

Regarding Mr. Gutierrez, it was undisputed that he was near the southwest corner of West 43<sup>rd</sup> Street and Broadway when Sgt. Horohoe grabbed him by the arm and moved him away from the area. It was also undisputed that he was subsequently arrested.

#### **Disputed Facts**

Regarding Jordan Groh, the accounts given by Mr. Groh, Sgt. Horohoe and PO Quirk in their CCRB statements were consistent – barring differences in interpretation – with video footage of the incident and there were no disputed facts regarding Mr. Groh and Sgt. Horohoe's actions. However, the supporting deposition to which PO Quirk swore contained numerous details in dispute with the above accounts which will be discussed in the assessment of evidence below. As such, it is in dispute whether PO Quirk fabricated the account to which he swore, or whether that account was based on information provided to him by Sgt. Horohoe.

Regarding Richard Vazquez, in dispute was whether he rode through a steady red light, whether Sgt. Horohoe directed him to stop, whether Sgt. Horohoe pushed him off his bicycle or whether he rode into Sgt. Horohoe and subsequently fell off his bicycle, whether after coming into contact with Sgt. Horohoe, Mr. Vazquez immediately went to the ground or whether he continued riding for 15-20 feet before intentionally dismounting the bicycle, whether Mr. Vazquez then tried to evade police capture by leaving the bicycle in the street and attempting to run away on foot, whether two officers then apprehended him or whether Sgt. Horohoe lifted him to his feet and placed him over a trashcan.

Regarding Mr. Gutierrez, in dispute was whether upon reaching the southwest corner of West 43<sup>rd</sup> Street and Broadway he raised his bicycle in the air, swinging the pole mounted camera around while situated within a crowd and created a significant safety hazard, whether Sgt. Horohoe directed other officers to direct Mr. Gutierrez to move away, whether upon Sgt. Horohoe's directing Mr. Gutierrez to move away he then returned to the southwest corner of West 43<sup>rd</sup> Street and Broadway, whether Mr. Gutierrez's actions on that corner caused a crowd to gather independent of police action at that location, whether Mr. Gutierrez physically obstructed the arrest of Joyce Lin and whether Mr. Gutierrez was arrested before or after Joyce Lin.

#### **Assessment of Evidence**

Video evidence available to this investigation resolved many disputed facts in this case.

Regarding Mr. Groh, video footage showed him kneeling between a uniformed officer and other uniformed officers who were summoning two pedicabs across the street from the substation. Mr. Groh's head was within inches of a uniformed officer's gun belt. Sgt. Horohoe approached, grabbed Mr. Groh and another male individual by the arms and told them, "We're in the middle of a police incident; take your camera and get out of here." Sgt. Horohoe escorted Mr. Groh and the other individual approximately 10-15 feet away from where the officers were issuing summons. Mr. Groh immediately turned around and came back to where the officers were issuing summonses and crouched down at approximately the same distance at which he was previously crouched and took another picture. Sgt. Horohoe immediately grabbed Mr. Groh by the arm and placed him under arrest. The other individual, who did not return, was not arrested. While other civilians are seen standing at approximately the same distance as Mr. Groh, none came as close to any of the officers as Mr. Groh did initially and none, in the available footage, were advised to move away.

The video footage was discrepant from the supporting deposition prepared by PO Quirk, which detailed Mr. Groh crouching directly behind Sgt. Horohoe while four other separately charged individuals surrounded Sgt. Horohoe, obstructing his free movement. Although there were numerous other civilians standing at roughly the same distance as Mr. Groh, these individuals did not act as described by PO Quirk in his supporting deposition. Furthermore, the supporting deposition stated that Mr. Groh's actions not only obstructed Sgt. Horohoe's ability to effect lawful arrests, but that it created a public disturbance/inconvenience in that it caused a crowd to gather, disrupted the flow of traffic and caused people to express alarm. There is no indication whatsoever from video footage of this incident that any



civilians reacted to Mr. Groh's kneeling and taking photographs nor was there any noticeable congregation of civilians in response to Mr. Groh's actions, nor was there any indication that civilians or motorists were in any way impeded by Mr. Groh's actions. The only expression of alarm among civilians came after Sgt. Horohoe grabbed Mr. Groh by the arm and placed him in handcuffs.

As such, the supporting deposition to which PO Quirk swore not only exaggerated Mr. Groh's actions, but alleged additional criminal conduct in which Mr. Groh did not take part. When questioned directly about this, PO Quirk conceded that he did not in fact witness Mr. Groh engage in any of the behavior described in the supporting deposition. In fact, PO Quirk stated that all of the information contained therein was provided to him by Sgt. Horohoe, even though the deposition states that PO Quirk himself observed this behavior and the resulting public inconvenience and alarm. Sgt. Horohoe was also asked to address the discrepancies between his account and the account contained in the supporting deposition. Sgt. Horohoe did not waver from his initial account of Mr. Groh's actions, which was consistent with what is reflected in the video footage. Sgt. Horohoe added, "There was a crowd of people. Whether or not they were with him I couldn't tell you. What I know is he was a primary aggressor to me at that point because he was noncompliant and he remained in a zone where I felt I was unsafe and my officers were unsafe."

As Sgt. Horohoe himself effected Mr. Groh's arrest and assigned it to PO Quirk, it stands to reason that Sgt. Horohoe also told PO Quirk what to charge him with and the basis of those charges. Furthermore, rather than blithely corroborating the supporting deposition to which he swore, PO Quirk was forthcoming in his CCRB interview and indicated not only that he did not observe what he swore to having observed, but also that his direct supervisor told him what to tell the Assistant District Attorney. In doing so, PO Quirk exposed himself not only to allegations of perjury, but to any possible repercussions for implicating his direct supervisor in connection with his making a false official statement to the Assistant District Attorney. As such, PO Quirk's testimony to the CCRB was against his own personal interest and was found to be highly credible.

Regarding Mr. Vazquez, video footage revealed that Mr. Vazquez in fact rode through a steady red light as he crossed West 43<sup>rd</sup> Street, and that Sgt. Horohoe then ran toward him and was to the back and right of him when Sgt. Horohoe raised his hands from his sides and brought them down on Mr. Vazquez's upper body. Mr. Vazquez's bike traveled less than the width of the painted crosswalk, Sgt. Horohoe running beside it, as it abruptly turned to the left and Mr. Vazquez fell to the ground. Mr. Vazquez rolled across the ground and came to rest on his right side as Sgt. Horohoe caught up with him. Mr. Vazquez did not attempt to get up on his own, but was still lying on the ground when Sgt. Horohoe grabbed him by the jacket. There is no indication from video footage that Mr. Vazquez intentionally dismounted his bicycle or made any attempt whatsoever to evade apprehension by fleeing on foot. More importantly, Sgt. Horohoe used physical force against him which caused him to fall off of his bicycle.

While the video evidence is rather compelling, Sgt. Horohoe maintained that he did not push Mr. Vazquez off of his bicycle, but that Mr. Vazquez ran into Sgt. Horohoe's outstretched hands before dismounting his bicycle and attempting to "run away from three police officers" on foot. Given the available video footage, this account is rather absurd on its face. However, further diminishing Sgt. Horohoe's credibility with regard to his and Mr. Vazquez's actions is the fact that Sgt. Horohoe was not at all forthcoming when he testified as to this portion of the incident. In his initial narrative, Sgt. Horohoe left out the fact that Mr. Vazquez went to the ground. What followed was extensive and painstaking questioning, transcribed verbatim above, during which Sgt. Horohoe admitted in turn that Mr. Vazquez got off the bicycle, dismounted the bicycle, fell off the bicycle, and intentionally "dumped" the bicycle in an attempt to flee on foot. Had Mr. Vazquez in fact run into Sgt. Horohoe before dumping his bicycle and attempting to flee, surely Sgt. Horohoe would have described this in his initial account. That Sgt. Horohoe carefully left out Mr. Vazquez's going to the ground, and only after repeated questioning developed this account, while being extremely evasive about whether or not Mr. Vazquez was pushed off his bicycle, strongly suggests that Sgt. Horohoe intentionally obscured the facts of this incident. What is more, such willful distortion suggests that this was no accident, that Sgt. Horohoe was fully aware of his actions, but that he could not defend what actually occurred so he fabricated an account when simply omitting certain facts proved insufficient.



This is not to say that Mr. Vazquez's account of the incident was entirely accurate either. Mr. Vazquez stated that he entered the intersection with a green light, but stopped due to stopped cyclists in front of him. Mr. Vazquez assessed the situation, saw 3-4 bicyclists proceeding south of the intersection in the bike lane, determined it was unsafe to remain in the middle of the intersection and proceeded southbound across E 43<sup>rd</sup> Street. Video evidence proves that this was not the case. Clip 2 revealed that the light was red prior to any bicyclists entering the intersection and that, as of the time that Sgt. Horohoe turned and pursued an unidentified cyclist through the intersection, the light was still red, there were no stopped cyclists in the intersection and Mr. Vazquez had not yet entered the intersection. While this calls into question the credibility of Mr. Vazquez's account, and leads the investigation to determine unequivocally that he proceeded through a steady red light, it does not negate the fact the Sgt. Horohoe brought his hands down on Mr. Vazquez's shoulders and that Mr. Vazquez immediately went to the ground. Also, Sgt. Horohoe was not signaling with his hands for Mr. Vazquez to stop, given that his hands were at his side immediately prior to his raising them to shoulder height and making physical contact with Mr. Vazquez. No verbal commands are heard in the video and Sgt. Horohoe did not claim to have given any.

What is not entirely clear in the video, is whether Sgt. Horohoe shoved Mr. Vazquez, as the latter alleged, or whether he grabbed on to him in an attempt to hold him and stop his forward motion, as Mr. Vazquez volunteered that he did not. In either case, the video demonstrated that Sgt. Horohoe was not forthcoming about what happened, as it directly contradicted Sgt. Horohoe's assertion that he was signaling with his hands up for Mr. Vazquez to stop, at which time Mr. Vazquez rode into him and continued riding, 15-20 feet, before intentionally dismounting his bicycle and attempting to flee on foot.

Regarding Christian Gutierrez, video evidence and the testimony of PO Stewart revealed that, with respect to the circumstances of Mr. Gutierrez's arrest, the account Sgt. Horohoe provided to the CCRB, as well as the accounts provided in Mr. Gutierrez's arrest report, criminal complaint report and supporting deposition, were largely without factual basis. Mr. Gutierrez maintained, and video footage corroborated, that after seeing Mr. Vazquez thrown from his bicycle, Mr. Gutierrez walked his bicycle up on to the sidewalk at the southwest corner of W 43<sup>rd</sup> Street and Broadway. He then encountered Sgt. Horohoe who grabbed him by the arm and forcibly moved him backward, west on W 43<sup>rd</sup> Street, away from the location where Mr. Vazquez was being arrested.

However, the video footage also partially corroborated Sgt. Horohoe's description of Mr. Gutierrez lifting his bicycle up in the air and leaning the pole mounted camera toward the officers and Mr. Vazquez. While Mr. Gutierrez did not, as Sgt. Horohoe alleged, swing the pole around amidst a crowd of people, he was standing within 5-7 feet of the officers, leaning the pole toward them. It was also apparent from the video that this is what alerted Sgt. Horohoe to Mr. Gutierrez's presence as it was at this point that Sgt. Horohoe stepped away from Mr. Vazquez and walked directly toward Mr. Gutierrez, forcibly moving him eastbound along the sidewalk.

Mr. Gutierrez remained on the sidewalk, east of the corner, near the spot where Sgt. Horohoe released him, for 1 minute and 5 seconds, before picking up his bicycle, placing it in the street and returning to the corner. Mr. Gutierrez then stood at the eastern edge of the east-west crosswalk, approximately 5 feet behind Mr. Vazquez and the officers, for approximately 10 seconds as Sgt. Horohoe carried Mr. Vazquez's bike across the street to the substation. Mr. Gutierrez then crossed the street himself. At the southwest corner, Mr. Gutierrez re-encountered Sgt. Horohoe who told him to take his bike and go somewhere else. Before Mr. Gutierrez could comply, Sgt. Horohoe turned him around and placed him under arrest.

Regarding Mr. Gutierrez's obstructing the arrest of Joyce Lin, video footage unequivocally demonstrated that this did not occur. In fact, as Ms. Lin stood taking photographs of Mr. Vazquez, on the southeast corner of the intersection, Mr. Gutierrez was already in custody, in handcuffs, on his knees in front of the substation, across the street from where Ms. Lin was arrested.

Nonetheless, Sgt. Horohoe maintained that after Mr. Vazquez was placed against the garbage can, Mr. Gutierrez was advised to remove himself from the corner and that, when he returned, Sgt. Horohoe grabbed Mr. Gutierrez by the arm and escorted him eastbound, telling him again to stay away. Sgt. Horohoe further maintained that Mr. Gutierrez was at that point swinging the pole-mounted camera around in the air amidst



a crowd of people, creating a significant risk to Sgt. Horohoe, his officers and other civilians. From video footage, Mr. Gutierrez was determined to have been advised to leave the corner only once.

Sgt. Horohoe also stated that Mr. Gutierrez returned to the southeast corner, where Mr. Vazquez was being arrested, and that upon his return to that corner Sgt. Horohoe placed him under arrest. Video footage reflected that Mr. Gutierrez was not arrested on that corner, but was arrested in front of the substation upon encountering Sgt. Horohoe there.

While this discrepancy is rather minor in the context of a chaotic incident that spanned both sides of a Times Square intersection, what cannot be overlooked is Sgt. Horohoe's account of Mr. Gutierrez's behavior with regard to Ms. Lin. In his initial narrative during his first interview, Sgt. Horohoe got the sequence correct, stating that he arrested Mr. Gutierrez and that Ms. Lin then became disorderly and was arrested as well. However, upon more detailed questioning, and when faced with Mr. Gutierrez's arrest report and supporting deposition, which indicated that Mr. Gutierrez physically obstructed Ms. Lin's arrest, **Sgt. Horohoe changed his account of the incident.**

Specifically, Sgt. Horohoe stated, "I'm trying to assist in the apprehension of Miss Lin when I observe a pipe being swung around the crowd over head. Realizing there's a potential danger to myself and those in the area, I direct him to step back after he refused to comply with the officer who I ordered to have him moved back from the scene. I then direct him back and I escort him through the crowd, further down 43<sup>rd</sup> Street, where he's noncompliant and eventually he's placed under arrest." Sgt. Horohoe also stated that he was present at the substation when Mr. Vazquez was brought inside and that when he returned to the east side of the street, Ms. Lin was being arrested at the same time that Mr. Gutierrez was waving the pole around in the crowd surrounding her.

When asked to clarify if Mr. Gutierrez was still present on the east side of Broadway, after Mr. Vazquez was brought to the substation and Sgt. Horohoe returned to the east side of the street, Sgt. Horohoe stated, "Joyce Lin is involved right now and Gutierrez? Gutierrez has been around all night. He's wearing a bright yellow jacket with a big red heart on it and an 8 foot tall pipe with a camera driving around on a child's bicycle. He's easy to sight in Times Square." **Sgt. Horohoe consistently maintained that Christian Gutierrez physically obstructed the arrest of Joyce Lin.**

However, **PO Stewart, who prepared Mr. Gutierrez's arrest report, complaint report and supporting deposition,** stated that he **did not actually observe any of Mr. Gutierrez's behavior prior to the arrest and did not even see Mr. Gutierrez until he was already in handcuffs inside the substation.** What is more, PO Stewart was one of the officers who arrested Joyce Lin and whose free movement was supposedly obstructed by Mr. Gutierrez's actions. While PO Stewart stated in his supporting deposition that as he was placing Ms. Lin under arrest he observed Mr. Gutierrez standing over him with fifteen foot pole with a camera attached to the top of it, he recanted this statement in his CCRB interview and admitted not only that he did not make this observation, but that the entire contents of his supporting deposition was based on information provided to him by Sgt. Horohoe. Ultimately, PO Stewart stated, he did not in fact observe or independently recall any of what was described in the supporting deposition.

More telling is that **this is consistent with statements of PO Quirk and PO Kantor, who also admitted that they did not actually observe or independently recall what was contained in the summonses/arrest paperwork they prepared for Mr. Groh and Mr. Vazquez. In all three cases, Sgt. Horohoe himself made the arrest and assigned it to the officer who prepared the paperwork. As such, contrary to his stating that he does not tell any of his officers how to testify, it would appear that Sgt. Horohoe did instruct these officers as to what statements they should make in the arrest-related documents for all three individuals.**

Regarding Sgt. Horohoe's CCRB testimony, his confusion over the sequence of events and Mr. Gutierrez's exact actions might be attributable to the chaotic nature of the event and the fact that he was interviewed three months after the incident. However, Sgt. Horohoe's statements regarding Mr. Gutierrez were consistent with the information he provided to PO Stewart on the night of the incident, when he, as PO Stewart's supervisor and the officer who arrested Mr. Gutierrez, was responsible for ensuring that Mr. Gutierrez was