



Howard's death." Nonetheless, Plaintiffs insist that the jury should be able to observe Ms. Sanders reenacting – or demonstrating – her movements at the police station, including zooming in on a particular holding cell. (*Id.* ¶¶ 5, 6.)

Plaintiffs argue that a reenactment/demonstration will assist counsel – and possibly the jury – in understanding the facts of this case. Plaintiffs note that the Village does not have the manuals and instruction books pertaining to the video surveillance system, and claim that it is difficult to understand how the system works without observing it firsthand. (Pl. Reply, at 4-8.) Defendants, however, object on several grounds. Defendants first argue that FED. R. CIV. P. 30 contemplates depositions “upon oral examination,” not by reenactment or demonstration. Defendants analogize that a plaintiff in a slip-and-fall case cannot be compelled to reenact the fall; rather, he must describe in words what occurred. (Def. Resp., at 2-3.) Defendants also argue that Plaintiffs' objectives can be achieved via less intrusive means. They note that Plaintiffs themselves mention the purchase and use of a 21-inch monitor similar to those at the Village police department. In addition, the jury will be able to observe the specific area in question through videotapes depicting both 16-screen and single-screen views of the monitors in the radio room. (*Id.* at 7-8.)

The Seventh Circuit has not addressed the issue of reenactments or demonstrations during depositions. Courts in the Eastern District of Pennsylvania have allowed reenactments in cases involving industrial accidents or manufacturing defects. *See, e.g., Gillen v. Nissan Motor Corp.*, 156 F.R.D. 120 (E.D. Pa. 1994) (allowing videotaped reenactment in case involving an alleged defect in automobile seatbelts); *Carotenuto v. Emerson Elec. Co.*, No. Civ. A. 89-6298, 1990 WL 198820 (E.D. Pa. Dec. 3, 1990) (allowing videotaped reenactment in case involving injury by an allegedly defective radial arm saw); *Kiraly v. Berkel, Inc.*, 122 F.R.D. 186 (E.D. Pa. 1988) (allowing videotaped reenactment in products liability case where plaintiff was injured by defendant's meat slicer); *Moncrief v. Fecken-Kipfel America, Inc.*, No. Civ. A. 88-4930, 1988 WL 68088 (E.D. Pa. June 22, 1988) (allowing videotaped reenactment of accident involving the defendant's vertical

cutting machine). A New York court also allowed reenactment in a case where plaintiffs claimed to have suffered repetitive stress injuries from using the keyboards of the defendants' betting ticket machinery. *Brown v. General Instrument Corp.*, Nos. 93 Civ. 7907, 94 Civ. 1250, 1995 WL 244946 (S.D.N.Y. Apr. 26, 1995). See also *Roberts v. Homelite Div. of Textron, Inc.*, 109 F.R.D. 664 (N.D. Ind. 1986) (allowing videotaped reenactment in products liability case where plaintiff was injured while attempting to start a lawn mower).

More recently, a Nebraska district court allowed a videotaped reenactment by police officers accused of violating the plaintiff's civil rights. *Schmidt v. Bryner*, No. 4:06CV3285, 2007 WL 2375055 (D. Neb. Aug. 15, 2007). Unfortunately, the details of the case are not supplied in the opinion. In another case, a New York court declined to order a reenactment by a criminal defendant accused of public lewdness. *Martinez v. Port Authority of N.Y. and N.J.*, No. 01 Civ. 721 (PKC), 2005 WL 2143333 (S.D.N.Y. Sept. 2, 2005).

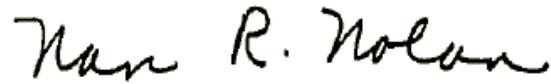
In the absence of any specific direction from courts in this jurisdiction, the court declines to allow the requested reenactment/demonstration. Unlike the majority of cases cited above, this case does not involve an industrial accident or seek damages in products liability. To the contrary, Plaintiffs do not allege that a defect in the videotape system caused, or even contributed to, Mr. Howard's death. As for *Schmidt*, the court does not have sufficient information about the case to draw any meaningful comparison here, and does not find it persuasive. Plaintiffs have both pictures and videotapes depicting the surveillance system in the radio room, and they are free to question Ms. Sanders as to her actions.

### **CONCLUSION**

For the reasons stated above, Plaintiffs' Motion to Compel the Defendants to Present Martha Sanders for a Limited Portion of her Deposition at the Village of Riverdale Police Department [Doc. 82] is denied.

ENTER:

Dated: March 3, 2008

Handwritten signature of Nan R. Nolan in cursive script.

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NAN R. NOLAN  
United States Magistrate Judge