September 29, 2011

Memorandum for: Deputy Commissioner, Trials

Re: ***Police Officer Paul Rodriguez***
Tax Registry No. 943750
Manhattan Court Section
Disciplinary Case No. 85387/09

The above named member of the service appeared before Deputy Commissioner Martin G. Karopkin on December 2, 2010 and was charged with the following:

Disciplinary Case No. 85387/09

1. Said Police Officer Paul Rodriguez, while assigned to the 33rd Precinct, on or about and between May 1, 2009 through June 5, 2009, did intentionally, and for no legitimate purpose, engage in a course of conduct directed at a specific person, and did know or reasonably should have known that such conduct was likely to cause reasonable fear of material harm to the physical health, safety or property of such person, a member of such person's immediate family or a third party with whom such person was acquainted. (As amended)
P.G. 203-10, Page 1, Paragraph 5 PROHIBITED CONDUCT
NYS PENAL LAW SECTION 260.26 (3) HARASSMENT IN THE SECOND DEGREE [sic] (should be Penal Law Section 240.26)

2. Said Police Officer Paul Rodriguez, while assigned to the 33rd Precinct, on or about and between May 1, 2009 through June 5, 2009, did engage in a course of conduct that caused alarm and/or annoyed an individual known to the Department without a legitimate purpose, to wit: said Police Officer repeatedly followed an individual. (As amended)
P.G. 203-10, Page 1, Paragraph 5 PROHIBITED CONDUCT
NYS PENAL LAW SECTION 260.26 (3) HARASSMENT IN THE SECOND DEGREE [sic] (should be Penal Law Section 240.26)

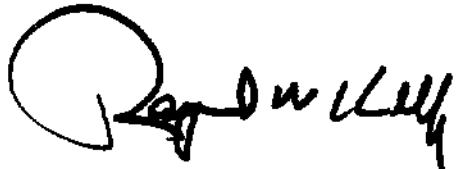
3. Said Police Officer Paul Rodriguez, while assigned to the 33rd Precinct, on or about and between May 1, 2009 through June 5, 2009, did recklessly endanger the welfare of a child, to wit: said Police Officer repeatedly followed an individual known to the Department who was under the age of seventeen without a legitimate purpose. (As amended)
P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT – PROHIBITED CONDUCT
NYS PENAL LAW SECTION 260.10 (1) ENDANGERING THE WELFARE OF A CHILD

4 Said Police Officer Paul Rodriguez, while assigned to the 33rd Precinct, on or about and between January 3, 2009 through March 10, 2009, improperly used a Department computer on at least five occasions, absent a Department purpose or police necessity, to wit said Police Officer used Department computer systems to conduct queries for personal reasons (As amended)

P G 203-06, Page 1, Paragraph 16 — PERFORMANCE ON DUTY PROHIBITED CONDUCT

In a Memorandum dated February 8, 2011, Deputy Commissioner Karopkin found the Respondent Not Guilty of Specification Nos 1, 2, and 3, and accepted the Respondent Pleading Guilty to Specification No 4 Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the recommended penalty of 15 Vacation days, with credit for 30 Suspension days previously forfeited

The disciplinary penalty for this matter shall consist of the forfeiture of 15 Suspension days previously served The remaining 15 Suspension days previously served regarding this matter are to be credited to Respondent Rodriguez



Raymond W Kelly
Police Commissioner

The City of New York

POLICE DEPARTMENT

February 8, 2011

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Paul Rodriguez
Tax Registry No. 943750
Manhattan Court Section
Disciplinary Case No. 85387/09

The above-named member of the Department appeared before me on December 2, 2010 and December 3, 2010, charged with the following:

1. Said Police Officer Paul Rodriguez, while assigned to the 33rd Precinct, on or about and between May 1, 2009 through June 5, 2009, did intentionally, and for no legitimate purpose, engage in a course of conduct directed at a specific person, and did know or reasonably should have known that such conduct was likely to cause reasonable fear of material harm to the physical health, safety or property of such person, a member of such person's immediate family or a third party with whom such person was acquainted. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT
NYS PENAL LAW SECTION 260.26 (3) – HARASSMENT IN THE SECOND DEGREE *[sic] (should be Penal Law Section 240.26)*

2. Said Police Officer Paul Rodriguez, while assigned to the 33rd Precinct, on or about and between May 1, 2009 through June 5, 2009, did engage in a course of conduct that caused alarm and/or annoyed an individual known to the Department without a legitimate purposes, to wit: said Police Officer repeatedly followed an individual. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT
NYS PENAL LAW SECTION 260.26 (3) HARASSMENT IN THE SECOND DEGREE *[sic] (should be Penal Law Section 240.26)*

3. Said Police Officer Paul Rodriguez, while assigned to the 33rd Precinct, on or about and between May 1, 2009 through June 5, 2009, did recklessly endanger the welfare of a child, to wit: said Police Officer repeatedly followed an individual known to the Department who was under the age of seventeen without a legitimate purpose. *(As amended)*

PD 158-151 (Rev. 1-97)-Server

P G 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT
NYS PENAL LAW SECTION 260 10 (1) ENDANGERING THE WELFARE OF A CHILD

4 Said Police Officer Paul Rodriguez, while assigned to the 33rd Precinct, on or about and between January 3, 2009 through March 10, 2009, improperly used a Department computer on at least five occasions, absent a Department purpose or police necessity, to wit said Police Officer used Department computer systems to conduct queries for personal reasons *(As amended)*

P G 203-06, Page 1, Paragraph 16 – PERFORMANCE ON DUTY – PROHIBITED CONDUCT

The Department was represented by Katie O'Connor, Esq , Department Advocate s Office, and the Respondent was represented by John Tynan, Esq

The Respondent, through his counsel, entered a plea of Not Guilty to the subject charges A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review

DECISION

The Respondent is found Not Guilty of Specifications 1, 2 and 3 The Respondent having pled guilty is found Guilty of Specification No 4

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called [redacted], Annette Crocker, Sonja Burns, School Safety Agent Richard Juan, Police Officer Max Gonzalez and Sergeant Steven Sarao as witnesses The Department also introduced statements made by former School Safety Agent [redacted] at an official Department interview

[redacted]

[redacted] turned 18 years of age on [redacted] In June 2009, when she was 16 years old, she went to the 43 Precinct to file a complaint because she felt that she was being stalked She felt this way because every time she would take the bus to school she would see the same car [redacted] said that at first she did not want to jump to conclusions but when she went to school a different way, she saw the same car with the same license plate [redacted] The car, she believed, was a silver [redacted] with very dark tinted windows She said she could not give a date for when this started She believed it was toward the end of her junior year

She said she would take the Bx5 bus to the Bx39 bus in the Bronx She would get off the Bx5 bus at Lafayette and Turnbull Avenues and then cross the street to go to the Bx39 bus stop She testified that usually she would see the car there or she would wait at the bus stop for the Bx39 bus and the car would show up The Bx39 bus would leave her across the street from her school at White Plains Road and Lacombe Avenue

[redacted] also indicated that she sometimes walked to school She testified

> Well, if I am walking to school, I would see him follow me from behind Or sometimes when I was on the bus, I would see the car right on the side of the bus, like following Or there were times when I seen him in front of the post office I seen him a lot of times
>
> Well, I had already seen, I kept seeing the same car Me, I am very aware of my surroundings because of past experiences that had happened to me So, um, I had seen the car I told, I had mentioned it to my mother I would say, Mom, I keep seeing the same car, you know It was scaring me, you know, because I[redacted] I had a [redacted] So I had been, you know, I was scared I was scared maybe it was the guy It had just been [redacted] I was scared maybe it was the guy following me So I mentioned to my mother, Ma, I think there is some car

> following me I don't want to jump to conclusions I was like, all right, let me see My mother was like, all right, keep writing down the days Let me know when it happens
>
> I had taken a different way, it was a day I went to my friend's house in the morning I took the 5 bus to the 27 bus It leaves me like up the block from my school It leaves me on [redacted], and I had seen him waiting at the bus stop, of the 27 bus stop at the gas station, with the same license plate I knew it was his car because his car has very, very dark tint It's not like every other car So I had went on the bus, I went to my friend's house and I had called my mother My mother told me go to school, and that's when we called the cops The cops never showed that day

When asked again when she believed she started seeing the car [redacted] said she believed it was around May [redacted] said that she initially was not allowed to have a cell phone but her mother purchased one when they were "one hundred percent sure" there was a stalker She said she became convinced when she took the Bx5 bus to the Bx27 bus as it was not a coincidence that the car would be there When asked what she did after that [redacted] stated

> I had went to the school, you know, I tried to make a report Nobody showed, so I was crying, I was talking to my principal I believed it [redacted] I was scared And I had called my mom, Mom, can you please take me out of school I don't want to be here So she had taken me out of school We went to the precinct, I believe the 43rd Precinct We went there and that's when we made a report They told me when I had gotten there that the police officers heard over the radio that I kept calling and calling about a car, a silver [redacted] with a license plate of [redacted]

When asked what she told the police at the 43 Precinct the first time she reported the matter, [redacted] stated

> I had told them that I felt like I was being followed I had told them about I had taken a different bus and I had seen him there That's how I officially knew that he was following me And I had spoken to Officer Gonzalez He had told me to make -- he had told me let's schedule a day for us to all meet up, you know, so he can see him following me to be a hundred percent sure I was like all right So we set up a date, that's when my mother bought me the cell phone I gave him the number and took his down When we set up our day, I believe it was the next day we had set it up, and it was raining I was late to school that day as well, but I was later than usual So the cops told me they had seen him there just driving around, you know, doing nothing But I had came late, so he had left That's what they told me So then we set up another day I believe that was the date that he had gotten arrested I was at the bus stop Officer Gonzalez was at the precinct I called him on my cell phone I am like, oh, he is here They were like all right They came in their car, and that's when they arrested him

[redacted] said that she believed the police showed up two or three times at her school She said she met Police Officer Max Gonzalez the first time she made the report She stated that she told Gonzalez about "[redacted] and that she, "[redacted]" She provided a description of the car and the license They arranged to meet and they exchanged cell phone numbers

She spoke to Gonzalez on his cell phone She could not recall the exact date, but it was when "everything was set up" She said they called each other in the morning and made sure that she was going to school She let him know she was running late, but by the time she arrived, the car had left She also called Gonzalez on the day the Respondent was arrested On that day she was standing at the bus stop on [redacted]e and she told Gonzalez that the car was there She said she told Gonzalez, "[H]e

is still there, like he is there, basically he wasn t doing nothing He was just there ' Gonzalez told her he was on his way and he showed up with other officers

[redacted] stated that she had only seen the driver one time and it was half his face when he lowered the passenger side window She described the driver as a light-skinned male She said "[H]e reminded me of someone Light skin or whatever, like the face was a little chubby in his face That's all I had seen, from his nose up That's it " She then said she believed it was on two occasions She said she was with one of her friends and she was walking to the Bx39 bus and he was behind the Bx5 bus stop Asked if there was another occasion, [redacted] stated

> Yeah, when he was parked in front of the 39 bus stop, I was with one of my friends, [redacted], and I was actually – I used one of my friend's phones to call my mother I was like, Ma, he is here again And my friend was like I am going to go up to the car I told her don't go up to the car, you don't know who is in there God forbid he has anything, you know I was with my friend.

[redacted] stated that she had told her principal, her assistant principal and the counselor about the car She later added the school aide and the "PTA person" to the list of people she notified She stated that she had been followed for more than a month During that time, she said, she was scared She did not know who was behind the wheel and [redacted] I was scared for my life "

On the day [redacted] believed that the Respondent had been arrested (June 10, 2009) [redacted] saw him from a distance She did not recognize him as anyone she knew She had only seen part of his face before but she believed it was the same person She had never had any verbal exchange with the person in the car [redacted] indicated that the

encounters only happened in the morning and that she never saw him in the afternoon She said she would leave her house at 8 30 or later After June 10, 2009, she never saw the car again She stated that she changed schools after that

On questioning by the Court, [redacted] stated that the period of time during which the car followed her was more than a month and that she saw the car every day She took the Bx5 bus from home and changed to the Bx39 bus She would get off the Bx5 bus at Turnbull Avenue and White Plains Road and walk to the Bx39 bus, located one block over on White Plains Road and Lafayette Avenue She would cross one street, White Plains Road She said the car was not in the same location all the time but generally in the same area. She said that sometimes the car was in the Bx9 bus stop in front of the post office Sometimes it would be parked by the City Jeans store She said that the car would follow her until she got to the front of the school

She said the trip on the Bx39 bus was four blocks and sometimes she would walk When she did that she would see the car follow behind her She said when she took the Bx27 bus, she got off the Bx5 bus, she believed, on Story Avenue She said she only did that once She had seen the car parked in a gas station right next to the Bx27 bus stop

On cross-examination, [redacted] agreed that she had the Respondent arrested and that she was interviewed by the Bronx District Attorney's Office concerning the case She agreed that the case was eventually dismissed [redacted] agreed that the time she filed the criminal complaint against the Respondent was the same point in time that she was [redacted] She believed that the grey [redacted] she saw was connected with that case She stated that, prior to the day in June when the Respondent was stopped by the police, all she had ever seen was half of his face

[redacted] stated that she knew [redacted] She said there [redacted] She did not know of any connection between the Respondent [redacted] [redacted] stated that the Respondent never tried to talk to her and never honked the horn at her She said he did roll down the window of the car and he did make eye contact with her He did not make any hand gestures towards her nor did he shake his head trying to beckon her, nor did he open the car door, nor did he whistle at her, nor did he ever get out of his car She did not see him smoking cigarettes in his car He did not try to expose himself to her, unbuckle his pants or unbutton his shirt [redacted] did say that she saw him appear to talk on the telephone She never saw him taking pictures She did not see him talk to anyone or point at her She did see him parked at the Bx39 bus stop on several occasions She said "he wasn't necessarily parked if he was following her" She said he would stay at the bus stop until she got on the bus but he would follow her from the bus stop while she was on the bus or walking

She said he followed the bus on White Plains Road or Story Avenue She said that if there was no traffic he would follow alongside the bus She said if she walked he would drive slowly She said after the first time she noticed the car she did not call the police When asked, "Not right away meaning not right away that day or not right away for several weeks?" [redacted] responded, "Not that day I wanted to make sure he was really following me" When asked if several weeks had passed she responded, "No I think it was about a week or two" She was then asked, "Now the first time you saw this grey Camry do that [follow her] did you call the police?" [redacted] responded "Yes" She was then asked, "That day?" She responded, "Yes" [redacted] went on to indicate that she called 911 from school and that the police never showed up She could not provide a date

for this

[redacted] stated that she reviewed the case with the Advocate and discussed when the 911 call was made but she indicated that she was not a hundred percent sure what day it was and then she indicated that she did not know the exact date [redacted] testified that when the police failed to appear she called 911 again and the police still failed to come She said one call was made from the general school office and the second from the principal's office The principal was aware of this and they contacted the school safety officer and he called the police for her She stated that the first day she called 911 was not the day that the Respondent was arrested She said she called the police on more than one occasion, stating "[S]everal days Many days I called to cops " While she said that she could not remember how many days she called the police, she said "I know I called a lot of times " She then said, "I didn't call eight times in one day I called eight times within the times he was following me over the month and a half " She said the police did not respond eight times but they responded more than once She said she recalled that she called one day which was "senior cut day" and all the police were at Orchard Beach She said there was another occasion when she went to the precinct with her mother

[redacted] asserted that the person in the car never made any type of contact with her, but he followed her

On re-direct examination, [redacted] said she went to the precinct with her mother because the police never responded She said she was scared at school and had her mother pick her up from school [redacted] marked various relevant locations on a map of the area that was offered in evidence [Court Exhibit (CX) 1]

Annette Crocker

Crocker is the principal of the Women's Academy of Excellence, a high school located at 456 White Plains Road between Lacombe and Patterson Avenues in the Bronx It is an all-girls school and the students are required to wear uniforms consisting of a plaid skirt, a navy blue sweater and a white blouse She said the school is just off the Bruckner Expressway and White Plains Road is busy in the morning. She said there are business establishments across the street from the school

[redacted] is one of the students on the school roster She has known [redacted] since she was 13 or 14 years old. Crocker testified that she learned that Santiago believed she was being followed in May 2009 She said [redacted] came to school very upset one morning and said she being followed to school by a car [redacted] told her this started several weeks earlier [redacted] described the car as a [redacted] and gave her the license number which she believed was [redacted] as noted in her cell phone She [Crocker] recorded that number in her phone on June 2, 2009 at 12 40 pm Crocker said the first thing she did was notify School Safety Agent (SSA) Richard Juan and they proceeded to reach out to the precinct She also notified other girls at the school about the issue Crocker also gave [redacted] her cell phone number

She said [redacted] called her almost every day after that when she got off the bus to let her know that she was in the area and to make sure that she got to school

Within a couple of days after [redacted] told her about the problem, [redacted] called Crocker to tell her that she had gotten off the bus and the car was in the area of the bus stop She immediately left the school with Juan and SSA [redacted] to meet [redacted] and to see if she could see this car She was also still on the phone with [redacted] and one

of her employees, Sonja Burns, had joined [redacted], she said, told her the car was slowly driving along with them

As they traveled to [redacted]s location, Crocker was seated in the rear passenger side of the car, Juan was driving and [redacted] was in the front passenger seat When they saw the car in question, it was across the street from [redacted] and Burns and slightly behind them It was travelling in the same direction as [redacted] and Burns It was driving pretty slowly, Crocker said, for a car on White Plains Road, particularly in the morning when the street is fast-paced The license plate on the car matched the number [redacted] had provided.

Crocker stated that Juan called the precinct and tried to get someone to come They were looking for police to assist them and they saw a police car but it was dealing with something else so they did not stop She stated that on their way back to school, they saw the grey car parked on Seward Avenue, but she was not sure if that was the street, about a block south of White Plains Road.[1] She said it was the block before White Plains Road

Crocker said this occurred before [redacted] got back to school, stating, "We were now headed back to school," She did not observe [redacted] enter the school but did see the driver of the car standing behind it and going into the trunk

Crocker said she saw the car again a few days later parked at the bus stop on Lafayette Avenue[redacted] was on the way to school by bus The car was stopped by police officers that day She saw the driver of the car that day and identified the Respondent as that person

---

[1] White Plains Road runs basically north/south Seward Avenue intersects White Plains Road perpendicularly about two blocks north of Lacombe Avenue [redacted]'s school is located beyond Lacombe Avenue

On cross-examination, Crocker indicated that she did not see the person in the car motion to [redacted], wave to her or do anything directed towards her She stated that she could not see into the car because the windows were tinted and stated that it was difficult to see into the car When asked why she made the notation of the car's license plate number on her cell phone at 12 40 p m., she stated that [redacted] reported the matter when [redacted] first got to school When she was asked if that was a delay of four hours, Crocker stated, ' I didn t say [redacted] [redacted] was on time, that's the first thing " She did not know when [redacted] first got to school She said that [redacted] was late on a fairly regular basis, noting that she was not a disciplinary problem but she was often late Crocker stated that [redacted] told her that she had previously called the police but Crocker did not know when

Crocker stated that she had seen the car at the Bx39 bus stop on Lafayette Avenue and White Plains Road That was on the day police were involved The first time she saw the car it was driving in the same direction that [redacted] was walking She did not know if the driver of the car was looking for a place to park She said at that time of the morning traffic was moving a lot faster than he was She said it was unusual When asked if he was looking for a parking spot. Crocker said that she did not know what the intention of the driver was but that there were schools in the area and very little parking

When she saw the driver looking in the trunk of the car, it was parked on a side street, she didn't know for sure which one, facing White Plains Road She said it was about a block and a half from White Plains Road

Sonja Burns

Burns is the parent coordinator at the the [redacted] and has known Santiago for four years She had overheard that [redacted] believed she was being followed, and she also learned of it directly from Santiago

On June 3, 2009, she had taken the day off to keep an appointment she had She had gone to her office at the school to get some documents she needed and then left her office At about nine o'clock she saw [redacted] at the Bx39 bus stop on the corner of Lafayette Avenue and White Plains Road Burns said she scolded [redacted] from across the street for being more than a half-an-hour late for school When she approached [redacted], that was when she told her about someone following her She identified the [redacted] Burns told her not to wait for the bus and they both walked toward the school along White Plains Road They noticed that the car was following behind them, at a slow pace She had met [redacted] on the west side of White Plains Road where the southbound bus stop is and when they passed Seward Avenue they crossed to the east side of White Plains Road where there is an elementary school The [redacted] is further south on the east side of White Plains Road

As they crossed Lacombe Avenue, which is the corner where the school is, Burns turned around and the car sped up and turned right onto Lacombe Avenue She said at that point one of the SSAs and the principal were downstairs because, in the interim, while they ([redacted] and Burns) were walking, they had called the principal

On cross-examination, Burns agreed that she initially was going to say something to [redacted] because she was late She indicated that [redacted] had a lateness problem Burns did not see the individual in the car The person in the car did not flash its lights,

honk its horn or roll down its windows They did not call the police right away

School Safety Agent Richard Juan

Juan is a SSA Level III who works at 546 White Plains Road He has been at the school for a little over 18 years and is the first-line supervisor There are three schools housed in the building and he is responsible for all of them as well as the nearby elementary school He has a working relationship with the School Safety Unit at the 43 Precinct

He learned from Crocker that [redacted] believed she was being followed He immediately notified the 43 Precinct and Police Officer DeBoise of the School Unit interviewed the young woman He recalled that the car was a grey sedan and had a license plate that began with [redacted] " He also recalled that the windows were tinted all around

He saw the car himself This occurred on a day when Crocker received a call from [redacted] as she was getting off the bus and Crocker was going to meet her He and [redacted] escorted Crocker As he recalled it, Crocker told [redacted] to stay on the bus and she remained on the phone

They (Juan, [redacted] and Crocker) proceeded to White Plains Road in his car and saw the car that [redacted] was describing In the meantime, Juan was trying to reach Gonzalez, who was the Youth Officer Gonzalez told him that he was in a special detail As they were heading back toward the school, the car made a right turn onto Lacombe Avenue and he proceeded to follow the car He saw a sector car handling a situation and

told them that there was a "61"[2] on the car but by that time the car had disappeared

When asked if he had observed the car follow [redacted], Juan replied, "I observed the car following the bus" Juan testified that the student was on the bus and on the phone giving the description

After the grey car made the right turn on to Lacombe Avenue, he continued following it He notified the sector car and then, he said, "the [grey] car wasn't there" He stated that on the way back to school he saw the car parked on the right hand side Juan was not sure which avenue this was He said the driver was in the back of the car with the trunk open [redacted] tried to take a picture but could not and they kept driving and went back to school Other than the call to Gonzalez he made no further notifications

Juan testified that [redacted] is no longer with the Department He moved to [redacted] where he is a Deputy Sheriff

On cross-examination, Juan indicated that he did not call 911 or use his radio to have someone notify the precinct or central dispatch He said his main concern was Crocker's safety, which is why he accompanied her He was concerned for Crocker's safety because the student, he was told, was being stalked

Juan said the car windows were tinted and it was not possible to see inside He saw the car on a second day when Gonzalez called him to tell him that the police had stopped the car and wanted him to confirm that it was the same car

On questioning by the Court, Juan said that he knew who the student was and that he did not see her on the street on the first day that he saw the car As far as he knew, he said, she was on the bus He did not recall if he saw Burns on the street that day

[2] Complaint report

Police Officer Max Gonzalez

Gonzalez has been a police officer for 17 years and has been at the 43 Precinct that entire time He is currently in the School Unit where he has been for five years He learned of [redacted] when the Youth Officer, Muniz, who was interviewing her, stopped her and asked him to interview her as well She was with her mother He gave [redacted] his phone number Gonzalez said he found out later she had made an earlier report [redacted]'s complaint was stalking and she said the car following her was a grey [redacted] He explained that Muniz asked him to become involved because she usually did administrative duties Gonzalez did not recall the date he met [redacted] and her mother in the precinct Examining the complaint reports made by [redacted] [Department Exhibits (DX) 1 and 2], he noted that reports were made on June 2, 2009 and June 5, 2009 Gonzalez agreed that he spoke to [redacted] on June 5, 2009

Gonzalez agreed that some time after he met [redacted] in the precinct he received a call from Juan regarding a student who was being followed by a car He believed this was on a Friday He was on a special detail at Orchard Beach that day [3] When he received the call from Juan he told him that he was unable to respond and told him to call 911

Sometime after he met [redacted] at the precinct he was at the school on another matter and saw her He reassured her that everything was okay and told her to call if anything occurred After that, Gonzalez indicated, she did call She told him that the car was there and she was being followed He and his team got to the location and saw both [redacted] and the car in the vicinity They got behind the car, he proceeded to passenger door and opened it When he did that, he saw a police uniform shirt and handcuffs and

[3] The Court takes judicial notice that June 5, 2009 was a Friday

was taken aback Other officers pulled the driver [later identified as the Respondent] out of the car When they asked the Respondent what he was doing there, he said he was dropping off his son, which seemed reasonable because there are a lot of schools in the area Then Gonzalez was told that the school was on Allerton Avenue, which is in the 49 Precinct, so he told the driver not to say anything else Supervisors were notified to make a determination about whether to make an arrest He said that [redacted] was "ecstatic" These events occurred, he said on June 10, 2009 No further complaints regarding anyone being followed by the grey [redacted] occurred after that

On cross-examination, Gonzalez said he was not the arresting officer He knows that [redacted] is in the 43 Precinct and is about four or five blocks from where the Respondent was stopped He did not know that the Respondent lived there or that he had a son from another relationship He said he did not question the Respondent because it is not his "realm" to question another police officer He did not recall if he had signed a supporting deposition for the District Attorney's Office

Gonzalez agreed that when the Respondent was taken out of his car, he was fully dressed He did not see a camera or video equipment in the car nor did he see any pornographic material Gonzalez had never received a complaint that [redacted] was physically threatened and the extent of the complaint was that she saw the car on several occasions

On re-direct examination, Gonzalez said that [redacted] was upset when he first saw her at the precinct The reason was, he stated, that [redacted] On re-cross examination, he said he did not know what [redacted] believed [redacted] He never asked [redacted] if she [redacted]

[redacted] Gonzalez stated that he didn't know the whole story until after the Respondent was arrested

Sergeant Steven Sarao

Sarao has been with the Department for about seven-and-a-half years He was promoted to sergeant in August 2008 and has been with the Internal Affairs Bureau (IAB) since April 24, 2009 In June 2009, he was involved in an investigation regarding the Respondent As part of that investigation he interviewed [redacted] He stated that on June 3, 2009, [redacted] had made important observations of the car and the Respondent [redacted] was presented with a photo array and identified the Respondent He had also identified the Respondent at a line-up conducted on June 15, 2009, the day of the Respondent's arrest

Sarao testified that [redacted] had told him that he observed [redacted] on a New York City bus and as the bus would pull over so would the car Sarao further testified that [redacted] told him that when the bus would pull out to continue on its route the car would too, "so not only did he ultimately follow her when she was on foot but it seemed as if the car was following her when she was even on the bus " Sarao went on

> When she would stop the car would pull over and he watched it for a period of time and the way in which the car was travelling was way too slow to indicate to him anything but the car was specifically following Ashley Santiago

Sarao testified that these were [redacted] "specific observations " He said Mimms and Juan accompanied Crocker [redacted]s, he said, was seated in the passenger seat and "these were observations that he specifically made to based on my investigation were

unobstructed and very clear to him "

Sarao interviewed [redacted] on two occasions The first interview with [redacted] was conducted, he said on Wednesday, June 10, 2009 (DX 3a and 3b are the audio recording on compact disc and the transcript, respectively, of [redacted] first interview) Sarao noted that the Respondent was initially stopped on June 10, 2009, but was not arrested until June 15, 2009 The Respondent was modified and suspended on June 10, 2009 There was an investigation by IAB and conferral with an assistant district attorney which led to the arrest

Sarao stated that he monitored the case in the Bronx Criminal Court and he also was in communication with the assistant district attorney assigned to the case [redacted] he said, was very cooperative with the assistant district attorney

Sarao stated that at some point the assistant district attorney stipulated that they had missed a procedural deadline under (CPL) 30 30 He stated that they had been required to file an accusatory instrument with more facts and they did not meet the deadline He said that the judge had said that even though the accusatory instrument was sufficient, he wanted more facts put into it

On cross-examination, Sarao acknowledged that he was the arresting officer He recalled that the judge had some issue with the complaint but, he believed, the judge said that it was sufficient and because of that he kept the order of protection going He agreed that the judge ordered the district attorney to file a superseding information He stated that he and the assistant district attorney on the case had numerous conferrals and numerous conversations about the deadline Sarao noted that he is not an attorney He agreed that the case was dismissed and sealed

Sarao agreed that [redacted] did not claim to see the Respondent attempt to contact Santiago He agreed that [redacted] never claimed that the Respondent tried to speak to her He did say that she claimed he approached her in that he came into close contact with her He agreed that the Respondent did not walk or run towards her or use his hands to communicate with her Sarao agreed that the first time [redacted] had seen the Respondent's whole face was on June 10, 2009, when the Respondent was removed from his car

Sarao agreed that [redacted] never claimed that the Respondent honked the horn at her or flashed his lights or yelled at her

Sarao agreed that [redacted] thought the Respondent was harassing her in connection [redacted] He stated that he investigated this matter He conferred with Detective Greene who [redacted] He also conferred with Assistant District Attorney Samone [redacted] Sarao agreed [redacted]

Sarao also obtained a subpoena for the Respondent's phone records to see if he had [redacted] found that there was no connection whatsoever between them

Sarao said he began his investigation on June 15, 2009, the day of the Respondent's arrest After reviewing the arrest reports, Sarao agreed that they were filed on June 2 and June 5

On questioning by the Court, Sarao stated that [redacted] He agreed that they had conducted an exhaustive

investigation to see if [redacted] Respondent and they concluded that there was no such connection

On further cross-examination, Sarao stated that the investigative work that was done between June 10, 2009, and June 15, 2009, was not done by him He said the initiation investigation included a full personnel profile of the Respondent, including addresses he had reported to the Department He said the Respondent's residence at [redacted] was less than a mile from where he had been stopped, approximately four blocks distance The school [redacted] attended was also in the vicinity, although he did not know the exact distance

Sarao indicated that [redacted] did not claim to have received phone calls from the Respondent, nor did she claim to have been followed by him outside of the quarter-mile area around [redacted] or that he followed her at the end of the school day

They investigated [redacted]'s background and she did not seem to have any unusual problems at school

During his interviews with the Respondent, Sarao learned that the Respondent dropped off his child at school in the morning in another area of the Bronx He also learned that the Respondent had [redacted] and that the Respondent claimed he was headed to his [redacted] when he was stopped He determined that the Respondent would drop off his son at school at 8 00 a m and that he was stopped between 8 00 and 8 30 a m He had determined that the Respondent dropped off his child not every day, but on school days Sarao stated that the dates the Respondent dropped off his child at school corresponded with the dates [redacted] claimed to have seen him

On re-direct examination, Captain Gregory A Sheehan was the commanding

officer of IAB Group 41 He stated that a group of investigators had the case between June 10 and June 15, when it was assigned to him He agreed that assistant district attorneys are not employed by the Department

On questioning by the Court, Sarao indicated that he did not sign the initial complaint He stated that there were three complaints filed in the criminal case The initial complaint was signed by [redacted], then there was another complaint signed by him and then there was a superseding complaint

On re-cross examination, Sarao stated that the complaint he signed was accurate to the best of his knowledge He agreed that [redacted]

On additional questioning by the Court, Saroa agreed that there was a team working on the case from June 10 to June 15, when he started working on it He was not part of that initial investigative team With regard to [redacted]s, Sarao stated that [redacted]s' observations were on one particular day He stated that [redacted] had informed him that [redacted] had been both on the bus and on foot. He said he believed that [redacted] was alone on that day, June 3, 2009 He agreed that it was his understanding of [redacted]' testimony that he had actually seen the Respondent's car follow the bus with [redacted] inside

On further cross-examination, Sarao stated that [redacted] knew that [redacted] was on the bus because she was in communication with Crocker over the phone He did not know if 911 or the precinct had been called that day

On questioning by the Court, Sarao was asked to look through the file and find the work and the document which supports his testimony that [redacted] actually witnessed a situation in which [redacted] was on the bus and the Respondent was following in his car

After reviewing the file, Saro stated that he believed that he and [redacted] had discussed it but there was no worksheet in the file to support it He stated that Juan had said that [redacted] was on a bus and that Crocker had told her to stay there He said Juan had reported that he noticed a car following the bus, that he (Juan) had stayed one or two car lengths behind the suspicious car until [redacted] arrived safely at school

On re-direct examination, Sarao stated that the reports indicate that [redacted] saw [redacted] walking with Burns

[redacted]

[[redacted] is no longer employed by the Department The following testimony was given at an official Department interview that, according to Sarao's testimony, was conducted on June 10, 2009 (DX 3a and 3b)]

[redacted] stated that he was an SSA assigned to Bronx East Command [redacted] said that on June 3, 2009, at sometime between 8 25 and 8 45 a m , the principal, Crocker, got a call from [redacted] stating that the car that had been following her was at that moment behind her, following her [redacted] stated that he, the principal and his supervisor, Juan, got into a car and went to where the student was They went to Lafayette Avenue and White Plains Road and saw the car in question on the opposite side of the street, following [redacted] The car was headed towards Lacombe Avenue and they made a U turn to get on the same side of the road as the car The car, a [redacted], made a stop at Seward Avenue and White Plains Road At this time, [redacted] was in the middle of the block between Seward and Randall Avenues The car, he said, was in the bus stop at White Plains Road and Seward Avenue [redacted], he stated, was in company

of Burns, who worked at the school

He said that the car stopped at a light and they stopped at a light [redacted] said that the Respondent turned his car off at the light "and then as we come back through the light, the light turns green he turns his car on " They are now behind him and he turns right at Lacombe Avenue heading towards Soundview Avenue

When asked how fast the Respondent was going, [redacted] stated, "He was going maybe 20 miles per hour" which he agreed was the regular speed limit on streets [redacted] stated that they followed him towards Soundview Avenue "and then that's when he just starts going around circles and stuff like that ' He said the Respondent headed down Lacombe Avenue towards the dead end at Rosedale Avenue He made a right turn and went to back to Lafayette Avenue "He comes back around on I forgot what block that is, but he comes back around and then he makes a whole bunch of turns and stuff like that '

At that point, they saw a police officer dealing with a traffic stop They spoke to him about the situation The officer provided his cell phone number and mentioned something about a detail at Orchard Beach By this point they had lost sight of the Respondent s car

[redacted] agreed that by this time [redacted] was in school He noted that the car followed [redacted] to the corner of where the school is located and that was when the car made the right turn He said that the Respondent started driving at normal speed at about the time they got to the corner of Soundview Avenue [4] [redacted] agreed that this was after [redacted] had gotten to school He stated that after he made the turn on Lacombe, because

[4] The question about "normal speed" is not in the transcript but is audible on the audio recording of the interview (DX 3a)

they are doing construction, one has to go slow

[redacted] then stated that after Lacombe the Respondent had made a right onto Soundview Avenue and went all the way down Soundview [5] "and then next thing you know, like I said, we was following him and that's when we saw the P O We let him know what was going on He gave us his number and then we thought we lost him, so we coming around to Seward Avenue now This is like going toward, back to Soundview "

They turned onto Seward Avenue and saw that the Respondent was out of his car and at the car s trunk They knew it was him because of the license plate [redacted] thought he could have known that they were following him He noticed that, occasionally, the Respondent sped up but he could not tell if he was trying to evade them

[redacted] stated that, during her walk down White Plains Road, [redacted] was on the phone with the principal He indicated that [redacted] stopped "at 182" between Seward and Randall Avenues He appeared to say that she crossed the street at that point She also stopped for a light There was also a bus stop where the Respondent stopped for a "little while " He said once [redacted] got to the corner, the Respondent "just hung a right" and went straight through to the projects [redacted] stated that the Respondent never got out of the car while they were following him but "for some reason" he got out of the car on Seward Avenue

The Respondent's Case

The Respondent testified on his own behalf

[5] This is different that what he stated earlier, where he said the Respondent went all the way down to Rosedale Avenue

The Respondent

The Respondent was appointed to the Department on January 10, 2007 He is currently on modified assignment Before that he had been assigned to the 33 Precinct in Manhattan In the period of May and June 2009 he lived at [redacted] in the [redacted] in a private house with his wife and [redacted] son During that period he was also involved in a [redacted] with [redacted], [redacted] with whom he [redacted] That relationship goes back to 2005, his marriage goes back to 2006

The Respondent acknowledged that he had pled guilty to Specification No 4 He agreed that between January 2009 and March 2009 he improperly used a Department computer to run information concerning [redacted] She believed she had been issued a summons so while he was in the patrol car and he was not otherwise busy, he would run her name to see if there was a warrant, "if they put a summons through or anything like that for her neutralization if the word is for her becoming a citizen " The Respondent then indicated that [redacted] is, in fact, currently a U S citizen The Respondent indicated that no one at work knew about his relationship with [redacted] He did not receive any compensation from her for looking up the information The Respondent never checked with a supervisor or sought permission to run the name He stated that he did not see anything wrong with it at the time

In May 2009, the Respondent took his oldest son, [redacted], whose mother is his wife, to school The child attended [redacted] within the confines of the 49 Precinct in the Bronx The school, he said, is about 10 minutes away from his home in [redacted] The Respondent said that sometimes after dropping his son off he

would get breakfast in the area of the school, sometimes he would head back to [redacted] His usual route back was straight down White Plains Road He did not use the Bronx River Parkway because that was backed up with traffic at that time in the vicinity of the Cross-Bronx Expressway

The Respondent testified that if he did not get coffee in the confines of the 49 Precinct, he would get coffee right across the street from his bank, which is located on White Plains Road and Turnbull Avenue

With regard to [redacted]'s school, the Respondent said that he did not know the name of her school He said Lacombe Avenue is about three blocks from the bank He said his home, at [redacted] is about [redacted] from the bank The Respondent asserted that he had never seen [redacted] before the previous day, December 2, 2010, (the first day of this trial and the day on which [redacted] testified) He had never seen or met Crocker or Burns

Explaining why he would not go straight home, the Respondent stated

> I am a chain smoker My father died of cancer, my wife's father also died of it, it's an ongoing problem She hates the fact that I smoke She would leave for work at 9 o clock so if I get there around 9, 9 10 I wouldn't come home smelling like cigarettes That's just basically it

He said he normally parked his car on the corner of White Plains Road and Lafayette Avenue, "right before the bus stop" He said he parked in a way that did not obstruct the bus He said he would be parked in the same direction as when he drove down White Plains Road He said he never had any contact with people getting off the bus

The Respondent stated that [redacted] was in the [redacted] at the time He said that

since his son started school that has been his routine The first time anyone approached him was on June 10, 2009, at some point between 8 30 and 9 30 a m He was parked, at that time. on the corner of Lafayette Avenue and White Plains Road His car was a 2007 [redacted] with license plate [redacted]

He was approached by uniformed officers from the 43 Precinct He said that his doors went flying open and he remembered a firearm being pointed at him He raised his hands and quickly stated that he was "on-the-job ` They told him to step out of the car and an officer retrieved his ID from his back pocket and verified that he was a member of the service His firearm was in his front right holster

The officer asked him what he was doing and he said that he was parked smoking a cigarette When asked what he was doing there, he said he lived in the neighborhood When they asked where he was coming from, he said he had just taken his son to his school on [redacted] [6] The Respondent stated that when he said [redacted] Avenue," the officer became irate At that point, the Respondent told the officer to call his supervisor The patrol supervisor came and asked him what he was doing and he told the supervisor that he that he did not know, that he had been parked there doing nothing He was told to go to the 43 Precinct, which he did, at about 10 30 a.m His firearm was taken at that point His duty status was changed at about 11 30 p m but he was not arrested that day

The Respondent said that he was arrested on June 15, 2009 He was initially [redacted] He was arraigned that night and released on his own recognizance The Respondent identified the initial criminal court complaint

[6] The transcript, incorrectly, reads [redacted] Avenue The Respondent testified [redacted] Avenue" which is in the vicinity of Mace and Arnow Avenues in the Bronx

(Respondent's Exhibit A) He said the case was eventually dismissed and sealed on September 24, 2009

On cross-examination, the Respondent agreed that he [redacted] that did not know anything about each other He does live with his wife and son at [redacted] The [redacted] he has with [redacted] are unaware that they [redacted] He continues to have a [redacted] with [redacted] He also maintains two cell phones in order to stay in touch with his [redacted] and [redacted] He also uses a service to retrieve his voice mail

The Respondent stated that he has lived in the [redacted] area since he was 19 years old His bank, he agreed, is the [redacted] Bank located at Turnbull Avenue and [redacted] He agreed that they have a parking lot there He said he got his coffee at a coffee stand across the street from the bank He never sits in the bank parking lot to have his coffee

The Respondent agreed that there is a post office nearby and it has a parking lot He does not use that parking lot to have his coffee He agreed that Stevenson Commons is a shopping center with an entrance on White Plains Road It also has a parking lot The Respondent stated that he would never park in the parking lot of Stevenson Commons When asked if he could have parked there, the Respondent said he could not He did not know if there was a coffee shop there He said in the morning there is a cart and that is where he bought his coffee The Respondent indicated that, on some occasions, he may have pulled in on a side street to have his coffee During the period of May to June 2009, he said, he may have parked on Lafayette Avenue

The Respondent agreed that he had worked patrol in the 33 Precinct and he was

aware that parking an unoccupied car in a bus stop is a summonsable offense He agreed that he sometimes spoke on his cell phone while parked on White Plains Road and that he might have done so in May and June 2009 He said he was sure that at some point he texted while parked there He said he might have texted [redacted] who lived near [redacted]

When asked why he did not just go to [redacted]' house, the Respondent explained that after doing a 4 to 12 tour he would go home He would go to bed at about 12 30 or 1 00 a m and then get up at 7 00 a m He said he was tired and that he was waiting to make sure that his wife would be gone so that he would not hear her complain that he got home smelling of cigarettes and so that he could go back to sleep so that he could get up for work He said if he was going to [redacted]' house he would do so before or after his tour

The Respondent was not familiar with Pugsley Creek Park He agreed that he chose to park his car on White Plains Road to have his cigarettes He is aware that in the vicinity of Lacombe and Lafayette Avenues and White Plains Road there are four public schools and that he did not know any SSAs, teachers or students in those schools He agreed that his grey [redacted] had dark tinted windows He said he put the tint on his windows when he was assigned to the Impact Response Team which moved from command to command every 30 days or so He stated that he lives in the city and is concerned for his safety He never discussed the legality of tinting the windows He is aware that only a certain degree of tint is permitted He agreed that, in the period May to June 2009, he had exclusive possession of his car and that no one else was driving it in the mornings He said he drove his son to school every school day in that period

On questioning by the Court, the Respondent indicated that he had no recollection of the alleged incident where he was driving slowly along White Plains Road He said that when he parked on White Plains Road he would drive to [redacted] Avenue and turn towards his home He stated that at [redacted] Avenue there are steep holes in the street and he would slow down at that point The Respondent denied ever following [redacted]

FINDINGS AND ANALYSIS

Specification Nos 1, 2 and 3 all stem from the same basic allegation It is claimed that for a period in excess of one month, from May 1, 2009 through June 5, 2009, Respondent engaged in a course of conduct with regard to a high school student, then 16-year-old, [redacted] The conduct, essentially, involved the Respondent following her while he was in his car All of these incidents allegedly occurred while [redacted] was on the way to her school Most seem to involve him waiting for her and sighting her in vicinity of a bus stop at Lafayette Avenue and White Plains Road in the Soundview section of the Bronx where she would get off the Bx5 bus and transfer to the Bx39 bus or walk the remaining three blocks to her school further down White Plains Road

Both sides agreed that the Respondent drove a car with dark tinted windows [redacted] never actually saw the Respondent's face during the period of time he allegedly was following her Indeed, the first time she saw him occurred when on-duty officers ordered him out his car on June 10, 2009 The Respondent never tried, in any way, to communicate with [redacted] during the period of time when he was allegedly following her She never saw him at any other time of day and, with apparently one exception, she

never saw him at any other location She did see him, or more correctly, his car, with sufficient frequency that she was able to take down his license plate number

The Respondent denies ever following [redacted] He claims that the first time he saw her was at this trial He stated that his practice was to drop off his son at school in the vicinity of [redacted] Avenue and White Plains Road He would then drive to the vicinity of Lafayette Avenue and White Plains Road where he would park, buy coffee and drink it while he smoked cigarettes He would then proceed, after 9 00 a.m to the home he had with his wife at [redacted], which is also in the [redacted] area of the Bronx, several blocks from the bus stop He did this, he said, because he liked to smoke cigarettes and his wife objected, so he waited until she left the house before returning

The main witness is [redacted], currently 18 years of age, seemed bright and articulate and there is no question that she strongly believes that she was followed by the Respondent Unfortunately her testimony was disjointed and vague so it is not clear exactly what she said occurred Certainly she claimed to see the Respondent in the vicinity of an intersection where she changed from the Bx5 bus to the Bx39 bus The second bus took her approximately 3 blocks, travelling south on White Plains Road, from Lafayette Avenue to just beyond Lacombe Avenue, where her school was

We know from her testimony that some days she walked this distance and other days she took the bus She offered no estimate of how many times she walked or how many times she took the bus Although she claimed to see the Respondent, or more correctly the Respondent's car, every day she did not say if he followed her every day So, her testimony leaves open the possibility that, at least on some days, he may have

been near the bus stop but may not have followed her

What her testimony seemed to indicate was that she would find the Respondent waiting at her bus transfer point, either parked in the bus stop or near the post office and that, at least on some days, he would follow her toward the school

She said that sitting in the bus she could see the car next to the bus, presumably on days when she took the Bx39 bus

Because she was concerned that the Respondent was following her, she altered her route on one occasion On that day, she took the Bx5 bus but got off at Story Avenue where she transferred to the Bx27 bus which would also take her to school There is no testimony to indicate if she stayed longer on the Bx5 bus to get to Story Avenue or if she got off before her usual transfer point This Story Avenue transfer point was several blocks away from her usual transfer point, yet, she said on that one day she observed that the Respondent's car was at the gas station across the street This convinced her that the Respondent was truly following her Although the Department did not elicit from her an approximate date for this event, a complaint report (DX 1) dated June 2, 2009, lists the place of occurrence as Noble and Story Avenues, which is near where the Bx5 bus and the Bx27 bus cross paths (see CX 2, partial Bronx bus map) Presumably, that is the day of this alleged occurrence

While no one can expect the victim of this type of crime to be clear about every event, [redacted]'s testimony provided the barest minimum and left a great deal to speculation as to what exactly occurred As will be seen, there is critical testimony about events on June 3, 2009, but [redacted] was never asked for her version of what occurred that day

More significant in assessing the accuracy [redacted]s testimony is her state of mind at the time of these alleged sightings [redacted] testified, repeatedly, [redacted] This concern, while absolutely legitimate and believable, raises the possibility that otherwise innocent behavior unrelated to her might have been misinterpreted as conduct directed at her

The most crucial evidence comes from the events of June 3, 2009 Several people testified to the events of that day, [redacted] s school principal, Crocker, a school employee, Burns, and SSA Juan A second SSA, [redacted], was present but did not testify His official Department interview was placed in evidence Additionally Sarao offered testimony about what [redacted] allegedly said The problem is that there are some inconsistencies in the statements which need to be addressed Further, as previously noted, [redacted] was not specifically asked about this day

Burns testified that she had taken the day off to go to an appointment she had She was able to pin down the date as June 3, 2009 because she knew that was when her appointment was for At about 9 00 a.m she saw [redacted] standing in the Bx39 bus stop at the corner of Lafayette Avenue and White Plains Road She crossed over to the east side of White Plains Road to where [redacted] was and was about to admonish her for being late for school when [redacted] pointed to the Respondent's car and said she was being followed Rather than wait at the bus stop she said they walked south on White Plains Road toward the school when, about a block later, she observed the Respondent's car on the other side of the street going slowly just behind them She said when they got

passed Seward Avenue, which is one block south of Lafayette Avenue (see CX 2), they crossed over to the west side of the street, where they passed the elementary school and then on to the high school, which was on that side of the street After they crossed Lacombe Avenue, which is where the school is, she looked back and noticed the car turned right and sped up

During the walk down White Plains Road, [redacted] had been in touch with her school principal, Crocker When Crocker heard that [redacted] had seen the car she believed was stalking her, she (Crocker) joined up with Juan and [redacted] They got in Juan s car and drove up White Plains Road According to Crocker, when they travelled up White Plains Road they spotted the car following [redacted] and Burns

Taking just the statements of Burns and Crocker there certainly seems to be a strong indication that the Respondent was following [redacted] The question would then be was this an innocent act misinterpreted, or was the Respondent really following [redacted] But before one can even get to that question the entire scenario is challenged by other statements made by other Department witnesses

School Safety Agent Juan was in the car with Crocker He claims to have seen the Respondent's car follow a bus on which [redacted] was a passenger Although he claimed to know who [redacted] was he said he did not see her on the street nor did he mention Burns being there even though Burns worked at the school and was allegedly walking with [redacted]

To further confuse matters, Sarao testified that [redacted] had also said that he observed the Respondent's car follow the bus in which Santiago was a passenger He even provided details about how the car followed as the bus pulled into a bus stop and

remained to follow again when the bus left As it turns out there is not documentation of [redacted] having said that and, in fact, [redacted]s' version, as set forth in his official Department interview is very similar to that of Burns and Crocker

It would be easy to simply reject Juan's version of events but he was a witness put forward by the Department and his version does suggest that the other versions need more careful examination

For instance, Crocker testified that she received a call from [redacted] who was at the bus stop She told [redacted] to walk to school which presumably she did Yet Crocker was able to meet up with Juan and [redacted]s, exit the school and drive up to the bus stop before [redacted] and Burns got to the first intersection Additionally, Burns testified that they crossed White Plains Road to the east side of the street at that first intersection, something that Crocker did not mention

All of the versions agree that the car turned right onto Lacombe Avenue Burns said the car sped off, but [redacted] said the car continued to go slowly, indeed had to go slowly because of construction Crocker and Juan testified that they continued to follow the Respondent's car after that turn even though [redacted] had gotten to school The most detailed version of what occurred after the turn was given by [redacted]s and, as will be seen, what [redacted] said happened after [redacted] was at school may well shed a whole different light on the incident

The problem here is that all of these individuals were presented with a powerful and sympathetic scenario. A 16-year-old high school student [redacted] was being followed by someone [redacted] There is the very real possibility that as a result they saw what they were looking

for

There are also problems with the dates While [redacted] claims that the stalking went on for over a month (the charge covers a period starting at the beginning of May 2009) there is absolutely no record of anything prior to June 2, 2009 At one point in her testimony, [redacted] describes the events as going on for a week or two prior to her use of an alternate route, which seems to have occurred on June 2, 2009, so there are inconsistencies in her version of how long this stalking was allegedly occurring

In fact, all of the events that are documented occur within the nine days from June 2 to June 10 and while [redacted] said something happened every time she went to the bus stop, in fact not all of those days involved the alleged conduct

Tuesday, June 2, 2009 is the day [redacted] informed Crocker of the alleged problem We know this is so because that is the day Crocker recorded the license plate number in her cell phone The first police report is also dated June 2, 2009 According to that report, June 2, 2009, was also the day [redacted] took an alternate route and confirmed her suspicions that she was being followed On that issue, this Court notes that it is simply not clear how the Respondent knew she would be going to a different connection point and how he wound up in a gas station apparently waiting for her

June 3, 2009, is the day that Crocker, Juan and [redacted] went out to look for [redacted] and certainly there is an alleged stalking on that day

Thursday, June 4, 2009, there is no report of any sighting of the Respondent although [redacted] certainly had Crocker's cell phone number and as will be seen, may have had Gonzalez' cell phone number as well

The next day, Friday, June 5, 2009, is that day that the second police report was

filed There is no clear claim that anything happened on that day although there is some confusion about dates Gonzalez testified that he was at the Orchard Beach detail on a Friday and was unable to help [redacted] that day June 5, 2009, was the only Friday within the time frame and that was the day the second police report was filed and when Gonzalez said he met [redacted] at the precinct, so there is certainly confusion there Either Gonzalez was in the precinct on June 5, 2009, or he met [redacted] on June 2, 2009 [redacted] indicated that he was unable to get police assistance on June 3, 2009, because that was the day of the special detail at Orchard Beach Gonzalez testified that that Juan had called him when he was at Orchard Beach It is thus possible, if not likely, that Gonzalez met [redacted] before June 3, 2009, probably on June 2, 2009, and that she had his name and number after that day As no call was made to Crocker, Gonzalez or 911 on the morning of June 5, 2009, it is reasonable to assume that no stalking occurred on that day

There is no report of any sighting of the Respondent's car on Monday, June 8, 2009, or Tuesday June 9, 2009, although those were apparently school days Certainly [redacted] had the cell phone numbers of both her principal and Gonzalez on those date and certainly could have made a notification if she spotted the Respondent's car

It isn't until Wednesday, June 10, that the Respondent's car is sighted No effort was made to wait and see if he intended to follow [redacted] and the Respondent was detained while he was still parked There is no evidence that he was in the process of stalking [redacted] on that day although he was clearly in the area of the bus stop That is the last time [redacted] saw the Respondent's car

[redacted] certainly left the impression that she had been seeing the Respondent's

car on a daily basis It would seem that that was not the case This is not to suggest that [redacted] is not truthful but that she is not precise and that her allegations need to be scrutinized

The Respondent's defense is remarkable in its simplicity The Respondent said he would take his son to school He would leave his home in [redacted] and drive to a school several miles away near [redacted] Avenue He then had coffee and smoked cigarettes before returning home The reason for this, he said, is that his wife is very upset with his smoking and complained when he came home smelling of cigarettes He essentially killed time until 9 00 a m when she would leave home for work He would return home after her departure and thus avoid her apparently vocal complaints

The Respondent stated that he sometimes stopped for coffee and to smoke cigarettes in the vicinity of his son's school At other times, he went to White Plains Road and Lafayette Avenue, nearer to his home, where he purchased coffee at a cart stationed across from the bus stop in the morning White Plains Road and Lafayette Avenue would certainly be on the Respondent's way home Sarao confirmed that the Respondent dropped off his son at school where he said he did

So how did the allegation of stalking come about? The answer is simple [redacted] some things were established [redacted] at about the time that [redacted] noticed the Respondent's car, [redacted]

[redacted] testified that she believed the car that was following her [redacted] The windows were heavily tinted and she could not see inside She believed

it was being driven by [redacted] That is truly a terrifying situation After his arrest, Sarao confirmed that the Respondent had [redacted] We know this occurred after the arrest because Sarao testified that he did the research that led to the conclusion that the Respondent was [redacted] and Sarao started working on the case on June 15, 2009, *after* the arrest

Thus, right up until, and even beyond, the date of his arrest, people connected with this case believed that the Respondent was acting [redacted] This unquestionably colored the thinking about events in this case The strongest evidence of this is found in the statement made by [redacted] did not testify at this trial Two sources of his testimony were introduced into evidence The first was the testimony of Sarao who stated that [redacted] saw the Respondent follow the bus which carried [redacted] in a manner that unmistakably demonstrated that he was stalking her Sarao was unable to find any document in his file to support this version of what [redacted] had said The second piece of evidence is [redacted]' own statement at his official Department interview which contradicts Sarao's version Even though Sarao persisted and insisted that he recalled [redacted] say this, Sarao's testimony must be rejected as erroneous

[redacted]s' statement as recorded in the official Department interview (DX 3a and 3b) was given shortly after the incident so the events were fresh in his memory and, of course, the interview reflects what [redacted] actually said What is most interesting about his account is what he says happened after [redacted] had arrived at school

He described the car as turning right onto Lacombe Avenue but he does not, as the others did, describe the car as speeding up Indeed he said it continued to proceed

slowly The car got to the point near where Lacombe Avenue ends and turned right again While he did not name the street the car turned onto, one of the streets near the end of [redacted] Avenue is [redacted], the street on which the Respondent lives

The Respondent then, according to [redacted] proceeded to [redacted] Avenue, turned right and went around the block to [redacted] Avenue He was parked on [redacted] Avenue where he was seen going into the trunk of his car

What [redacted] described is someone who was meandering around the neighborhood, essentially killing time That is exactly what the Respondent claimed to be doing on those school mornings, killing time until his wife left for work before he went back into the house He is seen parked, incidentally, around the corner from where he lives This is hardly suspicious conduct yet it was somehow portrayed as such During [redacted]s' interview, it was clearly established that the car continued to go slowly after [redacted] was dropped off, a fact which was clearly noted by the questioner This evidence, that the Respondent s slow driving was unrelated to [redacted], was apparently ignored [7]

Re-examining the entire alleged stalking event on June 3, 2009, it makes less and less sense We know that [redacted] was in the company of Burns, who was walking with her that day For Respondent to stalk a lone young girl is one thing, but for him to stalk that girl when she was walking with an adult is something else again

Overall, the Respondent's explanation for his conduct makes more sense than [redacted]s allegations Even the claim that the Respondent's car was seen at a gas station on Story Avenue seems less than sinister when one considers that the gas station was

[7] It should be noted that it is not readily apparent in the printed transcript but quite clearly audible in the audio version of the interview

within a few blocks of his home [8]

Certainly [redacted] who was in the process of reactivating a rape complaint had every reason to be vigilant For her to take note of a car with tinted windows that seemed to be at the bus stop every morning is also certainly not unreasonable under the circumstances It is what was done with that information that becomes problematic In this case there is one sighting of an alleged stalking No call to 911 was made No second, controlled observation was made Exculpatory evidence was ignored The complaint of stalking persisted after the prime and only motivation for such conduct, the [redacted] was proved to be non-existent

There are some other issues that were raised during this trial, which cannot be ignored

The Department brought out testimony related to the failed criminal prosecution of the Respondent and then asked the Court to disregard the result of the criminal case The result of the criminal case is in no way controlling on this tribunal, however it should be noted that what Sarao reported occurred makes no sense It is most unusual for a prosecutor to have a case dismissed on speedy trial grounds where a complainant is fully cooperative, but of course, mistakes do happen and things fall through the cracks It is on the other hand inexplicable for a court to demand a superseding accusatory instrument when the original instrument was allegedly sufficient Also, unexplained is how or why a dismissal could occur, on consent, where the accusatory instrument was sufficient [9]

---

[8] Respondent's claim that he drove slowly down White Plains Road in the vicinity o[redacted]Avenue because of significant depressions in the southbound roadway is also unchallenged

[9] The Respondent was [redacted]Although the term '[redacted]as been used to describe the Respondent s alleged conduct in this case, the c[redacted]nder the penal law is not charged in the specifications in this case

Either Sarao is mistaken or something very unusual occurred with regard to the criminal case.

The Department, in its closing argument, complained that the Respondent had tinted the windows in his car There is no evidence before this Court that the Respondent was summonsed or admonished in any way for the tint on his car windows There is, in fact, no evidence that there was anything illegal or improper about the tint of his windows If the Department wished to pursue that issue it certainly could have, but without a charge related to illegally-tinted windows, or evidence that the tint on the Respondent's car violated the law, it is a non-issue

Similarly, the Department, in its closing argument, made much of the fact that Respondent parked at a bus stop while drinking his coffee and smoking his cigarettes The Respondent gave uncontradicted testimony that he actually was parked beyond the bus stop Even if he was parked at the bus stop that does not in any way prove he was [redacted] There is no testimony that he ever received a summons for parking at a bus stop and none apparently was issued, even on June 10, 2009, when uniformed officers arrived on the scene As with the tinted windows, without charges related to the conduct or proof that it occurred, it is a non-issue

Perhaps the most chilling argument made by the Department occurred when the Advocated claimed

> Respondent should not have been hanging out in the vicinity of four public schools, including an elementary school, while school was in session and in these times of heighten sensitivity it's understood that a 30-year-old man should not hang around an all-girls school or an elementary school

The Respondent was parked on a public street two blocks from an elementary school and four blocks from a building housing three schools, including [redacted]'s all- girl's school He was in the vicinity of an intersection with multiple bus stops and a number of commercial and public establishments including a post office and a bank

For the Department to rely on such specious and tangential arguments only underscores the weakness of its case on the merits

In the end, an allegation of this type can never be disproved What can be said is that the Department has failed to provide substantial and reliable evidence sufficient to meet its burden of proof The Respondent is found Not Guilty of Specification Nos 1, 2 and 3

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined, see *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974).

The Respondent was appointed to the Department on January 10, 2007. Information from his personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

The Respondent has been found Guilty of misusing a Department computer. A penalty of 15 days has imposed in other cases for similar misconduct, see Disciplinary Case No. 85352/09 signed March 10, 2010, Disciplinary Case No. 84659/08 signed August 25, 2010 and Disciplinary Case No. 84713/08 signed October 21, 2010. Consequently this Court recommends that a penalty involving the loss of 15 vacation days be imposed and that the Respondent be credited the 30 suspension days previously forfeited in this matter.

Respectfully submitted,

Martin G. Karopkin
Deputy Commissioner – Trials

DISAPPROVED
SEP 29 2011
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From Deputy Commissioner – Trials

To Police Commissioner

Subject CONFIDENTIAL MEMORANDUM
POLICE OFFICER PAUL RODRIGUEZ
TAX REGISTRY NO 943750
DISCIPLINARY CASE NO 85387/09

The Respondent received an overall rating of 3 5 "Highly Competent/Competent" on his last annual performance evaluation He has been awarded one medal for Excellent Police Duty and one for Meritorious Police Duty He has no prior formal disciplinary record

For your consideration

Martin G Karopkin
Deputy Commissioner – Trials