing it
 14 was the three targets, target suspects,
 15 Mr. Stamps and I believe his wife or a female, is
 16 what was briefed to us, and there was a
 17 possibility of others.
 18 Q. And the reason -- the reason it's
 19 important for the SWAT team to know who's in the
 20 apartment is because they -- first of all, they
 21 want to protect themselves against dangerous
 22 people; is that correct?
 23 A. We want to protect everyone
 24 involved is the original intent, yes.

1 Q. And you want to protect the people
 2 who are not targets of the search but who may be
 3 also present in the apartment who have nothing to
 4 do with the possible distribution of drugs; is
 5 that correct?
 6 MR. DONOHUE: Objection.
 7 A. I'm going to stick with my first
 8 answer there. We want to protect everyone
 9 involved, everybody.
 10 Q. And in the course of doing that,
 11 it's important to know [REDACTED]
 12 are and who the people are who just may reside
 13 there who the police don't have any basis to
 14 believe are involved in criminal activity?
 15 A. I believe that's accurate.
 16 Q. Now, we've been talking about what
 17 you recall was told at the planning meeting
 18 regarding Mr. Stamps. That was information that
 19 was conveyed to all of the members of the SWAT
 20 team; is that correct?
 21 A. Yes. I'm not sure what you mean by
 22 that.
 23 Q. Well, was the fact that Eurie
 24 Stamps, Sr. was present in the apartment and he

1 was approximately 68 years old conveyed to
 2 everybody in the SWAT team?
 3 A. Yes, yes, sir.
 4 Q. Now, during the planning meeting,
 5 you and the other SWAT members were not provided
 6 with any information that Mr. Stamps was armed or
 7 dangerous; is that correct?
 8 A. They did not tell us any
 9 information like that, no.
 10 Q. They didn't tell you any
 11 information that Mr. Stamps was involved in the
 12 actual selling of drugs; is that correct?
 13 A. No. No, they didn't say he was --
 14 they said it was his apartment, and that it was
 15 very busy with drug activity, is what they said.
 16 Q. Right. But he was not a target of
 17 the search warrant; is that correct?
 18 A. As far as I know, his unit was what
 19 the search warrant was for. This 26 Fountain
 20 Street was what our search warrant was for. I
 21 believe he's on the lease for that apartment.
 22 Q. Correct. But you didn't have any
 23 reason to believe and you were not provided with
 24 any information that the police had probable

1 cause to believe that Eurie Stamps himself was
 2 involved in the illegal distribution of drugs?
 3 A. Other than it was coming out of his
 4 apartment, they didn't tell us that they made any
 5 physical hand-to-hand buys from him, no.
 6 Q. Now, do you know who was listed on
 7 the search warrant as the targets of the search?
 8 A. Off the top of my head, no.
 9 MR. DONOHUE: You keep saying the
 10 individuals as the targets of the search. It's
 11 the apartment that's the target of the search.
 12 Q. (By Mr. Musacchio) Okay. In terms
 13 of the individuals who the police have probable
 14 cause to believe were distributing drugs from 26
 15 Fountain Street, what was your understanding of
 16 who those individuals were?
 17 A. My understanding was there was
 18 three potential threats, that's why the SWAT team
 19 was called, in that apartment, but that the
 20 apartment -- within the apartment itself was
 21 where the drug activity was coming from was my
 22 impression.
 23 Q. I'm going to show you what's been
 24 previously marked as Exhibit 13, and I'm going to

1 represent to you that's the search warrant for 26
 2 Fountain Street.
 3 A. Mm-hmm.
 4 Q. Can you state who the targets of
 5 the search were in terms -- I'm sorry. Let me
 6 try to get the correct phraseology here.
 7 Well, there are two individuals
 8 listed here on the search warrant itself and
 9 that's Dwayne Barrett and Joseph Bushfan; is that
 10 correct?
 11 A. Dwayne Barrett and Joseph Bushfan,
 12 yes.
 13 Q. And have you ever reviewed the
 14 search warrant before?
 15 A. I believe I looked at it that night
 16 prior to.
 17 Q. And was there any information in
 18 the search warrant that indicated that the police
 19 had any reason to believe or probable cause that
 20 Eurie Stamps, Sr. was a person who was actually
 21 distributing the drugs in his apartment?
 22 A. I don't think they had any probable
 23 cause to say he was physically distributing it,
 24 no.

1 Q. Now, during the planning meeting
 2 you were [REDACTED] or
 3 strike that.
 4 During the planning meeting, you
 5 had in your possession -- when I mean you, I mean
 6 the tactile plan that was planning the warrant --
 7 [REDACTED]
 8 [REDACTED] is that
 9 correct?
 10 A. Yes, sir, I believe that is
 11 correct.
 12 Q. [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 A. [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 Q. [REDACTED]
 19 [REDACTED]
 20 A. Yes, as I can remember.
 21 Q. And did the police -- during the
 22 planning meeting, were you and the other SWAT
 23 team members provided with any information that
 24 [REDACTED]

1 [REDACTED]
 2 [REDACTED]
 3 A. No.
 4 Q. Now, why don't we go through
 5 briefly what you actually did during the
 6 execution of the search warrant on the scene.
 7 As I understand it, once you
 8 knocked and announced and received no answer on
 9 the right doorway leading into what is labeled
 10 here the living room, that door needed to be
 11 breached; is that correct? What I mean by that,
 12 forcibly opened.
 13 A. That door was closed at the time
 14 and no one opened it for us. We had to breach
 15 it.
 16 Q. And once the door was breached --
 17 and Officer Duncan was the breacher, so to speak?
 18 A. Yes, sir.
 19 Q. And once that door was breached,
 20 you, Officer Sebastian and Officer Duncan made
 21 entry into the living room/makeshift bedroom; is
 22 that correct?
 23 A. Yes.
 24 Q. Okay. And when you entered that

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1 bedroom, can you -- do you recall where you went
2 and what you did there? Now I'm just limiting it
3 to the makeshift bedroom.
4 A. Yes. When the door opened, the
5 plan was Duncan would breach the door; myself and
6 Sebastian would make entry, and unfortunately,
7 the door started to fall apart, and Duncan was
8 kind of drawn into the room by the weight of the
9 ram. So he actually went into the room first. I
10 followed, then Sebastian. I believe Duncan was
11 on this side of the room, and I was over here and
12 made my way over this way.
13 Q. And you searched that room, is that
14 correct, in terms of looking for individuals?
15 A. Correct, looking for any possible
16 individuals in this room or anyone that would
17 pose a threat to us or the search team come
18 later.
19 Q. And you did not see any individual
20 that posed you a threat, is that correct, in the
21 bedroom?
22 A. Not in this room, no.
23 Q. And can you mark where you went in
24 that bedroom, your path? You can do that in

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1 green, if you would. And just do it with a line,
2 nothing, you know, nothing fancy, just the path
3 of where you went.
4 A. I believe I came from here in and
5 then over.
6 Q. And approximately how long did you
7 stay in the living room/makeshift bedroom?
8 A. Not very long, not long.
9 Q. Less than a minute?
10 A. Yes, less than a minute.
11 Q. Now, the bedroom -- there's an
12 entryway from the bedroom into what's been
13 labeled a den; is that correct?
14 A. That is correct.
15 Q. And there was a black blanket or
16 curtain of some sorts that covered the entryway
17 from the bedroom into the den?
18 A. I'm not sure of the color, but yes,
19 there was some kind of sheet or something hanging
20 there.
21 Q. Now, at some point, entry was made
22 into the den; is that correct?
23 A. Yes.
24 Q. And who was the first one to make

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1 entry into the den?
2 A. I believe it was Duncan. It was --
3 myself and him were the entry into that room.
4 Exactly who went first I don't know.
5 Q. Okay. When Duncan made his way
6 into the den, where did he position himself in
7 the den, if you recall?
8 A. Same color?
9 Q. Why don't you do that in red. Why
10 don't you trace the path of Officer Duncan from
11 the living room into the den?
12 A. I couldn't say exactly where he
13 walked. I know where he ended up.
14 Q. Okay. Tell me where he ended up
15 then?
16 A. Well, before we went into this
17 room, he was here, I believe. We were on either
18 side of this entry.
19 Q. Would you just put an "X" there
20 where you have that mark?
21 A. (Witness complies.)
22 Q. Okay. And where was he when he
23 first entered the den?
24 A. Well, he went in this direction,

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1 but exactly where he stood I couldn't say.
2 Q. Okay. So can you just draw a line
3 to where you believe he went from the "X" that
4 you made into the den to where you think he --
5 where he was standing when you first entered?
6 MR. DONOHUE: I object to the form
7 of that, to the where you think he was.
8 A. I can tell you exactly where I was
9 and where I saw him before he left my sight, but
10 exactly where he went --
11 Q. Okay. Where did you see him when
12 you went -- after?
13 A. He turned this way, and the next
14 time I saw him he was here.
15 Q. Can you just put a "D" next to
16 those X's?
17 A. (Witness complies.)
18 Q. Okay. Now you said -- your
19 testimony was that Duncan was the first one to
20 enter the den; is that fair to say?
21 A. No, I didn't say that. I said I
22 wasn't sure. I don't remember who.
23 Q. You weren't sure. You don't
24 remember who the first was who entered. Why

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1 don't you trace your path where you left off in
2 green to where you ended up standing in the den?
3 A. When we made entry, I came this
4 way.
5 Q. Okay.
6 A. There was a table right here and a
7 bunch of I don't know what stacked on the sides.
8 Q. And you've marked that in green; is
9 that correct?
10 A. I did.
11 Q. Now, did you see any threats in the
12 den?
13 A. I did not.
14 Q. Now, while you were in the den, the
15 other team that made entry into the kitchen,
16 they -- were they in the kitchen at the time that
17 you and Officer Duncan were in the den?
18 A. Where everyone was then I don't
19 know.
20 Q. Okay. But at some point you're --
21 not pinning you down to exact timing, at some
22 point Officer O'Toole and Sheehan made their
23 entry into the kitchen; is that correct?
24 A. I couldn't tell you what those

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1 others did there. I think that was part of the
2 plan, but exactly where these people were, I was
3 concentrated on my area.
4 Q. Fair enough. While you were in the
5 den, did you hear any police officer saying
6 anything in the kitchen?
7 A. Yes.
8 Q. Okay. What did you hear?
9 A. I heard them calling for trailers.
10 Exactly who I don't know but.
11 Q. And what does a trailer mean to a
12 police officer executing a warrant?
13 A. For our SWAT team, it means that
14 they're looking for assistance. They're looking
15 for more of our guys to come assist them to do
16 whatever task that they're trying to do right
17 then and there. They need more help.
18 Q. And when you heard the call for
19 trailers, what did you do? Did you make any
20 orders or did you do anything yourself?
21 A. I looked up. I saw Duncan standing
22 at the door. I saw Sebastian still standing in
23 this back room here. I gave Duncan a nod, go
24 ahead, and he went into the kitchen.

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1 Q. And at some point did Sebastian go
2 into the kitchen as well?
3 A. After that point, I lost sight of
4 what Sebastian was doing.
5 Q. Okay. But you knew that Duncan
6 went in to act as a trailer; is that correct?
7 A. Yes, give them more support. Our
8 task was basically done here. I was finishing
9 detailing this last little bit here. I wasn't
10 quite done. But our task had mainly been
11 accomplished?
12 Q. Now when Duncan went into the
13 kitchen, you remained in the den; is that
14 correct?
15 A. Yes.
16 Q. And why did you stay in the den?
17 A. I was just saying I wasn't
18 finished. I still had a small area that I had
19 not checked, and I wasn't just going to breeze
20 past it.
21 Q. So you're still securing and
22 searching the den area; is that correct?
23 A. I had some minor areas left that I
24 hadn't actually visibly checked to make sure

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1 there was no one tucked in a corner.
2 Q. And while you were in the den and
3 while Officer Duncan was in the kitchen, you
4 heard a gunshot; is that correct.
5 A. Yes. What I thought was a gunshot,
6 yes.
7 Q. And you believed it to be a gunshot
8 based on the sound you heard; is that right?
9 A. Absolutely, yes.
10 Q. And were you certain it was a
11 gunshot?
12 A. I was, yes.
13 Q. Now, when you heard the gunshot,
14 you were still in the den; is that correct?
15 A. Correct.
16 Q. And can you mark with an "X" where
17 you were standing when you first heard the
18 gunshot? And you can use the green again.
19 A. I think it's right at the end of
20 the line I already drew.
21 Q. Okay.
22 A. I believe it was somewhere in that
23 area.
24 Q. Okay. Can you just put an "S" next

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1 to the "X"?

2 A. (Witness complies.)

3 Q. We now know that that gunshot came

4 from Officer Duncan's weapon; is that correct?

5 A. That is correct.

6 Q. You did not see Officer Duncan when

7 his gun was fired; is that correct?

8 A. No, I did not.

9 Q. You were in the den?

10 A. I was in the den.

11 Q. Now, when the gunshot was fired,

12 Officer Sebastian, Officer Riley and Lieutenant

13 Downing have testified that they were in the

14 kitchen when they heard the gunshot or a loud

15 noise. Do you have any reason to doubt that

16 testimony?

17 A. I have no idea where all of them

18 were. There was one of them that I saw.

19 Q. All right. But you have no reason

20 to doubt their testimony that the three of them

21 were in the kitchen?

22 A. No, I don't. I didn't see them

23 there but . . .

24 Q. And they also testified that they

Page 47

1 were standing by this doorway that led to a

2 stairwell down into the basement of the house.

3 You don't have any reason to disagree or doubt

4 that testimony, do you?

5 A. I saw one there. Other than that,

6 I don't know. I don't recall who else.

7 Q. But you don't have any reason to

8 disagree with their testimony?

9 A. No.

10 Q. Now, Officer Riley testified in his

11 deposition that when he heard the gun while he

12 was in the kitchen, he immediately turned in a

13 split second to the area where the gunshot came

14 from.

15 Officer Sebastian testified in his

16 deposition that he also immediately turned when

17 he heard the gunshot while he was standing in the

18 kitchen.

19 Now, you don't have any reason to

20 doubt their testimony or disagree with it; is

21 that correct?

22 A. Like I said in the last, I saw one

23 when I made entry in the kitchen.

24 Q. But you don't have any reason to

Page 48

1 disagree with their testimony?

2 A. No.

3 Q. Now, Lieutenant Downing testified

4 that he was in the kitchen when the gunshot was

5 fired and that he also immediately turned to the

6 location where he heard the shot come from. You

7 don't have any reason to disagree with his

8 testimony, do you?

9 A. No. He's actually the one that I

10 saw.

11 Q. Okay. Now, each one of these

12 individuals, Officer Riley, Officer Sebastian and

13 Lieutenant Downing all testified that when they

14 turned immediately they saw Officer Duncan. You

15 don't have any reason to doubt that testimony, do

16 you?

17 A. No.

18 Q. Now, at some point you left the den

19 and entered the kitchen after you heard the shot;

20 is that right?

21 A. As soon as I heard the shot, that's

22 when I started towards the direction.

23 Q. Now, some time elapsed between the

24 time you heard the shot and the time that you

Page 49

1 actually made entry into the kitchen; is that

2 correct?

3 A. Yes.

4 Q. Okay. Do you have an estimate of

5 how much time elapsed between the time that you

6 first heard the shot and the time that you

7 actually made entry into the kitchen?

8 A. Seconds.

9 Q. Seconds. Now, you saw Officer

10 Duncan when you entered the kitchen; is that

11 correct?

12 A. Yes. Well, not initially, not

13 until I made the turn.

14 Q. Right, right.

15 A. Yes.

16 Q. And I just want you to mark with an

17 "X" -- you can do it in -- we're running out of

18 colors -- in red.

19 A. Okay.

20 Q. And I'm only asking you a very

21 simple question. I just want you to mark where

22 you saw Officer Duncan, not what he was doing but

23 just where you saw him. When you first observed

24 him when you entered the kitchen, where was he?

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1 A. With an "X"?

2 Q. Yes.

3 A. I believe he was right here.

4 Q. And can you put a "D" next to that

5 "X"?

6 A. (Witness complies.)

7 Q. Okay. Now, because Officer

8 Sebastian and Riley were in the kitchen when the

9 shot was fired and they turned immediately when

10 they heard the shot, they observed Officer Duncan

11 before you did; is that correct?

12 MR. DONOHUE: Objection.

13 A. I couldn't answer what they did or

14 didn't see or testify to.

15 Q. Well, we -- assuming that they

16 turned -- well, assuming that they were in the

17 kitchen when the gun was fired, okay, and

18 assuming that they turned immediately when they

19 heard the gunfire, they saw, and assuming also

20 that it took at least, like you said, a matter of

21 seconds to go from the den -- to go from the den

22 into the kitchen, you would agree with me that

23 Officers O'Riley --

24 A. Riley.

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1 Q. -- Officer Riley, Officer Sebastian

2 and Lieutenant Downing would have seen Duncan

3 before you did after the gun was fired?

4 MR. DONOHUE: Objection.

5 A. I have no idea what they could or

6 couldn't have seen. I don't even know where they

7 were standing, except for Downing.

8 Q. So as you sit here today, your

9 testimony is that you cannot say whether Officers

10 Sebastian and Riley and Lieutenant Duncan would

11 have observed Duncan before you did after the gun

12 went off?

13 MR. DONOHUE: Objection. You said

14 Lieutenant Duncan, too.

15 MR. MUSACCHIO: I'm sorry.

16 MR. DONOHUE: You said Lieutenant

17 Duncan.

18 MR. MUSACCHIO: Lieutenant Downing.

19 A. I'm saying I can't tell you what

20 they saw or didn't see. I can't speak for them.

21 Q. But you do admit that a matter of

22 seconds transpired before you -- after you heard

23 the shot, a matter of seconds transpired before

24 you left the den and actually entered the kitchen

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1 and when you first observed Mr. Duncan?

2 A. Yes, a very short period of time,

3 seconds.

4 Q. Now, Officer O'Riley and Officer

5 Sebastian testified that when they immediately

6 turned after hearing the gunshot they saw Officer

7 Duncan on his feet. Do you have any reason to

8 doubt or disagree with their testimony?

9 A. No.

10 Q. Lieutenant Downing testified in his

11 deposition that when he was in the kitchen when

12 the gun was discharged he immediately turned and

13 saw Officer Duncan walking towards him. Do you

14 have any reason to doubt that testimony?

15 A. No.

16 Q. Now, after the shooting incident,

17 did you have any conversations with

18 Officer Duncan during the early morning hours of

19 January 5, 2011?

20 A. Immediately following the shooting

21 when I entered the kitchen, yes.

22 Q. What conversation did you have with

23 him?

24 A. I stood right over him in this

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1 doorway here and I asked him if he were okay. He

2 responded -- I believe he said, "We have shots

3 fired." And I said, "Are you hit?" And he said,

4 "No, but he is," and he pointed at Mr. Stamps.

5 Q. Did you have any other conversation

6 with Officer Duncan about this shooting during

7 the early morning hours of January 5th?

8 A. Are we talking about right here at

9 this incident?

10 Q. No, at any time after the incident.

11 Okay, let me ask you this, after

12 you had that conversation with Officer Duncan

13 immediately after the shooting took place, where

14 did you go and where did Officer Duncan go?

15 A. As soon as I determined that Duncan

16 was not hit, that Mr. Stamps was, I got Duncan up

17 and transferred him over to Lieutenant Downing.

18 Where he took him from there exactly at the time

19 I don't know. I stood here 'cause we still had

20 people down here that I don't know who was in

21 what room. I called for the medics. They

22 immediately came in. And that's where I remained

23 until the medics -- I got the all clear signal

24 from our guys back here and the medics removed

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1 Mr. Stamps.
2 Q. In the subsequent early morning
3 hours of January 5th, did you have any further
4 conversation with Officer Duncan about what
5 occurred?
6 A. Not about what occurred, but I did
7 speak to him. I actually drove him and his union
8 representative, Officer Eliadi, back to the
9 police station.
10 Q. And during that drive, did you have
11 any conversations with Officer Duncan about what
12 had transpired relating to the shooting?
13 A. No. He turned over his weapons to
14 me, and I'm not sure if it was Eliadi or who
15 advised him that he should go to the hospital. I
16 drove him back to the station, took his weapons,
17 and then I believe Eliadi brought him to the
18 hospital.
19 Q. Prior to being interviewed on
20 January 5, 2011, relating to the state police
21 homicide investigation, did you have any
22 conversations with Officer Duncan about what
23 happened when his gun discharged?
24 A. I'm not sure I'm understanding what

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1 your question is. Are you talking about right
2 here in front of him or --
3 Q. No. I just want to know that prior
4 to the time that you were -- prior to your
5 interview with the state police on January 5,
6 2011, did you have any conversations with Officer
7 Duncan about what occurred when his gun
8 discharged and the bullet struck Mr. Stamps other
9 than the immediate conversation you had with him
10 in the apartment itself?
11 A. I don't believe I had any detailed
12 conversation with him or any conversation other
13 than what I just described to you. We had a
14 brief conversation over the top of him, standing
15 right here. He was transferred to Lieutenant
16 Downing, and I believe Sibilio were with him in
17 the den while I was here. And then once the
18 apartment was secured, I was instructed by I
19 believe Deputy Chief Davis to drive him and
20 Officer Eliadi back to the police station, secure
21 his weapons and let him go to the hospital.
22 Q. When was the next time you saw
23 Duncan?
24 A. After the hospital?

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1 Q. Yeah. Did you go to the hospital?
2 A. No.
3 Q. Okay. When was the next time you
4 saw Duncan?
5 A. I don't remember.
6 Q. Was it before or after your January
7 5th interview with the state police?
8 A. After the hospital, I'm not sure.
9 I mean, I never went home after that. I stayed
10 at the station. So the interview happened later
11 on that morning.
12 Q. Now, did you -- my question is very
13 simple. After Duncan was removed from 26
14 Fountain Street, did you have any conversation
15 with him regarding what transpired during the
16 shooting?
17 A. I don't believe so, no.
18 Q. Did you learn at any time prior to
19 your interview with the state police as to
20 what -- as to how Duncan described how the
21 shooting occurred?
22 A. Yes.
23 Q. Okay. What did you learn and who
24 did you learn it from?

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1 A. I believe I heard Downing say that
2 he had an accidental discharge.
3 Q. You heard Downing say that?
4 A. I'm not positive, but I believe it
5 was Downing.
6 Q. Did you have any conversations with
7 anybody in which you learned the exact mechanics
8 and what, you know, moment-by-moment events that
9 led to Officer Duncan's gun discharging and
10 killing Mr. Stamps?
11 MR. DONOHUE: Objection.
12 A. I don't believe I had conversation
13 over the time of the investigation and all of
14 that.
15 Q. I'm talking about prior to your
16 interview on January 6th with the state police.
17 A. I heard he had an accidental
18 discharge. Exactly how, at that point I didn't
19 know.
20 Q. So you didn't know the details of
21 what happened to Mr. Duncan, how he -- what
22 position he was in prior to the shooting, where
23 he was located prior to the shooting, how his gun
24 fired or anything like that?

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1 A. No, sir.
2 Q. All you knew prior to the interview
3 on January 6th was that there was an accidental
4 shooting?
5 A. Yes.
6 Q. Now, after the shooting and
7 sometime in May of 2011 the Framingham Police
8 Department retained Steven -- I'm going to say
9 Ijames. I'm not sure how you pronounce it -- to
10 conduct an independent review of the shooting of
11 Mr. Stamps; is that correct?
12 A. I believe it is.
13 Q. And the reason he was hired is that
14 the Framingham Police Department wanted an
15 objective opinion regarding the circumstances
16 surrounding the shooting and the training that
17 Officer Duncan had received; is that correct?
18 A. Exactly why they hired him, I don't
19 know. That was nothing to do with me.
20 Q. You weren't involved in the
21 decision?
22 A. Not in the least.
23 Q. Now, Ijames provided the Framingham
24 Police Department with a report of his

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1 conclusions; is that right?
2 A. He did.
3 Q. And did you ever review that
4 report?
5 A. I did.
6 Q. Now, in the report, Mr. Ijames
7 stated that Officer Duncan was not trained to
8 keep his weapon on safe until he perceived an
9 actual threat; is that correct?
10 A. That's what Ijames said pretty
11 much, yes.
12 Q. And you took exception to that; is
13 that correct?
14 A. That is 100 percent wrong. He was
15 trained.
16 Q. So you took exception to that
17 opinion of Mr. Ijames; is that right?
18 A. Yes, it's an incorrect statement.
19 Q. And the reason you felt that was
20 incorrect is because you knew that Officer Duncan
21 had received training prior to January 5, 2011,
22 that he should keep his weapon on safe until he
23 actually perceived a threat; is that correct?
24 A. I knew that the way Ijames was

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1 portraying it was incorrect according to how I
2 train and our department has been trained by
3 Michael and myself.
4 Q. Explain why it's incorrect?
5 A. The officers -- and in those
6 documents that you're going to be getting, it
7 explains it all. The officers are instructed
8 which we learned from our training, Mike Odle,
9 you keep your weapon down at the low ready on
10 safe with your finger off the trigger unless you
11 perceive a threat or you have to take a hand off
12 the weapon, or two, or you're actively clearing
13 rooms.
14 Q. And you received specific training
15 to do that; is that right?
16 A. Multiple times.
17 Q. Now after the Ijames report was
18 issued, you, Lieutenant Downing and Brian --
19 Simoneau? --
20 A. Correct, yeah.
21 Q. -- Simoneau and Deputy Chief Craig
22 Davis and Chief Steven Carl had a meeting to
23 discuss the report; is that correct?
24 A. Correct.

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1 Q. And what was your participation in
2 why that meeting came about?
3 A. They knew that I was completely
4 against Ijames's report. I went and complained
5 to them that that is inaccurate and you guys all
6 know it. They've all been to the training. So
7 what are we going -- are we going to send a
8 rebuttal to this, are we going to have this
9 corrected, amended or what.
10 Q. So you basically asked for the
11 meeting; is that right?
12 A. No, they told me to be there. I
13 went to each one of them individually and said
14 just what I said to you.
15 Q. Okay. And as a result of that,
16 they -- a meeting was held?
17 A. Correct.
18 Q. And that was held sometime in
19 September of 2011, if you recall?
20 A. I don't know the date.
21 Q. Okay. I'll represent to you that
22 it occurred in September of 2011. I'll show you
23 a document that confirms that.
24 Now, Brian Simoneau is an assistant

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1 to the chief of police; is that right?
2 A. Yes.
3 Q. And he's not -- he's what they call
4 a special police officer; is that right?
5 A. He's not a sworn police officer in
6 Framingham. He's a legal assistant and an
7 attorney for the chief.
8 Q. So your understanding is that he's
9 not a sworn officer. He's a legal assistant,
10 because he's a lawyer, to the chief?
11 A. Correct.
12 Q. And he doesn't have detailed
13 knowledge regarding the training that the SWAT
14 team receives; is that right?
15 A. No. Sworn officers and SWAT
16 members are the only ones that come to the
17 firearms training that we put on. He does not.
18 Q. Would Duncan have received the
19 training that you referred to about keeping your
20 weapon on safety until there's a perceived threat
21 or while you're actively clearing a room, was
22 that training he received as simply a Framingham
23 police officer?
24 A. Yes, all our Framingham police

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1 officers receive that training.
2 Q. Did he also receive that training
3 as part of his SWAT training?
4 A. Yes.
5 Q. I'm going to show you what's been
6 previously marked as Exhibit No. 11. I'm going
7 to represent to you that Mr. Simoneau has
8 testified that this is the document that he
9 prepared after the meeting to memorialize what
10 was said during the meeting. Have you ever seen
11 this document before?
12 A. Yes, I have.
13 Q. And when was the first time you saw
14 it?
15 A. Maybe a couple of weeks after the
16 meeting.
17 Q. And Mr. Simoneau testified that the
18 whole purpose of the meeting was to provide a
19 rebuttal to Ijames. Do you agree with that?
20 A. Yes, that was my impression of the
21 meeting.
22 Q. I want to call your attention to
23 the second full paragraph of Exhibit 11, the last
24 sentence. It says, "More specifically, the

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1 report states that the training Officer Duncan
2 received resulting in him removing his weapon
3 from safe in the absence of a defined threat."
4 Did I read that -- let me read it again.
5 "More specifically, the report
6 states that the training Officer Duncan received
7 resulted in him removing his weapon from safe in
8 the absence of a defined threat." Did I read
9 that correctly?
10 A. I believe you did.
11 Q. And that's basically Ijames's
12 opinion that Officer Duncan was not trained to
13 keep his weapon on safe until he either perceived
14 a threat or was clearing rooms; is that correct?
15 A. Ijames's opinion, correct.
16 Q. That's his opinion?
17 A. Yup.
18 Q. That he did not receive that
19 training; is that correct?
20 A. That's correct.
21 Q. Okay. And the next paragraph
22 states, "Sergeant Stuart and Lieutenant Downing
23 claim that officers are trained to keep their
24 rifles on safe unless the officer perceives a

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1 threat or he is actively clearing room/danger
2 area." Did I read that correctly?
3 A. You did.
4 Q. And do you agree that that's what
5 you conveyed during the meeting on September
6 21st?
7 A. That and unless he has to give up
8 positive control of the weapon. Like, if I'm
9 actively clearing a room and I have two hands on
10 my weapon, it can be off safe on semi-automatic
11 down at the low ready.
12 However, if I have to take a hand
13 or hands off to open a doorknob, key my
14 microphone, do anything else, if I have to remove
15 a hand from a weapon, on safe it goes down at the
16 low ready. I can open the doorknob and do
17 whatever I need, to throw a flashbang noise,
18 diversionary device, whatever it may be. But
19 that's a third addition to that rule.
20 Q. Okay. So there's two situations --
21 let me see if I have this straight, there's two
22 situations where the rifle is removed from being
23 on safe; is that right? There's three
24 situations, right?

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1 A. You're suppose to keep that rifle
 2 on safe --
 3 Q. Unless, one --
 4 A. -- unless you're doing -- you're
 5 clearing rooms actively or you have a perceived
 6 threat, yes.
 7 Q. Okay. You have to keep the weapon
 8 on safe?
 9 A. Yes.
 10 Q. Does the weapon stay on safe when
 11 the officer is doing what you described, throwing
 12 a flashbang, opening a door? I mean, I'm trying
 13 to understand where that third factor comes in?
 14 A. That means you would put it on safe
 15 unless -- in every other circumstance other than
 16 those two reasons right there.
 17 Q. All right.
 18 A. So, yeah, if I have to take my hand
 19 off of my weapon, I have two hands on it -- if I
 20 have to for some reason take a hand off, it has
 21 to go on safe.
 22 Q. It goes on safe?
 23 A. Yes.
 24 Q. Okay, gotcha. Then the next

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1 sentence states, "This means that Duncan should
 2 have had his weapon on safe because neither of
 3 the above two conditions existed." Did you
 4 express that opinion at the meeting?
 5 A. Yes, I believe I did.
 6 Q. So you agree that in this
 7 particular circumstance Officer Duncan should
 8 have had his gun on safe because he did not
 9 perceive a threat; is that correct?
 10 A. I don't know what he perceives.
 11 All I know is these are -- this is how I train.
 12 Exactly what he perceived as a threat, I can't
 13 speak for that. I don't know whether he
 14 perceived a threat or not, but at that time he
 15 was in a situation we refer to as contact/cover.
 16 Q. Okay. I'm going to read this
 17 again. It says that, "Sergeant Stuart and
 18 Lieutenant Downing claim that officers are
 19 trained to keep their rifles on safe unless the
 20 officer perceives a threat or if he is actively
 21 clearing rooms and danger area. This means that
 22 Duncan should have had his weapon on safe because
 23 neither of the two conditions existed." That's
 24 what you stated at the meeting, right?

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1 A. Correct.
 2 Q. And you stand by that opinion?
 3 A. I do.
 4 Q. Now you're familiar with the
 5 contact/cover procedure; is that correct?
 6 A. I am.
 7 Q. And under the contact/cover
 8 procedure when an individual is detained during
 9 the execution of a search warrant, one officer
 10 will cover the individual with his weapon and
 11 another officer will actually make physical
 12 contact with the person to further restrain him
 13 or to frisk him for weapons if necessary; is that
 14 your understanding?
 15 A. Pretty much, yes.
 16 Q. And while that individual is being
 17 covered, unless there's a perceived threat the
 18 gun is on safe; is that correct?
 19 A. We're talking about the hands-on
 20 officer, the contact officer.
 21 Q. I'm talking -- okay, let's -- we're
 22 talking -- let me -- no, I'm talking about the
 23 cover officer.
 24 A. The cover officer.

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1 Q. Why don't you explain the procedure
 2 to me, maybe that's easier.
 3 A. You want me to explain
 4 contact/cover?
 5 Q. Yes.
 6 A. Okay. Contact/cover, you have one
 7 officer providing cover on the -- we'll call him
 8 the suspect, whatever it maybe. This is a
 9 hypothetical, so. One officer is providing
 10 cover. He has his weapon out. It does not have
 11 to be on fire. It depends on a million different
 12 scenarios of whether it will be or won't be, so
 13 I'm not even going to go down that road.
 14 Q. Right.
 15 A. One cover officer has his weapon
 16 out, and he's providing security for the officer
 17 that is now going to be basically unarmed. He's
 18 going to be open-handed. The officer that is
 19 going to go in and approach and go open-handed,
 20 before he even takes one step towards whoever it
 21 is that he's going to go hands-on with, if he has
 22 a long rifle it goes on safe and it's slung
 23 behind his back, or if you have a handgun out
 24 it's holstered and snapped in.

1 Once your hands-free and you're
2 holding them out, which is how we train, you
3 communicate. Contact/cover is a hundred percent
4 communication between the person you're
5 protecting -- I mean the person that's protecting
6 you and yourself, 'cause otherwise you both
7 holster up, and now neither one of you has a
8 weapon out, and then if a threat results, then
9 you have a big problem, right?

10 Once the weapon is secured, slung
11 on the back on safe or holstered on a handgun,
12 then you communicate, okay, I'm moving in. He
13 moves in, he can go hands-on, hands-free. If the
14 person decides to resist or wrestle with you, you
15 don't have a weapon in your hands that you're
16 also dealing with. It's all hands. That's my
17 opinion of contact/cover.

18 Q. And the purpose -- and the purpose
19 of the procedure is to ensure that the officer
20 making hands-on contact does not accidentally --
21 one of the purposes is that the officer making
22 hands-on contact does not accidentally discharge
23 his weapon; is that correct?

24 A. One of many purposes.

1 officer available and an officer wishes to
2 physically -- further physically restrain or to
3 frisk or to search somebody who's detained, is
4 the procedure that before that officer makes
5 physical contact with that person that he puts
6 his rifle on safe and slings it over his
7 shoulder?

8 A. Not by himself, no. You wait and
9 you call for trailers. You call for support.

10 Q. Let's take a hypothetical situation
11 where there's no trailers available, you just
12 have a single officer, and there's nobody -- no
13 police officer nearby, and you have a suspect who
14 is -- that the officer has seized in the sense
15 that he's commanded him not to move, and the
16 officer wants to further restrain that person.
17 Is it the procedure of the Framingham police
18 officer for that officer to either holster his
19 weapon before touching that person or putting it
20 on safe and slinging the rifle over his shoulder
21 before making physical contact assuming that the
22 police officer does not have any reason to
23 believe that the person he's going to physically
24 touch is dangerous?

1 Q. And another purpose is that it also
2 avoids a situation where the person that is being
3 physically touched or frisked or searched,
4 whatever is happening does not grab the officer's
5 weapon and use it against him?

6 A. That's a major concern, yes.

7 Q. So the procedure is designed in
8 part to provide protection to the person who's
9 actually being searched; is that correct?

10 A. It goes back to the original intent
11 with our team going in. Our intent is not to
12 just to protect ourselves. Everybody involved,
13 good guys, bad guys, innocent bystanders, someone
14 who just happened to be there. Everyone is the
15 intent.

16 Q. So part of the purpose -- one of
17 the purposes of the contact/cover rule is to
18 protect the person who's actually being touched
19 and physically searched; is that correct?

20 A. Yes, yup.

21 Q. Whether he's a suspect or a
22 non-suspect or an innocent bystander?

23 A. It doesn't matter.

24 Q. Now, when there isn't a cover

1 MR. DONOHUE: Objection.

2 A. That's quite a hypothetical you got
3 going on there. There's a lot moving on. If the
4 officer has his weapon out to begin with, he
5 perceives some sort of threat or danger. It's
6 not just like I'm walking up to someone and
7 placing him under arrest.

8 Q. Fair enough.

9 A. So you've got your gun out already,
10 so there's some kind of danger or element of
11 threat. I would put to you in Framingham there
12 will eventually be an officer there. You can
13 hold and just hold your position and use your
14 verbal commands and maintain exactly where
15 everyone is. Place your cover. I'm safe, he's
16 safe and wait. Get on your radio, I need help
17 over here right now, send somebody now and wait.

18 Q. That's the preferred procedure
19 then?

20 A. That's the preferred procedure,
21 yes. I mean, we're talking all kinds of
22 extremes. This thing could twist a million
23 different ways.

24 Q. Okay. In the context of what we

1 understand happened on September 5th with
 2 Mr. Stamps, he's lying on the ground apparently,
 3 as I understand it from the testimony, with his
 4 hands either up or out.
 5 In that circumstance, before
 6 Officer Duncan touched him, assuming that there
 7 was no other officer available to help him,
 8 should he have slung his rifle over his shoulder
 9 and put it on safe before he touched Mr. Stamps?
 10 MR. DONOHUE: Objection.
 11 A. In the situation that night we're
 12 talking about?
 13 Q. Mm-hmm.
 14 A. No.
 15 Q. No what?
 16 A. I would maintain exactly what I
 17 told you before. He's going to get backup.
 18 There's almost a dozen officers there, probably
 19 more. Wait, keep your position of cover. It's
 20 not a race. Call for help.
 21 Q. So it's your position that in the
 22 circumstances confronting Officer Duncan that
 23 evening he should never have gone hands-on or
 24 attempted to go hands-on with Mr. Stamps until he

1 had a cover officer available to him?
 2 A. That's how we train.
 3 Q. Now, Officer O'Riley and Sebastian
 4 have testified in their deposition that they were
 5 in the kitchen when Officer Duncan's gun was
 6 discharged, and you've testified you have no
 7 reason to disagree with that.
 8 A. Correct.
 9 MR. DONOHUE: I think it's Riley.
 10 MR. MUSACCHIO: Riley. Did I say
 11 O'Riley? Riley.
 12 MR. DONOHUE: You're Irishing it
 13 up.
 14 MR. MUSACCHIO: I really am.
 15 THE WITNESS: He's pretty Irish
 16 already. I don't think he needs any more.
 17 Q. (Mr. Musacchio) Lieutenant
 18 O'Downing -- Lieutenant Downing testified that he
 19 was in the kitchen as well, you say that you
 20 don't have any reason to disagree with that?
 21 A. No, I don't.
 22 Q. Now, Lieutenant Downing testified
 23 that if Duncan asked for someone to act as a
 24 cover or a contact person before he went hands-on

1 with Mr. Stamps, he would have ordered somebody
 2 to assist him or would have done it himself. You
 3 don't have any reason to disagree with that
 4 testimony, do you?
 5 A. It sounds reasonable to me.
 6 Q. And do you agree with his testimony
 7 as a reasonable course of action?
 8 A. Yes. If Duncan had requested, he
 9 would have got it, eventually.
 10 Q. Now, Officer Riley and Officer
 11 Sebastian and Lieutenant Downing have testified
 12 that Duncan never asked for help. You don't have
 13 any reason to disagree with that testimony; is
 14 that correct?
 15 MR. DONOHUE: Objection.
 16 A. I didn't hear any request.
 17 Q. You don't have any reason to agree
 18 with their testimony; is that correct?
 19 MR. DONOHUE: Objection.
 20 A. No.
 21 Q. And you didn't hear any request
 22 from Officer Duncan for help relating to his
 23 handling of Mr. Stamps; is that correct?
 24 A. No.

1 Q. When you say no, you did not
 2 hear --
 3 A. That's correct.
 4 Q. Let me just rephrase it. Am I
 5 correct that you did not hear Officer Duncan ask
 6 for help at any time relating to his handling of
 7 Mr. Stamps; is that correct?
 8 A. Yes, sir.
 9 Q. So you understand today what
 10 Officer Duncan's account is of how his gun
 11 discharged; is that correct?
 12 A. I'm not sure I understand what
 13 you're saying by that.
 14 Q. Okay. Well, let me -- is it your
 15 understanding that Officer Duncan intended to go
 16 hands-on with Mr. Stamps that evening; is that
 17 correct?
 18 A. I really don't know what his
 19 intention was. I'm not sure. I know he had an
 20 accidental discharge while going hands-on.
 21 Q. He had an accidental discharge
 22 while going on hands-on. That's your
 23 understanding; is that correct?
 24 A. That's my understanding, yes.

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1 Exactly the mechanics I don't know.
2 Q. Okay. Based on your understanding
3 that Officer Duncan intended to go hands-on with
4 Mr. Stamps, what occurred and how his gun was
5 discharged and knowing that his gun did
6 discharge, he did not place his rifle on safe and
7 sling it over his shoulder before attempting to
8 restrain Mr. Stamps; is that correct?
9 MR. DONOHUE: Objection.
10 A. That I don't know what he did with
11 his rifle beforehand. I don't know all the
12 mechanics. I couldn't say.
13 Q. And based on what you know, he did
14 not seek the assistance of another officer before
15 he attempted to go hands-on with Mr. Stamps; is
16 that correct?
17 A. Based on what I know, correct.
18 Q. Now, you're responsible for SWAT
19 training; is that correct?
20 MR. DONOHUE: Is now a time to take
21 a break.
22 MR. MUSACCHIO: Yup.
23 MR. DONOHUE: I don't mean to --
24 MR. MUSACCHIO: No, that's fine.

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1 That's a good idea, we'll take a break.
2 THE VIDEOGRAPHER: Going off the
3 record the time is 11:24 a.m.
4 (A break was taken.)
5 THE VIDEOGRAPHER: We're back on
6 the record at 11:38 a.m.
7 Q. (By Mr. Musacchio) Sergeant Stuart,
8 I want to go back to Exhibit 11, which is the
9 Simoneau report of the September 21st meeting. I
10 want to call your attention to the last
11 paragraph, five lines up beginning with,
12 "According to both Downing and Stuart."
13 A. "According to both Downing and
14 Stuart"?
15 Q. Yes. Starting there, can you read
16 into the record those last two sentences?
17 A. "According to both Downing and
18 Stuart, Officer Duncan's training instructed him
19 to place his weapon on safe and sling it prior to
20 assuming the role of the contact officer.
21 Further, if Officer Duncan perceived Stamps as
22 having posed a threat, he should have maintained
23 his position as the cover officer and waited
24 until another contact operator was available to

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1 search and/or secure Stamps."
2 Q. Did you convey that verbally at the
3 meeting?
4 A. Very similar, yes, to the
5 conversation we had here a little while ago, my
6 impression of contact/cover.
7 Q. And Lieutenant Downing expressed
8 that as well or agreed with those expressions?
9 A. Yes.
10 Q. And you stand by what's written
11 here --
12 A. I do.
13 Q. -- today?
14 A. I do.
15 Q. Now, as a team captain of the SWAT
16 team, you had the responsibility to train the
17 team on the proper procedure to follow before an
18 officer makes physical contact with a seized,
19 arrested or detained person during the execution
20 of a search warrant; is that correct?
21 A. A team leader. I'm not a captain,
22 but I would like the promotion.
23 Q. Oh, sorry. A team leader.
24 A. Team leader part of my

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1 responsibilities are to carry out training, but
2 all that training -- ultimately Deputy Chief
3 Davis is the commander of the SWAT team, so he
4 has to authorize all the training. Usually I
5 will bring him a training outline.
6 Q. But part of your responsibility was
7 to actually train members of the SWAT team on the
8 proper procedures before an officer makes
9 physical contact with a person who is arrested,
10 seized or detained; is that correct?
11 A. Yes.
12 Q. And based on the content of what
13 you just read contained in Exhibit 11, you
14 concluded on September -- in September of 2011
15 that Duncan violated his Framingham Police
16 Department training when he attempted to or
17 actually made physical contact with Mr. Stamps
18 without seeking the assistance of a cover officer
19 and without placing his rifle on safety and
20 slinging it over his shoulder; is that correct?
21 A. He did not follow our training,
22 that's correct.
23 Q. Now, after the Stamps' shooting,
24 certain revisions were made to the firearms and

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1 weapon protocol; is that correct?
2 A. Yes, eventually.
3 Q. And I want to show you what's been
4 previously marked as Exhibit No. 5. If you go to
5 page -- can I see that?
6 Go off the record for a minute.
7 THE VIDEOGRAPHER: Going off the
8 record the time is 11:43 a.m.
9 (A break was taken.)
10 THE VIDEOGRAPHER: Back on the
11 record at 11:43 a.m.
12 Q. (By Mr. Musacchio) If you can turn
13 to Page 5. And Exhibit 5 is the Policy on
14 Firearms and Weapons; is that correct?
15 A. Could you say that again, please?
16 Q. Exhibit 5 is the Policy on Firearms
17 and Weapons No. 50-4; is that correct?
18 A. Yes.
19 Q. And it has revision dates of
20 February 2, 2012, and October 4, 2012; is that
21 correct?
22 A. Yes.
23 Q. So this was the policy that was in
24 effect -- well, strike that.

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1 Let's take a look at Page 5. Under
2 subsection C where it says "Low Ready."
3 A. Yes.
4 Q. And it has Subsection 1 "On Safe."
5 Do you see that?
6 A. I do.
7 Q. And it states, "Finger off trigger,
8 and along lower receiver; two hands on weapon."
9 Did I read that correctly?
10 A. Yes.
11 Q. Then Subsection 2 says "Off safe."
12 A. Yup.
13 Q. "Officer perceives a threat, weapon
14 comes up and onto target, only when the officer
15 is ready to shoot does the weapon come off safe;
16 eyes align sights; acquire proper sight picture."
17 Did I read that correctly?
18 A. Yes.
19 Q. And that was the new procedure that
20 was added to the fire -- Policy on Firearms and
21 Weapons after the Stamps' shooting; is that
22 correct?
23 A. Correct.
24 Q. Now, several officers have

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1 testified, and I believe Lieutenant Downing and
2 Deputy Chief Craig Davis were included within
3 those people, that although this off safe policy
4 that you just read was not in the Policy on
5 Firearms and Weapons prior to January 5, 2011,
6 that officers were actually trained to follow
7 what's written under "On Safe" in Exhibit 5; is
8 that correct?
9 MR. DONOHUE: Objection.
10 A. It's very similar but not exactly.
11 Q. Okay. Well, how was the training
12 different from what's stated under "Off Safe" in
13 Exhibit 5?
14 A. The training prior to this was what
15 we were talking about earlier, actively clearing
16 rooms or addressing a perceived threat.
17 Q. Okay. So there's a new feature
18 that was added in under "Off Safe," and that is
19 the weapon comes off safe only when the officer
20 is ready to shoot. Was that the new feature or
21 requirement that was added into the new policy
22 after the Stamps' shooting?
23 A. Yes.
24 Q. So prior to January 5, 2011,

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1 officers were not trained on this notion of
2 keeping the weapon on safe until the officer is
3 actually ready to shoot; is that correct?
4 A. That is correct.
5 Q. So under the new policy, officers
6 are instructed that the gun comes off safe when
7 they perceive a threat and the officer is ready
8 to shoot; is that correct?
9 A. The new policy, yes.
10 Q. And that was not part of the
11 training prior to January 5, 2011?
12 A. Prior to this new policy, the
13 training was you can be off safe as we had
14 discussed prior. Actively clearing rooms or a
15 perceived threat you can come off safe.
16 Q. Why wasn't the additional
17 requirement that you don't come off safe until
18 the officer is ready to shoot not in the prior
19 policy, because it just was not considered to be
20 a practice?
21 A. I don't know. I don't write the
22 policies.
23 Q. Do you know why the additional
24 requirement that the officer -- the gun stays on

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1 safe until the officer is ready to shoot, why
2 that actually made its way into the new policy?
3 A. You'd have to ask Deputy Chief
4 Davis that one. I don't know.
5 Q. Now, if you go to Page 6 of
6 Exhibit 5, under Subsection f there's an entire
7 provision that explains contact and cover; is
8 that correct?
9 A. There is.
10 Q. Now, the old policy on policy and
11 fire -- on firearms and weapons No. 50-4 that
12 existed on January 5, 2011, did not have that
13 provision that's in the new policy under
14 Subsection f, contact and cover; is that correct?
15 A. That's correct.
16 Q. Although you agree that all
17 officers were trained on the contact/cover rule
18 prior to January 5, 2011; is that correct?
19 A. Absolutely. They all were, yes.
20 Q. But it was not in the policy that
21 existed on January 5, 2011; is that correct?
22 A. Not in this form, no.
23 Q. And do you know why it wasn't in
24 there?

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1 A. No. I believe it just said in line
2 with training.
3 Q. Do you know why the contact/cover
4 rule was added to the policy on firearms and
5 weapons after the Stamps' shooting?
6 A. You'd have to ask Deputy Chief
7 Davis.
8 Q. Now, the contact/cover rule is
9 taught at the police academy; is that correct?
10 A. Yes, it is.
11 Q. It was taught as part of the SWAT
12 training; is that correct?
13 A. Yes.
14 Q. It was part of the training for
15 the -- for any officer of the Framingham Police
16 Department; is that correct?
17 A. On numerous occasions, yes.
18 Q. It's a basic and fundamental rule
19 of police practice; is that correct?
20 A. True.
21 Q. I'm going to show you what's been
22 previously marked as Exhibit No. 4. Can you
23 identify that?
24 A. Our Policy on Firearms and Weapons

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1 50-4.
2 Q. For the Framingham Police
3 Department, right?
4 A. The Framingham Police Department,
5 yes.
6 Q. And this was the version of the
7 policy that existed on January 5, 2011; is that
8 correct?
9 A. Yes.
10 Q. If you go to Page 6 where it says
11 "Weapon Handling" it states, "Officer shall: A,
12 handle all weapons in accordance to their
13 training;" is that correct?
14 A. Yes.
15 Q. And that's what you referred to
16 before as encompassing the contact/cover rule,
17 correct?
18 A. Exactly, yes.
19 Q. If you go down to D, "Officers
20 shall keep their finger outside of the trigger
21 guard until ready to engage in fire on a target."
22 Did I read that correctly?
23 A. Yes.
24 Q. And Stamps -- and Officer Duncan

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1 was trained on that procedure to keep the finger
2 outside of the trigger guard until ready to
3 engage in fire prior to January 5, 2011; is that
4 correct?
5 A. Yes.
6 Q. And that's a basic and fundamental
7 rule of police training and practice?
8 A. Yes.
9 Q. Do you recall any training after
10 January 5, 2011, in which Mr. Stamps was killed
11 that re-emphasized the contact/cover rule?
12 A. After the incident?
13 Q. Yes.
14 A. Yes.
15 Q. And was that training provided
16 specifically because of what happened to Eurie
17 Stamps on January 5th?
18 A. It was in direct relation to it.
19 Q. It was. And what do you mean when
20 you say it was in direct relation to it?
21 A. We wanted to make perfectly clear
22 so there was no doubt in anyone's minds exactly
23 what the procedure is for contact/cover.
24 Q. And its relationship to the Stamps

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| | |
|--|--|
| <p style="text-align: right;">Page 90</p> <p>1 shooting was that Officer Duncan did not follow 2 that contact/cover rule; is that correct? 3 A. Correct. 4 Q. Do you recall any details of the 5 training, and specifically I want to know was the 6 Stamps incident discussed as part of the 7 training? 8 A. No. 9 Q. Sergeant Stuart, you understand the 10 meaning of a seizure in the context of police 11 activity; is that correct? 12 A. Yes. 13 Q. And a person is seized essentially 14 when they're no longer free to move; is that your 15 understanding? 16 A. Yes. 17 Q. And that seizure can occur in a 18 variety of ways. An officer can make a command 19 to somebody not to move; is that correct? 20 A. That's correct. 21 Q. And that's a use of force; isn't 22 that correct? 23 A. It is a version, yes. 24 Q. And an officer can also seize</p> | <p style="text-align: right;">Page 92</p> <p>1 Q. Now, you agree that during the 2 execution of a search warrant it is entirely 3 proper that all persons be seized or detained in 4 terms of their freedom of movement during the 5 execution of a search warrant even if they're a 6 non-suspect and an innocent bystander; is that 7 correct? 8 A. Everyone temporarily detained 9 inside that residence. 10 Q. Right. And they're told to do 11 that, not to move during the execution of the 12 search warrant? 13 A. Yes, absolutely, for everyone's 14 safety. 15 Q. For their safety and for the 16 officers's safety? 17 A. Yes. 18 Q. Sergeant Stuart, I'm going to show 19 you what's been marked as Exhibit No. 36, and 20 it's the Policy on Search and Seizure No. 100-1 21 of the Framingham Police Department. It has an 22 effective date of July 1, 2003. Is this the 23 policy that was in effect at the time of the 24 Stamps' shooting?</p> |
| <p style="text-align: right;">Page 91</p> <p>1 somebody by using their weapon and pointing it at 2 them and telling the person to freeze or to not 3 move; is that correct? 4 A. That is a seizure. 5 Q. And that also -- but that type of 6 seizure involves a use of force; namely, the 7 showing of a weapon and the pointing of a weapon 8 as a show of force to entice or encourage 9 somebody to actually not move; is that correct? 10 A. Displaying any use of force, 11 especially a weapon, is definitely a seizure. 12 Q. Right. And the weapon is -- the 13 weapon itself is the display of force; isn't that 14 correct? 15 A. It is a display of force, but we're 16 trained that your weapon is there for your 17 protection. How the other person interprets it 18 is . . . 19 Q. Okay. But you agree that when an 20 officer tells somebody to not move and to freeze 21 and points their weapon at them in the process, 22 they're using their weapon as a show of force; is 23 that correct? 24 A. It is a show of force.</p> | <p style="text-align: right;">Page 93</p> <p>1 A. I believe it was, yes. 2 Q. Can you go to Page 9, Section 8? 3 And could I see that back from you just for a 4 second? Section 8 refers to searches of persons 5 on the premises, and it relates to the execution 6 of a search warrant; is that correct? 7 A. That's what it's saying there, yes. 8 Q. Can you read Subsection b, 9 Subsection i and ii into the record, please? 10 A. Subsection b of Section 8, "Persons 11 not named in or referred to in the search warrant 12 may not be searched unless either -- this is 13 "i" -- probable cause exists in regard to the 14 individual to be searched. However, mere 15 presence at a location where criminal activity 16 has taken place is not enough to constitute 17 probable cause; ii, officer has reasonable 18 suspicion to believe that such person is armed, 19 and then she or he may be frisked for weapons." 20 Q. Now, can you go back to 21 Exhibit No. 11, please, the September 21st 22 memorandum regarding the meeting that occurred on 23 that day. I refer you to the third paragraph. 24 It states, "Sergeant Stuart and Lieutenant</p> |

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1 Downing claim that officers are trained to keep
2 their rifles on safe unless the officer perceives
3 a threat or he is actively clearing rooms/danger
4 area. This means that Duncan should have had his
5 weapon on safe because neither of the two
6 conditions existed." Did I read that correctly?
7 A. Yes.
8 Q. And you testified before that you
9 stand by those words?
10 A. Yes.
11 Q. Now, if you go back to
12 Subsection 8, Page 9 of Exhibit 36, the search
13 and seizure protocol, it states that: "Persons
14 not named or referred to in the search warrant
15 may not be searched unless there is probable
16 cause to believe the person is engaged in
17 criminal activity or reasonable suspicion to
18 believe that the person is armed, and then he may
19 be frisked for weapons." Did I state that
20 accurately?
21 A. Yes.
22 Q. So Officer Duncan according to this
23 policy could not frisk Mr. Stamps for weapons
24 unless he had probable cause to believe that he

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1 engaged in criminal activity or he had reasonable
2 suspicion to believe that Mr. Stamps was armed,
3 and then he may frisk him for weapons; is that
4 correct?
5 A. I believe that Officer Duncan and
6 any SWAT member in that house because of the
7 briefing we had before did have reasonable
8 suspicion to at least frisk persons inside the
9 house.
10 Q. But you previously said in this
11 memorandum, Exhibit 11, that Officer Duncan had
12 no perceived threat of danger?
13 A. No, no, no. I didn't say he had no
14 perceived threat of danger. I don't know what he
15 perceived is exactly what I said.
16 Q. All right. I want to go to the
17 position of your rifle in terms of its setting.
18 No, let me go back. What weapon were you
19 carrying when you entered 26 Fountain Street?
20 A. Me personally?
21 Q. Yes.
22 A. I had a Colt Commando which is a
23 smaller version of the M-4.
24 Q. It's a rifle?

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1 A. It is a rifle. It's a smaller
2 version.
3 Q. And does it have a safety?
4 A. It does.
5 Q. Was your weapon on safety when you
6 entered 26 Fountain Street? I mean the first
7 entry into the hallway.
8 A. I practice -- we're all suppose to
9 practice safety manipulation. It was on and off
10 throughout the entire time I was in there.
11 Q. So the entire time you were -- so
12 when you first made entry into the living
13 room/makeshift bedroom, when you first went in
14 was your gun on safe or off safe?
15 A. It was on semiautomatic.
16 Q. So it was off safe?
17 A. Off safe.
18 Q. Okay. And at some point you put it
19 on safe again?
20 A. Exactly when I do that I'm not
21 sure. It's done multiple times. If I have to
22 take my hand off to do something, pull the
23 curtain down, it's going back on safe. If I am
24 not up front, let's say I'm in the hallway and

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1 I'm like three people behind, on safe. So it's
2 being manipulated depending on the situation.
3 Q. So do you recall manipulating your
4 weapon from safe to off safe a number of times
5 while you were in 26 Fountain Street?
6 A. Yes.
7 Q. Do you have any knowledge of the
8 reason Officer Duncan was removed from the SWAT
9 team after the Stamps' shooting?
10 A. As to why he was removed from the
11 team?
12 Q. Yes.
13 A. That was ultimately Deputy Chief
14 Davis's decision.
15 Q. Did you have input into that
16 decision?
17 A. I did.
18 Q. And did you share -- did you convey
19 information or your opinions to the deputy chief?
20 A. I did.
21 Q. And what did you tell him?
22 A. I told him that we can't have him
23 still actively on this team if he's violated
24 these different training procedures and it

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1 resulted in a death. We can't put him out on the
2 road again and it happens again.
3 Q. So you concluded that he violated
4 procedures and those violations led to Stamps's
5 death; is that right?
6 A. He violated our training, yes, and
7 as a result of it, someone died.
8 Q. All right. Can you tell me -- do
9 you remember -- when you first entered the
10 kitchen from the den, you said you saw Officer
11 Duncan. Do you have a specific memory -- and if
12 you don't, you don't. If you have a specific
13 memory as to where Eurie Stamps's head was in
14 relationship to the threshold. Do you have a
15 specific memory?
16 A. Yes, I do.
17 Q. Okay. And can you give me -- how
18 close was his head to the threshold?
19 A. Do you want me to mark it down on
20 here?
21 Q. No. You know, in terms of what you
22 remember before you mark anything.
23 A. He was face down with his head up
24 here right next to Duncan, and this doesn't

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1 really depict it the way we're drawing but. And
2 his feet I believe were still in this room here.
3 His body was across this hallway face down with
4 his head right next to Duncan.
5 Q. So where would you place his head
6 as you remember seeing it. You saw it that
7 night. Did you see his head?
8 A. Right there (indicating).
9 Q. Okay. Can you mark on the -- in
10 green, can you just make a dot where you -- now
11 try to be as accurate as you can in terms of
12 where his head was in relationship to the wall
13 that's there.
14 A. Somewhere in there, I would say.
15 I'm not positive but . . .
16 Q. And can you just put an "S" next to
17 that mark?
18 A. It's going to be the same "S" as
19 me.
20 Q. Oh. Why don't you write the word
21 "Stamps."
22 A. (Witness complies.)
23 Q. Now, the SWAT team has been
24 disbanded; is that correct?

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1 A. Yes.
2 Q. And that has occurred in the
3 last -- when did that take place? When was the
4 last day of the SWAT team?
5 A. The official date, I'm not
6 positive. Within the past two weeks.
7 Q. The past two weeks. Were you
8 involved in the decision to disband the SWAT
9 team?
10 A. That was Chief Carl's decision.
11 Q. Did you have conversations with him
12 about that?
13 A. As to the degree how it would be
14 disbanded, yes, but the ultimate decision was
15 his.
16 Q. Okay. What did you share with --
17 you said the chief, right?
18 A. Yes.
19 Q. What did you share with Chief Carl
20 as to your opinion on the SWAT team and whether
21 it should or should not be disbanded?
22 A. Well, he told me it was going to be
23 disbanded, and he was going to turn tactile
24 operations over to the state police.

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1 I asked him if he explored the
2 regional SWAT options yet, and he had some
3 outdated information, and I informed him as such,
4 so he told me to look into it and get back with
5 him.
6 Q. Did you share any opinions with
7 anybody including the chief about whether you
8 agreed or disagreed with the disbanding of the
9 SWAT team?
10 A. I talked to many people about it.
11 Do I think that the SWAT team should be
12 disbanded, no. I'm not going to argue with him
13 about it. It's up to him. He's the boss.
14 Q. Did you explain to him why you
15 think the SWAT team should have stayed intact?
16 A. I didn't bother. No.
17 Q. Do you know -- do you have any
18 knowledge of the reasons Chief Carl decided to
19 disband the SWAT team?
20 A. I don't know exactly what his
21 personal reasons were for disbanding the team,
22 no.
23 Q. But as far as -- do you have any
24 knowledge of what the reasons were for disbanding

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| Page 102 | Page 104 |
|--|---|
| <p>1 of the SWAT team, whether they were personal 2 opinions of the chief or just what your 3 understanding is of why it happened? 4 A. I believe it was a mixture of a 5 bunch of scenarios, cost, liability. He's no 6 longer going to be there in charge to keep a lid 7 on it is what I think his exact words were. 8 Deputy Chief Davis is leaving who was his 9 appointed person in charge. He gave -- he listed 10 numerous reasons why. 11 Q. Okay. Let me see if I have 12 anything I need to have you mark here. Why don't 13 we take a short break. I think we may be done. 14 THE VIDEOGRAPHER: Going off the 15 record the time is 12:08 p.m. 16 (A break was taken.) 17 THE VIDEOGRAPHER: We're back on 18 the record at 12:12 p.m. 19 Q. (By Mr. Musacchio) Sergeant Stuart, 20 I think you testified that in terms of your 21 placement of where you remember seeing Mr. Stamps 22 that you indicated where his head was in the 23 hallway, and you said his feet were pointed 24 towards the bathroom door?</p> | <p>1 reasons the SWAT team was disbanded? 2 A. I didn't see any. There was an 3 e-mail that came out. 4 Q. Okay. 5 A. I did see that. That's a 6 correction, I did see the e-mail that went out to 7 the entire police department. 8 Q. You say you didn't see any 9 documents. Are you aware of whether any 10 documents exist that explains the reasons that 11 the SWAT team was disbanded? 12 A. Other than the e-mail and he did go 13 into some of his reasons that he put in the 14 e-mail, I haven't seen any other documents. 15 Q. Did Chief Carl distribute that 16 e-mail to everybody in the department? 17 A. Exactly -- I know it went to all 18 ranking officers and members of the SWAT team. 19 Anything other than that, I'm not sure. 20 MR. MUSACCHIO: Okay. I'm going to 21 request the e-mail that was sent by Chief Carl to 22 members of the SWAT team. I have no further 23 questions. 24 THE WITNESS: Very good.</p> |
| Page 103 | Page 105 |
| <p>1 A. It was a very narrow hallway. He 2 was a big man. 3 Q. Yeah. 4 A. I believe part of his body, 5 especially the legs, were still in that bathroom 6 area. 7 Q. Okay. I want you to mark for me 8 again with two, you know, small circles, similar 9 to what you did with the head, where you remember 10 his feet were. If his head is here, do you 11 remember where -- 12 A. I couldn't see his feet. 13 Q. Okay. Can you mark here where his 14 legs were that evening when you saw him? 15 A. Okay. Dots, did you say? 16 Q. You can do a line if it's legs. 17 A. I believe the legs were something 18 like this. 19 Q. And can you just, again, next to 20 those lines just write the word "Stamps"? 21 A. (Witness complies.) 22 Q. I want to just go back to the 23 decision to disband the SWAT team. Were there 24 any written documents prepared relating to the</p> | <p>1 MR. MUSACCHIO: Thank you very 2 much. 3 THE VIDEOGRAPHER: This concludes 4 the deposition of Sergeant Vincent E. Stuart. 5 The number of tapes used today was one. We're 6 off the record at 12:15 p.m. 7 (Deposition concluded at 12:15 p.m.) 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> |

Sergeant Vincent E. Stuart

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1 **CERTIFICATE**

2 I, Maryellen Coughlin, a RPR/CRR and

3 Notary Public of the Commonwealth of

4 Massachusetts, do hereby certify that the

5 foregoing is a true and accurate transcript of

6 my stenographic notes of the deposition of SERGEANT

7 VINCENT E. STUART, who appeared before me,

8 satisfactorily identified himself, and was by me

9 duly sworn, taken at the place and on the date

10 hereinbefore set forth.

11 I further certify that I am neither

12 attorney nor counsel for, nor related to or

13 employed by any of the parties to the action in

14 which this deposition was taken, and further

15 that I am not a relative or employee of any

16 attorney or counsel employed in this case, nor

17 am I financially interested in this action.

18 THE FOREGOING CERTIFICATION OF THIS

19 TRANSCRIPT DOES NOT APPLY TO ANY REPRODUCTION OF

20 THE SAME BY ANY MEANS UNLESS UNDER THE DIRECT

21 CONTROL AND/OR DIRECTION OF THE CERTIFYING

22 REPORTER.

23

24 MARYELLEN COUGHLIN, RPR/CRR

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1 **INSTRUCTIONS TO WITNESS**

2

3

4 Please read your deposition over

5 carefully and make any necessary corrections.

6 You should state the reason in the appropriate

7 space on the errata sheet for any corrections

8 that are made.

9 After doing so, please sign the

10 errata sheet and date it. It will be attached to

11 your deposition.

12 It is imperative that you return

13 the original errata sheet to the deposing

14 attorney with thirty (30) days of receipt of the

15 deposition transcript by you. If you fail to do

16 so, the deposition transcript may be deemed to be

17 accurate and may be used in court.

18

19

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2 **E R R A T A**

3 - - - - -

4 **PAGE LINE CHANGE**

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22 REASON: _____

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24 REASON: _____

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1 **ACKNOWLEDGMENT OF DEPONENT**

2

3

4 I, _____, do

5 hereby certify that I have read the

6 foregoing pages, and that the same is

7 a correct transcription of the answers

8 given by me to the questions therein

9 propounded, except for the corrections or

10 changes in form or substance, if any,

11 noted in the attached Errata Sheet.

12

13

14

15 _____
SERGEANT VINCENT E. STUART DATE

16

17

18 Subscribed and sworn

19 to before me this

20 _____ day of _____, 20____.

21 My commission expires: _____

22

23

24 _____
Notary Public