

1 A Okay.
2 Q What did you review to prepare for giving
3 this deposition today? Did you review anything?
4 A Yeah. I looked over the SOP.
5 Q Okay. Just the SOP?
6 A Just the SOPs in this room; mm-hmm.
7 Q Okay. And is that something -- you just
8 pointed to something. Is that something your lawyer
9 has?
10 A Yeah. It was two SOPs. The, the new SOP,
11 and I looked at the Linder report.
12 Q Okay. The new SOP?
13 A Mm-hmm. The one that was changed in 2006.
14 Q All right.
15 A Mm-hmm.
16 Q And the Linder report?
17 A Right.
18 Q And that's it?
19 A That's it.
20 Q Did you look at the FBI report?
21 A No, I didn't.
22 Q Have you ever looked at it?
23 A I looked at -- yes, I have reviewed the FBI
24 report.
25 Q Hope so.

Page 26

1 A Yeah, I have. Yeah; mm-hmm.
2 Q Did you look at any of the internal reports
3 that were done either at your behest or at the
4 direction of folks who work for you in terms of
5 investigating the Kathryn Johnston shooting?
6 A I reviewed the FBI report and I turned the
7 report over to the Office of Professional Standards.
8 I have not reviewed any investigation since then or
9 any outcome or conclusions because they haven't given
10 it to me yet.
11 Q Okay. Who is the Office of Professional
12 Standards?
13 A Major Hagin.
14 Q So in terms of the person under your charge
15 who's responsible internally --
16 A Mm-hmm.
17 Q -- for investigating the Kathryn Johnston
18 shooting and the instance that followed, is that
19 Major Hagin's job?
20 A Yeah. The administrative investigation;
21 yes.
22 Q All right. Now, let's address something
23 you said to me earlier. And I hate to go back, but I
24 need to go back.
25 A Mm-hmm. Sure; mm-hmm.

Page 27

1 Q You said that the only person that can make
2 policy for the Atlanta Police Department is me, Chi
3 Pennington.
4 A Mm-hmm; that's right.
5 Q Is that correct?
6 A That's correct.
7 Q All right. There are a couple questions I
8 have about that.
9 A Okay.
10 Q The first one is this: Could you point me
11 to something specific -- since you talk about SOPs --
12 A Mm-hmm.
13 Q -- and all this stuff that's written
14 down --
15 A Right; mm-hmm.
16 Q -- about how the police department
17 functions --
18 A Right.
19 Q -- point me to something specific that says
20 in the Atlanta Police Department the only person th
21 can make policy that's applicable to this departmen
22 is Chief Pennington? Where is that in writing so I
23 can read it so I --
24 A Well, I don't have it in front of me, but I
25 know it's in writing. I just don't have it in front

Page

1 of me.
2 Q Is there any way --
3 A It's an SOP and I remember. I just don't
4 know the name of it.
5 Q Okay.
6 A But there is an SOP that --
7 Q Let me tell you why --
8 A -- that dictates that.
9 Q Let me tell you about why I'm asking, Ch
10 Pennington.
11 A Okay.
12 Q We asked that question of folks.
13 A Mm-hmm.
14 Q I'm not going to play games with you.
15 A Okay.
16 Q And everybody kind of says the same thin
17 A Mm-hmm.
18 Q And I've asked, either through one of my
19 surrogates --
20 A Mm-hmm.
21 Q -- or kind of directly, show me in writing
22 where that is --
23 A Mm-hmm.
24 Q -- because it looks to me --
25 A Mm-hmm.

Page

1 Q Why wouldn't you do that? Why not?
 2 A Because you don't have to give a person --
 3 in law, first of all, quotas are against the law.
 4 That's the first thing, quotas are against the law.
 5 Q Right.
 6 A And that's the first thing, quotas are
 7 against the law, as far as I'm concerned.
 8 Q Why, Chief Pennington? Why?
 9 A Because I just don't think that any police
 10 department in America should have a quota system.
 11 Q Because what, Chief Pennington?
 12 A Because, because it's against the law, I
 13 think.
 14 Q Is it also because if you tell people they
 15 have to make arrests based on numbers --
 16 A Mm-hmm.
 17 Q -- it leads to bad policing, Chief
 18 Pennington?
 19 A Yeah, I think it does.
 20 Q Okay. It leads to the potential violation
 21 of civil rights because folks make arrests based on
 22 numbers and not necessarily based on good policing,
 23 first of all?
 24 A Yeah. I think, I think you can go back and
 25 look traditionally in law enforcement, that police

Page 70

1 departments that have traditionally given quotas to
 2 go out and make arrests have led to bad policing.
 3 Q Okay. Now, let's say -- let's take and
 4 refine that number.
 5 A Mm-hmm.
 6 Q Let's not say just quotas.
 7 A Mm-hmm.
 8 Q How about if you give them numbers,
 9 targets, say, I want you to go out and make 20
 10 arrests this month? Is that just as bad as having a
 11 quota, or is that the same thing?
 12 A No. I think, I think, I think that's just
 13 as bad. Because if you say, go out and make 20
 14 arrests, I think that's just as bad because you
 15 shouldn't be giving any quotas. You should, you
 16 should say, go out and make arrests and lock people
 17 up for violating the law.
 18 Q Okay. And if you have a police department,
 19 Chief Pennington --
 20 A Mm-hmm.
 21 Q -- that is a part of the custom and
 22 practice of that department --
 23 A Mm-hmm.
 24 Q -- you have folks who direct -- folks who
 25 are under them to make arrests based on numbers,

Page 71

1 whether it's quotas or whether it's target numbers,
 2 that's bad policing and that's inconsistent with how
 3 you police; isn't that right?
 4 A I would say yes. I would say yes.
 5 Q That's a bad policy, isn't it?
 6 A Yeah, that's a bad policy.
 7 Q Okay.
 8 A Mm-hmm.
 9 Q All right.
 10 A But that's not my policy. I want to get
 11 that straight.
 12 Q Well --
 13 A And it wasn't my policy.
 14 Q -- we're going to get to that.
 15 A Okay.
 16 Q And, in fact, I think you kind of already
 17 said it. If people go out and do it that way,
 18 that's, that's bad policy, that's bad policing and
 19 that leads to illegal conduct, correct?
 20 A I think it does.
 21 Q Okay. You said that's not your policy?
 22 A Mm-hmm.
 23 Q All right. I'm not going to try to make
 24 you change your mind.
 25 A Mm-hmm.

Page 72

1 Q But I just want to make sure how your
 2 policy works --
 3 A Mm-hmm.
 4 Q -- in the city.
 5 A Okay.
 6 Q When you put a policy in place, I think we
 7 already agree that you can't reach down with 1700
 8 officers and implement it by yourself.
 9 A No, you can't.
 10 Q Okay. The way that policy works is through
 11 custom and practice.
 12 A Mm-hmm.
 13 Q You have officers in your chain of command
 14 who are responsible for implementing your policy down
 15 the line?
 16 A Right; mm-hmm.
 17 Q Okay. And they should implement it
 18 consistent with good police practice --
 19 A That's right.
 20 Q -- good police conduct --
 21 A Mm-hmm.
 22 Q -- rule of the law --
 23 A Mm-hmm.
 24 Q -- constitutional? Okay? You understand
 25 what I'm saying?

Page 73

REGENCY-BRENTANO, INC.

19 (Pages 70 to 73)

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Page 172

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Page 173

1 you've got to make a certain number of arrests --
2 A Mm-hmm.
3 Q -- you know, you've got to get a certain
4 number of warrants executed, do you think that kind
5 of police training and directive, in addition to what
6 we see on Plaintiff's Exhibit 23, is bad policing?
7 A Yeah, yeah, I do.
8 Q All right. Do you have an understanding,
9 as we sit here today, that the two things I just
10 articulated for you, which you just read about
11 Sergeant Stallings --
12 A Mm-hmm.
13 Q -- and about the numbers --
14 A Mm-hmm.
15 Q -- you had to get 20 arrests, all that, do
16 you know that's a part of this case, that that's a
17 part of what happened in the narcotics division prior
18 to Kathryn Johnston's death? Did you know that?
19 A I didn't, I didn't know it prior, but I
20 know it now.
21 Q Okay.
22 A Mm-hmm.
23 Q So when did you find out about that?
24 A After the FBI gave me the report.
25 Q Okay. So during all that time, do you

1 think -- before you got the FBI report --
2 A Mm-hmm.
3 Q -- do you have an understanding as to
4 whether or not any of the officers in the chain of
5 command underneath you that's responsible for
6 implementing your policy, developing the practice and
7 custom in the police department, whether any of them
8 knew about the need for 20 arrests or the 9 and 2 or
9 any numbers that you've heard subsequent to the death
10 of Kathryn Johnston? Do you know whether any of
11 those folks knew about that? By "that," I mean any
12 of those folks --
13 A Oh, yes.
14 Q -- the lieutenant --
15 A Yes.
16 Q -- major, the assistant chief, the
17 deputy --
18 A Yeah.
19 Q Who, who, who knew?
20 A Well, it was brought to my attention by
21 Major Pearline Williams that a memo had gone out to
22 people in the narcotics unit about some quota system.
23 And then she wrote a memo directing them to withdraw
24 the -- Major Finley's memo, and she brought that to
25 my attention and she told me that. And I said, well,

1 we don't have, you know, quotas in this department.
2 And I commended her for writing the letter back to
3 Major Finley.
4 Q Now, I want to make sure I understand this
5 because we just talked to, we talked to Major
6 Williams a couple days ago.
7 A Mm-hmm.
8 Q And I'll be honest with you.
9 A Mm-hmm.
10 Q We asked Major Williams --
11 A Mm-hmm.
12 Q -- if she could recall --
13 A Mm-hmm.
14 Q -- the set of facts --
15 A Mm-hmm.
16 Q -- or set of circumstances, pardon me,
17 that, that led to her writing the memo you just
18 talked about.
19 A Mm-hmm.
20 Q And for some reason, she couldn't even --
21 A Mm-hmm.
22 Q And one of the questions we asked her is
23 whether or not she talked to you about it.
24 A She brought it to my attention.
25 Q When did she bring it to your attention?

1 A I can't remember the date, but -- let me
2 say this. No, no, she didn't. Chief Dreher, one of
3 them brought it to my attention. She didn't come in
4 personally and talk to me, but it was brought to my
5 attention that she had written a memo withdrawing
6 the -- Major Finley's 9 and 2, or whatever that was.
7 Q So she --
8 A Yeah. It was brought to my attention, but
9 it wasn't brought to my attention by her.
10 Q So it was brought to your attention --
11 A Mm-hmm.
12 Q -- when the memos were being --
13 A No.
14 Q -- distributed back and forth?
15 A No. Not then, no.
16 Q So when was it brought to your attention?
17 A About a week later or so.
18 Q Okay.
19 A Yeah.
20 Q But that was before Kathryn Johnston was
21 shot, correct?
22 A Yeah, yeah. That was before Kathryn
23 Johnston was shot.
24 Q Because that was, like, in 2005 or
25 something like that.

1 you see cars swerving -- the indicators that most
2 drunk drivers perform when they drive a car because a
3 police car just don't stop you because they think you
4 driving drunk. There is supposed to be other
5 indicators to suggest that this person might be
6 driving under an influence, because they cross over
7 the lane or they driving erratically or they're
8 driving fast and slowing down. And so that's in
9 their performance evaluation too.

10 So in terms of -- I'd have to see when she
11 put that document out and, also, was that a part of
12 the civil -- did civil service approve that as the
13 indicators for the officers' performance.

14 Q Okay. I understand what you just said. I
15 understand all of that.

16 A Mm-hmm. But a quota system -- like I said,
17 and I'll say it again -- no, we do not have a quota
18 system and I will not condone a quota system. And
19 if, if it's in writing that we have a quota to go out
20 and perform and make so many arrests, then I would
21 say that would be inappropriate.

22 Q Okay. Well, as we sit here today -- and
23 you've reviewed what I've shown you from Lieutenant
24 Gibbs --

25 A Mm-hmm.

Page 206

1 Q -- you have to get a certain number of
2 clearances --

3 A Mm-hmm; clearances.

4 Q -- and if you didn't get that --

5 A Mm-hmm.

6 Q -- you were ineffective --

7 A Mm-hmm.

8 Q -- and you could potentially lose your job?

9 A Well, I don't think she said you had to get
10 a certain amount of arrests, did she? Did she say
11 that?

12 Q Yes, she did. I'll let you look at it
13 again.

14 A Okay. Let me see it again. I didn't think
15 she indicated that you had to go out and make so many
16 arrests. I thought she said you had to clear.

17 Q No, no. She also said arrest, cleared by
18 arrest.

19 A Yeah. Cleared by arrest. That means --

20 Q By arrest.

21 A Yeah. You know what cleared by arrest
22 means?

23 Q Well, we know what she said.

24 A Okay. But you know what cleared by arrest
25 means? Cleared by arrest means that somebody

Page 208

1 Q -- in terms of how she's evaluated --

2 A Mm-hmm.

3 Q -- her people --

4 A Mm-hmm, mm-hmm.

5 Q -- and I've shown you what we've identified
6 as Sergeant Stallings and his report to the F --

7 A To --

8 Q -- to the FBI.

9 A Right.

10 Q As you sit here today, then, you, you do
11 not agree that in 2006 when Kathryn Johnston was
12 shot, that there was a numerical system in place in
13 the, in the narcotics division that was being managed
14 by Lieutenant Gibbs?

15 A Yeah, that's -- yeah. According to what
16 you showed me --

17 Q Yeah.

18 A -- that is a numerical system.

19 Q Yeah.

20 A Yeah. That's a numerical system.

21 Q And it was based on you perform --

22 A Mm-hmm.

23 Q -- you have to get a certain number of
24 arrests --

25 A Mm-hmm.

Page 207

1 violates the law. And when you arrest them, you
2 arrest them for the violation that they perform and
3 then it's cleared. Not just go out and just harass
4 people and arrest people because you have a quota
5 system.

6 Q I understand.

7 A Okay.

8 Q But my point, though, Chief, is if you tell
9 somebody you got to, you got to arrest 40 people or
10 60 people a month --

11 A But she didn't say that here. She didn't
12 say you got to go out and arrest 60 people per month.
13 No. I'm being serious. It says, "Employee averages
14 at least two search warrants per week, clears
15 50 percent of their signed lead sheets by arrest."
16 That means that she -- if a person has 40 lead
17 sheets, then she expects them to close at least 20 of
18 them.

19 Q I understand that part.

20 A Mm-hmm. Okay.

21 Q But the problem I have with it --

22 A Okay.

23 Q -- and I'm not a police officer --

24 A Okay. All right.

25 Q -- I'm just trying to understand this

Page 209

REGENCY-BRENTANO, INC.

53 (Pages 206 to 209)

1 Q Mm-hmm; mm-hmm. That's it?
 2 A That's it.
 3 Q Okay. Let's --
 4 A I didn't write on it either, so --
 5 Q That's okay. That's all right.
 6 A Mm-hmm.
 7 Q What I just put in front of you, I want to
 8 add -- give you another piece as a follow-up to it.
 9 A Okay.
 10 Q This is -- what is this? Plaintiff's
 11 Exhibit Twenty --
 12 MR. MORAITAKIS: 23.
 13 Q (By Mr. Sistrunk) -- 23 is what you were just
 14 looking at.
 15 A Mm-hmm.
 16 Q I want to put in front of you what's been
 17 marked as Plaintiff's Exhibit Number 11.
 18 Take a look at that, Chief. Do you
 19 recognize that form?
 20 A I just recognize it to be a performance
 21 evaluation form; yes.
 22 Q See the person whose -- who it applies to?
 23 A Yeah. Officer Junnier.
 24 Q Mm-hmm.
 25 A Mm-hmm.

Page 218

1 30 percent of yearly watch averages -- average in
 2 arrest. Highly effective averages of at least three
 3 search warrants per month, averages at least four
 4 search warrant -- I mean, clears 60 percent of their
 5 assigned lead sheets by arrest and exceeds the yearly
 6 watch average by 5 percent. Outstanding averages at
 7 least four search warrants per month, clears 70
 8 percent of their lead sheets by arrest and exceeds
 9 the yearly watch average by 10 percent. And needs
 10 improvement averages one search warrant per month.
 11 clears between 30 to 49 percent of their lead sheets
 12 by arrest and fails to meet the watch average and
 13 arrest by 5 percent. Unacceptable, no search
 14 warrants, clears less than 30 percent of lead sheets
 15 by arrest and fails to meet the watch average by
 16 6 percent or greater."
 17 Q Mm-hmm. And this was the performance
 18 evaluation standards applicable to Officer Junni
 19 when he was in the narcotics unit in November --
 20 A Mm-hmm.
 21 Q -- before November 6th -- November 2000
 22 before Kathryn Johnston was killed; isn't that ri
 23 A According to the dates. Wait a minute.
 24 Q Yeah.
 25 A Before she was killed. Yes, yes.

Page

1 MR. YOUNG: Excuse me, Counsel. Which
 2 numbered exhibit are you referring to?
 3 MR. SISTRUNK: 11. It's the City of
 4 Atlanta performance evaluation form for Gregg E.
 5 Junnier.
 6 THE WITNESS: Mm-hmm. Yeah, I see it.
 7 Q (By Mr. Sistrunk) Okay. Is this something
 8 you're familiar with?
 9 A I'm, I'm familiar with performance
 10 evaluations, yes. In fact, I have to sign off on
 11 every one that comes to the department. I don't see
 12 my signature on this one, but I have to sign off on
 13 them.
 14 Q Okay. I want you to go to the last page of
 15 Number 11 to the section that says "critical job
 16 element number three, enforcement operations."
 17 A Okay. Mm-hmm.
 18 Q You see that?
 19 A Yes.
 20 Q Read it for me.
 21 A It says, "Performance indicatives and
 22 sources. Performance is effective when during the
 23 evaluated year an employee averages at least two
 24 search warrants per month, clears 50 percent of their
 25 assigned lead sheets by arrest and is within

Page 219

1 Q That's right.
 2 A Yes; mm-hmm. She was killed in November
 3 think.
 4 Q When you look at that --
 5 A Mm-hmm.
 6 Q -- Chief Pennington --
 7 A Mm-hmm.
 8 Q -- those indicators, those numerical
 9 requirements almost look like quotas. Does thi
 10 bother you?
 11 A Well, this doesn't bother me. And the
 12 reason this doesn't bother me is the fact that I
 13 think she was setting out performance measures for
 14 these officers in their unit in terms of what she
 15 expected from them to perform and how she expect
 16 them to perform. We put, we put numbers by all ty
 17 of police officers, investigators and et cetera in
 18 our department. And so I wouldn't be alarmed abo
 19 this unless it says you are expected or demanded to
 20 make a certain number of arrests, which was 30, 40
 21 50, whatever that number. I wouldn't be alarmed
 22 unless it said that.
 23 Q Okay. All right. I think we're on the
 24 same page.
 25 A Mm-hmm, mm-hmm.

Page

1 Q If, in fact --
2 A Mm-hmm.
3 Q -- the evidence in this case would be that
4 that's how this worked --
5 A Mm-hmm.
6 Q -- that if you were going to get a good
7 evaluation of high --
8 A Mm-hmm.
9 Q -- and effective, you had to meet that
10 performance requirement --
11 A Mm-hmm.
12 Q -- if you had to get one that was
13 acceptable, you had to meet that performance
14 requirement --
15 A Right.
16 Q -- if, in fact, that's how this was
17 actually done --
18 A Mm-hmm.
19 Q -- then that would be a problem for you,
20 wouldn't it? You understand my question?
21 A I think I understand it.
22 Q I'll reframe it for you.
23 A In other words, you're trying, you're
24 trying to relate quotas to this?
25 Q No, no. Let me reframe it for you.

Page 222

1 Q -- in your evaluation, then that would be
2 problematic for you, if you had to meet that number;
3 isn't that right?
4 A I think I would have problems with, with
5 that, yes.
6 Q Okay.
7 A Mm-hmm.
8 Q Well, I want you to assume --
9 A Mm-hmm.
10 Q -- with me, Chief Pennington --
11 A Mm-hmm.
12 Q -- that that's what was in place --
13 A Mm-hmm.
14 Q -- in November of 2006 --
15 A Mm-hmm.
16 Q -- when Kathryn Johnston was killed.
17 A Mm-hmm.
18 Q Okay? Now, you know Lieutenant Gibbs was
19 here a couple days ago.
20 A Mm-hmm. And she said that's what was in
21 effect?
22 Q Well, he can tell you --
23 A Okay.
24 Q -- but I think she said something -- that
25 this stuff that we're looking at now --

Page 224

1 A Okay.
2 Q I'll try to make it clearer for you. You
3 said that it doesn't bother you because it looks like
4 she's just trying to set forth objectives and targets
5 for them.
6 A Mm-hmm.
7 Q But if she was saying that they had to do
8 this, meet these numbers --
9 A Mm-hmm.
10 Q -- to meet their job performance, then that
11 would be a problem for you, right?
12 A If she was -- let me say it again. If she
13 was demanding them to make a certain number of
14 arrests and if they didn't make that certain number
15 of arrests it would affect the, the rating, yes, that
16 would bother me.
17 Q All right.
18 A That, that would bother me; mm-hmm.
19 Q Okay. So, so if, in fact, for you to get a
20 highly effective rating you had to average at least
21 three search warrants per month, clear 60 percent of
22 your assigned lead sheets by arrest and exceed the
23 yearly watch average by 5 percent, if you had to do
24 that to get a highly effective rating --
25 A Mm-hmm.

Page 223

1 A Right.
2 Q -- is what was in effect.
3 A Okay. All right. See, I didn't know. I
4 didn't know.
5 Q All right. If that's the case, that's
6 problematic for you, that's bad policing? All the
7 negative things we just talked about five minutes ago
8 would apply to this, wouldn't it?
9 A Yeah. I think especially when you're
10 putting, when you're putting numbers to performance.
11 I just personally don't think we should be putting
12 numbers to performance.
13 Q And, in fact, Chief Pennington --
14 A Mm-hmm. She put numbers. She put numbers
15 to some of these things, yes.
16 Q And, in fact, as this is written down
17 here --
18 A Mm-hmm.
19 Q -- by Lieutenant Gibbs, that is
20 inconsistent with your SOP, isn't it?
21 A Yes. About quota systems; yes.
22 Q All right. Now, you said something
23 interesting just then. And I don't want to belabor
24 it, but you said you're required to sign off on all
25 these evaluations.

Page 225

1 A Right.
 2 Q Well, when you -- do you recall having seen
 3 evaluations from the narcotics division on folks like
 4 Gregg Junnier and Officer Smith where this kind of
 5 criteria was outlined for you and you signed off on
 6 it? Because that's, that's, that's on all the
 7 evaluations.
 8 A Yeah. I can't remember. But if they came
 9 up like that, I probably did sign off on it.
 10 Q So, so --
 11 A Because I'm required to sign off on all
 12 the -- the commissioner is required to sign off on
 13 all evaluations.
 14 Q Every one of them?
 15 A Everybody. Every one.
 16 Q So every evaluation on the --
 17 A Right.
 18 Q -- narcotic squad in 2005, 2006 --
 19 A Right.
 20 Q -- after the Linder report was
 21 commissioned --
 22 A Right.
 23 Q -- and before Kathryn Johnston was shot --
 24 A Right; mm-hmm.
 25 Q -- you signed off on it?

1 Q -- that meant you would have known about
 2 the fact that they were using these numbers, Chief
 3 Pennington. You signed off on it.
 4 A Well, as I indicated, I would have signed
 5 off -- on this, I would have even signed off on this
 6 one because it doesn't indicate to me that there is a
 7 quota system on here.
 8 Q So there is not enough on this --
 9 A For me, for me to indicate that there is a
 10 quota system. Because in the report or in this form,
 11 it doesn't say you're required to make 20 arrests per
 12 week or you're required to make a hundred arrests per
 13 month. It doesn't say that, so I would have probably
 14 still signed this.
 15 Q Okay. But as you understand it today, the
 16 way it actually works, in fact, if one of these came
 17 across your desk today, would you sign it?
 18 A Well, I would, I would review it. I would
 19 look at it. And anything pertaining to these
 20 numbers, even on closure rates, I would have them
 21 take it out.
 22 Q All right. Well, I got --
 23 A Mm-hmm.
 24 Q -- another question --
 25 A Mm-hmm.

1 A My signature should have been on it;
 2 mm-hmm.
 3 Q Okay. Now, if the evaluations --
 4 A Mm-hmm.
 5 Q -- were consistent with what's on
 6 Plaintiff's Exhibit Number 11 --
 7 A If they did, if they did an evaluation.
 8 Q Okay.
 9 A Because each year we have a 3 to 5 percent
 10 failure to complete evaluation.
 11 Q I understand. I understand.
 12 A Okay.
 13 Q But if they did an evaluation in the
 14 narcotics division --
 15 A Mm-hmm.
 16 Q -- Lieutenant Gibbs and Sergeant Stallings
 17 or whoever initiated them --
 18 A Mm-hmm.
 19 Q -- got them done and it was based on the
 20 criteria outlined in Plaintiff's Exhibit 23 and
 21 consistent with what's on Plaintiff's Exhibit Number
 22 11, which is an actual performance evaluation form --
 23 A Mm-hmm.
 24 Q -- and you signed off on that --
 25 A Mm-hmm.

1 Q -- because this is where --
 2 A Mm-hmm.
 3 Q -- I think the rubber meets the road for
 4 us.
 5 A Okay.
 6 Q If you say that it is your SOP, your
 7 policy --
 8 A Mm-hmm.
 9 Q -- your custom and your practice not to
 10 have quotas and numbers --
 11 A Mm-hmm.
 12 Q -- determine the way policing is performed
 13 in Atlanta --
 14 A Mm-hmm.
 15 Q -- and you've got a division where that's
 16 clearly the way it is --
 17 A Mm-hmm.
 18 Q -- okay, and that comes across your desk --
 19 A Mm-hmm.
 20 Q -- would you issue a new SOP? What would
 21 you be doing?
 22 MR. YOUNG: Objection. That question
 23 assumes facts that are not in evidence.
 24 But you can answer the question, Chief
 25 Pennington.

1 Q -- Major Williams, those memos --
2 A Mm-hmm.
3 Q -- that kind of talked about numbers and
4 you thought they might be quota driven or something?
5 A Right.
6 Q And you said, I'm not going to have quotas
7 in the police department --
8 A Mm-hmm.
9 Q Stop?
10 A Mm-hmm.
11 Q When you realized that that was a problem
12 based on those memos --
13 A Mm-hmm.
14 Q -- did you institute any program to write
15 or direct someone else to write an SOP that you sent
16 down into the field to tell folks in the field, look,
17 in the Atlanta Police Department, we can't use
18 quotas/numbers to develop expectations for
19 performance? Did you do that?
20 A Not written, but I did it verbally.
21 Q Okay. All right. To who -- to whom did
22 you say that to verbally?
23 A To all the, all the commanders at COBRA.
24 All the commanders that came to COBRA that were a
25 part of our command staff. That's all the deputy

Page 234

1 chiefs, all the majors, assistant zone commanders. I
2 told them on not just one occasion, several
3 occasions, that quotas would --
4 Q So, so the way you do policing -- the way
5 you did the policing --
6 A Mm-hmm.
7 Q -- and I guess the way policemen work
8 generally is, is, as the chief, you should be in a
9 posture --
10 A Mm-hmm.
11 Q -- to direct folks underneath you to do
12 stuff --
13 A Mm-hmm.
14 Q -- that's consistent with your notion of
15 policy, and it's their job to carry it out for you;
16 is that right?
17 A Well, yeah, but you have several ways of
18 doing it. You can put a written document out, or you
19 can do it verbally to your commanders, who can pass
20 it on.
21 Q Okay. Fine. If you told them verbally not
22 to do it and then we see that you've got Plaintiff's
23 Exhibit 11 and Plaintiff's Exhibit 23 in front of
24 you, what happened?
25 A Well, I told you, I don't see that

Page 235

1 particular document as being a quota, not me.
2 Q Well, how about Number 23?
3 MR. MITCHELL: What number? What number
4 was that?
5 MR. SISTRUNK: Plaintiff's 11 and
6 Plaintiff's 23.
7 THE WITNESS: I have 11. I don't have 23.
8 Q (By Mr. Sistrunk) I gave you 23 too.
9 A I have 11.
10 MR. MITCHELL: Which exhibit was he
11 speaking to when he said he didn't believe that
12 was a quota?
13 THE WITNESS: 11.
14 MR. SISTRUNK: 11. Plaintiff's 23 is -- is
15 that the statement by Lieutenant Gibbs?
16 MR. MORAITAKIS: Right.
17 MR. WILLIAMS: No. 23 is Stallings,
18 actually.
19 MR. MORAITAKIS: Yeah.
20 Q (By Mr. Sistrunk) Just a second, Chief.
21 A Mm-hmm.
22 Q I'm going to give it to you --
23 A Mm-hmm.
24 Q -- so you can see exactly what I'm talking
25 about.

Page 236

1 17 and 11. This is, this is a copy --
2 A You say 17 what now?
3 Q Plaintiff's 17, which is this one.
4 A Okay.
5 Q And that's Plaintiff's 11.
6 A Okay.
7 Q Plaintiff's 17 is Lieutenant Stacie Gibbs
8 communication with the FBI --
9 A Okay.
10 Q All right.
11 A Mm-hmm.
12 Q -- where she talks specifically about the
13 numbers.
14 A About -- okay. About the job elements?
15 Q Yes.
16 A Okay.
17 Q Okay.
18 A Mm-hmm.
19 Q That's pretty clear. She's talking about
20 numbers, right?
21 A Mm-hmm.
22 Q Okay. So, so is it still your position
23 that that's not inconsistent with the policies?
24 A Well, as I indicated earlier, I don't see
25 this as being a quota system, not what she's

Page 237

1 effective rating?
2 A That's, that's what this says.
3 Q It is a directive, Chief Pennington, that
4 you do that or you don't get the rating; isn't that
5 correct?
6 A Well, not in essence. And what I'm saying
7 is this, is that we can set criteria for
8 investigators, we can set criteria for patrolmen,
9 officers, traffic, motorcycle cops, we can set the
10 criteria, what we want them to do in terms of
11 performance. And sometimes that may include numbers.
12 Q Mm-hmm.
13 A But as long as you don't demand, direct or
14 advocate that they have to go out and arrest 20
15 people today and if you don't arrest the 20 people,
16 you're going to get a bad rating -- and I don't see
17 this as saying that. That's me. I don't see this
18 saying -- this lists criteria, but I don't see it
19 saying, if you don't make 20 arrests, you are not
20 going to get an outstanding rating. I just -- that's
21 just me. I don't see that.
22 Q You don't see that in that writing?
23 A I don't see that in that writing.
24 Q So if Lieutenant Gibbs testifies consistent
25 with what I just said to you, that that's, in fact,

Page 242

1 what she was employing when she evaluated her
2 officers, you would say she was not doing it right?
3 A Well, I would say I would have to review
4 not only this, but what she told her people in terms
5 of -- now, if she said, I want you to go out there
6 and make a certain number of arrests, even though she
7 didn't put it in here, that's a different ballpark
8 because then she would be wrong for giving them
9 numbers to go out -- and, and quota systems.
10 Q Let me ask you this, Chief Pennington:
11 You've been -- is it fair to say that this Kathryn
12 Johnston situation has been pretty close to your
13 heart as a policeman?
14 A Yes; mm-hmm.
15 Q Did you follow the trial of Officer Tesler?
16 Did you follow any of that?
17 A Not -- I followed some of it. I wasn't
18 sitting in trial following it every day, but I did
19 follow some of it.
20 Q Okay. All right. Did you follow or have
21 anybody under you follow -- and I tell you why I'm
22 asking this --
23 A Mm-hmm.
24 Q -- because I saw them in the courthouse. I
25 was over there.

Page 243

1 A Mm-hmm.
2 Q Did you follow the sentencing hearing for
3 Junnier and Smith? I mean Tes -- yeah, Junnier and
4 Smith.
5 A Yeah, yeah.
6 Q Okay. Because I think I saw some --
7 A Yeah.
8 Q -- Atlanta police officers over there.
9 A Yeah. I think I was there for his
10 sentencing.
11 Q That's right. I think I saw you.
12 A Yeah, I was there for his sentence.
13 Q Well, if you were there --
14 A Mm-hmm.
15 Q -- did you hear -- when they talked about,
16 to the judge, how they did their jobs, did you hear
17 Junnier and Smith tell the judge -- this is an open
18 court record.
19 A Mm-hmm.
20 Q We can go get it.
21 A Mm-hmm.
22 Q I'll get it if you want to break --
23 A Mm-hmm.
24 Q -- but we got the transcript in the
25 office -- tell the judge that they were required,

Page 244

1 required --
2 A Mm-hmm.
3 Q -- to go out and make a certain number of
4 arrests --
5 A Mm-hmm.
6 Q -- in order to do their job? They didn't
7 have a choice? Did you hear that?
8 A I think I did hear them say that.
9 Q Okay. All right.
10 A Mm-hmm.
11 Q And they were required because, who, their
12 commander told them to do it.
13 A Mm-hmm.
14 Q Now, if that is, in fact, the way it
15 worked, Chief Pennington, then why are we arguing
16 about whether those are quota numbers or not? The
17 folks who work for you directed them to do it --
18 consistent with what you have in front of you, Chief
19 Pennington.
20 A Mm-hmm. All I'm -- I'm just telling you
21 what I'm getting out of this is that this is not the
22 only critical job element in the police department
23 where numbers are attached.
24 Q Well --
25 A And so I'm just saying, even though we

Page 245

1 don't put, you know, how many arrests --
2 Q Mm-hmm.
3 A -- the number of arrests --
4 Q Mm-hmm.
5 A -- in here, she is saying she --
6 Q Mm-hmm.
7 A Clearance rates, we talk about
8 clearance-rate numbers all the time. Clearance rates
9 are something that -- police departments throughout
10 the nation talk about clearance rates because we're
11 measured in terms of our clearance rates.
12 Q All right. If, in fact, Chief Pennington,
13 what you see in front of you --
14 A Mm-hmm.
15 Q -- Plaintiff's 17 and Plaintiff's 11 --
16 A Mm-hmm.
17 Q -- that talk about numbers, and the
18 testimony of folks that work for you is that that's
19 what they required the officers to do, to make that
20 number of arrests to get those ratings --
21 A Mm-hmm.
22 Q -- it wasn't a suggestion --
23 A Mm-hmm.
24 Q -- it wasn't you could do it or you
25 couldn't do it --

Page 246

1 A Mm-hmm.
2 Q -- if you didn't make the number of arrests
3 and the other things articulated in here, you didn't
4 get those ratings --
5 A Mm-hmm.
6 Q -- and the final thing is if I have a
7 record some place of a public testimony in front of a
8 federal court judge --
9 A Mm-hmm.
10 Q -- where the officers who work for you
11 specifically said --
12 A Mm-hmm.
13 Q -- that that's what they were directed to
14 do --
15 A Mm-hmm.
16 Q -- by their superiors, including Stallings,
17 Gibbs and everybody else --
18 A Mm-hmm.
19 Q -- are you still telling me and the jurors
20 that are going to hear this case and the citizens of
21 Atlanta --
22 A Mm-hmm.
23 Q -- that you don't perceive that there is a
24 quota system or a number system in place that would
25 lead to faulty policing by the officers in the

Page 247

1 narcotics division?
2 A Well --
3 Q Is that what you want us to believe?
4 A I'm -- and I'm going to say it again. I
5 know that I never or the department, me, since I've
6 been chief has -- have had a quota system where we
7 have directed officers to go out and make a certain
8 number of arrests or, if you don't make those
9 arrests, it's going to affect your ratings.
10 Now, based on this, I still don't get quota
11 out of this critical job element that I see here.
12 Now, I'm not saying that they didn't have quota
13 systems then. I didn't know about it if they did,
14 and it was wrong if they did. They never should have
15 had quota systems.
16 Q All right.
17 A And I know in police departments critical
18 job elements come up every day; not just in
19 narcotics, but almost every unit throughout the
20 police department because how, how else are you going
21 to measure what these officers do if you don't have a
22 performance evaluation or performance standards?
23 You've got to have some way to measure what police
24 officers do in the, in the police department.
25 And the only way we can measure what they

Page 248

1 do is based on productivity. When they go out and
2 work every day, you don't have to tell an officer to
3 go out and write tickets. But if an officer observes
4 somebody speeding, drunk driving, whatever, we expect
5 them to enforce the law. And so when you go out and
6 enforce the law, you don't have to put a quota system
7 with, you know, the performance evaluation.
8 Q No, you don't have to. That's right.
9 A Right.
10 Q But, but, you know, that's not what I'm
11 asking you, Chief Pennington.
12 A Okay. Right.
13 Q I'm not asking what you don't have to.
14 A Mm-hmm.
15 Q I'm talking about specifically what
16 happened in the narcotics division that -- under your
17 watch --
18 A Mm-hmm.
19 Q -- in November --
20 A Mm-hmm.
21 Q -- and before 2005, 2006 --
22 A Right.
23 Q -- where the evidence in front of you
24 suggests --
25 A Mm-hmm.

Page 249