

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MARC FISHMAN, :  
 : DOCKET NO.  
 :  
 Plaintiff, : 19-CV-265 NSR  
 :  
 -against- :  
 :  
 CITY OF NEW ROCHELLE; LANE :  
 SCHLESINGER, SHIELD #1058; JOSEPH :  
 F. SCHALLER; ROBERT GAZOLLA, In His :  
 Official Capacity as Police :  
 Commissioner of the City of New :  
 Rochelle Police Department; :  
 SERGEANT MYRON JOSEPH, SHIELD #18 :  
 & COUNTY OF WESTCHESTER, :  
 :  
 Defendants. :  
----- x

Lexitas -  
LegalView VC

December 1, 2023  
10:00 A.M.

DEPOSITION of OFFICER LANE SCHLESINGER, a  
Defendant in the above-entitled action, held at the  
above time via Video Conference, taken before a  
Certified Court Reporter of the State of New  
Jersey.

LEXITAS TRI STATE  
100 Merrick Road, Suite 320W  
Rockville Centre, New York 11570  
(516) 678-8700 Ext. 2332



(1)     **A P P E A R A N C E S:**

(2)

(3)     LAW OFFICES OF CANER DEMIRAYAK, ESQ., P.C.

(4)     BY: CANER DEMIRAYAK, ESQUIRE

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(9)     Email: caner@canerlawoffice.com

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(11)

(12)

(13)

(14)    THE QUINN LAW FIRM

(15)    BY: LALIT K. LOOMBA, ESQUIRE

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(21)    Attorneys for the Defendants

(22)

(23)

(24)    **A L S O     P R E S E N T:**

(25)    **ROBERT CALVERT, New York State E-Notary**

I N D E X

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WITNESS

EXAMINATION BY

PAGE

OFFICER LANE SCHLESINGER

MR. DEMIRAYAK

8

(1)	E X H I B I T S		
(2)			
(3)			
(4)	EXHIBIT NO.	DESCRIPTION	PAGE
(5)			
(6)	P-1	AUDIO RECORDING	PREMARKED
(7)	P-2	UNIDENTIFIED DOCUMENT	PREMARKED
(8)	P-3	TEXT MESSAGES	PREMARKED
(9)	P-4	DOMESTIC INCIDENT REPORT	PREMARKED
(10)			
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(20)	*Exhibit marked & retained by Attorney*		
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S T I P U L A T I O N S

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IT IS HEREBY STIPULATED AND AGREED

(7)

by and between (among) counsel for the respective

(8)

parties herein, that filing and sealing being the

(9)

same are hereby waived.

(10)

IT IS FURTHER STIPULATED AND AGREED

(11)

that all objections, except as to the form of the

(12)

question, shall be reserved to the time of the

(13)

trial.

(14)

IT IS FURTHER STIPULATED AND AGREED

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that the within deposition may be sworn to and

(16)

signed before any officer authorized to administer

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an oath, with the same force and effect as if

(18)

signed and sworn to before the Court.

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V I D E O   S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED

by and between counsel for all parties present  
that pursuant to C.P.L.R. Section 3113 (d) this  
deposition is to be conducted by  
Videoconference, that the Court Reporter, all  
counsel, and the witness are all in separate  
remote locations and participating via  
Videoconference ((LegelView/Zoom/WebEx) meeting  
under the control of Lexitas Court Reporting  
Service, that the officer administering the  
oath to the witness shall be sworn in remotely  
by the Court Reporter after confirming the  
witness' identity, that this Videoconference  
will not be recorded in any manner and that any  
recording without the express written consent  
of all parties shall be considered  
unauthorized, in violation of law, and shall  
not be used for any purpose in this litigation or  
otherwise.

IT IT FURTHER STIPULATED that

exhibits may be marked by the attorney

(1)  
(2) presenting the exhibit to the witness, and that  
(3) a copy of any exhibit presented to a witness  
(4) shall be emailed to or otherwise in possession  
(5) of all counsel prior to any questioning of a  
(6) witness regarding the exhibit in question. All  
(7) parties shall bear their own costs in the conduct  
(8) of this deposition by Videoconference.

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\* \* \*

(1) (Whereupon, the deposition commences at 10:09 a.m.)  
(2) O F F I C E R L A N E S C H L E S I N G E R,  
(3) 47 North Avenue, New Rochelle, New York 10801,  
(4) having been duly sworn, testifies as follows:

(5) DIRECT EXAMINATION

(6) **BY MR. DEMIRAYAK:**

(7) Q. Good morning, Officer. My name is Caner  
(8) Demirayak. I am an attorney and I represent the  
(9) plaintiff, Marc Fishman, versus the City of New  
(10) Rochelle in a lawsuit that involves an incident  
(11) that occurred on December 15, 2018 and  
(12) circumstances arising thereafter.

(13) I'm going to be asking you some questions  
(14) today regarding that lawsuit in your capacity as a  
(15) police officer on behalf of the New Rochelle Police  
(16) Department, and, also, as a factual witness for  
(17) involvement in the arrest and prosecution of Mr.  
(18) Fishman.

(19) So I'm going to ask you some questions  
(20) about that today. If, at any point, you don't  
(21) understand what I ask or if it didn't make sense,  
(22) please let me know. I can repeat or rephrase the  
(23) question for you.

(24) This is important because if you answer a  
(25) question, it's going to be assumed for the record



(1) that you understood the question, okay?

(2) A. Yes, sir.

(3) Q. Okay.

(4) MR. LOOMBA: Before you continue, just for  
(5) the record, I want to place on the record that  
(6) Officer Schlesinger will reserve his right to  
(7) review and correct the transcript. Thank you.

(8) MR. DEMIRAYAK: Okay. He has every  
(9) opportunity to do that. That's not a problem at  
(10) all.

(11) Q. If there's anything you don't remember or  
(12) don't recall, please let us know. I don't want you  
(13) to guess or say anything. Only tell us what you  
(14) know and what you can remember, okay?

(15) A. Yes, sir.

(16) Q. If there is anything that I've asked you  
(17) that in order to answer it you're referring to a  
(18) document, a video, anything to refresh or remind  
(19) your recollection, please let us know what you're  
(20) looking at or what you have looked at to remind  
(21) yourself or recollection in providing an answer,  
(22) okay?

(23) A. Yes, sir.

(24) Q. Alright. Did you prepare in any way for  
(25) today's deposition?

(1)           **A.    Yes, sir.**

(2)           Q.    Okay. Please tell me what you did to  
(3) prepare for today's deposition.

(4)           **A.    I met with Mr. Loomba, approximately,**  
(5) **three weeks ago.**

(6)           Q.    I'm sorry. Say that again.

(7)           **A.    I met with Mr. Loomba, approximately,**  
(8) **three weeks ago and the deposition was canceled.**

(9)           Q.    Did you meet with an attorney to go over  
(10) the case after that cancellation?

(11)           **A.    No. I met Mr. Loomba earlier this**  
(12) **morning.**

(13)           Q.    Okay. So other than those two meetings  
(14) with the attorney, did you review any documents?

(15)           **A.    All pertinent paperwork for file.**

(16)           Q.    And tell me what that means, all  
(17) pertinent paperwork for file.

(18)           **A.    Documents related to the arrest from the**  
(19) **domestic incident report and all paperwork filed by**  
(20) **me.**

(21)           Q.    When you reviewed those documents were  
(22) they the documents that were exchanged in discovery  
(23) in this lawsuit, or were they taken from your own  
(24) file at the police department?

(25)           **MR. LOOMBA: If you know.**

(1)           **A.    I don't know.**

(2)           **MR. LOOMBA: Counsel, I can say we**  
(3) **reviewed documents that we produced to you.**

(4)           Q.    Did you go and look at any police files  
(5) maintained right New Rochelle Police Department  
(6) aside from the documents that were exchanged in  
(7) discovery in this case?

(8)           **A.    No.**

(9)           Q.    Do you have -- or do you have access to a  
(10) police file for this case?

(11)          **A.    I don't understand your question.**

(12)          Q.    Is there an existing police file for the  
(13) incident of December 15th, 2018?

(14)          **A.    That's maintained at New Rochelle Police**  
(15) **Department?**

(16)          Q.    Yes.

(17)          **A.    Possibly.**

(18)          Q.    Is it electronic or physical or both?

(19)          **A.    I wouldn't know.**

(20)          Q.    Would you have access to it?

(21)          **A.    I wouldn't know. I don't have access to**  
(22) **paperwork that's already been filed.**

(23)          Q.    With respect to the documents that you  
(24) reviewed where did they come from? Who gave them  
(25) -- how did they come into your view?

(1)           **A.     I'm not understanding your question. Mr.**  
(2)           **Loomba had all pertinent paperwork that I reviewed**  
(3)           **with him.**

(4)           Q.     You don't know if that was given to the  
(5)           attorney through the police department, prosecutor,  
(6)           somebody else?

(7)           **A.     No.**

(8)           Q.     Okay. So in preparation for today you  
(9)           did not go into a police file maintained by the  
(10)          police department and look at your own document.

(11)          Is that fair?

(12)          **A.     Yes.**

(13)          Q.     Okay. Did you review any videos in  
(14)          preparation for today?

(15)          **A.     Yes.**

(16)          Q.     Okay. What videos did you review?

(17)          **A.     Lobby video when Mr. Fishman was at**  
(18)          **headquarters.**

(19)          Q.     Alright. In viewing that video were you  
(20)          able to hear any audio? Speaking of persons?

(21)          **A.     Yes.**

(22)          Q.     Alright. And in reviewing those videos  
(23)          were you able to hear anything that you, also, said  
(24)          yourself?

(25)          **A.     Yes.**

(1) Q. Okay. And were you able to hear anything  
(2) that Mr. Fishman may have said?

(3) A. Yes.

(4) Q. Okay. Did you review any or listen to  
(5) any audio calls or recordings in preparation for  
(6) today?

(7) A. Other than the video footage, no.

(8) Q. Did you listen to a radio run that may  
(9) involve statements that you made on December 15,  
(10) 2018 in preparation for today?

(11) A. No.

(12) Q. Did you listen to an audio call by the  
(13) allegedly complaining witness that initiated the  
(14) December 15, 2018 police interactions that you were  
(15) involved in?

(16) A. No.

(17) Q. Okay. Were you ever made aware, at any  
(18) point since December 15, 2018, whether or not a  
(19) phone call was recorded and maintained by the  
(20) police department by Jennifer Solomon?

(21) MR. LOOMBA: I'm just instructing the  
(22) witness not to reveal communication between Counsel  
(23) and yourself in answering that question. But,  
(24) otherwise, you can answer the question.

(25) A. Can you rephrase the question, please?

(1) Q. Sure. I'll rephrase it. It's not a  
(2) problem at all.

(3) Back in 2018 were you ever made aware of  
(4) when someone calls the police department if those  
(5) phone calls are recorded?

(6) A. Yes.

(7) Q. In your job as a police officer in 2018  
(8) would you ever have an occasion to listen to a  
(9) phone call made by a complaining witness that was  
(10) recorded by the station?

(11) A. If it's pertaining to the investigation,  
(12) yes.

(13) Q. Okay. And in this specific incident on  
(14) December 15, 2018, involving Marc Fishman and  
(15) Jennifer Solomon, were you ever made aware of or  
(16) did you ever learn of an audio recording of a phone  
(17) call made by Solomon to the precinct?

(18) A. I know Miss Solomon called the precinct,  
(19) yes.

(20) Q. Did you ever listen to that phone call?

(21) A. No.

(22) Q. Okay. Can you please walk me through the  
(23) issues in which -- in 2018 in your police practice  
(24) that it would be pertinent to your investigation to  
(25) listen to such calls?

(1)           **A.     If there was any information or**  
(2)           **statements that were made during the phone call**  
(3)           **that would reflect the outcome of an incident.**

(4)           Q.     Okay.  Who would make that  
(5)           determination?

(6)           **A.     Myself and my supervisor.**

(7)           Q.     Okay.  And you were aware that Jennifer  
(8)           Solomon called the precinct?  And is it your  
(9)           testimony that you did not listen to that phone  
(10)          call at any point in your investigation?

(11)          **MR. LOOMBA: Asked and answered.  You can**  
(12)          **answer that again.**

(13)          **A.     Yes.**

(14)          Q.     Okay.  Why did you not listen to that  
(15)          phone call in this investigation?

(16)          **A.     Because I interviewed Miss Solomon.**

(17)          Q.     Okay.  In your practice have you ever --  
(18)          in 2018 or up until today, ever listened to a phone  
(19)          call to determine if a complaining witness that  
(20)          you've interviewed has provided you with consistent  
(21)          statements?

(22)          **A.     No.**

(23)          Q.     Okay.  So it's your testimony that  
(24)          whatever was stated by Miss Solomon on that phone  
(25)          call, you would not have been aware of the sum and

(1) substance of the statements that she made.

(2) Is that fair?

(3) **A. Can you rephrase that, please?**

(4) Q Sure. So it's your testimony you never  
(5) listened to that phone call. So what I'm asking  
(6) you, is it fair to say that you would not know the  
(7) sum and substance of the statements made by that  
(8) complaining witness on that phone call to the  
(9) police precinct?

(10) **A. That's correct.**

(11) Q. Now, were you ever made aware of whether  
(12) or not an audio recording of that call existed?

(13) **A. I believe I stated that any call to**  
(14) **headquarters is a taped line.**

(15) Q. Okay. And did it raise any concerns to  
(16) you that you weren't provided with that audio call  
(17) in preparation for today's deposition?

(18) **MR. LOOMBA: Objection. I don't know what**  
(19) **to say about that one. Go ahead and answer. Just**  
(20) **don't reveal any communications between yourself**  
(21) **and your Counsel.**

(22) **A. No.**

(23) Q. Okay. Here's another question then on  
(24) that subject. Then we're going to move on.

(25) Assuming the statements made by the



(1) witness here, the complaining witness, were  
(2) different from what she told you in your interview  
(3) on that phone call. Would you have any concerns  
(4) about the case?

(5) **MR. LOOMBA: Hold on. Objection to the**  
(6) **form. What do you mean by the case?**

(7) **MR. DEMIRAYAK: The criminal case.**

(8) **MR. LOOMBA: Objection to the form. You**  
(9) **can answer.**

(10) **A. Can you rephrase please?**

(11) **Q. Sure. Let's assume that on that phone**  
(12) **call that you haven't listened to, that we both**  
(13) **agree was record and maintained by the police**  
(14) **precinct, let's assume that there's a statement on**  
(15) **that that's different from what the complaining**  
(16) **witness told you in her interview thereafter.**

(17) **If those statements were different, how**  
(18) **would that affect your assessment of the**  
(19) **investigation ongoing at that time?**

(20) **MR. LOOMBA: Objection to form. You can**  
(21) **answer.**

(22) **A. Usually in a domestic incident or any**  
(23) **criminal incident that does occur the information**  
(24) **relayed on a non-911 phone call, or phone call to**  
(25) **the police, okay, is usually in a rushed manner or**

(1) in hyper-escalated state where it differs from when  
(2) we interview them one-on-one in person. So that  
(3) wouldn't affect my investigation.

(4) Q. Okay. In this case, do you have an  
(5) independent recollection of the event of December  
(6) 15, 2018?

(7) A. I don't understand what you mean  
(8) independent, sir.

(9) Q. Do you remember anything just by your own  
(10) memory?

(11) A. Yes.

(12) Q. Okay. And on that date when you received  
(13) -- withdrawn.

(14) Did you receive a radio run to respond to  
(15) the complaining witness, Jennifer Solomon, that  
(16) day?

(17) A. Yes.

(18) Q. At the time you received the radio run,  
(19) wasn't Mr. Fishman already at the precinct  
(20) voluntarily?

(21) A. I don't believe so.

(22) Q. Okay. Were you notified on that radio  
(23) run that Mr. Fishman was already there?

(24) A. I believe your time line might be askew.

(25) Q. Explain that. What do you mean by my time

(1) line's wrong?

(2) **A. By the time I was finished interviewing**  
(3) **Miss Solomon I believe headquarters advised me on**  
(4) **the radio that Mr. Fishman was at headquarters.**

(5) **Q. What's a 10-12?**

(6) **A. For an arrest.**

(7) **Q. Before you got back to the station during**  
(8) **that radio run, was a 10-12 order issued through**  
(9) **the radio for Mr. Fishman?**

(10) **A. I don't remember.**

(11) **Q. Okay. Was it stated that the "other half**  
(12) **of the radio run was already at the precinct"?**

(13) **A. At a certain point, yes, sir.**

(14) **Q. Okay. And when that was stated, was it,**  
(15) **also, made clear that there should be a 10-12 on**  
(16) **that other half?**

(17) **A. I don't remember, sir.**

(18) **Q. In your practice as a police officer,**  
(19) **have you ever stated words "give him a 10-12"?**

(20) **A. I don't recollect over my career.**

(21) **Q. Alright. And you haven't listened to**  
(22) **your radio run in this incident at any point?**

(23) **A. No, sir.**

(24) **Q. Okay. Do you recall ever asking over the**  
(25) **radio for this incident "is he available at**

(1) headquarters"?

(2) **A. I don't remember my exact verbiage.**

(3) **Q. Okay. Did you ever ask whether or not**  
(4) **the alleged defendant, at that point the arrestee,**  
(5) **was already at headquarters?**

(6) **A. I believe I was advised he was at**  
(7) **headquarters.**

(8) **Q. Did you ask if he was at headquarters and**  
(9) **then were advised thereafter?**

(10) **A. I don't recall the exact time line of**  
(11) **that.**

(12) **Q. Okay. And did you request that Mr.**  
(13) **Fishman be given a 10-12 while you were on the way**  
(14) **back to the precinct?**

(15) **A. I don't recall.**

(16) **Q. Okay. Assuming a radio run were to**  
(17) **identify yourself stating that you were asking that**  
(18) **he be given 10-12, would that be accurate or**  
(19) **inaccurate as far as your memory of how that**  
(20) **incident occurred?**

(21) **MR. LOOMBA: Objection to form. You can**  
(22) **answer.**

(23) **A. Can you rephrase the question, please,**  
(24) **sir?**

(25) **Q. Sure. If I was to tell you that on an**

(1) audio recording it appears that you stated "give  
(2) him a 10-12" on the radio before you got to the  
(3) precinct, does that refresh your recollection as to  
(4) what you said on that radio run?

(5) A. No.

(6) Q. Okay.

(7) MR. DEMIRAYAK: So I'm going to try to  
(8) share the audio. And I'm going to be marking this,  
(9) which we'll provide it as a separate file. And  
(10) it's not actually a document, Plaintiff's Exhibit 1  
(11) which is going to be a 3-minute and 11-second audio  
(12) file that's entitled Marc Fisherman-Lieutenant  
(13) Reynolds.

(14) I'm trying to bring it up on my screen  
(15) and see if it will play. I'm going to play it.  
(16) Just let me know if you can hear any audio before  
(17) we get going on it. I'm starting out as a test.  
(18) Then we'll move on from there.

(19) (Audio plays)

(20) Q. Were you able to hear the speaker? She  
(21) said her name was Jennifer Solomon.

(22) A. Yes.

(23) Q. Okay. So I'm going to skip ahead to the  
(24) 2-minute mark. We're going to start the audio at  
(25) the 2-minute mark. Just please listen.

(1) (Audio plays)

(2) Now, the person that said proceed, who is  
(3) that?

(4) **A. CSQ.**

(5) Q. Who was that on that day?

(6) **A. I don't know.**

(7) Q. Do you recognize the voice?

(8) **A. I couldn't be certain.**

(9) Q. Does it sound like Lieutenant Wenzler  
(10) (phn)?

(11) **A. No.**

(12) Q. Okay.

(13) (Audio plays)

(14) Q. What's a 10-8?

(15) **A. A dispute.**

(16) Q. Domestic dispute or just any dispute?

(17) **A. Any dispute.**

(18) Q. Okay. 10-8 means a dispute. Do you know  
(19) who that speaker was again who said the other half  
(20) of that 10-8 is at headquarters or something like  
(21) that? Who was speaking?

(22) **A. The dispatcher.**

(23) Q. Okay.

(24) (Audio plays)

(25) Q. Is that your voice?

(1)           **A.     Yes.**

(2)           Q.     Okay.  What did you just say there?

(3)           **A.     Without -- I couldn't really make out the**  
(4) **whole statement.**

(5)           Q.     Alright.  We'll go back and we'll play it  
(6) again from the 2-minute and 42-second mark.

(7)           (Audio plays)

(8)           Q.     So what did you say there?

(9)           **A.     You have an available officer at**  
(10) **headquarters?  He's going to be a 10-12.**

(11)          Q.     Okay.  And what were you saying at that  
(12) point?  If you can go back on December 15, 2018,  
(13) what were you saying when if there's an officer  
(14) there give him 10-12?  What does that mean?

(15)          **A.     I didn't say give him a 10-12.**

(16)          Q.     What you had said, what did you mean by  
(17) what you said?

(18)          **A.     That he's a probable arrest.**

(19)          Q.     Okay.  So, at that point, after going to  
(20) the complaining witness' address, interviewing her,  
(21) speaking with her, name is Jennifer Solomon, and  
(22) before you even got back to the precinct and had  
(23) any interview or conversation with Mr. Fishman, the  
(24) alleged defendant, you already had felt that he was  
(25) a probable arrest.  Is that fair to say?

(1)           **A.     Based on the CPL that there was**  
(2)           **reasonable cause to detain him and interview him,**  
(3)           **yes.**

(4)           Q.     Okay, but a 10-12 is an arrest. Is there  
(5)           a different code for detain and question?

(6)           **A.     No.**

(7)           **(Audio plays)**

(8)           Q.     What is the significance in your  
(9)           experience as a police officer of a 10-12 order?  
(10)          What sort of rights or obligations apprise to an  
(11)          arrestee?

(12)          **MR. LOOMBA: Objection to the form of the**  
(13)          **question. You can answer.**

(14)          **A.     Can you rephrase the question, please?**

(15)          Q.     Sure. When a 10-12 is issued, or  
(16)          requested, on behalf of a particular citizen or  
(17)          civilian, what is your obligation as a police  
(18)          officer to apprise them of their rights, if any?

(19)          **A.     Do you mean the New Rochelle Police**  
(20)          **procedure for arrest?**

(21)          Q.     Yeah. You 10-12 someone. What do you  
(22)          have to say or what do you have to do for that  
(23)          person?

(24)          **A.     Depending on the circumstances and where**  
(25)          **I am.**



(1) Q. Do they get any rights read to them?

(2) Like what's the story on that?

(3) A. What's the story?

(4) MR. LOOMBA: Let me object to the form.

(5) Do you understand what he wants?

(6) THE WITNESS: No.

(7) MR. LOOMBA: Okay. Tell him no.

(8) Q. Alright. I'll rephrase. It's fine.

(9) When you issue a 10-12 on a person that's  
(10) a probable -- as you said, probable arrestee, is  
(11) that the point in which the obligation to read the  
(12) Miranda rights arises?

(13) A. No. Not necessarily.

(14) Q. Is that the point in which a right to an  
(15) attorney arises?

(16) A. No.

(17) Q. Okay. So what was the purpose of you  
(18) stating give him a 10-12? What did you want to  
(19) happen?

(20) MR. LOOMBA: I object to the form. You  
(21) can answer.

(22) A. To interview him.

(23) Q. So he was not free to leave? Is that  
(24) fair?

(25) A. At that point?

(1) Q. If he wanted to leave, your 10-12 request  
(2) would basically obligate the other officers and  
(3) supervisors at the precinct to not let Mr. Fishman  
(4) leave.

(5) Is that correct?

(6) A. Based on the eJustice print-out, yes.

(7) Q. Did you look at the eJustice print-out  
(8) before you got to the precinct? While on the  
(9) radio?

(10) A. Going back there I looked at it on the  
(11) computer.

(12) Q. In the car?

(13) A. Mm-hum.

(14) MR. LOOMBA: You have to say yes or no.

(15) A. Sorry. Yes.

(16) Q. What was the date of the order of  
(17) protection that you saw on the eJustice?

(18) A. I don't recall.

(19) Q. Were there multiple orders of  
(20) protection?

(21) A. I believe so.

(22) Q. Which order of protection were you  
(23) claiming that Mr. Fishman violated that day?

(24) A. I can't think it out right now.

(25) Q. Was it one? More than one?

(1)           A.    I don't have the information in front of  
(2) me.   It's five years ago.

(3)           Q.    Okay.   So the 10-12 was authorized upon  
(4) interviewing Miss Solomon and looking at the  
(5) eJustice print-out at that point, right?

(6)           A.    To detain and interview the party.   Yes.

(7)           Q.    Alright.   When you asked for that 10-12  
(8) were you made aware of the fact that there was a  
(9) visitation order in place allowing some contact  
(10) between Mr. Fishman and Jennifer Solomon?

(11)           MR. LOOMBA: Objection to form.   You can  
(12) answer.

(13)           A.    I believe there were several stipulations  
(14) that I observed in the order.

(15)           Q.    Okay.   And were you aware at that point  
(16) that Mr. Fishman was attempting to have a  
(17) supervised visit with his children that day?

(18)           MR. LOOMBA: Objection to form.   You can  
(19) answer.

(20)           A.    Based on my interview only to what she  
(21) stated.   That Miss Elliot explained to her that she  
(22) -- Miss Elliot said she did not want to come  
(23) today.   She knew it was in violation and she was  
(24) made to do so.

(25)           Q.    Who said that she knew it was in

(1) violation?

(2) **A. Miss Elliot.**

(3) Q. Okay, but you hadn't spoken to Miss  
(4) Elliot yet. You only got that from Miss Solomon.  
(5) Is that fair?

(6) **A. Right.**

(7) Q. Okay. Now, at that point, did anyone  
(8) allege that Mr. Fishman had threatened or spoken to  
(9) Miss Solomon?

(10) **A. No.**

(11) Q. Okay. And the eJustice that you looked  
(12) at in your car, did it say it was a full stay-away  
(13) order or something else?

(14) **A. I don't recall.**

(15) Q. Okay. Who did you get the information  
(16) from as far as the -- sorry. Withdrawn.

(17) Who did you get the information from as  
(18) far as the visitation order? Was it from eJustice  
(19) or was it from Miss Solomon or somebody else?

(20) **A. At which point, sir?**

(21) Q. Before you got back to the precinct?

(22) **A. From Miss Solomon.**

(23) Q. Okay. And what did Miss Solomon say Mr.  
(24) Fishman did that would result in a 10-12?

(25) **A. I can't recall verbatim but the summary**

(1) of our conversation was that Mr. -- I'm sorry. Mr.  
(2) Fishman was able to, under supervised visitation  
(3) and in accordance with her belief, to do so visits  
(4) with a court-appointed liaison.

(5) MR. LOOMBA: Supervised?

(6) A. Supervised visit. That due to the last  
(7) time, whatever incident occurred, okay, Miss  
(8) Solomon explained to Miss Elliot and Mr. Fishman,  
(9) whatever form of communications that they used,  
(10) that the visitation for that day was canceled which  
(11) she's allowed to do.

(12) Q. Okay. So the visit was canceled.  
(13) Alright. But beyond the visitation being canceled,  
(14) what did Miss Solomon say that Mr. Fishman did that  
(15) was illegal?

(16) A. Oh, I'm sorry. That he went by the  
(17) house, okay? House is on Halcyon Terrace which is  
(18) a cul-de-sac, dead-end street which is not near any  
(19) main roads. That he drove by in a vehicle. Got out  
(20) of the passenger seat I believe. And tried to call  
(21) to his son who was outside playing hockey.

(22) Q. But there were no criminal charges made  
(23) against Mr. Fishman with respect to violating order  
(24) of protection with respect to this. Is that fair?

(25) MR. LOOMBA: Objection to form. You can

(1)       answer.

(2)               A.     I don't know. I don't recall exactly  
(3)       which part was used in the charge.

(4)               Q.     Well, Jennifer Solomon was the victim,  
(5)       not his son, right?

(6)               MR. LOOMBA: Objection to form. You can  
(7)       answer.

(8)               A.     From what I understand Lieutenant --  
(9)       detective at the time, Lieutenant Wenzler spoke to  
(10)      the County DA office and it was decided upon that  
(11)      they were going to charge order for criminal  
(12)      contempt with Miss Solomon at that time. That when  
(13)      it got to White Plains that charges could be  
(14)      modified.

(15)              Q.     When did Lieutenant Wenzler speak to the  
(16)      prosecution?

(17)              A.     When I was at headquarters.

(18)              Q.     After or before you interviewed Mr.  
(19)      Fishman?

(20)              A.     I believe it was during and after.

(21)              Q.     Why did Lieutenant Wenzler speak to the  
(22)      prosecution?

(23)              MR. LOOMBA: Objection to form. You can  
(24)      answer. If he told you or...

(25)              A.     He thought it was the best way to make an

(1) **informed decision. That's coming from my**  
(2) **perspective.**

(3) Q. Did you feel that you had enough to  
(4) charge Mr. Fishman with a criminal offense without  
(5) speaking to a prosecutor?

(6) **MR. LOOMBA: Objection to form. You can**  
(7) **answer.**

(8) **A. My opinion?**

(9) Q. At that point? Yes.

(10) **A. Yes.**

(11) Q. Okay. Did you ever state out loud to  
(12) anyone on December 15, 2018 that "I don't think he  
(13) did it on purpose"?

(14) **A. Not that I recall.**

(15) Q. Did you ever say "I don't think it's  
(16) intentional or malicious"?

(17) **A. Not that I recall.**

(18) Q. Okay, but you listened to the video that  
(19) we described that you had -- withdrawn.

(20) But you looked at the video from the  
(21) station house in preparation for today, right?

(22) **A. From the front lobby. Yes, sir.**

(23) Q. Okay. And did you observe any video in  
(24) which you're on camera in the front taking bail  
(25) cash from the other person and making those

(1) statements?

(2) **A. No.**

(3) Q. Okay. Did you see two videos? One  
(4) video? What did you see?

(5) **A. I believe it was one video.**

(6) Q. And the video you saw, is it a video that  
(7) looks at a jail cell in which Mr. Fishman is in  
(8) that jail cell?

(9) **A. No.**

(10) Q. So what video did you watch? What did it  
(11) show?

(12) **A. The front lobby before -- when I was at**  
(13) **headquarters before I spoke to him.**

(14) Q. Okay, but you didn't look at any videos  
(15) where you're interacting with Miss Isabelle Bulevar  
(16) (phn)?

(17) **A. Not that I reviewed, sir.**

(18) Q. Okay. Would you be surprised if you were  
(19) on video -- an audio stating "I don't think he did  
(20) it on purpose"?

(21) **MR. LOOMBA: Objection to form. You can**  
(22) **answer.**

(23) **A. I don't recall if I did or not.**

(24) Q. Okay. Was it your feeling that Mr.  
(25) Fishman may not have done this on purpose? Was



(1) that the reason why you had to reach out to the  
(2) prosecutor to make a charge and charging  
(3) determination?

(4) **MR. LOOMBA: Objection to form. You can**  
(5) **answer.**

(6) **A. I didn't reach out to the prosecutor,**  
(7) **sir.**

(8) **Q. Okay. Your lieutenant did. However, at**  
(9) **that point, what was Lieutenant Wenzler's**  
(10) **involvement in this investigation at that point?**

(11) **A. Lieutenant Wenzler is my supervisor.**

(12) **Q. After going for the arrest you then spoke**  
(13) **with him about it?**

(14) **A. Yeah.**

(15) **Q. Okay. I'm going to share what I'm going**  
(16) **to mark as Plaintiff's Exhibit 2 for**  
(17) **identification. This is a video that was provided**  
(18) **by your attorney to us. It is labeled -- it starts**  
(19) **with main and it ends with 1340-1.AVR. We're going**  
(20) **to play on the EF player. Hopefully, I can share**  
(21) **the audio and hear it. You just let me know.**

(22) **(Audio plays)**

(23) **Q. Can you hear the audio?**

(24) **A. Vaguely.**

(25) **Q. Alright. And is that you on the bottom**

(1) left?

(2) **A. Yes.**

(3) **Q. Yes?**

(4) **A. Yes.**

(5) **Q. Alright. I want to draw your attention**  
(6) **to 11:59:25 and then 12:36. Then I'm going to play**  
(7) **it through. And after we reach -- after 12:01 I'll**  
(8) **ask you questions so try to listen.**

(9) (Audio plays)

(10) **Q. Alright. I'm pausing it at 12:01:09.**  
(11) **Were you able to listen to that audio and watch**  
(12) **that video, Officer?**

(13) **A. Yes.**

(14) **Q. Can you state whether it's you speaking**  
(15) **and you depicted in that video?**

(16) **A. Yes.**

(17) **Q. Okay. And now that you've seen it, does**  
(18) **it refresh your recollection as to a conversation**  
(19) **you had with Isabelle Bulevar (phn), whoever this**  
(20) **individual is, on December 15, 2018 related to the**  
(21) **investigation of Marc Fishman?**

(22) **A. No.**

(23) **Q. It still doesn't refresh your**  
(24) **recollection after hearing your own voice?**

(25) **A. I can't make out what I was saying half**

(1)       **the time.**

(2)           Q.     Okay. Were you able to make out that you  
(3)     said he didn't -- "I don't think he did it on  
(4)     purpose"?

(5)           A.     I believe I said I don't think he was  
(6)     malicious about it.

(7)           Q.     Aren't the words you said, "I don't think  
(8)     it was malicious; I don't think it was intentional;  
(9)     I don't think it was malicious intent", did you say  
(10)    words like that?

(11)           MR. LOOMBA: Objection to form. You can  
(12)    answer.

(13)           A.     I believe I was being empathetic that I  
(14)    don't think he had malicious intent by doing it,  
(15)    but the the order was still broken.

(16)           Q.     After hearing that audio you don't know  
(17)    if you said "I don't think he did it on purpose"?

(18)           A.     I think my opinion in the matter is  
(19)    immaterial because the order was still broken.  
(20)    Violated.

(21)           Q.     Officer, wouldn't you agree with me if  
(22)    you were of the opinion that he didn't do it on  
(23)    purpose, there wouldn't be any criminal intent  
(24)    necessary to violate an order of protection?

(25)           MR. LOOMBA: Objection to form. You can

(1)       **answer.**

(2)           **A.     I was speaking to a third party in trying**  
(3)       **to alleviate and empathetic towards the situation**  
(4)       **that she was under. Doesn't mean that the party,**  
(5)       **Mr. Fishman, is still not violating the order and**  
(6)       **makes Miss Elliot go with him to the visitation**  
(7)       **which harrassed Miss Solomon.**

(8)           **Q.     It's your testimony that you stating "I**  
(9)       **don't think it was intentional", "I don't think it**  
(10)       **was malicious intent", "I don't think he did it on**  
(11)       **purpose", were just mere words of empathy to a**  
(12)       **person that has some sort of relationship to Mr.**  
(13)       **Fishman as opposed to an actual statement or your**  
(14)       **opinion at that time?**

(15)           **MR. LOOMBA: Objection to form. You can**  
(16)       **answer.**

(17)           **A.     Correct.**

(18)           **Q.     Okay. Why would you say those words**  
(19)       **then?**

(20)           **A.     Because she's a third party that has to**  
(21)       **deal with repercussions on what's happening. I was**  
(22)       **trying to be sympathetic towards her need.**

(23)           **Q.     But she was, in fact, a court-appointed**  
(24)       **disability aide, right?**

(25)           **A.     I never verified that. I don't know.**

(1) Q. She was the one driving the car when the  
(2) incident happened, right?

(3) A. Yeah.

(4) Q. Mr. Fishman never drove a car, right?

(5) A. Correct.

(6) Q. As you sit here today, do you know  
(7) whether or not Mr. Fishman is a person with a  
(8) disability?

(9) A. Yes.

(10) Q. Okay. Tell me what disability does Mr.  
(11) Fishman have under your understanding?

(12) A. I believe he stated he had a cognitive  
(13) disability.

(14) Q. Okay. When did he state that?

(15) A. When I was interviewing him.

(16) Q. And did you interview him in a separate  
(17) room?

(18) A. Can you clarify that?

(19) Q. Did you interview him in a room that  
(20) wouldn't be recorded on the video we're looking  
(21) at?

(22) A. Yes.

(23) Q. Okay. Now, the room in which you  
(24) interviewed him in, please tell me where that is  
(25) specifically in the New Rochelle Police

(1) Department. And without disclosing anything that  
(2) creates any security concerns.

(3) **A. The door you see to your right? On the**  
(4) **wall to the right of the police -- second police**  
(5) **window there's a key card access.**

(6) Q. Okay. Through that door straight ahead?  
(7) Into the room that's straight ahead is the  
(8) interview room?

(9) **A. That's straight ahead.**

(10) Q. Did that interview room connect to Camera  
(11) 1 or Camera 3 or no?

(12) **A. No.**

(13) Q. Okay. Now, on December 15, 2018, were  
(14) there any devices to record video in that room?

(15) **A. Not to my knowlegde. No.**

(16) Q. On December 15, 2018, were there any  
(17) devices to record audio in that room?

(18) **A. Not to my knowledge.**

(19) Q. Okay in your work as a police officer,  
(20) have you ever conducted an interview in that room  
(21) that was recorded on video?

(22) **A. Not at that time.**

(23) Q. When did you start doing any interviews  
(24) in that room through video recording?

(25) **A. With the introduction of body cameras.**

(1) Q. Alright. When did you start wearing  
(2) body-worn cameras?

(3) A. You'd have to ask the New Rochelle Police  
(4) Department. I don't have the exact date.

(5) Q. I'm asking for you when did you start  
(6) wearing a body camera?

(7) A. When the New Rochelle Police Department  
(8) mandated it.

(9) Q. Was it in 2017?

(10) A. No.

(11) Q. Was in it 2018?

(12) A. No.

(13) Q. Was it in 2019?

(14) A. No.

(15) Q. So it's your testimony you did not have a  
(16) body-worn camera on you at the time of December 15,  
(17) 2018?

(18) A. Yes.

(19) Q. Okay. Do you have an independent  
(20) recollection of the sum and substance of the  
(21) statements made by yourself and plaintiff, Mr.  
(22) Fishman, in that interview room that's not recorded  
(23) on video?

(24) A. Yes.

(25) Q. Okay. What do you remember about your

(1) specific interview independently without reviewing  
(2) documents in your own head that you had with Mr.  
(3) Fishman in that room?

(4) A. Mr. Fishman was perfectly lucid in  
(5) conversation. Miss Elliot was in the room with us  
(6) first and stated that she knew that she did not  
(7) want to -- she told Mr. Fishman that he should not  
(8) be going to Miss Solomon's house today. That the  
(9) visit was canceled. And that he basically  
(10) threatened her fiscally by saying that if she  
(11) didn't go he would find another court-appointed  
(12) liason.

(13) MR. LOOMBA: By the way, for Miss  
(14) Reporter, I think, and the witness can correct me,  
(15) I think he meant to fiscally.

(16) Q. You can continue.

(17) A. Miss Elliot stated the fact that he was  
(18) not supposed to be there. She stated that in front  
(19) of him. Mr. Fishman then decided to show me he had  
(20) contact with his daughter and was sending her  
(21) messages via text message.

(22) Q. So you didn't interview Mr. Fishman  
(23) individually? Just with Miss Elliot there?

(24) A. I interviewed them together. And then  
(25) Miss Elliot was excused and I spoke to Mr. Fishman.



(1) Q. Okay. How many minutes did you spend in  
(2) the room with both Mr. Fishman and Miss Elliot  
(3) together?

(4) A. Approximately five to ten minutes.

(5) Q. Okay. And were you asking them both  
(6) questions or were you just asking one person  
(7) questions?

(8) A. Don't recall.

(9) Q. Okay. During that conversation, did you  
(10) discuss any sort of order of protection or  
(11) visitation order with Mr. Fishman and Miss Elliot?

(12) A. Yes.

(13) Q. Okay. What was stated? What do you  
(14) remember about that?

(15) A. That Miss Elliot knows. She stated that  
(16) she knew that the visit and the actions were in  
(17) violation of order of protection.

(18) Q. Did you ask her if she ever saw or read  
(19) the order of protection?

(20) A. Yes.

(21) Q. What did she say?

(22) A. Yes.

(23) Q. Okay. What did Mr. Fishman say about  
(24) this order of protection and visitation order?

(25) MR. LOOMBA: I'm sorry. The last part of

(1) **the question I didn't hear.**

(2) Q. What did Mr. Fishman say about the order  
(3) of protection and visitation order?

(4) A. **That Miss Solomon was barring him from**  
(5) **seeing his children.**

(6) Q. Did he state to you that it was his  
(7) belief that under the visitation order that he was  
(8) permitted to have visitation that day?

(9) **MR. LOOMBA: Objection to the form. You**  
(10) **can answer.**

(11) A. **Can you rephrase that, please?**

(12) Q. Sure. I'll rephrase it.

(13) Did Mr. Fishman ever tell you that he was  
(14) under the impression that the order allowed him to  
(15) engage in activities he engaged in that day?

(16) A. **Yes. I believe so.**

(17) Q. Okay. And did anyone ever show you a  
(18) copy of a document that would show the order and  
(19) the visitation order?

(20) **MR. LOOMBA: The order and the visitation**  
(21) **order?**

(22) **MR. DEMIRAYAK: Correct. I mean I think**  
(23) **they are two documents together.**

(24) Q. So did you ever get a chance to see all  
(25) of those documents, is what I'm saying, on that

(1) day?

(2) A. One second.

(3) MR. LOOMBA: We're having a tech issue  
(4) here evidently.

(5) (Off the record at 10:08 a.m.)

(6) (Back at 11:01 a.m.)

(7) MR. LOOMBA: Can I have the last question  
(8) read back?

(9) (Whereupon, the requested portion is read  
(10) back by the court reporter.)

(11) MR. LOOMBA: I was trying to get  
(12) clarification because it wasn't clear at least to  
(13) me what you meant by order.

(14) MR. DEMIRAYAK: I'll rephrase the  
(15) question.

(16) Q. Did you ever get a chance to read all of  
(17) the documents that we referred to so far which  
(18) would include the orders of protection and the  
(19) visitation order that day?

(20) A. Yes.

(21) Q. Okay. And after having reviewed those  
(22) documents you still felt Mr. Fishman violated some  
(23) sort of law?

(24) A. Yes.

(25) Q. Okay. What law do you think he violated

(1) at that point?

(2) **A. Criminal contempt.**

(3) **Q.** What are the elements of that crime at  
(4) that point?

(5) **A. Violating a duly advised order that's**  
(6) **been signed off by a Judge.**

(7) (Off the record at 11:05 a.m..

(8) **Mr. Demirayak has technical issues.)**

(9) (Back on the record at 11:13 a.m.)

(10) **MR. DEMIRAYAK:** What was the last question  
(11) **and answer?**

(12) (Whereupon, the requested portion is read  
(13) **back by the court reporter.)**

(14) **Q.** From your understanding of criminal  
(15) contempt, on December 15, 2018, was intent the  
(16) required element of that crime?

(17) **MR. LOOMBA:** To your understanding.

(18) **A. No.**

(19) **Q.** From your understanding, on December 15,  
(20) 2018, whether or not there was intent, as long as  
(21) an order of protection was violated in some way,  
(22) it's, as you said, set in stone and the violation  
(23) has occurred. Is that fair?

(24) **MR. LOOMBA:** Object to form. You can  
(25) **answer.**

(1) A. Can I rephrase what I did say?

(2) Q. You can answer whatever you'd like, sir.

(3) A. Yeah.

(4) MR. LOOMBA: Object to the form of the  
(5) question because I wasn't sure that he had  
(6) accurately characterized what you said on the  
(7) video. My objection is noted for the record. You  
(8) can answer that.

(9) A. I believe every situation is different.  
(10) The actions of Mr. Fishman during that day violated  
(11) the order, okay? Miss Elliot told him in this  
(12) specific situation that he was violating the order  
(13) and he chose not to listen.

(14) Q. Did he violate the order with intent?

(15) MR. LOOMBA: Objection to form.

(16) A. After being told that he was not supposed  
(17) to do it, I would say yes. In -- this is my  
(18) opinion.

(19) Q. You feel there's intent because someone  
(20) told him not to do something?

(21) A. A court-appointed liason, that's a  
(22) representative of the court. Yes.

(23) Q. Did you ever accomodate Mr. Fishman's  
(24) cognitive disability during the police encounter  
(25) you had with him?

(1) MR. LOOMBA: Objection to form. You can  
(2) answer.

(3) A. Can you rephrase it, please?

(4) Q. Did you ever provide a communications  
(5) accomodation to Mr. Fishman during the police  
(6) encounter?

(7) A. I don't recall him ever asking for one  
(8) during my conversations. Sorry. Go ahead.

(9) MR. LOOMBA: You cut out, Caner.

(10) A. During my conversation with Mr. Fishman  
(11) he was perfectly lucid. Had no problem hearing me  
(12) or describing to me what his account was.

(13) Q. A few moments ago you testified that Mr.  
(14) Fishman had a cognitive disability. So it's your  
(15) testimony you did not accommodate that disability?

(16) A. I stated Mr. Fishman stated he had a  
(17) cognitive disability.

(18) Q. Did he tell you he had to bring a brain  
(19) injury card?

(20) A. I don't remember a brain injury card.  
(21) Mr. Fishman did show me, however -- pointed to a  
(22) appointed device in his chest.

(23) Q. And you did not feel that disability or  
(24) impairment required any sort of accommodation?

(25) MR. LOOMBA: Objection to form. You can

(1)       **answer.**

(2)               **A.     Mr. Fishman did not ask for any**  
(3)       **accommodations when I was speaking to him. He was**  
(4)       **perfectly lucid in his conversation towards me what**  
(5)       **he was trying to articulate, and was able to**  
(6)       **converse back and forth without having an issue.**

(7)               **Q.     Then you didn't think he needed an**  
(8)       **accommodation?**

(9)               **A.     That's not what I said.**

(10)              **Q.     Alright. Let's go back then.**

(11)              **On December 15, 2018, from your**  
(12)       **interaction, were you under the belief that Mr.**  
(13)       **Fishman suffered from a disability?**

(14)              **A.     From my interaction the answer is no. He**  
(15)       **stated he had one.**

(16)              **Q.     And you've described to us the reasons**  
(17)       **why you don't think there was disability, because**  
(18)       **he was able to converse with you with no issues.**  
(19)       **And because of that determination, you did not feel**  
(20)       **he was disabled, correct?**

(21)              **A.     He did not ask for any accommodation at**  
(22)       **that time. It's not my job to make that decision.**

(23)              **Q.     But whether or not he asked for an**  
(24)       **accommodation at that point, would you have viewed**  
(25)       **him as a person with a disability?**

(1) A. If he asked for accommodation and showed  
(2) credentials for it, I'd afford every right given to  
(3) him.

(4) Q. That wasn't my question.

(5) A. Can you rephrase?

(6) Q. My question is was Mr. Fishman disabled  
(7) or not on that day? Yes or no?

(8) A. I --

(9) MR. LOOMBA: Objection. You mean did he  
(10) physically -- I don't understand your question.

(11) A. Was he physically disabled? Was he  
(12) mentally disabled? Can you rephrase it, please?

(13) Q. Did he suffer from any disability under  
(14) your view of the facts and circumstances that day?

(15) A. He stated he had a disability. However,  
(16) through my interaction with him, I did not notice  
(17) any part of that that would indicate that he had a  
(18) disability where he would not understand what I  
(19) said or what he was saying.

(20) Q. What did you do in response to him  
(21) stating he had a disability?

(22) A. I listened to what he said.

(23) Q. In other words, you rejected his claim he  
(24) had a disability?

(25) MR. LOOMBA: Objection.



(1) A. I never said that.

(2) MR. LOOMBA: Hang on. Objection to form.

(3) A. I never said that.

(4) Q. So we're being a little bit -- all I'm  
(5) asking you is, and you've answered it in the way  
(6) you answered it, which he said he had a disability,  
(7) but that's not -- what I'm asking you is you're an  
(8) officer. You have an obligation to determine if  
(9) someone in front of you can properly communicate  
(10) with you, yes or no, without an accomodation or  
(11) with an accomodation.

(12) What I'm asking you is, in your  
(13) interaction with Mr. Fishman, were you under the  
(14) belief that he was disabled or not?

(15) MR. LOOMBA: Okay. I'm going to object.  
(16) Asked and answered. You can answer.

(17) MR. DEMIRAYAK: It was not asked and  
(18) answered. He won't answer the question actually.

(19) MR. LOOMBA: If you're asking --

(20) A. -- do I believe that he was disabled? Is  
(21) that what you're asking me?

(22) Q. Yeah. Was he disabled?

(23) MR. LOOMBA: Objection to form. Go  
(24) ahead. Give your answer.

(25) A. Through my interactions with him, if he

(1) did not state that he had a disability, no, I would  
(2) not think he's disabled.

(3) Q. Okay. And him stating he had a  
(4) disability didn't change your opinion?

(5) A. My interaction with him and how he  
(6) verbalized what he said, the way he spoke, his body  
(7) language, and everything else that goes along with  
(8) a person interview face-to-face, no, I did not  
(9) think he was disabled.

(10) Q. Who explained the custody of visitation  
(11) orders here?

(12) A. I read it on Miss Solomon's computer.  
(13) And Miss Elliot.

(14) Q. Did you read the whole thing on Miss  
(15) Solomon's computer?

(16) A. I don't remember. I don't remember how  
(17) many pages I read.

(18) Q. The whole thing?

(19) A. Sir, I don't remember how many pages I  
(20) read.

(21) Q. Did you ever review a hard printed copy  
(22) of that?

(23) COURT REPORTER: Sorry. Can you repeat  
(24) your answer?

(25) MR. LOOMBA: Question was did he ever read

(1) a hard copy of the custody and visitation order?

(2) And his answer is no.

(3) Q. Did you ever ask Ms. Elliot to  
(4) authenticate the order that we just discussed?

(5) A. I don't remember. I don't recall which  
(6) order. I don't remember exactly how that happened.

(7) Q. Did you ask Miss Elliot to authenticate a  
(8) 28-page custody and visitation order that Mr.  
(9) Fishman stated gave him the right to engage in the  
(10) conduct he engaged in that day?

(11) A. I don't recall.

(12) Q. Did you ever ask Mr. Fishman to  
(13) authenticate whether the document was real or not?

(14) A. I don't recall.

(15) Q. Did Mr. Fishman ever ask you if you'd  
(16) allow him or have someone go to the car to get the  
(17) document and then explain it to you so you will  
(18) understand the complexity of this order?

(19) MR. LOOMBA: Wait. Let me object to form,  
(20) but he can answer it.

(21) A. I don't recall.

(22) Q. At what point did you review the custody  
(23) and visitation order on Ann Elliot's computer?

(24) MR. LOOMBA: No. He said Jennifer  
(25) Solomon's computer.

(1) Q. And Elliot's computer.

(2) A. Miss Elliot didn't have a computer.

(3) Q. A few moments ago you had testified you  
(4) reviewed the order on Jennifer and Ann Elliot's  
(5) computer. Was that a mistake?

(6) A. That's not what I said, sir.

(7) Q. You only reviewed it on Jennifer  
(8) Solomon's computer?

(9) A. Correct, sir.

(10) Q. Did you reread it at any point thereafter  
(11) before the end of that day? Meaning, after you  
(12) left Jennifer Solomon's house, after you put her  
(13) computer down, did you ever see that document again  
(14) in writing on any other device or no?

(15) A. No, sir.

(16) Q. You did see it again?

(17) A. No, sir.

(18) Q. No? Okay. So you don't recall whether  
(19) or not Mr. Fishman requested to be able to have you  
(20) look at that order again?

(21) A. No, sir.

(22) Q. And you don't recall whether Mr. Fishman  
(23) had asked that I need an accommodation to explain  
(24) this order to you?

(25) A. No, sir. I don't remember that.

(1) Q. And those conversations would have  
(2) occurred in that side room where there's no video  
(3) or audio recording, correct?

(4) A. Yes, sir.

(5) Q. And when you're telling me that Mr.  
(6) Fishman did not request an accommodation for  
(7) disability, are you telling me that based on your  
(8) independent recollection, or are you telling me  
(9) that based on reviewing documents?

(10) A. My recollection, sir.

(11) Q. So you remember on December 15, 2018, as  
(12) you sit here today five years ago -- approximately,  
(13) five years ago, you remember him not asking for  
(14) accommodation? You remember that just from your  
(15) own memory?

(16) A. Yes, sir.

(17) Q. Are you sure?

(18) A. Yes, sir.

(19) Q. If Mr. Fishman said he did, in fact,  
(20) request accommodation, would he be wrong?

(21) A. Yes, sir.

(22) Q. Did any other officer or employee at the  
(23) New Rochelle Police Department give Mr. Fishman  
(24) accomodation that day?

(25) A. What do you mean?

(1) MR. LOOMBA: What do you mean by  
(2) accommodation?

(3) Q. Did anyone accommodate any of his  
(4) disabilities before the end of that day?

(5) MR. LOOMBA: Object to form. You can  
(6) answer.

(7) A. I believe what you're referring to is the  
(8) fact that we made accomodations for him to be  
(9) bailed out on a non-bailable offense. The answer's  
(10) yes.

(11) Q. Why was that done?

(12) A. Out of consideration for Mr. Fishman.

(13) Q. Consideration for what?

(14) A. His claimed disability.

(15) Q. So, although you didn't believe he was  
(16) disabled, you still considered his disability and  
(17) letting him bail out on a non-bailable offense?

(18) A. Yes. The New Rochelle Police Department  
(19) tries to imploy empathy and accomodations for  
(20) people with certain situations. They did so that  
(21) day.

(22) Q. But only after you have someone  
(23) criminally charged, right?

(24) MR. LOOMBA: Objection to form. You can  
(25) answer.

(1)           **A.     Only after an incident that was**  
(2)           **substantiated for reasonable cause for arrest was**  
(3)           **affected and that he was convicted of.**

(4)           Q.     What are you basing your knowledge that  
(5)           he was convicted of something?

(6)           **A.     Westchester County Court.**

(7)           Q.     Who told you that?

(8)           **A.     Who told me that? The case I testified**  
(9)           **in.**

(10)          Q.     You were notified of the result by the  
(11)          district attorney?

(12)          **A.     Yes.**

(13)          Q.     Okay. Now, going back to that audio call  
(14)          that we had played for you, that you listened to,  
(15)          did the prosecutor have that before trial?

(16)          **A.     I don't know if he had the phone call,**  
(17)          **sir. You'd have to ask him.**

(18)          Q.     Did the prosecutor ask you to review that  
(19)          or listen to that before testifying in the criminal  
(20)          trial?

(21)          **A.     No, sir.**

(22)          Q.     Now, the video that we looked at, do you  
(23)          know if the prosecutor had it before trial?

(24)          **A.     No, sir.**

(25)          Q.     Meaning they did not or you don't know

(1) that he had it?

(2) A. I don't know, sir. You'd have to ask  
(3) him.

(4) Q. And did the prosecutor have you review or  
(5) listen --

(6) A. -- You cut out, sir. I'm sorry.

(7) Q. Did the prosecutor ask you to review or  
(8) look at that video before testifying in the  
(9) criminal trial?

(10) A. What video, sir?

(11) Q. The video that we looked at before?

(12) A. No.

(13) Q. Okay. In your police practice have you  
(14) ever been requested to provide discovery to a  
(15) prosecutor in a case that you arrest someone on?

(16) A. Can you rephrase that question? I'm not  
(17) sure if I'm understanding.

(18) Q. Sure. I will be real direct about it.

(19) In this case, did the prosecutor ask you  
(20) to complete a 1K disclosure form?

(21) A. I don't recall. I don't remember who  
(22) asked us to do it.

(23) Q. What is a 1K disclosure questionnaire  
(24) form, to your understanding?

(25) A. DA has to ask us several questions for



(1) **authenticity.**

(2) Q. That goes to whether or not there's any  
(3) sort of disciplinary or any sort of things that can  
(4) be used for impeachment against your trial  
(5) testimony at trial. Is that fair?

(6) **MR. LOOMBA: Objection to form. You can**  
(7) **give your understanding.**

(8) **A. I believe so. Yes.**

(9) Q. Okay. Isn't it true that you did not  
(10) answer the 1K questionnaire provided to you by the  
(11) prosecutor in Mr. Fishman's criminal case?

(12) **A. I don't recall.**

(13) Q. Did you tell the process that there was a  
(14) lawsuit pending against you by Mr. Fishman at that  
(15) point?

(16) **A. I don't recall my conversations with him**  
(17) **about a lawsuit.**

(18) Q. It's true, Officer, that you do have some  
(19) sort of disciplinary record?

(20) **A. Yes.**

(21) Q. Okay. Did you disclose that to the  
(22) prosecutor before testifying in a criminal trial?

(23) **A. I don't recall.**

(24) Q. Have you ever disclosed your disciplinary  
(25) file in any case that you've handled since 2018?

(1) MR. LOOMBA: You mean in a criminal case  
(2) for any matter? For anything?

(3) A. Disclose it to whom, sir?

(4) Q. To a prosecutor.

(5) A. I don't believe so. I don't believe I  
(6) was asked.

(7) MR. DEMIRAYAK: One second. I'm trying to  
(8) get an exhibit up. It's giving me an issue. I'm  
(9) going to turn off my video while I try.

(10) The best thing to do, let's take a  
(11) five-minute break and come back at 11:36.

(12) Officer, you're still under oath. Thank  
(13) you.

(14) (Whereupon, a recess is taken  
(15) at 11:31 a.m.)

(16) (Whereupon, the proceedings resume  
(17) at 11:39 a.m.)

(18)  
(19) CONTINUED DIRECT EXAMINATION

(20) BY MR. DEMIRAYAK:

(21) Q. So, Officer, were you made aware of the  
(22) ongoing litigation involving the criminal  
(23) prosecution against Mr. Fishman arising from  
(24) December 15, 2018?

(25) A. I'm sorry. Besides from the criminal

(1) **case?**

(2) Q. Yeah. Are you aware of any new  
(3) developments in that case since the conviction?

(4) A. Yes.

(5) Q. What were some of the things you were  
(6) made aware of since the conviction?

(7) A. That Mr. Fishman didn't show up to  
(8) sentencing I believe and a warrant was issued for  
(9) his arrest out of Westchester County.

(10) Q. Where did you learn that information  
(11) from?

(12) A. Mr. Loomba, the gentleman sitting next to  
(13) me.

(14) Q. Were you ever made aware that the  
(15) prosecutor's office wrote an illegal document that  
(16) the verdict was "legally defective"? Did you ever  
(17) learn of that?

(18) A. No. I don't know what you're referring  
(19) to, sir.

(20) Q. Anyone tell you that a motion to satisfy  
(21) the verdict was filed and a response to prosecution  
(22) had admitted that it was legally defective?

(23) I'm asking if you ever learned about  
(24) that?

(25) A. I have not learned of any of these.

(1) **MR. LOOMBA: Note my objection to the form**  
(2) **of the question, please.**

(3) Q. Were you ever told that Mr. Fishman was  
(4) convicted of both and pleaded to attempted criminal  
(5) contempt in the second degree?

(6) A. I'm sorry. Can you repeat that?

(7) Q. Were you told specifically what Mr.  
(8) Fishman was convicted of?

(9) A. No.

(10) Q. Did he tell you that he was, also,  
(11) convicted of attempted criminal contempt?

(12) A. I wasn't -- I just explained I wasn't  
(13) aware of the charges.

(14) Q. You didn't charge Mr. Fishman with  
(15) attempted criminal contempt, right?

(16) A. I'd have to check the booking sheet, sir.

(17) Q. Back to Exhibit 1 which was the audio  
(18) file. I'm going to try to share it. Hopefully, it  
(19) doesn't crash my screen.

(20) I want you to listen to it and I'll ask  
(21) you some questions when I pause it.

(22) (Audio plays)

(23) Q. Were you able to hear that audio?

(24) A. For the most part, yes, sir.

(25) Q. Did you hear someone state that Mr.

(1) Fishman was two houses away from them?

(2) A. Yes, sir.

(3) Q. Okay. Now, is this the first time you've  
(4) heard this audio --

(5) A. -- yes, sir --

(6) Q. -- up to this point?

(7) A. Sorry. Yes, sir.

(8) Q. Now, after having heard that, I'm  
(9) assuming that it's correct that Mr. Fishman was two  
(10) houses away from the alleged victim.

(11) Would you still feel that he committed  
(12) criminal contempt at the second degree?

(13) MR. LOOMBA: Object to form. You can  
(14) answer.

(15) A. Yes, sir.

(16) Q. Why?

(17) THE WITNESS: Can I -- am I allowed to use  
(18) the diagram?

(19) MR. LOOMBA: No. Just don't write  
(20) anything. Just answer his question.

(21) A. Halcyon Terrace, where the complainant  
(22) lives, is approximately four to five blocks off of  
(23) North Avenue. So it would be eastbound off of  
(24) North Avenue.

(25) It's located in a very secluded area that

(1) is adjacent to Iona College. On one end of the  
(2) block there's a dead-end and it's a completely  
(3) residential neighborhood. There's very little  
(4) through-traffic in that neighborhood.

(5) So two houses down from the place where  
(6) he's not supposed to be, which is, also, four to  
(7) five blocks off of the main thoroughfare, in my  
(8) opinion as a police officer shows intent.

(9) Also, the fact that he stopped and tried  
(10) to make contact with the children when he's not  
(11) supposed to be, shows intent.

(12) Q. Did the order of protection have any  
(13) restrictions on distance, locations, and such?

(14) A. No, sir.

(15) Q. Do you know that from your own memory?

(16) A. I don't recall for most of my career if  
(17) any orders have an exact footage or distance.

(18) Q. So whether Mr. Fishman was two houses  
(19) down, one house down, on the curb ten houses down,  
(20) he still violated it?

(21) MR. LOOMBA: Objection to form. Go  
(22) ahead.

(23) A. If Mr. Fishman was on the curb one house  
(24) down, two houses down, and he tried to make contact  
(25) with the children where he was supposed to stay

(1) away from them, I would say yes, sir.

(2) Q. And those same facts that you've alleged  
(3) what did he do to violate Jennifer Solomon?

(4) A. He was advised to stay away from her home  
(5) and he was advised to stay away from any third  
(6) party communication. Having Ann Elliot go up to her  
(7) door or tell her that he wanted the visitation was  
(8) a clear-cut violation.

(9) Q. He was two houses away. He didn't go to  
(10) her house, right?

(11) MR. LOOMBA: Objection. You're arguing  
(12) with him. You can answer.

(13) Q. Just a question.

(14) A. May I answer?

(15) Q. Yes.

(16) A. Mr. Fishman sent Miss Elliot to the door  
(17) to speak to Miss Solomon.

(18) Q. Supervised visitation through her because  
(19) he couldn't go into her house. Is that fair?

(20) MR. LOOMBA: Object to form. You can  
(21) answer -- I'm sorry. I didn't hear the whole  
(22) question, sir.

(23) MR. DEMIRAYAK: I'll rephrase it.

(24) Q. Pursuant to the parties' agreement in the  
(25) court order, the visitation was supposed to be done

(1) through a supervisor, right?

(2) A. Yes, sir.

(3) Q. That supervisor was Ann Elliot, right?

(4) A. Yes, sir.

(5) Q. And on this day Mr. Fishman had not set  
(6) foot on Miss Solomon's property to retrieve the  
(7) children. Is that fair?

(8) A. Just to my knowledge.

(9) Q. In fact, he sent the supervisor to get  
(10) the children for visitation. Is that fair?

(11) MR. LOOMBA: Objection to form. You can  
(12) answer.

(13) A. The visit was canceled prior to him  
(14) leaving where his residence was. Miss Elliot was  
(15) advised that the visitation was canceled.

(16) Mr. Fishman had picked Miss Elliot up  
(17) from her residence. Drove to a secluded area in  
(18) the neighborhood which the complainant lives on  
(19) Halcyon Terrace. Dropped Miss Elliot off at the  
(20) house. Stayed within a close proximity to it.  
(21) Attempted to make contact with at least one child  
(22) I'm aware of.

(23) Q. Going back to my question that I keep  
(24) asking, back to Miss Solomon, it's your testimony  
(25) that those circumstances constitute a violation of



(1) an order of protection that was issued in her  
(2) favor?

(3) **MR. LOOMBA: Objection to form. You can**  
(4) **answer if you understand.**

(5) **A. Yes.**

(6) **Q. Okay. In what way does a person who has**  
(7) **the right to supervisor visitation violate an order**  
(8) **of protection by going to some -- going to attempt**  
(9) **visitation with their supervisor?**

(10) **MR. LOOMBA: Objection to form. You can**  
(11) **answer.**

(12) **A. The visitation was canceled which Miss**  
(13) **Solomon was allowed to do.**

(14) **Q. In your investigation did you research or**  
(15) **look into how that cancellation was done?**

(16) **A. I don't recall but Miss Elliot was aware**  
(17) **that it was canceled.**

(18) **Q. Were you made aware of the method in**  
(19) **which cancellations were supposed to be notified?**  
(20) **E-mail? Text? Phone call? Letter?**

(21) **A. To the best of my recollection I believe**  
(22) **it was e-mail but I can't -- I'm not 100 percent**  
(23) **sure.**

(24) **Q. Did Miss Solomon show you an e-mail**  
(25) **saying that visitation was canceled?**

(1)           **A.     No.**

(2)           **Q.     Did Ann Elliot show you an e-mail showing**  
(3) **the visitation was canceled?**

(4)           **A.     No.     She verbally stated it.**

(5)           **Q.     And did anyone show you a text message**  
(6) **showing that the visitation was, in fact, confirmed**  
(7) **for that day?**

(8)           **A.     No.**

(9)           **Q.     Are you sure?**

(10)          **A.     Yes.**

(11)          **Q.     Did Mr. Fishman try to show you a text**  
(12) **message confirming the visit and did you brush it**  
(13) **off and say I don't want to see it?**

(14)          **MR. LOOMBA: Objection to form. You can**  
(15) **answer.**

(16)          **A.     No.     Mr. Fishman showed me several text**  
(17) **messages that he had between him and his daughter.**

(18)          **Q.     This daughter was reaching out to him,**  
(19) **not other way, correct?**

(20)          **MR. LOOMBA: Objection to form. You can**  
(21) **answer.**

(22)          **A.     I don't recall who was answering who but**  
(23) **I do remember that he was supposed to not contact**  
(24) **her.**

(25)          **Q.     Assuming that his daughter contacted him**

(1) and he did not respond, would that still be a  
(2) violation of an order?

(3) **MR. LOOMBA: Objection to form. You can**  
(4) **answer.**

(5) **A. That would not be a violation but he did**  
(6) **respond.**

(7) **Q. How do you know that?**

(8) **A. He showed me.**

(9) **Q. You remember that?**

(10) **A. Yes.**

(11) **Q. What was the sum and substance of the**  
(12) **conversations that he had with his daughter that**  
(13) **were illegal?**

(14) **A. I believe it was a conversation about**  
(15) **Passover -- I'm sorry. Chanukah. It was a Jewish**  
(16) **holiday. Either Chanukah or Passover. I'm sorry.**

(17) **Q. I'm showing you what I'm marking as**  
(18) **Plaintiff's Exhibit 3 for identification.**

(19) **You see what I put up on the screen**  
(20) **here?**

(21) **A. Okay.**

(22) **Q. Have you ever seen this before?**

(23) **A. No.**

(24) **Q. Does this text message show that the**  
(25) **visitation for December 15, 2018 was confirmed?**

(1) MR. LOOMBA: Object to form. You can  
(2) answer.

(3) A. I don't know the veracity of where the  
(4) text came from. If it was altered or anything  
(5) else. Who it came from.

(6) Q. Okay. Did anyone show you these messages  
(7) on December 15, 2018 while you were investigating  
(8) the case? Do you have an answer, Officer?

(9) A. I stated no. I'm sorry.

(10) Q. No one showed this to you?

(11) A. No.

(12) Q. But Mr. Fishman did show you messages in  
(13) his phone, right?

(14) A. From his daughter. Yes.

(15) Q. He voluntarily showed you messages he was  
(16) exchanging with his daughter, correct?

(17) A. Correct.

(18) Q. So his phone was available. His phone  
(19) was being shown to you and it's your testimony that  
(20) he did not, also, show you this message?

(21) A. Correct.

(22) Q. If you saw this message, what would you  
(23) have altered, if anything, in your investigation?

(24) MR. LOOMBA: Object to form. You can  
(25) answer.

(1)           **A.     At the time I'd have to take into**  
(2)           **consideration other topics and speak to Miss Elliot**  
(3)           **again.**

(4)           **Q.     Assuming that Mr. Fishman requested Ann**  
(5)           **Elliot to confirm a visit for December 15 at 8**  
(6)           **p.m., received a message the following day at 4:18**  
(7)           **a.m. saying 9 a.m. pick-up, would that alter your**  
(8)           **opinion as far as whether or not the visit was**  
(9)           **actually canceled for that day?**

(10)           **A.     I would have to verify how the visit was**  
(11)           **canceled. And Miss Elliot would have to explain to**  
(12)           **me why she told me it was canceled and then wrote**  
(13)           **to him that they were picking him up.**

(14)           **Q.     You would then want to look into whether**  
(15)           **or not an e-mail cancellation notice was sent by**  
(16)           **Miss Solomon or her representative?**

(17)           **MR. LOOMBA: Object to form. You can**  
(18)           **answer.**

(19)           **Q.     Correct?**

(20)           **A.     Any form of cancellation. Yes.**

(21)           **Q.     You just testified a few moments ago that**  
(22)           **the method in which cancellation was to be done was**  
(23)           **by e-mail, right?**

(24)           **MR. LOOMBA: Objection.**

(25)           **A.     That's not what I said, sir. I said I**

(1) **believe it was e-mail but not a hundred percent**  
(2) **sure.**

(3) Q. Okay, but this message, assuming it was  
(4) true, assuming you did see it, would it raise  
(5) question in your mind as to whether or not the  
(6) visit was actually canceled?

(7) **MR. LOOMBA: Objection to form.**

(8) A. I'm not going to assume, sir. I don't  
(9) know the veracity of the message. It was not shown  
(10) to me at that time.

(11) Q. You didn't know the veracity of Miss  
(12) Solomon's statements, correct?

(13) **MR. LOOMBA: Objection. Go ahead and**  
(14) **answer.**

(15) A. She signed a sworn statement.

(16) Q. At the time you interviewed her, before  
(17) she signed the sworn statement on that day, you  
(18) didn't know the veracity of her statements, right?  
(19) You didn't know?

(20) A. I confirmed with her children what her --  
(21) with her son happened. Yes.

(22) Q. But speaking to Miss Solomon one-on-one  
(23) you couldn't tell whether or not she was telling  
(24) you the truth or not, correct?

(25) A. Can you rephrase that?

(1) Q. She could have been lying to you, right?

(2) MR. LOOMBA: Objection. You can answer.

(3) A. During domestic incidents we usually try  
(4) not to think about someone being a liar that's a  
(5) complainant. We try to verify their story which I  
(6) did with her son and her supporting paperwork, and  
(7) I spoke to Miss Elliot who confirmed it.

(8) Q. You don't question her veracity but you  
(9) question the veracity of a message between Mr.  
(10) Fishman and his supervisor?

(11) MR. LOOMBA: Objection.

(12) A. That's being shown to me five years  
(13) after? Yes, sir.

(14) Q. I did ask you to assume that you saw this  
(15) placard five years ago and you still said you would  
(16) question his veracity, right?

(17) A. Question veracity of?

(18) Q. This text message.

(19) MR. LOOMBA: I don't think that's exactly  
(20) his answer, but you can answer again.

(21) A. It would require more investigation.

(22) Q. Mr. Fishman did not violate an order of  
(23) protection, right -- (Mr. Demirayak cut out).

(24) A. I'm sorry. Say that last part.

(25) A. -- an investigation after receiving a

(1) message like this five years ago, and you reviewing  
(2) it, would that possibly have led to the  
(3) determination that Mr. Fishman did not violate a  
(4) law?

(5) MR. LOOMBA: Objection to form. You can  
(6) answer.

(7) A. I couldn't tell what other information I  
(8) would uncover. If the other person had an e-mail  
(9) or whatever form they used to cancel the visit.  
(10) Miss Elliot's testimony was different than it was.  
(11) It was -- I can't give you a definitive answer.

(12) Q. Let me ask it a different way.

(13) Assume the visit was not canceled. Would  
(14) you still feel Mr. Fishman violated an order of  
(15) protection?

(16) A. If the visit was not canceled?

(17) Q. Correct.

(18) A. And it was done properly? Then no.

(19) Q. Okay. And assuming that Mr. Fishman was  
(20) on the way with the supervisor and the visit was  
(21) canceled while he was on the way, would you still  
(22) feel he violated an order of protection?

(23) MR. LOOMBA: Object to form. Go head.

(24) A. I don't remember the parameters of what  
(25) Miss Solomon was allowed to cancel and if -- and



(1) what time from time to time, but she's allowed to  
(2) cancel during any time frame due to the health of  
(3) the -- mental health of her children. I'd have to  
(4) look at that. I can't give you a definitive answer  
(5) for things that are being assumed, sir.

(6) Q. Let's assume further the visit was not  
(7) canceled. Mr. Fishman was two houses down from  
(8) Miss Solomon. Miss Elliot walked to Miss Solomon's  
(9) house, and at the point which Miss Elliot says  
(10) we're here for visitation Miss Solomon then cancels  
(11) it.

(12) Would you say that Mr. Fishman was  
(13) violating an order of protection by being there  
(14) when it was canceled on the spot?

(15) MR. LOOMBA: Objection to form. Go  
(16) ahead.

(17) A. Depends on the motive. How the  
(18) visitation is supposed to transpire. If it goes  
(19) according to what the visitation order says how  
(20) they exchange children, then the answer would be  
(21) no. That's assuming.

(22) Q. Okay, but in your investigation you did  
(23) not see this message. You did not receive the  
(24) message. Your determination was that the visit was  
(25) canceled. So under those circumstances you felt

(1) that he did, in fact, violate the order of  
(2) protection and did, in fact, violate the law,  
(3) correct?

(4) **MR. LOOMBA: Objection. You can answer.**

(5) **A. Yes, sir.**

(6) Q. Okay. Do you know an individual by the  
(7) name of Myron Joseph?

(8) **A. Yes.**

(9) Q. What was his involvement, if any, in the  
(10) investigation of December 15, 2018?

(11) **A. None that I recall.**

(12) Q. Was he ever in the room with you when you  
(13) spoke with Mr. Fishman and Miss Elliot?

(14) **A. I don't believe so. No.**

(15) Q. What was his role on that day with  
(16) respect to you?

(17) **A. None that I remember.**

(18) Q. Did he supervise you?

(19) **A. He's supervisor. He's sergeant in the**  
(20) **traffic unit -- or was.**

(21) Q. He had no involvement in this case  
(22) whatsoever?

(23) **A. Not that I recall, sir.**

(24) Q. Are you sure?

(25) **MR. LOOMBA: He just said not that he**

(1) **recalls.**

(2) Q. Are you sure of your recollection?

(3) A. **From what I recall, sir, Sergeant Myron**  
(4) **Joseph had no involvement.**

(5) Q. Did you ever speak to him regarding Mr.  
(6) Fishman that day?

(7) A. **Not that I recall.**

(8) Q. Did he ever speak to you regarding Mr.  
(9) Fishman that day?

(10) A. **Not that I recall.**

(11) Q. In reviewing documents in preparation for  
(12) today, did you see --

(13) A. **-- You cut out.**

(14) Q. In reviewing documents in preparation for  
(15) today did you see Mr. Joseph's name on any of the  
(16) documents?

(17) A. **Not that I recall.**

(18) Q. Anything that would refresh your  
(19) recollection as to whether Mr. Joseph had any  
(20) involvement at all with respect to this  
(21) investigation?

(22) A. **No.**

(23) Q. If I show you some of the documents  
(24) involving the case, would that possibly refresh  
(25) your recollection as to whether there was any

(1) involvement by Mr. Joseph?

(2) A. If you'd like to, counsel.

(3) COURT REPORTER: What's that?

(4) MR. LOOMBA: In effect he said that if he  
(5) showed him some documents, that might refresh his  
(6) recollection. I'm phrasing it for her.

(7) THE WITNESS: Correct.

(8) Q. Right. We're going to work on that in  
(9) one moment.

(10) Did you create a domestic incident report  
(11) for this incident?

(12) A. Sorry, sir, I wasn't paying attention.  
(13) What was that?

(14) Q. Did you create a domestic incident report  
(15) for this incident and investigation?

(16) A. Yes, sir.

(17) Q. Did Myron Joseph review it and/or sign  
(18) it?

(19) A. I don't know which reviewing supervisor  
(20) there was.

(21) Q. I'm showing you what was previously  
(22) marked as exhibit -- I'm sorry.

(23) I'm showing you what I'm marking as  
(24) Plaintiff's Exhibit 4. It's a 2-page document  
(25) entitled New York State Domestic Incident Report.

(1) I'll show it to you. Take a look. Then  
(2) I'm going to ask some questions.

(3) A. Yes, sir.

(4) Q. You see Exhibit 4?

(5) MR. LOOMBA: We see it.

(6) Q. Do you recognize it?

(7) A. Yes, sir.

(8) Q. Is this one of the documents you reviewed  
(9) in preparation for today?

(10) A. Yes, sir.

(11) Q. Whose handwriting is on there?

(12) A. Mine.

(13) Q. Okay. Does this report involve the  
(14) incident involving Marc Fishman and Jennifer  
(15) Solomon?

(16) A. Yes, sir.

(17) Q. And at the bottom here, bottom of Page 2,  
(18) is that your signature, reporting officer?

(19) A. Yes.

(20) Q. On the supervisor line is that referring  
(21) to Myron Joseph?

(22) A. Yes.

(23) Q. Okay. After reviewing this does it  
(24) refresh your recollection as to what, if any, Myron  
(25) Joseph's involvement was in this case?

(1)           **A.    I'm assuming based on his signature that**  
(2)           **he was the desk supervisor at the time.**

(3)           Q.    He would have reviewed this document  
(4)           before signing it?

(5)           **A.    Would have reviewed the document? I'm**  
(6)           **assuming so, yes.**

(7)           Q.    Did you speak at any time with him when  
(8)           you prepared or after you prepared this document?

(9)           **A.    No.    I don't believe so.**

(10)          Q.    How did it get to him to sign?

(11)          **A.    It's placed in an envelope and the desk**  
(12)          **officer reviews it.**

(13)          Q.    Desk officer at that point was Myron  
(14)          Joseph?

(15)          **A.    I would believe so.**

(16)          Q.    There's no speaking of words? There's  
(17)          just putting it in an envelope, review it? Then  
(18)          after he reviews it, where does it go?

(19)          **A.    Which question would you like me to**  
(20)          **answer?**

(21)          Q.    Alright. We'll break it up.

(22)                Is there any discussions with the desk  
(23)          officer other than just putting it in an envelope?

(24)          **A.    In my particular case no. I spoke to**  
(25)          **Lieutenant Wenzler who was the ranking officer.**

(1) Q. What did you speak to Lieutenant Wenzler  
(2) about?

(3) MR. LOOMBA: You mean other than what he's  
(4) already testified to?

(5) MR. DEMIRAYAK: Correct. He says he  
(6) didn't remember speaking to the lieutenant. That's  
(7) fine.

(8) MR. LOOMBA: No. No.

(9) A. No, I never said that.

(10) MR. LOOMBA: He didn't say that. He said  
(11) -- we're talking over each. Otherwise, don't you  
(12) ask your question, Caner. We'll do one question at  
(13) a time.

(14) Q. I heard you testify before that you don't  
(15) recall any conversations you had with Lieutenant  
(16) Wenzler regarding this case.

(17) So now you said you spoke to him. So  
(18) what did you speak to Lieutenant Wenzler about?

(19) A. That's not what I said. I stated  
(20) Lieutenant Wenzler was, also, in there during the  
(21) interview and that he was advised of everything.

(22) I, also, told him that he's the one that  
(23) I believe he contacted the Westchester County  
(24) district attorney.

(25) MR. LOOMBA: Sorry.

(1) Q. Was Lieutenant Wenzler in the room when  
(2) you questioned Fishman and Elliot?

(3) A. He was in and out of the room. I don't  
(4) remember at that particular room if he was in or  
(5) out, but he was supervising the investigation.

(6) Q. Did he ask any questions of Mr. Fishman?

(7) A. I don't recall. You have to ask him.

(8) Q. Do you remember the sum and substance of  
(9) what you said and what Wenzler said to you?

(10) MR. LOOMBA: Asked and answered. Go  
(11) ahead, answer again.

(12) A. That there was probable cause to make the  
(13) arrest and that the violation of the order of  
(14) protection was valid.

(15) Q. Who said that?

(16) A. You stated what was our conversation  
(17) about.

(18) Q. I said what were the words stated by you  
(19) and what words were stated by Wenzler?

(20) A. I don't remember verbatim.

(21) MR. LOOMBA: He gave you the sum and  
(22) substance of the conversation. He said he couldn't  
(23) remember the precise words.

(24) MR. DEMIRAYAK: Alright.

(25) Q. Did you both ever speak about Mr.



(1) Fishman's disability?

(2) A. Yes.

(3) Q. What was stated by you and/or Wenzler  
(4) regarding Mr. Fishman's disability?

(5) A. I reiterated to my lieutenant what Mr.  
(6) Fishman stated to me. I believe the screening  
(7) officer, also, spoke to Mr. Fishman during the  
(8) booking process which he'd have access to the  
(9) video.

(10) I'm going to assume, because I didn't  
(11) watch it, that he stated his disability and it was  
(12) determined that we would have accommodations made  
(13) for him so that Miss Bulevar could take him. He  
(14) would post bail and he could return another date  
(15) instead of being in the holding cell for the  
(16) weekend.

(17) Q. So was, in fact, a determination of the  
(18) City of New Rochelle Police Department Mr. Fishman  
(19) was disabled?

(20) MR. LOOMBA: Objection. You can answer.

(21) A. I don't know what an official  
(22) determination of the police department would be  
(23) during the weekend. Lieutenant Wenzler is my  
(24) ranking officer. He made a decision based on  
(25) however he decided to, and that was what we did.

(1) Q. Well, Lieutenant Wenzler felt Mr. Fishman  
(2) was disabled but you did not, right?

(3) MR. LOOMBA: Objection.

(4) A. That's not what I said at all. I said  
(5) Lieutenant Wenzler made a decision based on his  
(6) synopsis of the situation, what was claimed, and he  
(7) made a decision to release Mr. Fishman so that  
(8) medical attention, if needed, could be given to him  
(9) and he doesn't have to be housed in a cell  
(10) unnecessarily.

(11) Q. If you were the ultimate decision-maker  
(12) would you have allowed Mr. Fishman to be released  
(13) without bail?

(14) A. I'm not the decision-maker. Nor would I  
(15) make assumptions like that.

(16) Q. Were you told --.

(17) Well, you didn't -- you told us before  
(18) you didn't believe his disability.

(19) A. I said based off our conversation I  
(20) didn't see any reason that he couldn't understand  
(21) or had a lucid conversation where he didn't.

(22) Q. As a result, you felt that he did not  
(23) require any accommodations or modifications in the  
(24) police encounter, correct?

(25) A. No. He didn't ask for any.

(1) Q. Did he ask to go home and not be put in  
(2) jail?

(3) A. Not that I recall.

(4) Q. So it was provided to him at Lieutenant  
(5) Wenzler's decision?

(6) A. Yes.

(7) Q. Okay. His decision that he was disabled  
(8) should be letting him go home?

(9) MR. LOOMBA: Objection to form.

(10) A. It was his decision based on  
(11) circumstances to show leniency. Not hold Mr.  
(12) Fishman in a jail block for the weekend. To  
(13) receive the sort of modified protocol that would  
(14) have to be issued.

(15) Lieutenant Wenzler made a decision based  
(16) off of whomever he may have spoken to as ranking  
(17) officer and as the officer in charge of that day.

(18) What goes into that consideration and  
(19) what decision is made you have to ask him, sir.

(20) Q. Did you review any medical record of Mr.  
(21) Fishman at any time during this investigation?

(22) A. I'm sorry. Say that again.

(23) Q. Did you review any of Mr. Fishman's  
(24) medical records?

(25) MR. LOOMBA: Sorry, Caner, you cut out the

(1) first time and then we were talking over each other  
(2) the second time. So just please restate the  
(3) question.

(4) Q. Did you review any medical records of Mr.  
(5) Fishman in your investigation?

(6) A. No.

(7) Q. Did you have access to any medical  
(8) records from the corrections department for any  
(9) prior incarceration of Mr. Fishman when you did  
(10) your investigation?

(11) A. No.

(12) Q. Do you know if Lieutenant Wenzler did  
(13) that?

(14) A. You have to find out from Lieutenant  
(15) Wenzler, sir.

(16) Q. Did anyone have any access to any  
(17) correctional health records?

(18) A. I don't. You have to ask Lieutenant  
(19) Wenzler what his abilities are.

(20) Q. Do you agree with the determination of  
(21) your ranking officer to let Mr. Fishman go and give  
(22) him leniency?

(23) A. I don't have an opinion on the matter.

(24) Q. Well, I'm asking to you give one for the  
(25) purposes of this deposition. Do you have an

(1) opinion?

(2) **MR. LOOMBA: Objection.**

(3) **A. No.**

(4) **MR. LOOMBA: I'll object. That's his**  
(5) **answer.**

(6) **Q.** Okay. Regardless as you not having an  
(7) opinion from your interactions with Mr. Fishman  
(8) that day, you did not feel he required  
(9) accommodation to speak with you. Is that fair?

(10) **A. Sorry. Can you repeat that?**

(11) **Q.** Knowing what we know now, and knowing --  
(12) remembering what your interactions were with Mr.  
(13) Fishman that day, it was your opinion that Mr.  
(14) Fishman did not require any accommodations because  
(15) he was speaking with you with no issues, right?

(16) **A. Correct. Nor did he ask for one.**

(17) **Q.** But aside from him asking, it was your  
(18) opinion that, whether or not he asked, he did not  
(19) require any modifications because, in your view, he  
(20) wasn't disabled?

(21) **A. Being the fact that he said he was**  
(22) **disabled and did not ask for accommodations and he**  
(23) **was able to have a lucid conversation where he was**  
(24) **able to speak, understand, and interact with me in**  
(25) **a normal basis, then the answer would be yes.**

(1) Q. When Mr. Fishman said he was disabled  
(2) what was your obligation to determine whether he  
(3) was disabled and then to provide an accommodation  
(4) under your understanding of department policies and  
(5) rules in 2018 and the training you received, if  
(6) any, related to disabilities?

(7) A. Can you rephrase that? I'm sorry. That  
(8) was long.

(9) Q. Sure. It's fine.  
(10) What was your understanding as far as  
(11) what your obligation was after Mr. Fishman said he  
(12) was disabled? What did you have to do pursuant to  
(13) the rules and procedures and your training?

(14) A. You have to check the MLT.

(15) Q. I would hope that you would know that.  
(16) So I'm saying in that situation what are you  
(17) supposed to do as an offer?

(18) MR. LOOMBA: You can testify to your  
(19) understanding.

(20) A. It's my understanding if he asked for any  
(21) assistance, in any kind of way, we would offer it  
(22) to him.

(23) Q. What about if someone says that they're  
(24) disabled?

(25) A. It would depend on the disability.

(1) Q. So would you have the obligation to  
(2) determine what an accommodation a person would need  
(3) under the circumstances?

(4) MR. LOOMBA: Wait. Are you -- are we  
(5) having a hypothetical where the person just uses  
(6) the words I'm disabled but didn't further explain?  
(7) Is that your question, Caner? That the way it read  
(8) on the record.

(9) Q. My question is when an officer is present  
(10) with a person who says they're disabled, what is  
(11) their obligation with respect to that person that  
(12) they're interacting with? What are you supposed to  
(13) do? What are you not supposed to?

(14) MR. LOOMBA: You can answer that question  
(15) to your understanding.

(16) A. My understanding is to find out what the  
(17) disability is.

(18) Q. Did you try to find out what Mr.  
(19) Fishman's disability was?

(20) A. Fishman stated he had a cognitive  
(21) disability.

(22) Q. Did you explore that any deeper?

(23) MR. LOOMBA: Wait. Let me object to  
(24) form. Go ahead.

(25) A. I asked him what that would entail.

(1) Q. And what did he say?

(2) A. That sometimes he had no problem  
(3) understanding or speaking.

(4) Q. He told you that?

(5) A. Excuse me?

(6) Q. And he told you that?

(7) A. Yes.

(8) Q. In response to hearing that what did you  
(9) do?

(10) A. I asked him if he had a problem  
(11) understanding or speaking at that time and I kept  
(12) asking him. Excuse me.

(13) Q. What did he say?

(14) A. No.

(15) Q. Did he ask for a notetaker?

(16) A. No, not that I recall.

(17) Q. Did he ask for a disability aide to be  
(18) there with him to help him understand what was  
(19) going on?

(20) A. No, not that I recall.

(21) Q. Okay. He had told you he had a difficult  
(22) time in understanding words sometimes. And after  
(23) that, you continued interviewing him without any  
(24) accomodations.

(25) Is that correct?



(1) A. He didn't say it the way you just stated  
(2) it. He said sometimes he has problem speaking or  
(3) understanding.

(4) Q. Okay. After hearing that, you proceeded  
(5) with the interview without an accommodation,  
(6) correct?

(7) MR. LOOMBA: Objection. That's not what  
(8) he said. Go ahead.

(9) A. I stated if he had a problem and needed  
(10) me to repeat myself, just say it the way you said  
(11) to me. That I would repeat myself, okay? If he  
(12) needed any help, okay, that we would help. That I  
(13) would help out to the best of my ability.

(14) He did not ask for any kind of  
(15) consideration that I recall. Nor did he ask for  
(16) any assistance. He had a perfectly lucid  
(17) conversation and was talking to the fact he was  
(18) showing me text messages on his phone regarding his  
(19) conversations with his daughter. And I believe how  
(20) he thought he was right for what he did. That it  
(21) was his turn to see his kids in summary.

(22) Q. So based on what you just said, you still  
(23) stand by your testimony that you did not believe  
(24) Mr. Fishman was disabled that day?

(25) A. It's not my determination whether he's

(1)       officially disabled or not. He had asked for no  
(2)       assistance with regards to a claimed disability.

(3)           Q.     Officer, I'm asking a specific question  
(4)       right now. Was he disabled or not on that day?  
(5)       That's all I'm asking you. Stop beating around the  
(6)       bush. Was he disabled or not?

(7)           MR. LOOMBA: Hang on.

(8)           A.     I really don't appreciate your tone.

(9)           MR. LOOMBA: Exactly. You're kind of --

(10)          Q.     -- I don't appreciate you beating around  
(11)       the bush and wasting my time and money on this  
(12)       deposition.

(13)           I want an answer. Was he disabled? Yes  
(14)       or no? And you're not answering the question.

(15)           MR. LOOMBA: Are you finished, Caner?

(16)           MR. DEMIRAYAK: I'm not finished. I want  
(17)       an answer.

(18)           MR. LOOMBA: Are you finished now?

(19)           MR. DEMIRAYAK: I'm not finished. I want  
(20)       an answer. So you can go ahead and make your  
(21)       objection. And you can go ahead and give colloquy  
(22)       on the record. Have a great time. But we still  
(23)       won't get an answer directly even after he's  
(24)       basically admitted he's disabled. It's just a  
(25)       joke. I need a real answer so we're going to have

(1) to call the Judge.

(2) MR. LOOMBA: I want to make a statement on  
(3) the record that the plaintiff's attorney has  
(4) adopted and applied a very argumentative and rude  
(5) tone of voice in questioning the witness today.  
(6) He's badgering the witness and it's improper.

(7) The witness is here doing his best to  
(8) answer your questions and we would both appreciate  
(9) it if you would not -- if you would stop adopting  
(10) this rude and badgering tone of voice and combative  
(11) and argumentative style in this deposition.

(12) You can go ahead and answer. Ask your  
(13) questions and the witness will do his best to  
(14) answer, but I don't think it's appropriate for you  
(15) to argue with the witness, which is what you have  
(16) been doing over the last several minutes.

(17) So I'm asking you, Caner, to restate your  
(18) question, please. Adopt a polite professional tone  
(19) and manner going forward in this deposition. So go  
(20) ahead and restate your question.

(21) MR. DEMIRYAK: Hold on one second. I  
(22) want to respond to your statement.

(23) I dispute your characterization that I'm  
(24) being rude. But I will say what's rude is that for  
(25) five years in this case you've misrepresented the

(1) existence of the audio and video. You've withheld  
(2) it.

(3) You've, basically, lied on the record  
(4) that there wasn't a video. You now produce a  
(5) witness who you haven't shown all the audio and  
(6) video to and expect us to be okay with his answers  
(7) which are completely skewed and sort of pushed by  
(8) their attorney in a way to protect yourself when  
(9) you have basically lied about the existence of the  
(10) audio and video.

(11) So I'm not going to sit here and allow  
(12) this witness to sit here and tell me I can't make a  
(13) decision if he's disabled or not. I want an  
(14) answer. And we're entitled to an answer. We're  
(15) going to get an answer.

(16) So your witness needs to answer the  
(17) question directly or, like I said, we'll have to  
(18) call the magistrate judge. We're tired of this.  
(19) It's been five years of this. Is he disabled or  
(20) not? That's really the question.

(21) MR. LOOMBA: Okay. So I can't leave that  
(22) unresponded to. I have not lied ever in this  
(23) case. As you know, we have diligently attempted to  
(24) located the audio and video. It was found. And  
(25) the moment it was found we produced it.

(1)                   **So your statement is absolutely incorrect**  
(2)                   **and I'm going to repeat what I said before. You**  
(3)                   **can ask your question. Please do it in a polite**  
(4)                   **and professional manner and this witness will do**  
(5)                   **his best to answer it. So go ahead.**

(6)               Q.    On December 15, 2018, are you able to  
(7)                   come to a determination whether or not Mr. Fishman  
(8)                   was a person with a disability?

(9)               A.    **According to his claim yes.**

(10)             Q.    What was the answer?

(11)             A.    **According to his claim.**

(12)             Q.    According to you, as a public servant who  
(13)                   interacts with citizens, who has to make sure  
(14)                   you're effectively accomodating a person who's  
(15)                   disabled, is it your opinion on December 15, 2018  
(16)                   that he was disabled? Yes or no?

(17)             A.    **I accomodated his claim by him telling me**  
(18)                   **he's disabled. So according to that, I have to go**  
(19)                   **by that. However, during our conversation he did**  
(20)                   **not ask for any assistance.**

(21)             Q.    So I'm trying to find a word that  
(22)                   characterizes the ridiculousness of your  
(23)                   testimony. And I'm trying my best to do it in a  
(24)                   polite way. But the answer you gave us does not  
(25)                   answer the question that we've asked and is

(1) unacceptable.

(2) So, again, did you come to a  
(3) determination in your head, as an officer, whether  
(4) he was disabled or not? Not as you just said, I  
(5) accommodated his claim by allowing him to ask me.  
(6) That's not an answer, Officer. You're in Federal  
(7) Court. So was he disabled or not in your opinion?  
(8) Yes or no?

(9) **A. According to his claim yes.**

(10) Q. So the answer is yes? Can you answer it  
(11) yes or no?

(12) **A. According to his claim yes. I'm not a**  
(13) **doctor. Nor can I give you diagnosis.**

(14) Q. I didn't ask if you're a doctor. You're  
(15) a police officer. You have a very, very important  
(16) job.

(17) **A. Right.**

(18) Q. I'm asking was he a person with a  
(19) disability? Is your answer yes because it's not  
(20) clear? The record says yes according to his  
(21) claim. I'm saying according to you?

(22) **MR. LOOMBA: You can give opinion**  
(23) **according to you whether you believe he had a**  
(24) **disability.**

(25) **A. I don't believe he had a disability that**

(1) prevented him from making statements or doing  
(2) documents. He said --

(3) Q. -- In other words, the answer is no?

(4) A. That's not what I said. I don't believe  
(5) he had a disability that prevented him from making  
(6) statements, hearing me, and making decisions based  
(7) on his own -- based on my interview with him.  
(8) Based on what he said. Video I saw. He seemed to  
(9) be perfectly lucid.

(10) Q. Yes or no, was Mr. Fishman a person with  
(11) a disability on December 15, 2018 when you were  
(12) questioning him? Yes or no?

(13) MR. LOOMBA: Hang on. Based upon your  
(14) interaction with Mr. Fishman on that day you can  
(15) give your opinion as whether you believe --

(16) A. -- My opinion is, no, he was not  
(17) disabled.

(18) Q. Okay. Why was that so hard? We're going  
(19) to move on.

(20) MR. LOOMBA: Let's take a quick bathroom  
(21) break.

(22) (Whereupon, a recess is taken  
(23) at 12:23 p.m.)

(24) (Whereupon, the proceedings resume  
(25) at 12:36 p.m.)

(1) **CONTINUED DIRECT EXAMINATION**

(2) **BY MR. DEMIRAYAK:**

(3) Q. Officer, on December 15, 2018, was there  
(4) anyone other than Lieutenant Wenzler and Myron  
(5) Joseph that you spoke with that asked you or  
(6) ordered you to arrest Mr. Fishman?

(7) **MR. LOOMBA: Objection. You can answer.**

(8) **A. Not that I recall. No.**

(9) Q. Do you know Judge Schauer,  
(10) S C H A U E R?

(11) **A. Judge Schauer? No.**

(12) Q. Never spoke with? Never hung out with?  
(13) Never seen Judge Schauer?

(14) **A. There was a Commissioner Schauer.**

(15) **MR. LOOMBA: No. He's saying the Judge.**

(16) **A. No.**

(17) Q. How about the court attorney for Judge  
(18) Schauer? Do you know her?

(19) **A. No, not that I know of.**

(20) Q. Can you recall testifying at a criminal  
(21) trial where Mr. Fishman looked unwell or sick when  
(22) you interacted with him at the police station?

(23) **A. I'm sorry. Can you repeat that?**

(24) Q. Do you recall Mr. Fishman looked sick or  
(25) was not well -- unwell at the police station?



(1) **MR. LOOMBA: Caner, you're cutting out a**  
(2) **little bit.**

(3) Q. Do you recall testifying in a criminal  
(4) trial where Mr. Fishman looked sick or unwell?

(5) A. **During the criminal trial?**

(6) Q. Yeah. When you interacted with him --  
(7) did you testify at the criminal trial where he  
(8) appeared to be unwell or sick to you?

(9) A. **Not that I recall.**

(10) Q. Have you ever denied a person request for  
(11) accommodations for communications whether it be for  
(12) disability or a language barrier? Yes or no?

(13) A. **I'm sorry. Can you repeat that?**

(14) Q. Have you ever denied an accommodation to  
(15) someone to who requested it for a communications  
(16) issue whether based on a disability or a language  
(17) barrier such as not speaking the English language?

(18) A. **No, sir.**

(19) Q. Did you provide Mr. Fishman with his  
(20) Miranda rights before or during your interview with  
(21) him inside the room that wasn't recorded?

(22) A. **No, sir. I don't believe so.**

(23) Q. I'm sorry?

(24) A. **No, sir.**

(25) Q. Why not?

(1) A. Because he requested to speak to me.

(2) MR. DEMIRAYAK: Take a break for a  
(3) second.

(4) (Whereupon, a short recess is taken.)

(5) (Whereupon, the proceedings resume.)

(6) BY MR. DEMIRAYAK:

(7) Q. At the time you decided he wanted to  
(8) speak to you, he was under -- he was there already  
(9) under that 10-12 order, right?

(10) A. Yes, sir.

(11) Q. He didn't leave, right?

(12) A. He was detained. Yes, sir.

(13) Q. Okay. And despite him being detained,  
(14) you did not advise him of his right to remain  
(15) silent, his right to an attorney before you spoke  
(16) to him in that side room, correct?

(17) A. Correct.

(18) MR. LOOMBA: Hold on.

(19) Q. And looking at various legal documents  
(20) that was in the claim Mr. Fishman?

(21) A. You're cutting out.

(22) MR. LOOMBA: We can hear part of what  
(23) you're saying. It goes in and out, Caner. That's  
(24) the problem.

(25) Q. How much time did you spend looking at

(1) the various documents in the claim Mr. Fishman  
(2) violated before you decided to charge him and  
(3) arrest him?

(4) **A. Are you referring to the order of**  
(5) **protection?**

(6) Q. Correct. Any of the documents involved?  
(7) Order of protection? Visitation? How much time  
(8) did you spend looking at that stuff?

(9) **A. Between Lieutenant Wenzler and myself,**  
(10) **approximately, 15 minutes back and forth. And then**  
(11) **follow-up investigation. I couldn't give you exact**  
(12) **time.**

(13) Q. Did Mr. Fishman make any statements to  
(14) you in that interview room that you felt were an  
(15) admission or a confession of his guilt?

(16) **A. I'm sorry. Can you repeat that?**

(17) Q. Did Mr. Marc Fishman make any statements  
(18) to you when you interviewed him that you felt were  
(19) an admission or a confession of his guilt to you  
(20) violating an order of protection?

(21) **A. No.**

(22) Q. Did you feel him showing you text  
(23) messages between himself and his daughter  
(24) constituted an admission of guilt?

(25) **A. I didn't know the stipulations, so the**

(1) **answer would be no.**

(2) Q. Did Mr. Fishman say anything that would  
(3) make you believe he was confessing that he violated  
(4) an order of protection?

(5) A. **Yes, I did.**

(6) Q. Yes, I did it or something like that?

(7) A. **Not that I recall.**

(8) Q. After interviewing Mr. Fishman, did you  
(9) think that any of his statements he made to you  
(10) would be necessary to prove criminal contempt  
(11) against him?

(12) A. **No.**

(13) Q. And why not?

(14) A. **Because there was enough between Miss  
(15) Elliot and Miss Solomon.**

(16) Q. Okay. And please walk me through what is  
(17) the enough from Miss Solomon and Miss Elliot that  
(18) allowed you to feel Mr. Fishman violated the law as  
(19) as far as criminal intent aside from anything that  
(20) he had said?

(21) A. **Miss Solomon stated that she had canceled  
(22) the visitation. Mr. Fishman had Miss Elliot come to  
(23) the door and speak to her when he was supposed to  
(24) stay away from the home. He violated that.**

(25) **He violated by making contact with the**

(1) child. Miss Elliot substantiated and corroborated  
(2) Miss Solomon's claim not only to saying it to her,  
(3) but saying it to me. And that she knew it was  
(4) wrong in the violation. And she, also, said Mr.  
(5) Fishman having text message conversations back and  
(6) forth with his daughter was a violation of the  
(7) other stipulations in one of the orders.

(8) Q. All put together you had enough, right?

(9) A. Yes, sir.

(10) Q. Do you independently recall your  
(11) testimony in a criminal trial?

(12) A. No, sir.

(13) Q. So if I was to tell you that we reviewed  
(14) the criminal trial transcript of your testimony in  
(15) which you testified that Mr. Fishman was subjected  
(16) to a full stay-away order, would that be a correct  
(17) assessment of your investigation or an incorrect  
(18) assessment of your investigation?

(19) A. I'm sorry. Can you rephrase that? I  
(20) didn't hear the first part.

(21) Q. Was Mr. Fishman subjected to a full  
(22) stay-away order?

(23) A. Yes.

(24) Q. And you're stating that even though  
(25) there's an order allowing for visitation?

(1) A. I'm not understanding the question, sir.

(2) Q. When you say there was a full stay-away  
(3) order, are you considering the order that allows  
(4) him supervised visitation?

(5) A. That I believe is the stipulation within  
(6) the order of protection. Yes, sir.

(7) Q. Wouldn't that make the order of  
(8) protection not a full stay-away order?

(9) MR. LOOMBA: Objection to the form. You  
(10) can answer to the best of your understanding.

(11) A. Okay. From my understanding and  
(12) verbiage, I believe that I remember from the order  
(13) it is a full stay-away order from Miss Solomon and  
(14) her children. And the bottom line there is a  
(15) provision stating any stipulations from family  
(16) court, okay, allow certain leeway in that. However,  
(17) it is considered a full stay-away order.

(18) Q. So full stay-away order with an asterisk  
(19) that says there are stipulations that may allow for  
(20) less than a full stay-away order? Is that what  
(21) you're saying?

(22) A. There are allowances for visitation.  
(23) However, she's -- however, they are dictated to  
(24) exchange children under court supervised  
(25) supervision.

(1) Q. Did you testify to that in a criminal  
(2) trial?

(3) A. I don't recall.

(4) Q. If you were asked about the order of  
(5) protection in order for you give a complete  
(6) statement, would it require you to say that, yes,  
(7) it's a full stay-away but there's, also,  
(8) stipulations that allow for some leeway? Would  
(9) that be a full answer?

(10) MR. LOOMBA: Objection to form. I mean --  
(11) yeah, you can answer the best you can.

(12) A. I think what you're trying to ask is that  
(13) there's two forms of orders of protection in New  
(14) York State. And I can only say for New York State  
(15) there's a refrain from order and a stay-away order.  
(16) Those are the only two forms of protection.

(17) So if it's a stay-away order, -- it  
(18) states stay-away order, it would be considered a  
(19) stay-away. If it says refrain from doing certain  
(20) behavior, that would be considered refrain.  
(21) I hope that answers your question.

(22) Q. Thank you. What I'm asking is would you  
(23) still say it's a full stay-away order even though  
(24) there are stipulations that allow for leeway?

(25) A. Yes, there's stay-away and refrain. If

(1) **it says stay-away, it's full stay-away order.**

(2) Q. And in order to completely explain the  
(3) situation to someone such as a juror on a criminal  
(4) trial, would you agree with me that you would have  
(5) to explain to that person that it is a full  
(6) stay-away order but there are some provisions for  
(7) leeway?

(8) **MR. LOOMBA: Objection to form. You can**  
(9) **answer.**

(10) A. I would state what the order states and  
(11) the stipulations.

(12) Q. Okay, but in order to give a complete  
(13) statement you couldn't just say a full stay-away  
(14) order, correct?

(15) **MR. LOOMBA: Objection.**

(16) A. That's not what I said either. An order  
(17) is either a refrain from order, sir or it's a  
(18) stay-away order. There's no other. If it's  
(19) classified as one, it's one. If it's classified as  
(20) another, it's another. There's only two forms,  
(21) sir.

(22) Q. Okay. I'll ask another way.

(23) A. Okay.

(24) Q. Would it be an accurate to tell someone  
(25) Mr. Fishman was subject to a full stay-away order,



(1) period, with respect to Jennifer Solomon?

(2) A. Yes.

(3) Q. But didn't you just say that? Withdrawn.

(4) MR. LOOMBA: Don't argue with him, Caner.  
(5) You asked it. He answered it. And now you're  
(6) going back to try to argue with him. You know  
(7) that's not proper the way.

(8) You keep going back and back and back to  
(9) it, okay? You can clarify his answers but you're  
(10) not doing that. You're arguing with him.

(11) MR. DEMIRAYAK: He refuses to give the  
(12) correct answer. That's fine.

(13) MR. LOOMBA: Yeah, that's your opinion of  
(14) what the correct answer is, but he's the witness.  
(15) He gets to give the answer to the best of his  
(16) ability which he's doing.

(17) MR. DEMIRAYAK: The witness here admits to  
(18) facts. Then when asked to answer it directly, he  
(19) beats around the bush. It's just a game and I'm  
(20) sick and tired of it.

(21) Q. What I'm asking --

(22) MR. LOOMBA: -- We're not exactly having a  
(23) great time here. If you have any more questions  
(24) ask them.

(25) Q. Is it an accurate statement -- leaving

(1) out the fact that there are stipulations allowing  
(2) for supervised visitation pursuant to these orders  
(3) of protection, would that be an accurate depiction  
(4) of the entire order that Mr. Fishman is subjected  
(5) to?

(6) **MR. LOOMBA: Objection. He answered it.**  
(7) **Go ahead and answer again.**

(8) **A. Sir, if you read the order of protection**  
(9) **it states stay-away order. If you read the other**  
(10) **it says refrain from. It's a refrain order. It's**  
(11) **one or two classification.**

(12) **Q. So how is Mr. Fishman allowed to have his**  
(13) **visitation with children and not be in violation of**  
(14) **the full stay-away order?**

(15) **A. Stipulations that are involved on a**  
(16) **stay-away order.**

(17) **Q. So having supervised visitation would not**  
(18) **be considered a violation of that order, correct?**

(19) **MR. LOOMBA: Objection. Go ahead.**

(20) **A. In accordance with. However, the court**  
(21) **dictates supervised visits for the children. That**  
(22) **would exclude the stay-away part from the children,**  
(23) **yes. However, it's still a stay-away order, not a**  
(24) **refrain.**

(25) **Q. But not a 100,000 million percent**

(1) stay-away order? It's a stay-away order with  
(2) stipulations, right?

(3) A. If you're trying to understand how New  
(4) York State issued protection I can't give you a  
(5) better answer. It's one or two. It's either  
(6) stay-away order or it's refrain from order. I  
(7) can't --

(8) Q. -- I don't care. I want to know what  
(9) happened in this case?

(10) A. I'm explaining to you.

(11) MR. LOOMBA: Hang on. Wait for the  
(12) question. Ask the question again.

(13) Q. Assuming you used the words full  
(14) stay-away order in the criminal trial, would that  
(15) be an accurate description of the order Mr. Fishman  
(16) was subjected to?

(17) MR. LOOMBA: Objection. Go ahead.

(18) A. Yes.

(19) Q. And it would still be an accurate  
(20) description of the order he was subjected to  
(21) despite the stipulations allowing for leeway?  
(22) Yes or no?

(23) A. Yes.

(24) Q. Did you ever tell the jury that there  
(25) were these stipulations?

(1)           **A.    I don't recall the testimony.**

(2)           **Q.    Do you feel that it was important for the**  
(3) **jury to know that although it's a full stay-away**  
(4) **order, he could - visitation? Do you feel that was**  
(5) **important for someone to know?**

(6)           **A.    Sorry. Okay. I don't know if it was**  
(7) **introduced with another witness or other Counsel.**

(8)           **Q.    Are you comfortable with testimony in**  
(9) **which you're only stating that, yes, he was**  
(10) **subjected to a full stay-away order and nothing**  
(11) **else is stated regardless of stipulations?**  
(12) **Would you have been comfortable with that being**  
(13) **truthful and accurate with respect to the order**  
(14) **that Mr. Fishman was claimed to have violated?**

(15)           **MR. LOOMBA: Objection. You can answer.**

(16)           **A.    If it was a full stay-away order, yes.**

(17)           **Q.    If it wasn't you would not be comfortable**  
(18) **with leaving out those stipulations?**

(19)           **MR. LOOMBA: Objection. You can answer.**

(20)           **A.    Then it would be refrain from order.**  
(21) **It's classified full stay-away, sir.**

(22)           **Q.    Stipulations would make it a refrain from**  
(23) **order? Is that what you're saying?**

(24)           **A.    I'm saying full stay-away order and the**  
(25) **stipulations would negate that for part of it as**

(1) long as it's in tune with what the court decides  
(2) and dictates for supervision.

(3) Q. Would you be comfortable leaving out the  
(4) fact that there were stipulations? Yes or no?

(5) MR. LOOMBA: Objection to form. You can  
(6) answer.

(7) A. If I was asked for stipulations then I  
(8) would give them. It's still a valid full stay-away  
(9) order.

(10) Q. I'm saying that assuming you're not  
(11) directly asked, would you feel comfortable with  
(12) giving an answer that left out the stipulations  
(13) without being asked? With you just having the  
(14) ability to say it?

(15) A. Yes.

(16) MR. LOOMBA: Objection to form. Go ahead  
(17) and answer.

(18) A. Yes, sir. Full stay-away order.

(19) Q. Have you ever been served in the lawsuit  
(20) in this case?

(21) A. I recall so. I believe so.

(22) MR. LOOMBA: You're talking about the  
(23) original lawsuit was he served with process? Is  
(24) that your question?

(25) MR. DEMIRAYAK: Marc Fishman versus New

(1) Rochelle and a hundred other people including Lane  
(2) Schlesinger.

(3) Q. Were you ever served?

(4) MR. LOOMBA: He wants to know if you got a  
(5) copy of the summons and complaint way back?

(6) A. I believe so.

(7) Q. How were you served way back?

(8) A. I believe at the time Detective  
(9) Lieutenant Reynolds served me.

(10) Q. Now, are you aware of any attempts to  
(11) serve you in 2021 or 2022?

(12) A. In regards to, sir?

(13) Q. This lawsuit or an amended lawsuit or  
(14) someone trying to serve you with papers in this  
(15) case in the last three years?

(16) A. I wouldn't know if I wasn't served, sir.

(17) Q. Well, you would know if it was coming to  
(18) your house.

(19) Are you aware of anyone coming to your  
(20) house or family members' house or an address you  
(21) used to be able to try to serve you in the last  
(22) three years? I just want to know if you were aware  
(23) of it?

(24) A. I don't believe so.

(25) Q. Did you refuse service, sir?

(1)           **A.     I just said I don't believe I was**  
(2)           **attempted to get served.**

(3)           Q.     I'll represent to you that my office made  
(4)           9 or 12 attempts to serve you with the amended  
(5)           lawsuit in this case. We have multiple addresses  
(6)           including your place of work and you were not  
(7)           served. Were you ever made aware that we made  
(8)           these attempts?

(9)           **A.     I don't believe so, sir.**

(10)          Q.     But you were aware this lawsuit existed  
(11)          against you?

(12)          **A.     I was aware.**

(13)          **MR. LOOMBA: When you say this lawsuit,**  
(14)          **you're talking about the original one where Marc**  
(15)          **Fishman was pro se?**

(16)          **MR. DEMIRAYAK: It's one case number. The**  
(17)          **whole case. Doesn't matter whether it's been**  
(18)          **altered or not. It is one case. 19-CV-265 NSR.**

(19)          **MR. LOOMBA: So what's your question?**

(20)          Q.     My question is you were aware that this  
(21)          lawsuit, this case number, existed against you?

(22)          **A.     Yes.**

(23)          Q.     And you were made aware at the time that  
(24)          would allow you to properly mount a defense if you  
(25)          were a proper defendant, correct?

(1) MR. LOOMBA: Objection to form.

(2) A. I don't understand what you're asking me,  
(3) sir.

(4) Q. Were you ever prejudiced in your ability  
(5) to respond to or defend this case?

(6) MR. LOOMBA: Objection to form. Do you  
(7) know what he means?

(8) THE WITNESS: No.

(9) Q. Can you rephrase that?

(10) MR. LOOMBA: You know what he means? If  
(11) you don't tell him you don't understand --

(12) Q. -- Were you ever prejudiced or prevented  
(13) in any way to properly mount a defense of this  
(14) case?

(15) A. No.

(16) Q. In fact, you were successful in getting  
(17) the case dismissed against you?

(18) A. The attorneys were, yes.

(19) Q. Yes, the case was dismissed against you  
(20) twice successfully, correct?

(21) A. I believe so, yes.

(22) Q. And, yet, when the case was amended you  
(23) still refused to accept service?

(24) MR. LOOMBA: No. Objection.

(25) A. I never said that.



(1) MR. LOOMBA: He said he was aware of  
(2) efforts to try to serve him.

(3) Q. When were you made aware that the amended  
(4) lawsuit was filed in this case?

(5) A. I recall Mr. Loomba told me.

(6) Q. Okay.

(7) MR. LOOMBA: Be careful about disclosure  
(8) communications between attorney and client.

(9) MR. DEMIRAYAK: Well, Mr. Loomba, facts  
(10) are not privileged.

(11) MR. LOOMBA: Understood. I get that. I'm  
(12) just cautioning --

(13) MR. DEMIRAYAK: -- Opinions are  
(14) privileged. I'd never ask for that but facts are,  
(15) you know, not privileged.

(16) Q. So the fact is not a privileged  
(17) statement, but yeah, please be careful what you say  
(18) so Mr. Loomba doesn't get upset.

(19) So what I'm asking you is after you were  
(20) notified the amended lawsuit was filed, were you  
(21) notified that the plaintiff was attempting to serve  
(22) you and/or made an application for an extension of  
(23) time to serve you because of difficulty in serving  
(24) you?

(25) Were you ever made aware of the attempts

(1) to serve you? That's the general question I'm  
(2) asking?

(3) **A. No, I don't believe so.**

(4) **Q. Okay. Did anyone tell you not to accept**  
(5) **service?**

(6) **A. No.**

(7) **Q. If someone was to serve you today, what's**  
(8) **the best address to serve you at?**

(9) **A. Work.**

(10) **Q. What is the best work address to serve**  
(11) **you at?**

(12) **A. 47 North Avenue, New Rochelle, New York**  
(13) **10801.**

(14) **Q. Who's authorized to accept service on**  
(15) **your behalf at work?**

(16) **A. Desk supervisor.**

(17) **Q. Do you have to be on duty when you're**  
(18) **served or they can accept for you?**

(19) **A. I'm assuming they can accept for me or**  
(20) **you can speak to Detective Lieutenant Wenzler.**

(21) **MR. LOOMBA: By the way, sorry to**  
(22) **interrupt you. All these questions relevant to Mr.**  
(23) **Fishman's Americans With Disability Act claim**  
(24) **against the City of New Rochelle. I don't really**  
(25) **think -- I mean I know that's relevant. It's not**

(1) an objection but I do think you're -- you can't  
(2) really use this deposition to ask any question that  
(3) you want. And you're sort of veering so far off  
(4) from the subject matter of Mr. Fishman's lawsuit  
(5) that you're almost in an area where I would say to  
(6) him it's palpably improper; don't answer.

(7) So just putting that out there. I'm not  
(8) telling him that yet, but I don't see how this has  
(9) anything to do with Mr. Fishman's case. But go  
(10) ahead and continue.

(11) MR. DEMIRAYAK: It's completely relevant.  
(12) Your witness refused to accept service. There's a  
(13) possibility a new lawsuit will be filed against  
(14) him. So we're entitled to know after making 9  
(15) attempts and get the order extension time to  
(16) serve. How do we serve this person that's  
(17) impossible to serve? I think it's okay to find out  
(18) so we don't have to do it the harder way.

(19) I think it's completely relevant to find  
(20) out why that happened because that resulted in  
(21) dismissal of the case against him. Was completely  
(22) relevant to the facts.

(23) MR. LOOMBA: You may have an opinion, Mr.  
(24) Demirayak, but there's no evidence on this record,  
(25) or anywhere else, that this witness refused

(1) service.

(2) So, you know, make sure that when you're  
(3) expressing things in your opinion, you properly  
(4) qualify them and not --

(5) MR. DEMIRAYAK: -- It's not opinion. It's  
(6) fact --

(7) MR. LOOMBA: -- and not express them as  
(8) either facts or, you know, the decision of a court  
(9) that, you know, you've been mischaracterizing  
(10) repeatedly throughout the deposition.

(11) MR. DEMIRAYAK: It's not opinion. It's  
(12) fact, Mr. Loomba. We'll move on.

(13) Q. So who was authorized to accept service  
(14) for you at the police department? Is it  
(15) Lieutenant? That's who you said, correct?

(16) A. Correct.

(17) Q. And it doesn't matter whether you're on  
(18) RDO or on duty? Wherever you may be they can still  
(19) accept service for you?

(20) MR. LOOMBA: I'm directing him not to  
(21) answer that question. Call the Judge on this,  
(22) Caner, okay? Go ahead, pick up the phone and call  
(23) him. I'd love to have that conversation, but he's  
(24) not going to answer any more questions to make it  
(25) easier for you to serve him with process other than

(1) he's already said which is more than enough that  
(2) you would need. And you can, also, consult Rule 4  
(3) of the federal rules of procedure or Section 308 I  
(4) believe it is of the CPLR. But beyond that, move  
(5) on to the questions that have to do with this  
(6) lawsuit.

(7) MR. DEMIRAYAK: I have many opinions, Mr.  
(8) Loomba. I'm not going to express them to you on  
(9) the record.

(10) Q. So couple more questions, Officer. I  
(11) want to get you out of here. Thanks for your time  
(12) today. I really do appreciate it. It's allowing  
(13) us to get this case done in a timely manner. So I  
(14) do appreciate your time today.

(15) When did you get out of the police  
(16) academy?

(17) A. 2006.

(18) Q. Since 2006 had you ever trained in  
(19) disability accommodations?

(20) A. Yes.

(21) Q. When and where? Under what is  
(22) circumstances?

(23) A. We do that training every year in the  
(24) police department. You have to consult the  
(25) training unit for the exact curriculum.

(1) Q. Did you ever recall receiving training on  
(2) people with cognitive disabilities?

(3) A. I don't recall.

(4) Q. How about communications disabilities?

(5) A. I don't recall either.

(6) Q. Have you ever interviewed a person who's  
(7) deaf or hard of hearing?

(8) A. Yes.

(9) Q. Have you ever accomodated a person that's  
(10) deaf or hard of hearing?

(11) A. I answered yes.

(12) Q. I didn't hear you.

(13) What sort of accomodations have you used  
(14) in the past for or among the deaf or hard of  
(15) hearing?

(16) A. An officer that we work with speaks -- or  
(17) signs. I'm sorry. He has a brother I believe that  
(18) is deaf so he knows sign language.

(19) Q. So there's an officer that happens to  
(20) know sign language because he has a relative that  
(21) suffers from a disability for the hearing  
(22) abilities?

(23) A. Yes.

(24) Q. And you've had an occasion to speak with  
(25) a person or interact with a person who's deaf or

(1) hard of hearing and requested the presence of and  
(2) use of that officer who would be able to  
(3) communicate with the person through American Sign  
(4) Language, right?

(5) **A. Yes, sir.**

(6) Q. Under those -- in that case, were you  
(7) able to make a determination, without giving out  
(8) details, whether or not that person was or was not  
(9) disabled?

(10) **A. Wait. I'm not understanding. Could I**  
(11) **verify that they were deaf or did I verify that**  
(12) **they understand and can sign?**

(13) Q. First one. Could you verify someone had  
(14) a disability to their hearing such as being deaf?

(15) **A. I can go behind and clap my hands to**  
(16) **know. If I listen to what he said I accommodate**  
(17) **him and he did no sign language.**

(18) Q. Was there anything else that could have  
(19) been done to confirm whether or not Mr. Fishman was  
(20) disabled that day?

(21) **A. Confirm he was disabled?**

(22) Q. Yeah.

(23) **A. I believe through interactive**  
(24) **conversations he was able to be extremely verbose,**  
(25) **talkative, had no problem understanding or making**

(1) **determinations, answered my questions. I think**  
(2) **that determined any question that would have been**  
(3) **asked just by interviewing him.**

(4) Q. But you're not an expert in the  
(5) percentage of words and phrases that are  
(6) understood, the delay, the difficulty, percentage  
(7) of deficits, you're not an expert in that.

(8) So, you know, assuming that one  
(9) communicates with you but has some deficits that  
(10) you as a medical expert don't know, how can you sit  
(11) here and tell me that you didn't think he was  
(12) disabled or enough to accept his belief that he was  
(13) suffering from a cognitive disability?

(14) **MR. LOOMBA: Objection. You can answer.**

(15) **A. He was able to answer me. Not ask for**  
(16) **assistance. Or have me repeat it.**

(17) Q. With him speaking with you, would you be  
(18) able to tell me whether or not he fully understood  
(19) the entire conversation?

(20) **A. As much as a normal interview would have**  
(21) **been established, yes.**

(22) Q. But there's no way for you to know what's  
(23) going on in his cognitive processing abilities  
(24) whether or not he could actually fully communicate  
(25) with you in a way that you thought he was from your



(1) own observations?

(2) MR. LOOMBA: Wait. Objection to form. Go  
(3) ahead.

(4) A. From my own observation if I ask a person  
(5) how they are, to introduce myself, they can answer,  
(6) reply, and interact with me on what they wanted to  
(7) say. Then based off of just that, that would be  
(8) where I would go from there.

(9) MR. DEMIRAYAK: Off the record.

(10) (Whereupon, a short recess is taken.)

(11) (Whereupon, the proceedings resume.)

(12)

(13) BY MR. DEMIRAYAK:

(14) Q. If someone comes to the precinct in a  
(15) wheelchair, and you see them in a wheelchair, do  
(16) you assume that they can't walk or would you ask  
(17) them to get up?

(18) A. I would assume they can't walk.

(19) Q. Okay. And you wouldn't have that person  
(20) say something to you?

(21) A. I mean why would I be questioning if  
(22) they're in a wheelchair?

(23) Q. Well, there's stairs to get into the  
(24) precinct, right? So how would you get into the  
(25) room?

(1)           **A.     There's a ramp.**

(2)           Q.     Okay.  So assuming they got up the ramp,  
(3) they're in there, and they're there, so  
(4) automatically you assume they're physically  
(5) disabled.  They need some sort of accomodation if  
(6) necessary for their mobility, correct?

(7)           **MR. LOOMBA: Objection to form.  Go ahead**  
(8) **answer.**

(9)           **A.     If they need help with mobility, then,**  
(10) **yes, I wouldn't ask them to verify anything.  I'll**  
(11) **just help them out as best I could.**

(12)          Q.     If someone came in with those really big  
(13) dark sunglasses that some people who are vision  
(14) impaired or blind walks in, doesn't have a blind  
(15) person's guide sticker and says I'm blind, help me,  
(16) would you ask that person to take their glasses off  
(17) and look into their eyes?

(18)          **A.     I would ask what they need help with.**  
(19) **Just me guiding them.**

(20)          Q.     They're claiming they can't see.  So, you  
(21) know, they're there.  They're now going to go and  
(22) be interviewed by Officer Schelsinger.  How do you  
(23) verify that person's actually blind?

(24)          **A.     I wouldn't have to verify.  If they can**  
(25) **speak fine, I'd introduce myself, and assist them**

(1) by guiding them by letting them take my arm.

(2) Q. Same --

(3) A. -- You cut out.

(4) Q. Now we have a person in a wheelchair. We  
(5) have a blind person. And we have someone like Mr.  
(6) Fishman with a mental incapacity -- a cognitive  
(7) disability.

(8) Why is it different with his disability  
(9) as opposed to the other one as far as verifying the  
(10) person's disability and having an obligation to  
(11) accomodate that person if they needed help?  
(12) Why is it different.

(13) MR. LOOMBA: Objection to form. You can  
(14) answer.

(15) A. In all of the situations you just  
(16) mentioned I never said I had to verify anything  
(17) with Mr. Fishman. I didn't verify anything  
(18) either. By my interaction, by his conversation  
(19) with me, okay, and by the way he was able to speak,  
(20) understand, answer questions, interact, his body  
(21) language. And he didn't ask for any assistance.  
(22) So, therefore, I wouldn't have to verify if he was  
(23) able to understand and have interaction back and  
(24) forth.

(25) Q. Is it your opinion that Mr. Fishman made

(1) up his disability?

(2) A. I don't have opinion on his personality.  
(3) That day I did not see a disability in my  
(4) interaction with him.

(5) Q. In other words, if he said he was  
(6) disabled, he wasn't telling the truth according to  
(7) you?

(8) A. No. If he said he was disabled, that's  
(9) his claim and I'm not here to dispute that.

(10) Q. But you didn't agree with his claim?

(11) A. I don't have to agree with it. It didn't  
(12) interfere with my -- with him or with what he was  
(13) trying to convey to me.

(14) Q. His disability is complete bullshit? Is  
(15) that what you're saying?

(16) MR. LOOMBA: Objection.

(17) A. I never said anything. Nor did I curse.

(18) Q. But -- so you didn't think he was  
(19) disabled. Yet, you say he's still entitled to  
(20) believe he's disabled?

(21) A. Right. He's --

(22) MR. LOOMBA: -- wait. Let me object to  
(23) form. He answered. Go ahead.

(24) Q. What was the answer?

(25) A. He's allowed to claim he's disabled. I'm

(1) not here to dispute that or argue with him.

(2) Q. But you didn't accept it?

(3) A. It's not for me to accept or not. It  
(4) didn't interfere with my ability to communicate  
(5) with him or his ability back to me to explain what  
(6) he wanted to do.

(7) He interacted with me on a normal basis  
(8) of conversation to have small talk, showing me text  
(9) messages between him and his daughter. He never  
(10) asked for assistance. Therefore, his cognitive  
(11) disability didn't have effect on my interview. And  
(12) he never asked for assistance. So it's not my  
(13) determination whether he actually has a cognitive  
(14) disability or not.

(15) Q. You stand by that testimony even though  
(16) you previously testified that Mr. Fishman told you  
(17) that he had a difficult time sometimes with  
(18) understanding words while talking?

(19) A. Yes. He didn't that day.

(20) Q. What did you say? I couldn't hear you.

(21) A. He did not.

(22) MR. LOOMBA: He said he didn't.

(23) Q. He didn't?

(24) MR. LOOMBA: He did not that day.

(25) Q. Were you able to count how many words and

(1) phrases he understood or didn't understand?

(2) **A. No. I wasn't counting my words.**

(3) **Q. How do you know he understood everything**  
(4) **you told him?**

(5) **A. Because he replied with intelligent**  
(6) **answers.**

(7) **Q. Can an intelligent person be disabled?**

(8) **MR. LOOMBA: Objection to form.**

(9) **A. I don't think intelligence has anything**  
(10) **to do with disability.**

(11) **Q. You just characterized the fact that he's**  
(12) **able to answer you intelligently despite the fact**  
(13) **that he had a disability with his cognition. You**  
(14) **just said that. That's why I'm asking you. His**  
(15) **intelligence is a thing that shows that you're not**  
(16) **disabled. I'm just using your words.**

(17) **A. You're being argumentative and skewing**  
(18) **what I'm saying, but I will still answer your**  
(19) **question nonetheless.**

(20) **When he answered me he was articulate,**  
(21) **answered questions, and didn't have any problem**  
(22) **cognitively. Understanding what I was saying or**  
(23) **speaking himself.**

(24) **So when I said that intelligence has**  
(25) **nothing to do with disability, I don't have to**

(1) characterize that, correspond, or not like that.

(2) Does that suit your answer?

(3) Q. In other words, if he sounded --

(4) A. -- That's not what I said at all. I said  
(5) he was able to have a normal conversation and  
(6) interact properly. If I asked him a question he  
(7) would respond. If he asked me a question I would  
(8) respond. And he would take my answer and ask me  
(9) another question and have a perfectly normal  
(10) interaction. Never said anything about  
(11) intelligence or anything.

(12) Q. Have you ever spoken to someone with a  
(13) mental disability?

(14) A. I'm sorry. I didn't hear your question.

(15) Q. Have you ever spoken to someone with a  
(16) mental disability?

(17) A. Yes.

(18) Q. Have you ever spoken to someone with  
(19) Down's Syndrome?

(20) A. Yes.

(21) Q. Have you ever spoken to someone that was  
(22) able to speak but due to hearing issues did not  
(23) pronounce their words correctly?

(24) A. Yes.

(25) Q. Did you ever speak with someone who has

(1) cerebral palsy? Has difficulty using their vocals  
(2) and mouth to speak?

(3) A. Yes.

(4) Q. Okay. If Mr. Fishman sounded how any of  
(5) those persons with those disabilities sound when  
(6) they speak, would you still think he wasn't  
(7) disabled?

(8) MR. LOOMBA: Objection to form. You can  
(9) answer.

(10) A. Can you rephrase that? I'm sorry. I  
(11) didn't understand.

(12) MR. DEMIRAYAK: Can you read back the  
(13) question?

(14) (Whereupon, the requested portion is read  
(15) back by the court reporter.)

(16) A. I don't think it's necessary how he  
(17) sounds. If he can enunciate the words properly, if  
(18) he can -- with cerebral palsy, motor skills are  
(19) inhibited, but I can still understand what you're  
(20) saying. It doesn't mean you don't have a  
(21) disability, but you're understanding what I'm  
(22) saying and I can understand what you're saying.

(23) Q. Wouldn't on the side of caution let's  
(24) give an accommodation to make sure everything is up  
(25) above board? And, you know, I disagree with it but



(1) maybe it will make everything better. Just give  
(2) the guy his accommodation. Let's push it forward.  
(3) You wouldn't do that?

(4) **MR. LOOMBA: Objection to form. He never**  
(5) **asked for accommodation.**

(6) Q. If he asked for accomodation would you  
(7) have given it?

(8) A. Yes.

(9) Q. Even though he wasn't disabled?

(10) A. I never said he wasn't disabled for the  
(11) umteenth time.

(12) Q. But you never said he was disabled  
(13) right?

(14) A. It's not my opinion. I explained that to  
(15) you, okay? The record speaks for itself.

(16) **MR. DEMIRAYAK: I have no further**  
(17) **questions. Thank you.**

(18) **MR. LOOMBA: Thank you, Miss Palazzo.**  
(19) **Appreciate it.**

(20) (Whereupon, the witness is excused.)

(21) (Whereupon, the deposition concludes  
(22) at 1:15 p.m.)

(23) **COURT REPORTER: Mr. Loomba, would you**  
(24) **like a copy of the transcript?**

(25) **MR. LOOMBA: Yes. We'll read and sign.**

**A C K N O W L E D G M E N T**

I hereby certify that having been  
first duly sworn to testify to the truth, I  
gave the above testimony.

I FURTHER CERTIFY that the foregoing  
transcript is a true and correct transcript  
of the testimony given by me at the time  
and place specified hereinbefore.

-----  
OFFICER LANE SCHLESINGER

Subscribed and sworn to before me

This \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

-----  
Notary Public

C E R T I F I C A T E

I, MADALENE PALAZZO, a Notary Public  
within and for the State of New Jersey, do hereby  
certify:

That OFFICER LANE SCHLESINGER, the  
witness whose deposition is hereinbefore set forth,  
was duly sworn by me and that such deposition is a  
true record of the testimony given by the witness.

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

IN WITNESS WHEREOF, I have hereunto set  
my hand this 1st day of December 2023.

*Madalene Palazzo*



MADALENE PALAZZO, C.C.R.  
LICENSE NO. XI00119000  
NOTARY PUBLIC NO. 2447950  
COMMISSION EXPIRES 7/16/24

(1) ERRATA SHEET FOR: OFFICER LANE SCHLESINGER

(2) OFFICER LANE SCHLESINGER, being duly sworn, deposes and  
(3) says: I have reviewed the transcript of my  
(4) proceeding taken on 12/01/2023. The following  
(5) changes are necessary to correct my testimony.

(5)	PAGE	LINE	CHANGE	REASON
(6)	---	---	---	---
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(23) Witness Signature: \_\_\_\_\_

Subscribed and sworn to, before me

(24) this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

(25) \_\_\_\_\_  
(NOTARY PUBLIC)

\_\_\_\_\_  
MY COMMISSION EXPIRES