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1 UNITED STATES DISTRICT COURT  
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 DAVID FLOYD, et al.,

4 Plaintiffs,

5 v.

08 CV 1034(SAS)

6 CITY OF NEW YORK, et al.,

7 Defendants.

8 -----x

8 New York, N.Y.  
9 March 29, 2013  
9 10:00 a.m.

10 Before:

11 HON. SHIRA A. SCHEINDLIN,

12 District Judge

13 APPEARANCES

14 BELDOCK LEVINE & HOFFMAN, LLP  
15 Attorneys for Plaintiffs

15 BY: JENN ROLNICK BORCHETTA  
16 JONATHAN MOORE

17 COVINGTON & BURLING, LLP  
17 Attorneys for Plaintiffs

18 BY: KASEY MARTINI  
18 GRETCHEN HOFF VARNER  
19 ERIC HELLERMAN  
19 BRUCE COREY

20 CENTER FOR CONSTITUTIONAL RIGHTS  
21 Attorneys for Plaintiffs

21 BY: DARIUS CHARNEY  
22 SUNITA PATEL  
22 BAHAR AZMY

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APPEARANCES (Cont'd)

MICHAEL A. CARDOZO  
Corporation Counsel for the City of New York  
Attorney for Defendants  
BY: HEIDI GROSSMAN  
BRENDA E. COOKE  
JOSEPH MARUTOLLO  
MORGAN D. KUNZ  
SUZANNA PUBLICKER  
LINDA DONAHUE  
LISA M. RICHARDSON  
JUDSON VICKERS

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1 THE COURT: Please be seated.

2 Good morning everyone. Mr. Charney.

3 MS. BORCHETTA: Good morning, your Honor. We would  
4 like to start by putting a stipulation on the record. Pursuant  
5 to the Court's directive during the testimony of Officer Cormac  
6 Joyce, the parties have reviewed his deposition transcript and  
7 have agreed to stipulate that in that deposition he did not  
8 mention suspicious bulge or peering into windows.

9 THE COURT: Thank you.

10 MR. KUNZ: On that same issue I realize that after the  
11 testimony of David Floyd I don't think we ever put on the  
12 record that -- stipulation that he never said in his deposition  
13 that he was stood up against the wall. I haven't got a chance  
14 to hear from the plaintiffs back on that so we'll want to put  
15 that on the record at some point.

16 THE COURT: Good.

17 Mr. Charney.

18 JAMES KELLY, resumed

19 DIRECT EXAMINATION

20 BY MR. CHARNEY:

21 Q. Good morning, Sergeant Kelly.

22 A. Good morning.

23 Q. Since you were here yesterday have you spoken to your  
24 attorneys?

25 A. No.

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1 Q. Have you reviewed any documents related to your testimony  
2 since yesterday?

3 A. No.

4 Q. Have you spoken to anyone in the police department about  
5 your testimony since yesterday?

6 A. No.

7 Q. Do you recall yesterday we were talking about the reasons  
8 that you had determined while you were still in the car that  
9 Mr. Floyd and the other man were trying to burglarize the  
10 apartment. Do you remember that?

11 A. Yes.

12 Q. And you mentioned three reasons. One being the observation  
13 that they were playing with the door, saw that for about 20 to  
14 30 seconds. Do you remember that?

15 A. Yes.

16 Q. And then the other one was you observed I guess a bag on  
17 the ground near them?

18 A. Yes.

19 Q. And then the third reason you said there had been a  
20 burglary pattern in the neighborhood around that time, correct?

21 A. Yes.

22 Q. So I want to talk about the burglary pattern a little bit.

23 I think as you said yesterday the 43rd precinct is a  
24 very large precinct, correct?

25 A. Correct.

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1 Q. And so for you to really effectively prevent crime and to  
2 locate crime you really try to focus on the specific locations  
3 where the crimes are happening, right?

4 A. It helps.

5 Q. And so to do that you would consult with the crime  
6 complaint data that the police department receives to find out  
7 where the locations of the crimes are?

8 A. It's one of the things you would do, yeah.

9 Q. What other things would you do?

10 A. Just a million things. You would like at pin maps. You  
11 talk to residents. Store owners. Building owners. There's a  
12 ton of contributing factors. The time of day. The date of the  
13 week.

14 Q. But that information is again information of -- about  
15 reported crimes, right?

16 A. Reported crimes I would review in the computer. I would  
17 review pin maps of where the burglaries are taking place. I  
18 might speak to crime analysis. To the detective squad.

19 Q. Did you, in fact, do that on or about February 27 --

20 A. I always do that. I'm sure I did.

21 Q. And so do you recall that day consulting a burglary pattern  
22 sheet for the 43rd precinct to get an idea of where the  
23 burglaries were happening?

24 A. I don't remember that day. I do know that we were -- I'm  
25 aware of any pattern that might be going on.

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1 Q. I'm going to show you a document. I don't think it's in  
2 evidence yet but maybe we can get it into evidence but let's  
3 show you. This is marked as Defendants' Exhibit L-4.

4 MR. KUNZ: I think we actually did put that in  
5 yesterday.

6 MR. CHARNEY: Is it already in? I know we put the map  
7 in.

8 MR. KUNZ: I believe we did directly after the map.

9 THE COURT: I think so too.

10 THE WITNESS: The same thing is sitting right here so  
11 we must have.

12 MR. CHARNEY: If we can then pull it up on the  
13 computer.

14 Q. You have a copy, Sergeant?

15 A. Yes. There's one here.

16 Q. So looking at this document it says patrol borough Bronx  
17 burglary pattern sheet.

18 Is this the kind of burglary pattern sheet you would  
19 consult regularly when trying to figure out where the crime  
20 patterns were in the 43rd precinct?

21 A. This might be one of them but a lot of times things aren't  
22 patterns yet. There's only one or two complaint reports. They  
23 might not be put into a pattern. So I also -- we have a thing  
24 called Omni. You can log onto the computer. You can read all  
25 the complaints that happened -- if it was put in, it could have

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1 happened an hour ago, if it was put in fast enough. So  
2 sometimes it might take a week or two for something to become a  
3 pattern.

4 Q. When you say the Omni system, you're talking about the  
5 database where you can actually read crime complaints that have  
6 been filed with the NYPD?

7 A. Correct.

8 Q. So if you can recall back in February, around February 27,  
9 2008 do you recall looking or reviewing a burglary pattern  
10 sheet to determine where burglaries were happening --

11 A. I'm sure that's one of the things I did.

12 Q. So looking at this document, you see at the top it says  
13 date opened January 9, 2008, right?

14 A. Yes.

15 Q. And then it says date updated March 7, 2008?

16 A. Yes.

17 Q. So is it fair to say that this burglary pattern sheet  
18 covers the time period in which Mr. Floyd's stop occurred?

19 A. Yes.

20 Q. And if you look, this is a two-page document, right?

21 A. Yes.

22 Q. And there are seven burglaries listed on this pattern  
23 sheet?

24 A. Correct.

25 Q. And you can tell -- am I correct that out of the seven, six

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1 of them occurred in January 2008.

2 Take your time and look at it.

3 A. That would be correct.

4 Q. And the only one that occurred in February occurred on

5 February 2, 2008, right?

6 A. Correct.

7 Q. And Mr. Floyd's stop was on February 27, 2008?

8 A. Correct.

9 Q. Is it fair to say that as of the date of his stop the  
10 burglary pattern that existed in the 43rd precinct that you  
11 were aware of did not include any burglaries that happened  
12 within three weeks of this stop?

13 A. According to this, yes. But it could -- there could very  
14 well -- I'm sure there were a lot more burglaries. They just  
15 weren't placed in this particular pattern.

16 Q. What's your basis for saying you were sure there were a lot  
17 more?

18 A. I don't know. I guess we'd have to go to the records. But  
19 in order to put into a pattern, it has to go through crime  
20 analysis, detective squad.

21 Q. But in terms of the pattern that existed that went through  
22 crime analysis and the detective squad there were no --

23 A. In regards though this one particular pattern, the last one  
24 was on February -- what does it say -- second.

25 Q. And this document was updated on March -- actually it

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1 looks --

2 A. March 10, yes.

3 Q. So as of March 10, 2008 the burglary pattern that had been  
4 identified for your precinct by crime analysis did not show any  
5 burglaries that had happened within three weeks of Mr. Floyd's  
6 stop, correct?

7 A. As far as this pattern, no.

8 Q. And you said that some of the crime complaints wouldn't  
9 have -- may not have been in the pattern, right?

10 A. Right.

11 Q. Are you aware that the NYPD crime complaint data shows that  
12 within the two months from January 1 to the point of  
13 Mr. Floyd's stop there had only been one burglary reported in  
14 the 36-square block radius around his home?

15 A. No, I'm not.

16 Q. I want to then move to I guess it's Defendants' Exhibit  
17 K-13 which I believe is already in evidence as well.

18 Now I'm going to represent and I think defendants  
19 agree that this map includes plots for each of the burglaries  
20 on the pattern sheet that we were just looking at.

21 A. Correct.

22 Q. Is it fair to say that these seven burglaries are the ones  
23 all to the west of the Bronx River Parkway, right?

24 A. I think this map is a little deceiving because the Bronx  
25 River Parkway, it looks as though it breaks up the command, but

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1 it actually runs underneath all of these streets. So it's  
2 actually not broken up by the Bronx River Parkway, no.

3 Q. I understand that. But my question was are they all to the  
4 west of the Bronx River Parkway?

5 A. Yes, they are.

6 Q. And the point on the top right-hand corner, that's where  
7 Mr. Floyd was stopped?

8 A. Correct.

9 Q. Now, on the date of this -- of Mr. Floyd's stop -- first of  
10 all, looking at the map it appears that three of the reported  
11 burglaries were on is it Stratford Avenue?

12 A. That's correct.

13 Q. And then two of them were on Elder Avenue, right?

14 A. Yes.

15 Q. And then the other two were on -- is it Ward Avenue?

16 A. Is it Manor -- it's either Manor or Ward Avenue.

17 Q. Looking at the sheet it looks like they're on --

18 A. Yes. Ward Avenue, yes.

19 Q. So the burglaries all occurred on one of three streets,  
20 right, Ward, Stratford, or Elder, correct?

21 A. Yes.

22 Q. But that's not where you were patrolling on the date of  
23 Mr. Floyd's stop, was it?

24 A. I was patrolling in that neighborhood.

25 Q. You were patrolling in that neighborhood?

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1 A. Correct.

2 Q. When you say "that neighborhood" you include Beach Avenue  
3 as part of that neighborhood?

4 A. Absolutely.

5 Q. That's what you mean by you were patrolling in that  
6 neighborhood?

7 A. Yes.

8 Q. Are you aware that each of these burglaries is  
9 approximately one or a little bit more than one mile away from  
10 Mr. -- 1359 Beach Avenue?

11 A. Is it that far? I don't know.

12 I'd say, yeah, it's about that.

13 Q. And based on what you said earlier about trying to find the  
14 specific locations in the precinct where crime is occurring are  
15 you -- do you feel that these burglaries were still within the  
16 vicinity of Mr. Floyd's home?

17 A. Absolutely.

18 Q. Now in terms of this burglary pattern, I think you said  
19 that it was -- the pattern was residential homes, right?  
20 That's what was being burglarized?

21 A. Correct.

22 Q. Was there a particular time of day they were being  
23 burglarized.

24 A. It looks like there's all different times.

25 Q. So there really wasn't a time of day that these burglaries

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1 were happening at, a particular time of day?

2 A. I guess no, not at a particular time of day.

3 Q. And in terms of the manner in which these burglaries were  
4 occurring, looks like six of the seven were not burglaries that  
5 were conducted through the front door of the home, right?

6 A. Correct. Some are saying rear window.

7 Q. Well, in fact, only one of them mentioned front door,  
8 right?

9 A. One is unknown, yes.

10 Q. And sitting here today you don't know whether any of these  
11 burglaries involve the suspect using keys to enter the door of  
12 the residence, right?

13 A. It's unknown.

14 Q. Now you said again that -- I think you already said this --  
15 but the day of the stop you were patrolling in or around Beach  
16 Avenue, correct?

17 A. Correct.

18 Q. You weren't patrolling on Elder Avenue?

19 A. I'm sure we were patrolling the whole area.

20 Q. You don't have any recollection sitting here today that you  
21 were patrolling on Elder Avenue?

22 A. I couldn't say.

23 Q. And up don't have any recollection sitting here today you  
24 were patrolling on Ward Avenue?

25 A. I couldn't say.

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1 Q. And you don't have any recollection sitting here today that  
2 you were patrolling on Stratford Avenue?

3 A. I couldn't say.

4 Q. So I think we've talked about the reasons for your  
5 determination while still in the moving car that Mr. Floyd and  
6 the other man were burglarizing the apartment. So is it  
7 correct that after you made this determination you did exit the  
8 vehicle with Officer Hernandez and Officer Joyce?

9 A. Yes.

10 Q. And you approached the two men on foot?

11 A. Yes.

12 Q. And they were still standing in front of the door of the  
13 residence?

14 A. They were standing by the door, yes.

15 Q. And at some point before you actually reached them when you  
16 were five to ten feet away from them you announce yourselves as  
17 police officers, correct?

18 A. At some -- yeah, at some point we announced ourselves as  
19 police officers.

20 Q. Do you recall that it was when you were standing about five  
21 to ten feet away from them?

22 A. No.

23 Q. Do you --

24 A. Do you want me to take a look at my deposition?

25 Q. Do you want to look at your deposition to refresh your

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1 recollection. Do you want to turn to page -- I apologize.

2 I guess page 43, line -- hold on. You know what,

3 we'll come back to that.

4 So you approached them and then you announce

5 yourselves as police officers, correct?

6 A. Correct.

7 Q. And at that point in time you were about five to ten feet

8 away from them when you announce yourself, correct?

9 A. If that's what I said at my deposition.

10 Q. Well then let's look at -- here we can look at page 31, I

11 believe. I'm sorry. You know what. I apologize. Let's ask a

12 few more questions and then we'll get to how far away you were.

13 So you announce yourselves as police officers,

14 correct?

15 A. Correct.

16 Q. And at the point in time when you announce yourselves, you

17 did observe one of the two men holding a set of keys, right?

18 A. Yes.

19 Q. And at that point you also ask the men for identification,

20 right?

21 A. Yes.

22 Q. So at that point in time when you announce yourselves as

23 police officers you were standing in between the men and the

24 street, correct?

25 A. In between the men and the street, yes.

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1 Q. And at that point in time they would not have been free to  
2 ignore you and walk away, right?

3 A. No.

4 Q. So at that point in time you announced yourself, you seen  
5 the keys, and you asked for identification. At that point in  
6 time you were five to ten feet away.

7 Now if you want to refresh your recollection, you can  
8 look at page 43, line 8.

9 A. Okay.

10 Q. You can read it to yourself and then let me know if that  
11 refreshes your recollection.

12 A. Somewhere around five feet.

13 Q. So you saw the keys in one of their hands, right?

14 A. Correct.

15 Q. You didn't see any of the burglary tools, right?

16 A. No.

17 Q. You didn't see any suspicious bulges on either of them?

18 A. No.

19 Q. And when you did ask for identification one of the two men,  
20 in fact, did give you his identification, right?

21 A. I remember one of them had an identification but it was  
22 out-of-state. It was an out-of-state license.

23 Q. But he didn't refuse to give it to you?

24 A. No.

25 Q. So, after you saw the keys you still suspected the men of

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1 burglary?

2 A. I didn't know yet. I was conducting an investigation. I  
3 mean my suspicions definitely rose. Neither one of them had  
4 identification that says that they belong there.

5 Q. But you had already suspected them of burglary when you  
6 were in the car, right?

7 A. That was my suspicion, yes.

8 Q. And at that point in time you didn't actually see what was  
9 in their hands, right?

10 A. Nope.

11 Q. So now you approach, right, and you're five feet away?

12 A. Yes.

13 Q. And now you see one of them holding a set of keys, right?

14 A. Not a set of keys. It was a large key chain with a lot of  
15 keys.

16 Q. It had keys on it?

17 A. A lot of keys, yes.

18 Q. Didn't have a screwdriver on it?

19 A. Right. But if you had the keys, I don't know why you would  
20 have to shake the door to get in.

21 Q. So you still suspected them of burglary even --

22 A. One hundred percent.

23 Q. -- though you saw the keys?

24 A. Yes.

25 Q. Do you consider a large set of keys to be a burglary tool?

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1 A. If you look at -- could they be hoping to get lucky and  
2 have a master key. People that steal cars, they have master  
3 keys for those cars.

4 THE COURT: Maybe you could just answer the question.  
5 Do you consider a large set of keys to be a burglar's tool?

6 THE WITNESS: It could be way to get in the house,  
7 yes.

8 THE COURT: You need to say yes or no.

9 THE WITNESS: There could be a master key on there.

10 THE COURT: Could you do me a favor. Could you say  
11 yes or no.

12 THE WITNESS: Yes.

13 Q. So it could be a burglary tool?

14 A. Absolutely.

15 Q. Now I want to look -- if you can pull up I think it's  
16 Defendants' Exhibit X-4. I think we were looking at it  
17 yesterday, the UF 250.

18 I think you have it. Do you have it in front of you,  
19 Sergeant, or did I not give you a hard copy? If not then we'll  
20 just pull it up?

21 THE WITNESS: You may have took it back. I think I  
22 did have it at one point.

23 MR. CHARNEY: I have an extra copy actually that I can  
24 give you.

25 Q. So do you see on the first page we have the check boxes

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- 1 which list the various circumstances which led to the boxes  
2 that you can check off?  
3 A. Yes.  
4 Q. You see the first one on there is carrying objects in plain  
5 view used in commission of a crime?  
6 A. Yes.  
7 Q. That wasn't checked off on this form, right?  
8 A. Nope.  
9 Q. So if a large set of keys is in your view a burglary tool,  
10 why wasn't this checked off?  
11 A. Depends on -- I don't think it was in plain view.  
12 Q. Well, you said you saw it in the man's hand when you  
13 approached?  
14 A. Originally I saw their backs, I testified, I saw their  
15 backs. I saw the things like this. I didn't see the keys in  
16 plain view until I was approximately five feet away from them.  
17 Q. So your testimony is that the --  
18 A. I also don't know what Officer Joyce saw, and he's the one  
19 that filled this out.  
20 Q. Yeah, but you reviewed, right?  
21 A. Yes.  
22 Q. And you signed it?  
23 A. This is what he saw. It's not what I saw. Three people  
24 there. Three people probably saw three different things.  
25 Q. But you reviewed it. And you could have spoken to him

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1 about what he saw, right?

2 A. I'm not going to tell him to write what I think he saw.

3 Q. Okay. So your testimony is that the three of you were  
4 together. You approached the two men, correct?

5 A. Correct.

6 Q. And saw the keys, right?

7 A. Correct. When I was about five feet away from him I saw  
8 the keys, yes.

9 Q. You have no basis for knowing whether or not Officer Joyce,  
10 who was also standing five feet away, saw the keys or not?

11 A. I have no idea when he saw the keys.

12 Q. So you saw the keys. One of the two men gave you his  
13 out-of-state license. And that was, in fact, Mr. Floyd,  
14 correct?

15 A. Actually I don't remember.

16 Q. Well let's look at the UF 250. What's the address listed  
17 for Mr. Floyd?

18 A. You are correct. It says New Orleans.

19 Q. So that would mean that Mr. Floyd is the one that gave you,  
20 complied with your request to give you his ID, correct?

21 A. Yes. Because it says photo ID, yes.

22 Q. Even after you saw the keys and even after Mr. Floyd  
23 complied with your request, Mr. Floyd was put against the wall,  
24 right?

25 A. I don't remember if he was put against the wall. It

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1 says --

2 Q. So do you have any reason to think he wasn't put against  
3 the wall?

4 A. No.

5 Q. So he was put against the wall. And he was also frisked,  
6 right?

7 A. Yes.

8 Q. Now, when you stopped these two men, they said they were  
9 trying to get in the apartment and they were locked out,  
10 correct?

11 A. I believe one of the men said that he had locked his  
12 keys -- at some point he said that he had locked his keys in  
13 the apartment.

14 Q. Okay. But you don't remember when?

15 A. No.

16 Q. But you and the other officers didn't try to help them get  
17 into the apartment until after the men had already been  
18 frisked, right?

19 A. Right. We were still conducting the investigation.

20 Q. You also, do you remember testifying at your deposition  
21 that when you announced yourselves as police officers you said  
22 one of the two men became what you described as  
23 confrontational?

24 A. Yes.

25 Q. And by that you meant he's speaking in a loud voice, right?

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Kelly - direct

- 1 A. Yes.
- 2 Q. And you said he was flailing his arms?
- 3 A. Yes.
- 4 Q. But you said he was flailing his arms in the way people do  
5 when they're angry, right?
- 6 A. That's what I remember, yes.
- 7 Q. But he didn't take a swing at you, did he?
- 8 A. No.
- 9 Q. He didn't put his hand in his waistband?
- 10 A. No.
- 11 Q. Didn't put his hand in his pocket, did he?
- 12 A. No.
- 13 Q. He was just gesturing the way people gesture when they are  
14 having a heated discussion?
- 15 A. Either that or a defense mechanism.
- 16 Q. What do you mean by a defense mechanism?
- 17 A. Act angry. Like maybe we shouldn't be talking.
- 18 Many people use anger as a defense mechanism.
- 19 Q. He wasn't using these gestures in a way that you felt like  
20 he was about to physically attack you, right?
- 21 A. I don't remember feeling in danger, you know -- no.
- 22 Q. You didn't feel that he was using his gestures in a way  
23 that made you think he might be reaching for a weapon or  
24 something, right?
- 25 A. No. I don't remember that.

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1 Q. You don't remember or you don't think he was?

2 A. I don't think he was.

3 Q. Now, the flailing of the arms was something that happened  
4 after you had already begun the stop and question of these two  
5 individuals?

6 A. No. It was immediately when he recognized our presence.

7 Immediately when we announced ourselves as being  
8 police officers.

9 Q. So is it your testimony that that was an additional reason  
10 for your suspicion of burglary?

11 A. Absolutely.

12 Q. And now is that on the UF 250 form?

13 A. No.

14 Maybe Officer Joyce didn't feel the same way.

15 Q. It's not in your memo book, right?

16 A. No.

17 Q. Now, in fact, at your deposition you testified, right, that  
18 that flailing of the arms was included in what you described as  
19 the furtive movements you observed, right?

20 A. Correct.

21 Q. So furtive movements is checked on the form, right?

22 A. Correct.

23 Q. Now if there was no burglary pattern -- I know we're just  
24 assuming because you and I disagree on this -- if there was no  
25 burglary pattern, do you believe that what you observed from

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1 the car gave you reasonable suspicion to stop?

2 A. One hundred percent. Pattern or not, I would have done the  
3 same stop.

4 Q. You believe you had reasonable suspicion --

5 A. One hundred percent.

6 Q. I want to ask you a little bit about your supervisory  
7 duties as an anticrime sergeant. My first question though is  
8 you're still an anticrime sergeant in the 43rd?

9 A. Correct.

10 Q. And is your supervisor still Lieutenant Guimaraes?

11 A. No.

12 Q. When did he stop being your supervisor?

13 A. I believe he got promoted about two years ago.

14 Q. So he's a captain now?

15 A. Correct.

16 Q. Now one of your duties, right, as an anticrime sergeant is  
17 to ensure that the officers you supervise are properly trained  
18 regarding their duties as described in current department  
19 directives, right?

20 A. Correct.

21 Q. So you are responsible for training them and speaking to  
22 them about all the operations orders that come out from the  
23 commissioner's office?

24 A. I'm one of the people that would speak to them yes.

25 Q. And that's part of your job description, correct?

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D3t9flol Kelly - direct

1 A. I would say when you said the -- did you say department  
2 bulletins?

3 Q. So operations orders --

4 A. I would say that's more the training sergeant would be more  
5 in charge of that.

6 Q. If an operations order includes a directive wouldn't it be  
7 your responsibility to make sure your officers are aware of it?

8 A. Sure. It would be one of my responsibilities.

9 MR. CHARNEY: I want to pull up Plaintiffs' Exhibit  
10 184.

11 Q. Sergeant, do you recognize this document?

12 A. I have seen the document, yes.

13 Q. And is it correct that this document articulates what the  
14 NYPD's policy regarding racial profiling was back in 2008 and  
15 2009?

16 A. Yes.

17 Q. So this would have been one of those directives you would  
18 have had the responsibility to make sure your officers were  
19 aware of, correct?

20 A. Yes.

21 Q. But you don't -- as of August 2009 when you were deposed  
22 you don't remember ever reviewing this policy with the officers  
23 you supervised, correct?

24 A. If that's what I said in my deposition, yes, that's  
25 correct.

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D3t9fl01 Kelly - direct

1 Q. Do you want to look at page 84, line 14.

2 Do you see it says:

3 "Q. You provided an instruction to your police officers  
4 regarding police procedures of racial profiling.

5 "I don't remember."

6 A. Okay.

7 Q. I think this is already in evidence, right, 184 or did we  
8 not -- I think it's already in evidence? Not?

9 MR. KUNZ: I don't know that it is.

10 MR. CHARNEY: I'm sorry then. I thought it was. I  
11 wouldn't have put it up on the screen. Do you guys have any  
12 objection?

13 MR. KUNZ: No objection.

14 MR. CHARNEY: We move this into evidence, your Honor.

15 THE COURT: And the exhibit number again?

16 MR. CHARNEY: 184.

17 THE COURT: Okay. 184 is received.

18 (Plaintiffs' Exhibit 184 received in evidence)

19 Q. Back in 2008, 2009, Lieutenant Guimaraes was your direct  
20 supervisor, correct?

21 A. Yes.

22 Q. And even though you're a sergeant you did from time to time  
23 in 2008 and 2009 complete UF 250 forms yourself when you  
24 conducted a stop, right?

25 A. I'm sure I did.

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D3t9fl01 Kelly - direct

1 Q. And when you did that you typically gave the form to  
2 Lieutenant Guimaraes to review, right, because he was your  
3 supervisor?

4 A. Most likely.

5 Q. But you don't recall any occasion where Lieutenant  
6 Guimaraes ever discussed with you the UF 250s that you  
7 completed, do you?

8 A. Not that I recall.

9 Q. A couple more questions and I should be --

10 (Pause)

11 MR. CHARNEY: One second, your Honor.

12 Q. So just to clarify for the record. When you testified  
13 yesterday and today about the reasons for your reasonable  
14 suspicion you mentioned a burglary pattern, right?

15 A. Correct.

16 MR. CHARNEY: No further questions, your Honor.

17 THE COURT: Thank you, Mr. Charney.

18 All right, Mr. Kunz.

19 CROSS-EXAMINATION

20 BY MR. KUNZ:

21 Q. Good morning, Sergeant.

22 A. Good morning.

23 Q. Thanks for coming back today.

24 Before we begin talking about the incident, I just  
25 want to go over a little bit of background about yourself for

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D3t9flol Kelly - cross

1 the court. How long have you been with the NYPD?

2 A. Fourteen-and-a-half years.

3 Q. And how long about were you at the academy?

4 A. Six or seven months.

5 Q. And could you just briefly walk the court through your  
6 career with the NYPD after you left the academy.

7 A. I left the police academy in February of 1999, went to the  
8 110 precinct in Queens. For pretty much did patrol -- went to  
9 FTU they called it at the time. Field training. Did patrol.  
10 Then in August of 2005 I got promoted to sergeant. Went to the  
11 43rd precinct where I did patrol. Did a little bit of CPU.  
12 And I guess for the last like five-and-a-half years I've been  
13 the anticrime sergeant.

14 Q. Could you briefly describe for the court what your duties  
15 and responsibilities are as a supervisor of an anticrime team.

16 A. Just being up on trends, patterns, the more violent crimes,  
17 robberies, burglaries, grand larceny, guns, shootings.

18 Q. What's your educational background?

19 A. I have an associate's degree.

20 Q. And are you -- do you have kids?

21 A. Yes.

22 Q. Why did you become a police officer?

23 A. I had family on the job and just good job, good benefits,  
24 pension.

25 Q. Now directing your attention to February 27, 2008 when you

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D3t9flol Kelly - cross

1 were an anticrime supervisor in the 43rd precinct, could you  
2 just briefly describe to the court the neighborhoods that are  
3 covered by the 43rd precinct?

4 A. Soundview, Castle Hill.

5 Q. Are you familiar with Parkchester?

6 A. Yes.

7 Q. Could you explain to the court what Parkchester is.

8 A. Parkchester is like -- it's like a complex, like with a lot  
9 of buildings. It's not housing. But it's, you know, a large  
10 complex with a lot of buildings.

11 Q. And where is the Parkchester complex in relation to 1359  
12 Beach Avenue?

13 A. It's probably about four or five blocks away to -- on the  
14 other side of White Plains Road.

15 Q. In policing are you familiar with the term crime condition?

16 A. Yes.

17 Q. Could you explain to the court what a crime condition is.

18 A. It would be like a rise in crime, for instance if there's a  
19 lot of robberies taking place after school. That would be a  
20 crime condition. Or if there's a lot of burglaries taking  
21 place during the day. That would be a crime condition.

22 Q. How are crime conditions identified?

23 A. I would say through crime analysis.

24 Q. Now as a supervisor of your anticrime team were you aware  
25 of the crime conditions going on in the precinct?

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D3t9flol

Kelly - cross

1 A. Yes.

2 Q. How did you stay aware of the crime conditions going on?

3 A. Everyday I come into work I go onto the computer. I read  
4 like the previous day or the previous couple days' reports  
5 pretty much just looking at the robberies, burglaries,  
6 shootings, assaults. And I confer with the detective squad,  
7 confer with crime analysis themselves.8 Q. And how would the knowledge of crime conditions going on in  
9 the precinct affect your day-to-day work as an anticrime  
10 supervisor?11 A. It would -- for the most part it would put you in a certain  
12 area. You're going to concentrate on the areas where the crime  
13 is taking place.14 Q. Would it affect the types of behaviors that you would watch  
15 for?

16 A. Yes.

17 Q. In what way?

18 A. For instance for a long time robberies would happen after  
19 school. Kids would get their phones stolen. So you might  
20 watch, you know, people following the kids or standing by  
21 subways. It could be a lot of different things.22 Q. So you would do these observations looking for suspicious  
23 behavior?24 A. Correct. Depending on the crime that you were focusing on  
25 or --SOUTHERN DISTRICT REPORTERS, P.C.  
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D3t9flol Kelly - cross

1 Q. Now in your experience could an observation of suspicious  
2 behavior upon investigation turn out to be innocent conduct?

3 A. Yes.

4 Q. Now, when you would patrol around the 43rd precinct as an  
5 anticrime officer, would you only focus on a block where a  
6 crime had recently happened?

7 A. No. If I'm in the passenger's seat, I'm looking out the  
8 window all day as we drive.

9 Q. So in the pattern that you just talked about with  
10 Mr. Charney, there was robberies that happened on Elder Avenue,  
11 Ward Avenue and Stratford Avenue; is that correct?

12 A. The burglaries, yes.

13 Q. Burglaries. I'm sorry.

14 Does that mean that if you were trying to get at that  
15 burglary pattern you would only look at those three blocks?

16 A. No.

17 Q. And can you tell the court any similarities or differences  
18 between those three blocks and Beach Avenue?

19 A. They're all very similar. Pretty much comprised of  
20 residential houses, buildings. They both pretty much border  
21 Westchester Avenue, which happens to be a commercial -- there's  
22 a subway on Westchester Avenue. It's the same neighborhood.

23 Q. Why didn't you focus on just those three blocks? Why  
24 didn't you just look at Elder, Stratford, and Ward?

25 A. I would focus on -- well because in my opinion a good

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D3t9flol Kelly - cross

1 burglar is not going to hit on the same block. He knows those  
2 are going to get reported. So you're not going to stay on the  
3 same block. They're going to bounce around.

4 To tell you the truth, I loved Beach Avenue because  
5 you're 50 feet away from the Cross Bronx Expressway so if  
6 there's somebody waiting in a car or something you get right on  
7 the Cross Bronx Expressway.

8 Q. Now, earlier today you were talking about the difference  
9 between a pattern gets identified but before it gets identified  
10 there are still crime complaints and they just haven't been  
11 compiled together yet.

12 A. Absolutely yes.

13 Q. Could you explain a little bit more about that to the  
14 Court.

15 A. The complaints are going in. Right now somebody is  
16 inputting complaints. To be identified as a pattern, it would  
17 have to go through crime analysis. Crime analysis would have  
18 to confer with the detective squad or the detective assigned to  
19 the particular burglaries. It could take -- it could take  
20 weeks before it was identified as a pattern.

21 Q. So just because a group of burglaries don't get placed into  
22 a pattern, does that mean that burglaries are not happening in  
23 the area?

24 A. No.

25 Q. Now, directing your attention to February 27 of 2008. What

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D3t9fl01 Kelly - cross

1 were you and your team wearing that day?

2 A. I know we were wearing plainclothes, but.

3 Q. Was that normal for your team to operate in plainclothes?

4 A. Yes.

5 Q. And do you know why that is?

6 A. I guess always been that way. That's what the anticrime  
7 team is.

8 Q. Did the fact that you were in plainclothes aid in your  
9 ability to observe crimes in progress?

10 A. I don't really think so.

11 Q. Why is that?

12 A. The whole neighborhood knows, you know, who you are. I  
13 think they're more concerned about the people in plainclothes  
14 as anybody else.

15 Q. I'm sorry. Just going back for a second just so we're  
16 clear. Just because a burglary, a specific burglary is not  
17 placed in a pattern, would you still know that the burglaries  
18 had occurred?

19 A. If they were in the computer and -- yes.

20 Q. And how did you become aware of burglaries that occurred,  
21 that are in the computer?

22 A. Like I said, like when I get in, in the morning it's just  
23 common practice, I'll log on and just look to see the crimes  
24 that have -- that have been reported in the past, especially if  
25 it's my first one -- you know, sometimes it takes two or three

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D3t9fl01 Kelly - cross

- 1 days for somebody to actually report something. So you might  
2 go in the computer because what wasn't there yesterday and it  
3 happened three days ago might be there, you know, that  
4 particular day. So you're just updating yourself on where  
5 these crimes are taking place.
- 6 Q. And --
- 7 A. What times of day.
- 8 Q. Was that a normal practice of yours?
- 9 A. Yeah, I still -- I do that everyday.
- 10 Q. You were working with Officers Joyce and Hernandez on  
11 February 27, 2008?
- 12 A. Correct.
- 13 Q. Do you normally work with those officers?
- 14 A. Not anymore.
- 15 Q. At the time.
- 16 A. Well I had a team of five police officers. So I guess  
17 maybe 50 percent -- often enough I worked with them, yes.
- 18 Q. Now, while you were out in the field that day what were you  
19 focusing on?
- 20 A. I'm sure like everyday we -- probably focusing on  
21 robberies, grand larcenies, burglaries.
- 22 Q. And how did you end up in the vicinity of Beach Avenue that  
23 day?
- 24 A. We were patrolling that whole area in regards to many  
25 things. One of -- being aware at the same time of any type of

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D3t9flol Kelly - cross

1 pattern that was going on. So I'm assuming -- I mean we're  
2 going back five years -- that I would be aware of any burglary,  
3 robbery, grand larceny pattern that may have been going on.  
4 I'm assuming that's why we were in that neighborhood.  
5 Q. Now, could you tell the Court what the area around Beach  
6 Avenue, 1359 Beach Avenue is like.  
7 A. It's a pretty quiet area. There's -- you have the Cross  
8 Bronx Expressway service road is like 50 feet from where the  
9 house is. And then if you go to the end of the block you have  
10 Westchester Avenue. And Beach Avenue, that street just happens  
11 to be a residential -- you know, purely residential. There is  
12 no stores, nothing like that.  
13 Q. Now, what first drew your attention to the men that you  
14 ultimately stopped?  
15 A. I would say just the -- like the shaking. Like it looked  
16 like they were forcibly trying to get into a house.  
17 Q. And what did you and your team do upon seeing that?  
18 A. Pulled over.  
19 Q. What did you do?  
20 A. I'm sure we observed for a couple more seconds, maybe a  
21 minute, and we exited the vehicle and investigated.  
22 Q. Why did you observe them for a period of time?  
23 A. I remember seeing something that raised all of our  
24 attention. And we were -- I don't know if we had a  
25 conversation or not. I'm sure we said something to each other

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D3t9flol Kelly - cross

1 like, holy cow these guys might go doing a burglary.

2 We exited the vehicle. Identified ourselves. And  
3 conducted the investigation.

4 Q. Were the men frisked?

5 A. Yes.

6 Q. At what point during the encounter were they frisked?

7 A. I don't remember. Probably right away. I hope right away.

8 Q. Do you recall if you had asked for their ID before the  
9 frisk or after the frisk?

10 A. No, I don't.

11 Q. Why were the men frisked?

12 A. What we were reasonably suspicious of was possible violent  
13 crime. I don't know if they are breaking into the house to do  
14 a home invasion or you want to break into a house and have a  
15 weapon, God forbid somebody is in the house.

16 Q. So did you fear for your safety when the men were frisked?

17 A. I wanted to make sure we were safe. I'm sure that was our  
18 intention, to make sure we were safe, and then finish  
19 conducting the investigation.

20 Q. And after the men were frisked were you still concerned for  
21 your safety?

22 A. Probably not.

23 Q. And that's because the frisk had determined they didn't  
24 have any weapons on them?

25 A. Correct.

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D3t9flol

Kelly - cross

1 I mean you're still going to be cautious.

2 Q. So, tell the court a little bit about how the investigation  
3 into the possible burglary went.

4 A. I remember that the one gentleman didn't have any  
5 identification. The other gentleman did. But it was an  
6 out-of-state license. Further raising my suspicions, anyway,  
7 because you're saying you live there, you're saying the keys  
8 are in the house, but nobody has any identification to say that  
9 they do live there.

10 The one gentleman was saying that he locked his keys  
11 in the house. I remember -- I believe it was Officer Hernandez  
12 that walked -- it was either -- it was either up the stairs --  
13 whatever he did, he was able to get some mail with the  
14 gentleman that did have his name on it. I want to say it might  
15 have been a Con Edison bill, something to that effect.

16 With that, I think there was another contributing  
17 factor, maybe somebody else that lived in house that  
18 corroborated the story that he did live there. I just remember  
19 being satisfied that the gentleman did live there, locked his  
20 keys in the house.

21 Q. So after you became satisfied that the gentlemen were not  
22 there to burglarize the place, what happened next?

23 A. I actually remember explaining the reason for the stop.  
24 Because the one gentleman was very agitated, extremely as soon  
25 as we got there -- as soon as we identified ourselves as police

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D3t9fl01 Kelly - cross

1 officers.

2 When the investigation was over and it was determined  
3 that they lived there, I remember explaining, you know, if  
4 somebody was breaking into your house wouldn't you be happy  
5 that we stopped, you know. And I actually remember all parties  
6 being satisfied and I don't know happy, but it was a cordial,  
7 you know, have a nice day, sorry to bother you. And went on  
8 our way.

9 (Continued on next page)

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D3tWflo2 Kelly - cross

1 BY MR. KUNZ:

2 Q. How long did the entire encounter last?

3 A. Five to ten minutes.

4 Q. So the incident happened in February of 2008, is that  
5 correct?

6 A. Correct.

7 Q. Did you have occasion to receive an award from the  
8 community council in 2008?

9 A. Yeah, actually got sergeant of the year from the community  
10 council, 2008.

11 Q. Can you tell the Court a little bit about what the  
12 community council is and the award?

13 A. Community council is made up of residents in the precinct,  
14 store owners, business owners, I guess anybody, anybody that  
15 would have a vested interest in the precinct, and that council  
16 would have like almost a direct line to commanding officer or  
17 to community affairs officers, if there's an event going on, if  
18 they want to have a block party, all types of things. With  
19 Hurricane Sandy and all the gas stations and madness, you know,  
20 you contact the community board and the precinct commander and,  
21 you know, helps straighten the situation out.

22 Q. Just briefly explain to the Court what the award was.

23 A. It was sergeant of the year. You know, I deal a lot with  
24 the community. A lot of the information I get is from store  
25 owners, building owners, supers. A wealth of information I get

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D3tWflo2 Kelly - cross

1 from these people.

2 Q. Now, you were asked some questions yesterday about the  
3 monthly activity of one of the men from your team, Officer  
4 Hernandez. Do you remember being asked those questions?

5 A. Yes.

6 Q. I'm going to show you Officer Hernandez's monthly activity  
7 report from February 2008. So this was from the month that the  
8 incident happened. Is that correct?

9 A. That's correct.

10 Q. Do you have a hard copy in front of you?

11 A. Yes, I do.

12 Q. Do you see the column that says stop and frisk?

13 A. Yes.

14 Q. And do you see how on some days Officer Hernandez had  
15 stop-and-frisk activity and on other days he did not have  
16 stop-and-frisk activity?

17 A. Yes.

18 Q. Was that typical for the five-person team, five members of  
19 your team, that some days they would have activity and some  
20 days they would not?

21 A. Absolutely.

22 Q. On the days that an officer did not have any activity, did  
23 you think negatively on the officer at all?

24 A. Not -- no, not at all. They could be doing, you might sit  
25 somewhere and watch all day and nothing happens.

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D3tWflo2

Kelly - cross

1 Q. And that means the officer was still doing his job as a  
2 police officer; he just didn't happen to see anything?

3 A. Absolutely.

4 Q. As a supervisor of this five-person team, were you aware of  
5 the performance of your officers?

6 A. I'm sure.

7 Q. And how did you, as a supervisor, gauge how well your  
8 officers were doing?

9 A. I mean, I happen to be lucky enough where I only have five  
10 police officers. I'm with them all the time. A lot of times  
11 if they make an arrest, I'm with them. I'm involved with it.  
12 I have a pretty clear picture of what they're doing day in and  
13 day out.

14 Q. Did you ever tell officers on your team that they needed to  
15 conduct a certain amount of activity within a given time  
16 period?

17 A. No.

18 Q. Did you ever pressure the officers on your team to conduct  
19 a certain number of stop, question, and frisks within a  
20 particular time period?

21 A. No.

22 Q. Did you ever transfer or discipline an officer for low  
23 activity?

24 A. No.

25 MR. KUNZ: Just one moment, your Honor.

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D3tWflo2 Kelly - cross

1 Q. Officer, just real briefly, do you know approximately how  
2 large the 43rd Precinct is?

3 A. Off the top of my head, I want to say it's like four square  
4 miles, something like that.

5 Q. I'm sorry. You were asked some questions earlier today  
6 about the NYPD's provision on racial profiling.

7 A. Correct. I was shown the form, anyway, yeah.

8 Q. Did you supervise your officers in terms of racial  
9 profiling when you would go out with them?

10 A. On a -- I mean, if I thought they were racially profiling,  
11 I would say something, but is it -- I don't think it's needed.  
12 A reasonable person is not going to racially profile, so it's  
13 not something that's discussed very often.

14 MR. MOORE: I'm sorry. I didn't hear the last part of  
15 that answer, Judge.

16 THE WITNESS: I said it's not something that's  
17 discussed -- I'm sorry.

18 THE COURT: Go ahead. You can repeat it.

19 THE WITNESS: I just said it's not something that's  
20 discussed very often.

21 BY MR. KUNZ:

22 Q. Why is that, that it's not discussed very often?

23 A. Because it doesn't need to be. If I thought they were  
24 racially profiling, then it would need to be discussed.

25 Q. Have you ever seen an officer on your command racially

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D3tWflo2 Kelly - cross

1 profile?

2 A. No. I mean, I have a five team unit, and it's made up of  
3 everything. You know, I have, we have two Hispanic officers.  
4 I have one black officer. I have a female officer. I have a  
5 white officer, and I have myself. I don't think they would be  
6 happy with each other if anybody was racially profiling.

7 MR. KUNZ: No further questions.

8 REDIRECT EXAMINATION

9 BY MR. CHARNEY:

10 Q. Sergeant, you were just asked some questions by Mr. Kunz  
11 about pressure for activity and quotas, remember that?

12 A. Correct.

13 Q. And you said that you don't do that and you're not aware of  
14 quotas, right?

15 A. No.

16 Q. Are you aware of what are called performance goals?

17 A. No.

18 Q. I want to show you what's previously been admitted as  
19 Plaintiffs' Exhibit 285.

20 A. You know what? There's actually one right here also.

21 Q. Oh, there is? If you want to, take a second to review it  
22 and then I'll ask you about it.

23 A. You want me to read the whole thing?

24 Q. No. I just wanted to see if by reading what you read you  
25 recognized the stuff.

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D3tWflo2

Kelly - redirect

- 1 A. No, I don't.  
2 Q. You've never seen this document before?  
3 A. I don't know if I have or not.  
4 Q. Are you familiar with what's stated in paragraph three  
5 about department managers? Do you see that there's a sentence  
6 there, "Department managers can and must set performance  
7 goals"?  
8 A. Okay.  
9 Q. Has that policy ever been communicated to you by your  
10 superiors, that you should be setting performance goals for the  
11 officers under your supervision?  
12 A. No.  
13 Q. Never?  
14 A. No.  
15 Q. Are you familiar with police officer monthly conditions  
16 impact measurement report?  
17 A. Like the activity report?  
18 Q. Yes.  
19 A. Yes.  
20 Q. The new one.  
21 A. The quest, yes.  
22 Q. So you're familiar with quest for excellence, right?  
23 A. Correct.  
24 Q. You went to a training on that for sergeant?  
25 A. Probably.

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D3tWflo2 Kelly - redirect

1 Q. At that training, were you shown this document, operations  
2 order 52?

3 A. I don't remember.

4 Q. That training was sometime in 2011?

5 A. I have no idea.

6 Q. So you have no knowledge whether or not this policy that  
7 managers can and must, that managers are required to set forms  
8 goals for their officers, until today you had no awareness of  
9 that policy?

10 A. I think I'm just probably lucky. I have five police  
11 officers. They're all, have high goals in the police  
12 department. Most of my police officers wind up going into the  
13 detective squad or getting promoted. To me, my police officers  
14 might have nothing. They might do nothing, what appears to be  
15 doing nothing on paper, but I know they're out there  
16 investigating robberies, burglaries, talking to the detective  
17 squad. They're doing a ton of work. This really, maybe that's  
18 why this doesn't --

19 Q. Okay. So you don't recognize this document or you're not  
20 familiar with this policy set forth in this document?

21 A. No.

22 Q. You testified also that with respect to the burglary  
23 pattern sheets that sometimes it would take several weeks for a  
24 burglary to appear on a pattern sheet?

25 A. I said it could take several weeks for something to be

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D3tWflo2 Kelly - redirect

1 identified as a pattern or placed into an existing pattern.

2 Q. So let's focus on that, placed into an existing pattern.

3 If we go back to Exhibit L4, right?

4 A. Yes.

5 Q. Remember on the second page, it says date updated March 10,  
6 2008?

7 A. Correct.

8 Q. And in the document, again, the latest burglary that's  
9 reported there is February 2, 2008, right?

10 A. Yes.

11 Q. And that's about five weeks before March of 2008?

12 A. Correct.

13 Q. And so it's fair to say that the burglary pattern sheet,  
14 during that five-week span, no new burglaries appeared on that  
15 sheet, right?

16 A. Right.

17 Q. You also said that you assume you would have checked the  
18 Omni database on the date of this stop, February 27, to see  
19 what the complaint said about burglaries?

20 A. Yes.

21 Q. But you don't remember sitting here today whether you, in  
22 fact, did that, do you?

23 A. Just on a regular basis, I do. On February 27, 2008, I  
24 have no idea what I did that morning.

25 Q. I think you were also asked by Mr. Kunz the reason you

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1 frisked these two individuals is for your and the other  
2 officers' safety, right?

3 A. Right.

4 Q. But didn't you testify earlier when I was asking questions  
5 that you didn't feel in danger by these two individuals?

6 A. Whether I necessarily felt in danger or not, what I was  
7 reasonably suspecting them of doing was possibly a violent  
8 crime. So whether I might have felt danger or not, I'd still  
9 like to make sure that they don't have a weapon on them.

10 Q. But you didn't actually feel in danger, right?

11 A. I don't remember.

12 THE COURT: That's what you testified.

13 THE WITNESS: I said that, yeah.

14 BY MR. CHARNEY:

15 Q. You also mentioned earlier that you received an award, and  
16 you talked about your relationships with certain people in the  
17 community. Do you recall that?

18 A. Yes.

19 Q. You never spoke to any of these individuals about stop,  
20 question and frisk?

21 A. Probably.

22 Q. Do you remember?

23 A. No, I don't remember.

24 Q. Did you ever speak to them about racial profiling?

25 A. I don't remember.

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D3tWflo2 Kelly - redirect

1 Q. Did you ever speak to them about their concerns about the  
2 way the police department conducts stop, question, and frisk in  
3 the 43rd Precinct?

4 A. Not that I remember.

5 MR. CHARNEY: One minute, your Honor.

6 Q. Just to clarify, you are a department manager, right; in  
7 other words, you manage officers in the police department?

8 A. Correct.

9 MR. CHARNEY: No further questions.

10 THE COURT: Anything further for this witness?

11 MR. KUNZ: One second, your Honor.

12 Nothing further, your Honor.

13 THE COURT: You're all set. Thank you.

14 (Witness excused)

15 THE COURT: All right.

16 MS. MARTINI: Your Honor, plaintiffs' next witness is  
17 Raymond Diaz, who we're calling through deposition designation.  
18 If you recall, we began his testimony last Friday, March 22.

19 THE COURT: Right. How far did we get?

20 MS. MARTINI: I believe we left off on page 109.

21 THE COURT: I have a paper clip there.

22 MS. MARTINI: Just as a reminder, Raymond Diaz is a  
23 retired commanding officer of Patrol Borough Manhattan North,  
24 and he was in that role in 2008, during the time that Deon  
25 Dennis was stopped in the 28th Precinct.

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D3tWflo2 "Diaz"

1 THE COURT: Okay.

2 "Q. Good morning.

3 "A. Good morning.

4 "Q. You mentioned previously also in your testimony that in  
5 CompStat, the members in attendance review the volume, the  
6 quality, the location of issuance, the criminal history of the  
7 person stopped, and the reason for stops of the UF250s?

8 "A. Yes.

9 "Q. Do you recall that?

10 "A. Yes.

11 "Q. We talked about the volume. How was the quality of stop  
12 question and frisk reviewed in Compstat, the quality?

13 "A. The precinct commanders are questioned as to what the  
14 stops were for, the criminal histories of the persons stopped,  
15 and locations of the stops.

16 "Q. Are you saying that -- we're talking about the weekly  
17 CompStat meetings?

18 "A. These are the downtown CompStat weekly meetings, yes.

19 "Q. Chaired by Chief Esposito, right? Correct?

20 "A. Yes.

21 "Q. And it's been your experience in the past that at those  
22 CompStat meetings that there has been a discussion of an  
23 individual stop, question, and frisk?

24 "A. No.

25 "Q. Well, when you say the quality of the stop, question, and

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D3tWflo2

"Diaz"

1 frisk review, what do you mean by that?

2 "A. The quality of the total volume of stops and percentages  
3 of those stops where a person has criminal histories, the crime  
4 suspected in those stops, and the locations of those stops.

5 "Q. Where does that information come from for the CompStat  
6 meetings? Is it some form that is being looked at in the  
7 CompStat meetings?

8 "A. The location of the stop, stops are plotted on a map. The  
9 criminal histories and the reason for the stops are usually  
10 articulated by the individual precinct commander.

11 "Q. If you say it is not an individual analysis of an  
12 individual stop, how is that done? How do you talk about  
13 generally the quality of the stops? I'm having a hard time  
14 understanding what is actually being discussed. I apologize.

15 "A. Let's say you had ten stops. In all ten stops, there were  
16 no criminal histories. The stops were conducted in areas of  
17 the precinct where there is not a significant amount of crime,  
18 and the reasons of the stops -- if you have, say, a burglary  
19 problem, and the reasons for the stops might be other than  
20 burglary, that might be something that might be a question.

21 "Q. And you say this is the discussion that goes on in  
22 CompStat?

23 "A. Yes.

24 "Q. Has there ever been any discussion about whether there is  
25 any racial profiling going on?

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D3tWflo2 "Diaz"

- 1 "A. Not to my recollection.  
2 "Q. When you say the location of the UF250s are projected on a  
3 board, is that on a map of the city broken down into precincts?  
4 "A. A map usually of the precinct area, yes.  
5 "Q. And is there an overlay of where the crime reports are?  
6 "A. Yes.  
7 "Q. Is one of the things that you're looking for to have a  
8 convergence, if you will, on the map between where the reported  
9 crime and the UF250s are?  
10 "A. Yes. And other indicators, right.  
11 "Q. And if there is one area of the precinct that shows a high  
12 reporting of crime and another part of the precinct that shows  
13 a high number of UF250s, you may question that, right?  
14 "A. Yes.  
15 "Q. That is the kind of analysis that goes on in the CompStat  
16 meetings?  
17 "A. Yes.  
18 "Q. And then whoever is the unit commander or precinct  
19 commander would have to explain why there are so many UF250s in  
20 this area and it doesn't show a high incidence of reported  
21 crimes, right?  
22 "A. Yes.  
23 "Q. Where does the information come from for those meetings as  
24 to the reasons for the stops?  
25 "A. The precinct commander would have that information.

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D3tWflo2

"Diaz"

1 "Q. In what capacity? In what form what he have it?

2 "A. Each precinct commander probably does it different. It's  
3 up to that individual.

4 "Q. Give me an example of how it's done generally, if you  
5 know.

6 "A. He would probably ask his crime analysis people to break  
7 down the 250s by a crime category."

8 MS. MARTINI: Mark this as Exhibit 8, which is  
9 plaintiffs' Trial Exhibit 85 in evidence.

10 "Q. I handed you or what the court reporter has kindly handed  
11 you what has been marked as deposition Exhibit 8 and I'll  
12 identify this as a four-page document which is a patrol guide  
13 with respect to stop and frisk, and, on the fourth page there  
14 is a sample UF250," which is now being projected in the  
15 courtroom. "Looking at the fourth page, you're familiar with  
16 that form?

17 "A. Yes.

18 "Q. That is the UF250 form that is currently in place in the  
19 City of New York?

20 "A. Yes.

21 "Q. When you say the reason for the stop, what part of this  
22 form would you be referring to, or parts?

23 "A. The part on the front of the report that says 'specify  
24 which felony, Penal Law, and misdemeanor suspected.'

25 "Q. With respect to, you said the criminal history of the

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D3tWflo2

"Diaz"

1 person stopped. Where does that information come from?  
2 "A. That, that is run separately from this report.  
3 "Q. So how would that be compiled, if you know?  
4 "A. That -- crime analysis or somebody would have to run the  
5 person's name.  
6 "Q. You would have to take the names from all of the UF250s --  
7 "A. Yes.  
8 "Q. -- and do a crime analysis history, a background review of  
9 that person?  
10 "A. Yes. Background. They do a criminal history.  
11 "Q. A criminal history report. And how often does that occur?  
12 "A. It usually occurs when we prepare for CompStat.  
13 "Q. So what does that mean, usually when we prepare? What  
14 does that mean, when you know you have to make a presentation?  
15 "A. That's correct.  
16 "Q. Would you take all the UF250s that you've run and do a  
17 criminal history on everybody?  
18 "A. Not all the 250s. They take a sampling.  
19 "Q. What's the purpose of that?  
20 "A. To see if we're stopping the right people.  
21 "Q. Based upon what they had done in the past?  
22 "A. Based upon reasonable suspicion. However, if the person  
23 that we're stopping, if we see there is a pattern of everybody  
24 who we're stopping does not have a criminal history, that might  
25 be of concern, where if we're stopping people based upon

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D3tWflo2 "Diaz"

1 reasonable suspicion and we do further background checks and  
2 find out that they are in fact, we -- say we're looking for  
3 burglaries and we check and see that they have a burglary  
4 history, that might be something that needs further  
5 explanation, maybe, you know, referred up to detectives for  
6 another to look at it.  
7 "Q. So the existence or the lack of a criminal history is  
8 something that is typically reviewed in the CompStat meetings,  
9 or is it just a rare occurrence?  
10 "A. No. It's happened. You know, it happens. I would not  
11 say it's rare that that question is asked.  
12 "Q. If it's asked in a meeting, you would have to wait for the  
13 next meeting to report on it, right? Or is that information  
14 obtainable?  
15 "A. We're not talking about an individual stop and frisk.  
16 We're talking about the total number.  
17 "Q. I understand. If you're asked that at a meeting, how do  
18 you access that information at a meeting?  
19 "A. We would have had to have researched that prior.  
20 "Q. And that is the kind of preparation you would have to do  
21 for all CompStat meetings?  
22 "A. Yes.  
23 "Q. So all --  
24 "A. Well, when I say -- can I correct that?  
25 "Q. Sure.

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D3tWflo2

"Diaz"

1 "A. When I say all CompStat, mostly downtown CompStat. At the  
2 borough CompStat, it's not a question I think we regularly are  
3 asked.  
4 "Q. And that information would be reflected in the minutes  
5 that are kept of those CompStat meetings, correct?  
6 "A. Yes.  
7 "Q. And do you know if those meetings are taped?  
8 "A. Yes.  
9 "Q. How long are those recordings kept, do you know?  
10 "A. I don't know.  
11 "Q. In your experience, when they're talking about the UF250  
12 activity, has the race of the person stopped ever been  
13 discussed?  
14 "A. No.  
15 "Q. It's your understanding within the unit or command there  
16 is a crime analysis sergeant or an officer assigned to do the  
17 crime analysis within that particular unit?  
18 "A. Yes.  
19 "Q. And they would be the one who would run those numbers in  
20 preparation for a CompStat meeting?  
21 "A. Someone in the command. It might, it could be anybody who  
22 is designated by that particular commanding officer.  
23 "Q. Right. So what, typically, would you expect a commanding  
24 officer to prepare in advance of a CompStat meeting with  
25 respect to the UF250 activity?

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D3tWflo2

"Diaz"

1 "A. To be, to be able to talk about the volume of 250s, the  
2 percentage of criminal history from the checks of those random  
3 samplings, the locations, where those 250s were conducted.  
4 "Q. Is that a sampling, or is that a --  
5 "A. No, no. That would be, that would not be a sampling.  
6 "Q. Right.  
7 "A. And the reason the 250s were conducted.  
8 "Q. The reason for the stop, right?  
9 "A. Yes.  
10 "Q. And we're talking there not the circumstances which led to  
11 the stop but the criminal, the particular felony, Penal Law, or  
12 misdemeanor that is at issue?  
13 "A. Yes.  
14 "Q. Is there ever an analysis of the circumstances which led  
15 to the stop?  
16 "A. No.  
17 "Q. At CompStat?  
18 "A. No.  
19 "Q. Why not?  
20 "A. I don't know. Well, let me correct that.  
21 "Q. Sure.  
22 "A. The CompStat process is basically to look at criminal  
23 activity and to see what strategies are in place to address  
24 that criminal activity, not so much to look at the quality of  
25 any, of the stop.

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D3tWflo2

"Diaz"

1 "Q. How did the information about the UF250 help advance the  
2 goal of trying to deal with the crime control?

3 "A. Because I think the more encounters we have with people  
4 that are suspected of engaging in criminal activity or are  
5 engaging in criminal activity is going to reduce crime.

6 "Q. I'm not sure I understand that last statement you said  
7 about the more encounters with people who are suspected of  
8 engaging in criminal activity is going to reduce crime. What  
9 do you mean by that?

10 "A. The more encounters we have with people in a given crime  
11 area where we're experiencing a type of crime, the more  
12 encounters we have with people who are suspected of committing  
13 those crimes, I think the likelihood that we're going to detect  
14 someone who is committing that crimes and place them in custody  
15 and would now lead to probable cause for an arrest.

16 "Q. What is the purpose of looking back at that in the  
17 CompStat meeting?

18 "A. To make sure that our crime focus is in those areas where  
19 we are experiencing crime and that the enforcement and that the  
20 contacts, if criminal contacts we have are in the area, in the  
21 right areas.

22 "Q. So if you were in a particular CompStat meeting where the  
23 stops and frisks were being discussed, and I understand this is  
24 only part of the overall analysis that goes on at these  
25 meetings, but in the context of stop and frisk, if a commander

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D3tWflo2

"Diaz"

1 presents that there is a sampling of reasons for the stop,  
2 there is a high incidence of, say, burglaries in the area, but  
3 the reasons for the stop don't indicate that there are people  
4 being stopped for reasonable suspicion of being engaged in  
5 burglary, what would that lead to?  
6 "A. It's very difficult to say what it would lead to. As long  
7 as those stops are based on reasonable suspicion, there would  
8 not be an issue. However, if there is a burglary condition and  
9 there is never a stop for burglary, that might be something  
10 that we might be concerned about.  
11 "Q. What if there is no burglary condition and there is always  
12 a stop for burglary? I mean, doesn't it work the other way  
13 around? Doesn't that lead you to, doesn't that lead you to  
14 conclude that maybe these stops are not legitimate stops?  
15 "A. It might be a question that would be posed if we see  
16 burglary 250s in an area that there is no burglaries and there  
17 is a large number of them, that would be a legitimate question  
18 to be posed.  
19 "Q. If, in fact, that was the case, I know it is speculative a  
20 little bit, but if that is, in fact, the case, what would be  
21 the recommendation that would fall from that fact pattern?  
22 "A. The commander would be asked to explore why we're getting  
23 all of these burglary stops in an area that doesn't seem to be  
24 prone to burglaries.  
25 "Q. How would that commander be expected to do that?

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D3tWflo2

"Diaz"

1 "A. To question the officers that prepared those stops and  
2 conducted those stops.

3 "Q. To find out whether, in fact, they're reporting it  
4 accurately or not, correct?

5 "A. And to see why they're stopping people for burglary in  
6 that particular area where there doesn't appear to be  
7 burglaries.

8 "Q. Let's talk just generally about the UF250s for a moment.  
9 Is the purpose of the UF250 to record results of an  
10 investigatory stop of a person based upon reasonable suspicion?

11 "A. Yes.

12 "Q. And if that occurs, what documentation follows from that?  
13 If somebody is stopped based upon reasonable suspicion,  
14 regardless of whether it leads to an arrest or not, what should  
15 follow from that in terms of the officer's obligation to  
16 document that stop?

17 "A. Stop-question-and-frisk report would be prepared and an  
18 activity in the log entry.

19 "Q. And would you agree that it's the policy of the police  
20 department to record all of these pertinent details that  
21 convince the officers to stop a suspect?

22 "A. I would say yes. And it depends what you mean by  
23 pertinent details.

24 "Q. Well, pertinent details would be the details that led the  
25 person to have reasonable suspicion that they had committed or

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D3tWflo2 "Diaz"

1 were about to commit a crime?

2 "A. Yes.

3 "Q. What do you understand to be the reason for the policy?

4 "A. To document those stops.

5 "Q. And for what reason?

6 "A. Or in case somebody contests a stop, for possibly court  
7 testimony, analysis.

8 "Q. It's often the case that the courts later on would closely  
9 scrutinize what led to a particular police activity, right?

10 "A. Yes.

11 "Q. And if the officer doesn't record the significant or  
12 pertinent details at the time it occurs, they may not have a  
13 memory of it when it comes time for them to testify about it,  
14 correct?

15 "A. That's correct.

16 "Q. So the policy is to encourage the officers to record  
17 enough of the details so that they don't have to rely just on  
18 their memory many months, if not years, later, correct?

19 "A. That's correct.

20 "Q. And that is one of the reasons why the officer is trained  
21 in the policy of the police department, that they record the  
22 details of their stop-and-frisks in not just one, but two  
23 different locations, right?

24 "A. Yes.

25 "Q. What responsibilities does the officer's supervisor on the

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"Diaz"

1 street have with respect to reviewing the UF250?

2 "A. Procedurally, the desk officer is responsible for  
3 reviewing the 250. But practically, oftentimes the officer's  
4 immediate supervisor will review it.

5 "Q. The instructions for the preparation of the UF250, which  
6 precede the form there on the first three pages of this  
7 document, they talk about the obligations of the police  
8 officer, the desk officer, and the commanding officer, right?

9 "A. Yes, sir.

10 "Q. They don't mention anything about the officer's  
11 supervisor, right?

12 "A. That's correct.

13 "Q. So, in fact, it is not accurate that the review process  
14 for officer preparing stop-and-frisk forms does not include, at  
15 least on paper, a review process by the officer's supervisor on  
16 the street, correct?

17 "A. Correct.

18 "Q. When the desk officer reviews the form, what is that  
19 review process like? Not like. What is that review process?

20 "A. He or she would review that form for completeness.

21 "Q. Is there any effort made in that process of reviewed by  
22 the desk officer to get the police officer to articulate any  
23 detail more than what appears on the form, the circumstances  
24 that led to the stop?

25 "A. I'm not sure what you mean. Verbally explain to the desk

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D3tWflo2

"Diaz"

1 officer?  
2 "Q. Yes.  
3 "A. There might be occasion, yes.  
4 "Q. But that is not part of the normal process, right?  
5 "A. I would say it's part of the review if the desk officer  
6 feels that he needs to question the officer, yes.  
7 "Q. If the desk officer gets a form that is completely filled  
8 out, it has nothing left blank, all appropriate boxes are  
9 checked, that would essentially be the end of the review,  
10 correct?  
11 "A. Not necessarily.  
12 "Q. Why is that?  
13 "A. Because if the desk officer felt that the form was  
14 prepared improperly or if the stop was conducted improperly.  
15 "Q. How would they know that?  
16 "A. By reading the form.  
17 "Q. There's obligations of the patrol guide 212-11?  
18 "A. For the desk officers to review?  
19 "Q. Yes.  
20 "A. Yes.  
21 "Q. So there may be dozens of UF250 forms that come in on any  
22 particular tour, right?  
23 "A. That's correct, possibly.  
24 "Q. And the reality is rather than checking to see if the form  
25 is properly checked out, they don't really have any time to do

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D3tWflo2

"Diaz"

1 any substantive review for the basis of the stop, do they?  
2 "A. Yes, they do.  
3 "Q. When is that? When you say yes, they do, what do you mean  
4 by that? When would that happen?  
5 "A. Do you see the caption 'specify which felony, Penal Law,  
6 misdemeanor suspected'?  
7 "Q. I see that.  
8 "A. There have been occasions where something entered into  
9 there which might not be appropriate for a stop.  
10 "Q. In other words, not a crime?  
11 "A. Correct.  
12 "Q. There may be occasions, but that is legitimately not the  
13 case, is that fair to say?  
14 "A. It happens occasionally.  
15 "Q. Occasionally. It's the rare occasion, right?  
16 "A. Yes.  
17 "Q. Is that a yes?  
18 "A. Yes.  
19 "Q. In terms of being able to determine whether there is a  
20 proper basis for the circumstance which led to the stop, there  
21 is no other information available to the desk officer, other  
22 than the box that is checked in that portion of the form,  
23 right?  
24 "A. That's correct.  
25 "Q. The desk officer does not review the memo book entries of

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"Diaz"

1 the officer as part of his review process of the UF250, right?

2 "A. Not generally.

3 "Q. What is the responsibility of the desk officer to ensure  
4 that police officers are complying with the department policy  
5 regarding racial profiling?

6 "A. To ensure that the stops and the arrests are effected, are  
7 conducted with reasonable, for reasonable suspicion and  
8 probable cause and not based on any other criteria.

9 "Q. And how does a desk officer determine that, given what  
10 responsibilities are set out for the desk officer in the patrol  
11 guide provision?

12 "A. When arrests are brought before the desk officer, the  
13 officer is questioned as to what the arrest and circumstances  
14 of the arrest.

15 "Q. I'm speaking about the review of the UF250.

16 "A. The 250?

17 "Q. Yes.

18 "A. Can you repeat that question? Sorry.

19 "Q. How does the desk officer determine whether the officers  
20 are complying with the department's policy regarding racial  
21 profiling, given what the responsibilities are for the desk  
22 officer that are set out in the patrol guide provisions?

23 "A. The desk officer would review that stop-question-and-frisk  
24 report and look for the reasons for the stop and if it's based  
25 on reasonable suspicion.

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"Diaz"

1 "Q. But that is accepting that the patrol officer has  
2 accurately filled out the form, correct?

3 "A. Yes.

4 "Q. So what would the desk officers do to determine whether,  
5 in fact, officers are properly filling out the form or simply  
6 filling it out as a ruse to engage in racial profiling?

7 "A. I don't know.

8 "Q. If anything.

9 "A. I don't know that the desk officer would be able to do  
10 anything.

11 "Q. What about the commanding officer of the precinct? What  
12 responsibilities does the commanding officer of the precinct  
13 have with respect to determining whether officers under his or  
14 her command who are engaging in stop-and-frisks are complying  
15 with the departmental policy regarding racial profiling?

16 "A. Well, the commanding officer is responsible to ensure  
17 training and instruction is provided to those officers so those  
18 stops are conducted in, in the proper manner.

19 "Q. So that is one way, by making sure that they are  
20 constantly trained and the message not to engage in racial  
21 profiling is reaffirmed from time to time, correct?

22 "A. Yes.

23 "Q. Is there anything else that a commanding officer in your  
24 experience does to ensure that officers are complying with the  
25 policy regarding racial profiling?

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"Diaz"

1 "A. Well, there are supervisors in the field besides patrol  
2 supervisors. There is integrity control officers that do  
3 patrol monitoring. There is also a captain designated as and  
4 supervises patrol that also do patrol monitoring to make sure  
5 officers' actions in the field are proper.

6 "Q. So in order for a commanding officer of a precinct or unit  
7 to have some degree of certainty that his or her officers are  
8 complying with departmental policies with respect to stop and  
9 frisk generally and with respect to the policy against racial  
10 profiling, they really rely on their supervisors to report to  
11 them whether there is a problem, is that accurate?

12 "A. Yes.

13 "Q. In fact, the memo book entry is a more detailed recounting  
14 of the circumstances of the stop-and-frisk more so than a  
15 UF250, isn't that accurate?

16 "A. I think it can be.

17 "Q. Isn't it designed to be?

18 "A. Yes.

19 "Q. Do you have Diaz Exhibit No. 11 before you," which is  
20 plaintiffs' Trial Exhibit 438 for identification?

21 "A. Yes.

22 "Q. It's Bates stamped NYC-000000941 and 942. Do you  
23 recognize this as a portion of the police student's guide  
24 dealing specifically with the preparation of department form,  
25 the stop and frisk report?

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D3tWflo2

"Diaz"

1 "A. I see that is what it is labeled, yes.

2 "Q. And at the bottom there, it says preparation of department  
3 form, the stop-and-frisk report, right?

4 "A. Yes.

5 "Q. And when you turn the page, it says proper documentation?

6 "A. Yes.

7 "Q. It states under that subsection, 'in every situation which  
8 a stop-question-and-frisk worksheet is prepared, activity logs  
9 must also be made,' do you see that?

10 "A. Yes.

11 "Q. You agree with that, right?

12 "A. Yes.

13 "Q. And then it says, 'all pertinent details regarding a  
14 street encounter must be recorded,' do you see that?

15 "A. Yes.

16 "Q. And that is how officers are trained with regard to the  
17 stop-question-and-frisk activity, right, the reporting  
18 activity?

19 "A. Yes.

20 "Q. And you agree with that policy, right?

21 "A. Yes."

22 MS. MARTINI: Your Honor, we'd like to move  
23 Plaintiffs' Exhibit 438 into evidence.

24 MS. GROSSMAN: No objection, your Honor.

25 THE COURT: All right. 438 is received.

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D3tWflo2

"Diaz"

1 (Plaintiffs' Exhibit 438 received in evidence)

2 BY MS. MARTINI:

3 "Q. The primary documentation for an officer's stop-and-frisk  
4 activity is the memo book entry, not the UF250?

5 "A. I think it could be both.

6 "Q. Well, the officers are trained to assume that the UF250  
7 will be lost or misplaced, so they are told to make all  
8 pertinent, report all pertinent details of the stop and frisk  
9 in their activity log, correct?

10 "A. Yes.

11 "Q. Why don't you take a look at Diaz Exhibit No. 10, which is  
12 plaintiffs' Trial Exhibit 97 in evidence, which I previously  
13 gave to you. And this is a training academy memo concerning  
14 activity log entries, right?

15 "A. Yes.

16 "Q. And it sets forth some of the prior policy that we talked  
17 about in terms of how activity logs must report all assignments  
18 and information pertaining to assignments, correct?

19 "A. Yes.

20 "Q. And do you see in the second paragraph there is a  
21 statement there, 'the concept that an activity log entry is  
22 repetitive of an actual report is not acceptable'? Do you see  
23 that?

24 "A. Yes.

25 "Q. So in the case of a stop and frisk, it would not be an

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D3tWflo2

"Diaz"

1 acceptable entry to simply put -- if the officer in preparing a  
2 stop-and-frisk report marked furtive motion or furtive activity  
3 as the circumstances that led to the stop, it would be  
4 unacceptable for that officer to repeat those very terms in his  
5 activity log, correct?  
6 "A. I really don't know what the writer of this report meant  
7 when he said that the log is repetitive of an actual report and  
8 what sections of the report would be repetitive or not  
9 repetitive.  
10 "Q. If an officer engages and does a stop, question, and  
11 frisk, and the reason is furtive movements, all right? Accept  
12 that for a moment, all right?  
13 "A. Yes.  
14 "Q. And on the UF250, they check that the circumstances which  
15 led to the stop, furtive movements, there is a box on the form  
16 to check that, right?  
17 "A. Yes.  
18 "Q. When they fill out the memo book entries, it would be  
19 unacceptable, according to how officers are trained, for them  
20 to simply repeat that the basis for this stop was, quote,  
21 furtive movements, correct?  
22 "A. I disagree.  
23 "Q. Why do you disagree?  
24 "A. Because it doesn't say in that statement that, just the  
25 furtive movements section, they're not referring just to the

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D3tWflo2

"Diaz"

1 circumstances which led to the stop in that, I think they're  
2 talking about the entire entry and entire report. The entry in  
3 the activity log just being totally repetitive of the entire  
4 stop-question report not any particular section of that report.  
5 "Q. I'm not just focusing on the circumstances that led to the  
6 stop, which is, after all, the heart of the matter for stop,  
7 question, and frisk. So just focusing on the circumstances.  
8 If, on the form, they check furtive movements, when they get to  
9 the memo book entry, which they're supposed to also fill out,  
10 it would be unacceptable, according to how the department  
11 trains their officers, for the officer to simply say a furtive  
12 movement led me to make this stop and frisk; they would be  
13 expected, would they not, to provide some pertinent, some more  
14 pertinent details like what the furtive movement was in their  
15 activity log?  
16 "A. I still disagree. I don't know that that statement is, is  
17 saying that.  
18 "Q. I don't want to belabor the point. But one of the reasons  
19 why the department says to officers to make a memo book entry  
20 is if they have to testify months later or years later, they  
21 will be able to refresh their recollection about what led them  
22 specifically to make the stop and frisk on that day, correct?  
23 "A. Correct.  
24 "Q. So in order to be able to refresh their recollection at  
25 some point down the road, months or years later, about a

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D3tWflo2

"Diaz"

1 particular stop and frisk, wouldn't you expect that the  
2 officers should put in their memo book entry at the time the  
3 circumstances that formed the basis for their furtive movement  
4 or simply put in their memo book entry furtive movement?  
5 "A. I think that would depend on the individual officer and  
6 the individual officer's memory. Some officers that write  
7 furtive movement and the names and the other circumstances  
8 listed in the activity log would be enough to jog their memory.  
9 "Q. You would not train officers on that though, right?  
10 "A. Train them on the basis of making an entry, on just making  
11 an entry that would help them recollect the incident?  
12 "Q. Are you telling me that if you're sitting with an officer  
13 and you're talking to them about how to do their  
14 stop-question-and-frisk reports, you would tell them it's okay  
15 simply to put in the same language that is in the UF250 in  
16 their memo book, that that is going to be the best guide for  
17 them to refresh their recollection a year or some many months  
18 later when the case comes up in court, if it comes up in court?  
19 "A. I would instruct them to make an entry so that in looking  
20 at that entry, they would have a recollection of the events --  
21 "Q. Right.  
22 "A. -- that happened.  
23 "Q. And the best way to do that is to have a fact-specific  
24 entry. I'm not talking about writing a novel, but you would  
25 want to be able to know, if the movement was a furtive

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"Diaz"

1 movement, what that movement was so that many months or years  
2 later they would be able to look at it and say I saw so-and-so  
3 engaged in this particular movement, which I concluded was a  
4 furtive movement and was a reasonable suspicion for me to stop?  
5 "A. I think the more information an officer puts in there  
6 would help them recollect his memory more.  
7 "Q. Right. But what I'm saying is: Isn't it the policy of  
8 the department that the more information the better when it  
9 comes to recording stop and frisk in the memo book?  
10 "A. The policy of the department, as it's written in the  
11 procedure, is to make an entry that would help recollect his  
12 memory of the incident.  
13 "Q. Are you disagreeing with me that a fact-specific  
14 recollection of what happened would be better than just simply  
15 putting a category down?  
16 "A. I think it would be more helpful.  
17 "Q. Not only more helpful, but it would be the best practice  
18 in terms of training police officers, correct?  
19 "A. Yes.  
20 "Q. Now, if a supervisor on the street, a sergeant, a squad  
21 supervisor, whatever, a patrol supervisor, observes what they  
22 believe to be an improper stop and frisk, what are their  
23 obligations? What are they supposed to do under those  
24 circumstances?  
25 "A. To instruct that officer.

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D3tWflo2

"Diaz"

1 "Q. Anything else, other than that?

2 "A. Possibly take disciplinary action.

3 "Q. And have you, in the course of your duties, as either  
4 patrolman or patrol borough of Manhattan North or Manhattan  
5 South, do you recall any incident where a patrol supervisor  
6 reported for disciplinary action an officer who they believed  
7 had made a stop and frisk on less than reasonable suspicion?

8 "A. No.

9 "Q. Did you ever hear of it happening?

10 "A. A supervisor, no.

11 "Q. I mean, I know there are instances where people complain,  
12 civilians complain, then you look back and you may conclude  
13 that it was a bad stop and frisk, but I'm talking about where  
14 the report is from the officer's supervisor. You've never  
15 heard of that happening, right?

16 "A. No.

17 "Q. What about any other officer reporting an officer for  
18 having made a bad stop and frisk?

19 "A. No.

20 "Q. In looking back at either a stop, question, and frisk and,  
21 say, a complaint is filed and you have an investigation being  
22 done of a particular stop, question, and frisk, would you agree  
23 with me that it would be more helpful in doing that to have a  
24 more detailed accounting that might be included in the  
25 officer's memo book entry rather than the information contained

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D3tWflo2

"Diaz"

1 in the UF250, which is primarily a checkoff form?

2 "A. Yes. Supervisors also sometimes review and sign off on  
3 the 250s, the stop, question, and frisk.

4 "Q. But the normal procedure is that it's reviewed first by  
5 the desk officer and not reviewed by the officer's actual  
6 supervisor on the street, right?

7 "A. Written procedurally, yes. Practically, not always.

8 "Q. As part of the supervisor's responsibility, the squad  
9 supervisor or unit supervisor, patrol supervisor, as part of  
10 their responsibilities, each day in supervising the officers  
11 under the commands, is that they review the memo book entries  
12 made by that officer, right?

13 "A. Correct.

14 "Q. In fact, they have to sign off in the book, put their  
15 signature in the book, either during the tour or at the end of  
16 the tour, that indicates that they reviewed the memo book  
17 entries, correct?

18 "A. Correct.

19 "Q. So the one sure procedure for a supervisor to review an  
20 officer's stop-and-frisk activity is by reviewing the memo book  
21 entries, right?

22 "A. Yes.

23 "Q. Because they have to do that every day, right?

24 "A. Yes.

25 "Q. Every tour, correct?

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D3tWflo2

"Diaz"

1 "A. Yes.

2 "Q. And officers have to fill out in their memo book entries  
3 the pertinent details with respect to those stop-and-frisk  
4 activities; that is part of their obligation as police  
5 officers?

6 "A. Yes.

7 "Q. In fact, if they don't do that, they could be disciplined?

8 "A. Yes.

9 "Q. And the officers, in reviewing these memo book entries,  
10 don't -- if they know their officers have engaged in  
11 stop-and-frisk activity, but there is no entry in the memo  
12 book, that could lead to that supervisor being disciplined,  
13 correct?

14 "A. If the supervisor --

15 "Q. Knows about the stop-and-frisk activity on the tour by  
16 that officer, and, in reviewing the memo book, there is no  
17 mention of a stop and frisk, that would be a violation of  
18 policy?

19 "A. Yes.

20 "Q. And the supervisor could be disciplined if they don't do  
21 something about that, right?

22 "A. Yes."

23 THE COURT: Let's take our morning recess now and  
24 reconvene at a quarter of 12 on that clock.

25 (Continued on next page)

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D3tWflo2

"Diaz"

1

1

THE COURT: Please be seated.

2

"Q. And the third paragraph there that says that the department has made it a priority to reduce violent crimes, disorder and fear in New York City. You agree with that?

3

4

"A. Yes.

5

"Q. And part of that means trying to interdict violent crimes

6

by getting as many guns off the street as possible?

7

"A. To --

8

"Q. To interdict violent crimes by getting as many guns off the street as possible. That is the goal of the New York City Police Department, right?

9

"A. One of the goals, yes.

10

"Q. The department recognizes that in pursuit of that goal there may be encounters with the public that the public may not understand necessarily, correct?

11

"A. Right.

12

"Q. That is where you get this tension between the need to

13

protect the city and trying to also protect the constitutional

14

rights of people who may have encounters with the police,

15

right?

16

"A. Correct.

17

"Q. So the city is clearly -- that is clearly the city -- the police department recognizes that tension and is sensitive to trying to make sure that the police don't go over the limit in terms of how they interact with their citizens, right?

18

19

20

21

22

23

24

25

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D3t9flo3

"Diaz"

1 "A. Yes.

2 "Q. And part of the way the city tries to do that is by  
3 requiring officers to document their stop-and-frisk activity,  
4 right?

5 "A. Yes.

6 "Q. So that the department can look back and see if there is a  
7 problem, right?

8 "A. Correct.

9 "Q. And with respect to racial profiling, do you believe that  
10 looking back at the UF 250 is an effective way for the police  
11 department to determine whether there is racial profiling in  
12 stop, questions and frisks by the department?

13 "A. Yes.

14 "Q. Why do you believe that?

15 "A. To ensure that the stops are based on reasonable  
16 suspicions and no other criteria.17 "Q. What is the ratio now between supervisors and police  
18 officers in the borough anticrime unit?

19 "A. I believe the ideal ratio is no more than one to five.

20 "Q. Mark this as Exhibit 18 which is Plaintiffs' Trial Exhibit  
21 335 marked for identification.22 "The first page of this document reflects QAD audits  
23 of members' activity log entries citywide with respect to stop,  
24 question and frisk, correct?

25 "A. Yes.

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D3t9flo3

"Diaz"

1 "Q. I'm sorry this -- we are going to refer to Bates numbers  
2 NYC\_2\_00000767 through 797."

3 MS. MARTINI: We'd like to move Plaintiffs' Exhibit  
4 335 into evidence.

5 THE COURT: Any objection.

6 MS. GROSSMAN: Plaintiffs -- did you say Plaintiffs'  
7 Exhibit 18 or -- okay.

8 MS. MARTINI: 335.

9 MS. GROSSMAN: The whole document, the whole document  
10 that was Plaintiffs' Exhibit 18 into evidence?

11 THE COURT: The deposition 18?

12 MS. GROSSMAN: Yes.

13 MS. MARTINI: Yes.

14 MS. GROSSMAN: We have no objection.

15 THE COURT: So 335 received.

16 (Plaintiffs' Exhibit 335 received in evidence)

17 MS. MARTINI: I'll just repeat the question.

18 "Q. The first page of this document reflects QAD's audits of  
19 members' activity log entries citywide with respect to stop,  
20 question, and frisk, correct?

21 "A. Yes.

22 "Q. And as it did in 2007 and 2008 the rating by QAD was that  
23 the patrol borough for all the patrol boroughs was that it was  
24 substandard, right?

25 "A. Yes.

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D3t9flo3

"Diaz"

1 "Q. And the rating for the fourth quarter 2006 is 1.1,  
2 correct?

3 "A. That's correct.

4 "Q. The ratings can't go below one, can they? Isn't the  
5 choice one through four?

6 "A. I don't recall.

7 "Q. Is there a zero rating?

8 "A. I'm not sure.

9 "Q. So from looking at these documents, would you agree with  
10 me that at least for these three-quarters we've looked at over  
11 2006, 2007, and 2008, that the quality assurance division has  
12 consistently rated the police department substandard, at least  
13 the patrol boroughs, substandard to the extent that officers  
14 are filling out their memo book entries with stop, question and  
15 frisk activity?

16 "A. Sorry. Repeat that again.

17 "Q. From looking at these documents, would you agree with me  
18 that at least for the three-quarters captured in these three  
19 different years that the quality assurance division has rated  
20 the patrol service bureaus, all of them substandard, in terms  
21 of whether the officers are including reports of their  
22 stop-and-frisk activity in their memo books?

23 "A. Yes.

24 "Q. What has the police department done about that, if  
25 anything, if you know?

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D3t9flo3

"Diaz"

- 1 "A. Yes. There was a -- I believe a memo by the chief of  
2 patrol stressing the importance of making -- making memo book  
3 entries. I've attended meetings with the chief of patrol and  
4 maybe, from either, from other executives in headquarters  
5 stressing the importance of officers, a requirement that  
6 officers make activity log entries regarding stop, question,  
7 and frisks.
- 8 "Q. And any audits you've seen in 2009, has there been any  
9 improvement?
- 10 "A. I haven't -- I haven't reviewed any audits like you just  
11 presented to me. I haven't seen these audits before --  
12 before -- I'm sorry. Before yesterday I haven't seen these  
13 audits.
- 14 "Q. But you were aware, were you not, that before yesterday,  
15 that QAD had consistently rated the patrol borough substandard  
16 in terms of what officers put into memo book details about  
17 stop, question and frisks? Were you aware of that before  
18 yesterday?
- 19 "A. No. No.
- 20 "Q. The first time you found out about that was yesterday?
- 21 "A. About the patrol boroughs, yes.
- 22 "Q. What about your own borough? Was that the first time you  
23 found out that your own borough was substandard in that?
- 24 "A. The entire borough, yes.
- 25 "Q. You knew there was some concern about particular precincts

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D3t9flo3

"Diaz"

1 but not about the entire borough?

2 "A. That's correct.

3 "Q. If you could look again at Diaz Exhibit 9."

4 THE COURT: Are you on page 197?

5 MS. MARTINI: 198. I'm sorry.

6 THE COURT: You see the same confusion I see.

7 MS. MARTINI: We don't have a page 197?

8 I don't think we should.

9 THE COURT: That's okay. But 198 doesn't start with  
10 the beginning of a sentence.

11 MS. BORCHETTA: I think it's just placing, we're  
12 talking about a specific document. At the end of that line it  
13 starts, "If you could look --

14 THE COURT: As long as we start with "if you" instead  
15 of the half sentence.

16 MS. MARTINI: Okay.

17 "Q. If you could look again at Diaz Exhibit 9. I gave you a  
18 copy of that. The third page. Which is Plaintiffs' Trial  
19 Exhibit 63. Is that a copy of the memo you referred to?

20 "A. Yes. I believe it is.

21 "Q. And that is dated February 29, 2008?

22 "A. Yes.

23 "Q. And this is from chief of patrol Giannelli?

24 "A. Yes.

25 "Q. To commanding officers, all patrol boroughs?

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D3t9flo3

"Diaz"

1 "A. Yes.

2 "Q. And it says commanding officers will ensure that all  
3 members of their command are appraised of the contents of the  
4 attached training memo. At the time that you were still in the  
5 patrol room Manhattan North, right?

6 "A. Yes."

7 MS. MARTINI: Your Honor, we'd like to move  
8 Plaintiffs' Trial Exhibit 63 into evidence.

9 MS. GROSSMAN: No objection, your Honor.

10 THE COURT: 63 is received.

11 (Plaintiffs' Exhibit 63 received in evidence)

12 "Q. What did you do to appraise the command, all members of  
13 your command, about the contents of this memo?

14 "A. Well, while I don't have a clear recollection of what I  
15 did, typically I would send this out as a communication to all  
16 precinct commands so that everybody would get a copy of it.

17 "Q. Notwithstanding this memo that was issued on February 29,  
18 2008, if you look once again at Diaz Exhibit No. 16, which is  
19 Plaintiffs' Trial Exhibit 95 for identification, which is the  
20 QAD audit for the third quarter of 2008 of stop, question and  
21 frisk activity, the patrol borough is still being rated  
22 substandard in ensuring that members record in the activity log  
23 their stop-and-frisk activity, right?

24 "A. That's correct."

25 MS. MARTINI: Your Honor, I'd like to move Plaintiffs'  
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D3t9flo3 "Diaz"

1 Trial Exhibit 95 into evidence.

2 MS. GROSSMAN: No objection, your Honor.

3 THE COURT: All right. Ninety-five is received.

4 (Plaintiffs' Exhibit 95 received in evidence)

5 "Q. When did you leave Manhattan North?

6 "A. The end of June, 2009.

7 "Q. And as of June 2009 you had -- had you noticed any  
8 improvement within the borough of Manhattan North with respect  
9 to officers reporting their stop, question and frisk activity  
10 in their memo books?

11 "A. I -- I didn't make that observation on the basis of any  
12 form, no.

13 "Q. Well I'm just asking whether there was an improvement in  
14 an area that had been recognized as deficient over several  
15 years in terms of recounting stop, question and frisk activity  
16 in officers' memo books?

17 "A. I don't know."

18 MS. MARTINI: Turning to page 203.

19 "Q. So is it fair to say, and I don't mean this in any  
20 negative way on you, is it fair to say that when you left as  
21 the commanding officer of the patrol borough Manhattan North  
22 the inspections were still indicating that with respect to  
23 stop-and-frisk activity officers were not properly documenting  
24 that activity in their memo book?

25 "A. It appears, looking at these three reports, there was some

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D3t9flo3

"Diaz"

1 improvement.

2 "Q. What is that?

3 "A. I see that it says the August 2009 inspection and the five  
4 samplings indicates that all five had memo book entries.

5 "Q. What about September?

6 "A. September -- out of the five, it looks like two of the  
7 five had proper memo book entries.

8 "Q. That is 40 percent, right?

9 "A. Yes.

10 "Q. That is not acceptable, right?

11 "A. No.

12 "Q. Let me hand you what has been marked as Diaz Deposition  
13 Exhibit No. 22 which is Plaintiffs' Trial Exhibit 43.  
14 Specifically pages Bates numbered NYC\_2\_00006423 through 6438.

15 "Can you identify this document?

16 "A. This is a report concerning the corrective action taken to  
17 correct the deficiencies in the stop, question and frisk  
18 reports in the 28th precinct."19 MS. MARTINI: Your Honor, I'd like to move Plaintiffs'  
20 Trial Exhibit 43, the Bates numbered pages just mentioned, into  
21 evidence.

22 MS. GROSSMAN: No objection.

23 THE COURT: 43 is received.

24 (Plaintiffs' Exhibit 43 received in evidence)

25 "Q. With respect to memo book activity, right, or is it -- or

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D3t9flo3

"Diaz"

1 is it broader than that?

2 "A. It's broader than that.

3 "Q. So the 28th precinct, is it fair to say that the audit  
4 revealed significant deficiencies in their reporting of stop,  
5 question and frisk activity?

6 "A. In the recording of their stop frisking?

7 "Q. Yes.

8 "A. Yes.

9 "Q. This is while you were a commanding officer of the patrol  
10 borough Manhattan North, right?

11 "A. That's correct.

12 "Q. And on January 7, 2009 you wrote a memo to the chief of  
13 patrol, correct?

14 "A. That's correct.

15 "Q. Outlining what you believed were the corrections to be  
16 taken to correct this activity, right?

17 "A. Yes.

18 "Q. The substandard activity, right?

19 "A. Yes.

20 "Q. And that included arranging for more training on the  
21 proper documentation for stop, question, and frisk activity,  
22 right?

23 "A. Yes.

24 "Q. Arranging for patrol supervisors to inspect activity logs  
25 daily to assure compliance with department orders?

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D3t9flo3

"Diaz"

- 1 "A. Yes. Specific to stop, question and frisking.  
2 "Q. Having the integrity control officer conduct random  
3 inspections of activity logs?  
4 "A. Yes.  
5 "Q. And directing desk officers to review stop, question and  
6 frisk worksheets for accuracy, right?  
7 "A. Yes.  
8 "Q. Do you know if any of that was done?  
9 "A. I don't know.  
10 "Q. Now, that is a report that you wrote in response to the  
11 substandard review back in January of 2009, right?  
12 "A. Yes.  
13 "Q. And that was for the 28th precinct, right?  
14 "A. I'm just looking to confirm the period.  
15 "Q. Well, the audit was done in December of '08, correct?  
16 "A. That is what I'm looking to -- to find.  
17 "Q. Look on the third page of this document. The first  
18 paragraph says, from December 4 through December 8, 2008 the  
19 QAD assigned a precinct evaluation team to the 28th precinct.  
20 Do you see that?  
21 "A. Yes.  
22 "Q. So they were doing their audit during that period of time,  
23 correct?  
24 "A. That is when they were doing their audit, yes.  
25 "Q. And so I presume they looked at a period prior to that,

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D3t9flo3 "Diaz"

1 right?

2 "A. Yes.

3 "Q. And in January -- on January 7 is when you wrote your memo  
4 indicating what steps would be taken to improve the situation  
5 in the 28th precinct, right?

6 "A. Yes.

7 "Q. Take a look at Diaz 23, which again is Plaintiffs' Trial  
8 Exhibit 43 in evidence. Specifically now looking at pages  
9 ending in Bates number 6454 through 6467.

10 "What is that?

11 "A. This is a report detailing the corrective action taken  
12 for -- in connection with the stop and frisks prepared in  
13 patrol borough Manhattan North task force.

14 "Q. That is a unit separate from the 28th precinct, right?

15 "A. That's right.

16 "Q. Apparently in October of 2008 QAD did an audit of the  
17 Manhattan North task force's stop and frisk report activity, at  
18 least among other things, and gave a substandard rating in the  
19 audit of that activity, correct?

20 "A. Yes.

21 "Q. And there is a memo in this group of materials dated  
22 December 8, 2008 which is from you?

23 "A. Yes.

24 "Q. And detailing what steps you were going to take to improve  
25 the situation, right?

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D3t9flo3

"Diaz"

1 "A. Yes.

2 "Q. And if you look at the letter of January 7, 2009, which  
3 appears in Diaz Exhibit 22, the fourth paragraph, which is the  
4 same as the fourth paragraph in your letter of December 8,  
5 2008, right?

6 "Which should be Bates numbered NYC\_2\_00006425, which  
7 is a page of Plaintiffs' Trial Exhibit 43 in evidence.

8 "On paragraph four of the letter of December 8, 2008  
9 you know what steps are going to be taken to improve the  
10 situation in the borough of Manhattan North task force?

11 "A. Yes.

12 "Q. Do you know whether any of those steps were actually taken  
13 following this letter of December 8, 2008?

14 "A. I don't know.

15 "Q. Chief Diaz, I've handed you what has been marked as Diaz  
16 Exhibit No. 24, which is Plaintiffs' Trial Exhibit 43 in  
17 evidence at NYC\_2\_00006407. And if I can summarize it. Is it  
18 fair to say that this is another collection of documents  
19 concerning deficiencies in the evaluation of the stop, question  
20 and frisk reports in the 23rd precinct sometime prior to  
21 October 21, 2008?

22 "A. Yes.

23 "Q. And in paragraph four of your letter of December 3, 2008  
24 you set forth certain procedures that you indicated would be  
25 instituted to improve the situation in the 23rd precinct?

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"Diaz"

1 "A. Yes.

2 "Q. Right. Do you know if any of those were ever done?

3 "A. I don't know.

4 "Q. Mark that as Diaz Exhibit 25. It's CompStat minutes. Is  
5 that an accurate minutes of CompStat meetings? Can you  
6 identify this document, Diaz Exhibit No. 25, which is  
7 Plaintiffs' Trial Exhibit 283 at NYC\_2\_00008050? Are you able  
8 to identify the document?

9 "A. I've never seen this document before.

10 "Q. I'm going to represent that it is -- at least it was  
11 produced as minutes of the CompStat meeting that took place in  
12 October of 2008.13 "How does it go in the CompStat meetings. Chief  
14 Esposito runs the meetings, right?15 "A. That's correct. With the commissioner of -- deputy  
16 commissioner of operations, yes.

17 "Q. Who was Pulaski until just recently?

18 "A. Yes.

19 "Q. Who is the new deputy commissioner of operations?

20 "A. It is Chief Joanne Jaffe is acting as.

21 "Q. Who?

22 "A. Chief Joanne Jaffe, I think, wearing two hats, fulfilling  
23 that position as well as the chief of housing bureau.24 "Q. How does it run? It goes through unit by unit, what units  
25 are going to be discussed that day, at the CompStat meetings?

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D3t9flo3

"Diaz"

1 "A. They decide what precincts or what units they're going to  
2 question.

3 "Q. You're notified in advance?

4 "A. Not exactly.

5 "Q. It's like a pop quiz, right?

6 "Now turning to page 2, which ends in Bates numbers  
7 8051, there is some -- most of this document is redacted but  
8 turning to page 2, there is some -- I'm going to call it  
9 dialogue where there is a comment attributed to Chief Esposito  
10 and it continues onto page three.

11 "Do you see that?

12 "A. Yes.

13 "Q. And there is some comments attributed to you, right?

14 "A. Yes.

15 "Q. Can you tell me what the subject matter -- what is being  
16 discussed here from reading this?

17 "A. Well, the first comment says Chief Esposito is  
18 questioning, um, Chief Mike Oveis as to the arrest pie chart.

19 "Q. Mike Oveis was your?

20 "A. Executive officer.

21 "Q. Executive officer in the patrol borrow in Manhattan North,  
22 right?

23 "A. Yes."

24 MS. MARTINI: Your Honor, before I forget, we'd like  
25 to move Plaintiffs' Trial Exhibit 283 at Bates number pages

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D3t9flo3

"Diaz"

1 8050 through 8051 into evidence.

2 MS. GROSSMAN: No objection, your Honor.

3 MS. MARTINI: I'm sorry. Through 8052.

4 THE COURT: Received.

5 (Plaintiffs' Exhibit 283 received in evidence)

6 "Q. And go ahead.

7 "A. Chief Oveis comments that our pie chart is better than any  
8 other borough.

9 "Q. What is the pie chart you're referring to?

10 "A. It's a pie chart of volume arrests by officers. And it  
11 gives percentages of how many arrests that officers have --  
12 have within the command.

13 "Q. So it is an average arrest number?

14 "A. It's -- yes, an average of arrest number. No. It's --  
15 actually it's a percentage and it's a specific number.

16 "Q. All on one chart?

17 "A. On one pie chart, graph.

18 "Q. Can you be more specific?

19 "A. It indicates how many and what percentage officers have  
20 zero arrests and then it breaks down to different categories,  
21 how many officers have -- and I might be off on the span, but  
22 two to four, four to ten, ten to twelve, etc.

23 "Q. What is being discussed further on here?

24 "A. Chief Esposito talks about arrests being down.

25 "Q. Compared to a year ago or whatever period of time it is?

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D3t9flo3

"Diaz"

- 1 "A. Whatever period of time he's referring to. I can't tell  
2 from looking at this.
- 3 "Q. And you respond to that, right?
- 4 "A. Yes.
- 5 "Q. What does that mean? Less specialization?
- 6 "A. Well, at one point a lot of precinct commands had a lot of  
7 specialty units, condition units, burglary autos, autos or  
8 units of patrol officers that were not into patrol squads.
- 9 "Q. How did that impact the number of arrests? They weren't  
10 credited, or were they credited to the borough?
- 11 "A. No. The arrests were credited -- well, to the precinct  
12 and -- and add up all the precincts, yes, to the borough. But  
13 what my comment means is that, that a lot of the specialized  
14 units were highly productive, motivated officers in those units  
15 and generated a lot of enforcement activity.
- 16 "Q. And there is fewer of those units now?
- 17 "A. Yes.
- 18 "Q. He says here C down 22 percent and 250s down ten thousand.  
19 What does that mean?
- 20 "A. Yes. C summonses, which is typically quality of life type  
21 summonses, were down 22 percent. And UF 250s, stop, question  
22 and frisk reports, were down 20,000.
- 23 "Q. Why do you think that is important in terms of CompStat  
24 analysis, the fact that there is ten thousand less UF 250s?
- 25 "A. I think there is a concern that if there is a lack of

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D3t9flo3

"Diaz"

1 enforcement that crime might have a tendency to start going up.

2 "Q. Is it fair to say that an increase in the 250s is usually  
3 a good sign that the unit is being reviewed -- that the unit  
4 that is being reviewed is engaging in more activity as opposed  
5 to less?

6 "A. Yes.

7 "Q. And would you say that there is some pressure on the part  
8 of -- coming from downtown to keep the number of 250s up and  
9 the number of C summonses for that matter?

10 "A. I think that I -- ideally if enforcement contacts were to  
11 increase, that is usually not a bad thing.

12 "Q. And how were these officers used in operation impact?

13 "A. Operation impact typically involves a specific  
14 geographical area. The IRTs are deployed in a specific area.  
15 But are able to be rotated into different areas every two -- 28  
16 days, depending on crime trends.

17 "Q. Is that an officer's permanent assignment, to be in the  
18 impact response team?

19 "A. Yes.

20 "Q. How long do those assignments last?

21 "A. We review that every six months, when the new academy  
22 class comes out.

23 "Q. How is that different than the IRT officers?

24 "A. The impact zone is fixed for basically a six-month period.  
25 The IRT zones are -- could possibly move every 28 days.

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D3t9flo3

"Diaz"

- 1 "Q. Since the inception of impact eleven we have 1,774 Cs and  
2 over three thousand 250s. I read that correctly, right?
- 3 "A. Yes.
- 4 "Q. What is the importance of those statistics in the context  
5 of this meeting here that we're looking at?
- 6 "A. I think Captain Plau is trying to show that his impact  
7 officers have been very active in enforcement efforts.
- 8 "Q. But one way of measuring the effectiveness of the impact  
9 response teams is to look at the number of C summonses that  
10 they -- that they issue, right?
- 11 "A. Yes.
- 12 "Q. And another way is to look at the number of UF 250s that  
13 they generate, right?
- 14 "A. Yes.
- 15 "Q. Is there any other way that their success is measured?
- 16 "A. Arrest activity and reduction of crime.
- 17 "Q. This is the presentation about the 28th precinct, right?
- 18 "A. Yes.
- 19 "Q. What was the problem with the 28th precinct at this  
20 point?
- 21 "A. Again, I'm not sure of the timeframe of this.
- 22 "Q. This is October of 2008. October 10, 2008.
- 23 "A. The 28th precinct had a long stretch in which they were  
24 having crime increases.
- 25 "Q. What is the boundaries of the 28th precinct?

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D3t9flo3 "Diaz"

1 "A. From 110th Street to 127th Street from Fifth Avenue over  
2 to -- I'm not sure if it's Saint Nicholas or Morningside  
3 Avenue, Morningside by the park.

4 "Q. There is some dialogue here between Inspector Montgomery  
5 and Chief Esposito. Do you see it?

6 "A. Yes.

7 "Q. And there is a reference to a C summons average. Do you  
8 see that? Do you see where Chief Esposito asks how many C  
9 summonses are given out per officer on street time. Do you see  
10 that?

11 "A. Yes.

12 "Q. And the answer from Inspector Montgomery is 2.3?

13 "A. Right."

14 MS. GROSSMAN: Your Honor, I think on the reference to  
15 street time there may be a question about -- that might mean  
16 straight time, but we'll clarify that later.

17 THE COURT: Okay.

18 "Q. Is there, in fact, an average amount of C summonses that  
19 an officer is expected to give?

20 "A. No.

21 "Q. What does that refer to then?

22 "A. I think that Inspector Montgomery is replying probably --  
23 I don't know if the question is what should the average be or  
24 what is the average. And I think Inspector Montgomery is  
25 replying from his reports that he sees it's 2.3.

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"Diaz"

1 "Q. Clearly the average is being used as some measurement of  
2 how effective the police activity is in that area, right?

3 "A. How effective?

4 "Q. Yes. Or to determine how effective the police activity is  
5 in the area?

6 "A. Yes.

7 "Q. That same is true for the average number of 250s that are  
8 being given by officers, right?

9 "A. Can you just repeat the question again? I want to make  
10 sure I --

11 "Q. The document refers to -- it's in response to a question  
12 from Chief Esposito what should the average be. And Inspector  
13 Montgomery is saying 2.3 for C summons and 2.3 for 250s as  
14 well. Is it fair to say that the average number of C summons  
15 and 250s is being used as a measurement of how effective the  
16 police officers are in any particular precinct?

17 "A. I don't think that Chief Esposito's question is what  
18 should the average be. I don't know if that is a typo or  
19 misinterpretation of what he said. Because I -- I -- I can't  
20 see him asking the question: What should the average be? But  
21 I can ask -- I can envision, and I've heard him say: What is  
22 the average?

23 "Q. He said what should the average be. So all I can do is  
24 deal with what is there. Even if it is what is the average, is  
25 it clear that an average number of 250s is some measurement --

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D3t9flo3

"Diaz"

1 not necessarily the only measurement -- but amongst some  
2 factors, is a tool to measure the effectiveness of the police  
3 activity by police officers in the city of New York?  
4 "A. Yes.  
5 "Q. What is that and how is it different from operation  
6 impact?  
7 "A. Operation impact is officers on straight time. Impact  
8 overtime program was officers on overtime.  
9 "Q. What is the purpose of the impact overtime program?  
10 "A. To get additional officers into high crime areas to reduce  
11 crime.  
12 "Q. And are those generally more experienced officers who can  
13 participate in impact overtime?  
14 "A. Yes.  
15 "Q. How are they recruited or how are they selected into the  
16 program?  
17 "A. Selected -- selected by their precinct commanding officer  
18 or in the case of the borough, the borough unit supervisors.  
19 "Q. How does it work? How does the impact overtime program  
20 work?  
21 "A. The -- the patrol borough is allocated an X amount of  
22 tours of overtime. Usually it's the direction -- it's -- there  
23 is direction given as to what commands should get that  
24 overtime. And at various times it was whether, you know, there  
25 was direction that they should be in a particular zone or have

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D3t9flo3 "Diaz"

1 precinct-wide -- precinct-wide boundaries to conduct  
2 enforcement activities.

3 "Q. Who makes the decision on where the officers are assigned  
4 in the impact overtime program?

5 "A. Where they're assigned?

6 "Q. Yes.

7 "A. The precinct commander would usually write up a proposal  
8 and it would be forwarded to the borough and in turn forwarded  
9 to the chief of patrol who would make the final decision.

10 "Q. Thank you. No further questions."

11 THE COURT: All right. That completes Diaz.

12 MR. CHARNEY: One more, your Honor, for today. This  
13 is Inspector Dwayne Montgomery, the former commander of the  
14 28th precinct. And we're also going to present his  
15 deposition.

16 "Q. Good morning.

17 THE COURT: I'm sorry. Do I have the transcript?

18 MR. COREY: Apologies, your Honor. I will give it  
19 right back.

20 THE COURT: Thank you.

21 MR. COREY: Sorry, your Honor. Can I actually give  
22 you this copy instead?

23 THE COURT: Okay.

24 "Q. Good morning.

25 "A. Good morning.

D3t9flo3 "Montgomery"

1 "Q. Can you state your name for the record.

2 "A. Inspector Dwayne Montgomery."

3 MR. COREY: Your Honor I think the way this deposition  
4 is designated it starts in the middle of an answer. So I'll  
5 just ask the witness to begin.

6 "A. April 2002 to April of 2004. 2004 I got transferred to  
7 the 28th precinct as the executive officer. And then I  
8 assumed command in June of 2005.

9 "Q. Are you still the commanding officer of the 28th  
10 precinct?

11 "A. No, I'm not.

12 "Q. When did you stop being the commanding officer of the  
13 28th precinct?

14 "A. March of 2009.

15 "Q. And I think -- I guess to start with, when you were the  
16 commander of the 28th, who was your direct supervisor that  
17 you reported to at that point in time?

18 "A. Chief Raymond Diaz.

19 "Q. Was he the commander of Manhattan North patrol borough?

20 "A. Yes. Patrol borough Manhattan North.

21 "Q. What is this document?"

22 MR. COREY: Your Honor, we would like to show  
23 Defendants' Exhibit 12.

24 MS. GROSSMAN: Your Honor, I'm sorry. The plaintiffs  
25 gave us one copy of this pink and yellow designation today.

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D3t9flo3

"Montgomery"

1 And the witness has the only copy. So I'm wondering maybe the  
2 plaintiffs could just spare another copy so I can read along,  
3 so I know -- I can facilitate the admission of exhibits. And  
4 we didn't get the copies of the exhibits that they're planning  
5 to use like they did with Diaz. So I'm a little handicapped  
6 right now.

7 MR. COREY: Plaintiffs don't have anymore color  
8 copies.

9 MS. GROSSMAN: If you could give me whatever the  
10 copy -- because I'm -- it looks like some of your counsel might  
11 have something I could borrow until we could finish.

12 Thank you.

13 MR. COREY: I'll read line 14 again.

14 "Q. What is this document?

15 "A. This is the patrol guide procedure detailing the duties  
16 and responsibilities of a commanding officer.

17 "Q. It says review activity of members of command each month.  
18 And then it says A. personally review and sign monitoring  
19 profiles of members in level two or level three monitoring  
20 programs. Performance profiles are due by the fifth day of  
21 each month for level two and monthly for level three as  
22 appropriate. The monitoring programs, is it true -- is it true  
23 that monitoring program that is referred to there is for  
24 officers who have already been identified as having some  
25 problems with their job performance?

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D3t9flo3

"Montgomery"

1 "A. Yes.

2 "Q. So other than reviewing the activity of officers who are  
3 already in the monitoring programs, is there any other --  
4 because, again, I'm looking at number eleven, and it said  
5 reviewing monthly activity of officers. Is there any other  
6 regular monthly monitoring of officer activity that you did  
7 when you were the 28th precinct commander?

8 "A. Yes.

9 "Q. What other monthly monitoring did you do?

10 "A. I monitored their monthly activity reports.

11 "Q. When you say you monitored them, what do you mean by that?

12 "A. I reviewed them.

13 "Q. So you reviewed the monthly activity reports of every  
14 officer in the 28th precinct every month?

15 "A. Well, there is a summary sheet that goes with the -- the  
16 activity reports are collected by the sergeants. They are  
17 compiled. A coversheet is compiled. I review that coversheet.

18 "Q. So you review the coversheet each month that's filled out  
19 by every sergeant in the 28th precinct?

20 "A. Yes.

21 "Q. What information is contained on the coversheet that  
22 you're describing?

23 "A. It lets me know the officer's activity for the prior  
24 month. It lets me know how many verticals were done, how many  
25 AD cards were prepared, how many complaint reports prepared,

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D3t9flo3

"Montgomery"

1 how many summonses were issued, how many UF 250s were done, how  
2 much overtime they have done, what the assignment was for that  
3 month.

4 "Q. Any other information?

5 "A. That's it.

6 "Q. So when you review these monthly activity summaries, does  
7 the particular information that would, if you saw it on the  
8 summary, give you concern about that officer's performance?

9 "A. Not particularly. If the officer -- say the officer was  
10 assigned to a steady sector and that sector had a rise in  
11 crime. I would want to know, well, what is that officer doing  
12 to bring that crime down. So if I looked at his activity  
13 report and it showed that he did nothing, then, yes, I would  
14 have concern.

15 "Q. When you say he did nothing, would an example be, you  
16 know, you looked at the month and he had zero or one UF 250s  
17 completed?

18 "A. Not just UF 250s. If he had no verticals.

19 "Say I had a rash of robberies taking place inside the  
20 building, I would expect him to conduct verticals in that  
21 building. If he has no verticals in that building, I'd more or  
22 less tell him: That's why my burglaries are going off the  
23 hook, because you're not getting out of that radio car.

24 "Or if I had a high number of incidents in a command,  
25 I would tell him, this is why incidents are occurring, because

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D3t9flo3 "Montgomery"

1 you're not taking enforcement action.

2 "If I had a pattern of robbery within a sector, if I  
3 have what description of the perpetrators, and he was -- he  
4 has -- and let's say the crime occurred while he was working  
5 and he did nothing, he has no activity to show that he has been  
6 stopping people that fit that description and that pedigree.  
7 If the crime occurred on his tour, I would question him on it.

8 "Q. So your vertical patrols is one thing. What about UF  
9 250s. Let's say you're reviewing the activity of an officer  
10 who had been working in a sector where crime had been up and  
11 you saw either very few or no UF 250s completed in that month.  
12 What would your response be to that?

13 "A. If we had a detailed description as to who were committing  
14 these crimes, I would go speak to the officer. I'd say: Did  
15 you look at the crime board in the back? Did you understand  
16 what's going on there? Do you understand who we're looking  
17 for? I'd say: You see nobody fitting the description? And if  
18 they say no, what can I say? I can't tell an officer what he's  
19 seen or what he didn't see."

20 (Continued on next page)

21  
22  
23  
24  
25

D3tWflo4 "Montgomery"

1 "Q. What if you didn't have detailed descriptions of suspects,  
2 but you just had crime statistics in a particular sector; would  
3 you expect to see on the officer's monthly activity report  
4 certain number of UF250s completed?

5 "A. No.

6 "Q. When you were the precinct commander of the 28th, how  
7 often did you meet with Assistant Chief Diaz?

8 "A. Too often. Every other week.

9 "Q. Okay. And so those were regular meetings that you had  
10 with him?

11 "A. Yes.

12 "Q. And were there other precinct commanders from Manhattan  
13 North at those meetings?

14 "A. Yes.

15 "Q. I understand that. I'm just talking about generally.  
16 When you would meet with other lieutenants, I'm trying to  
17 figure out what kind of issues you discussed with them, and I'm  
18 wondering if stop-and-frisks, not necessarily the quality  
19 assurance issue, but just stop-and-frisk activity in the  
20 precinct, was that discussed at these meetings with your  
21 lieutenants?

22 "A. No. We would basically discuss, for the gist of it, the  
23 crime that is going on, the crime pattern, how we're looking  
24 for the week, because I maintained my statistics on a daily  
25 basis. So I figure on Wednesday if we have something going on,

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D3tWflo4

"Montgomery"

1 that's enough time during the week to more or less formulate a  
2 plan, implement it, and hopefully see some results.

3 "Q. So in terms of a plan to implement, what kinds of policing  
4 activities would be included in the plan that you would  
5 implement?

6 "A. Sometimes we would initiate, I think it's called a, it's a  
7 procedure where we get all the city agencies and -- I don't  
8 know, I forgot the term for it. But we get department of  
9 buildings, we get department of patrol. We get everybody  
10 involved when we're doing an operation where we're targeting --  
11 we will go to a building. Say it's a problematic building. We  
12 will go over there. We will hit them for any type of  
13 violation, building code violations, sanitation violations,  
14 narcotics violations. If it's a part of a trespass affidavit  
15 program, anyone hanging in the building, we would arrest them  
16 for trespass. I would talk to my FIO, who is the field  
17 intelligence officer, to see what information he has been able  
18 to obtain from his informant, to see if we can get any search  
19 warrants. We might reach out to patrol. The patrol violations  
20 to see if we can get people who are violating the terms of  
21 their patrol, things such as that.

22 "Q. What about stop, question and frisk? Is that a strategy  
23 that you ever incorporated into these plans that we're  
24 discussing?

25 "A. No. No. We may have done some summons enforcement for  
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D3tWflo4

"Montgomery"

1 quality-of-life issues, people urinating in public, open  
2 container. But as far as UF250s, no. Stop, question, and  
3 frisk, no.

4 "Q. What about the biweekly meetings you had with Assistant  
5 Chief Diaz? Was the issue of stop, question, and frisk in any  
6 way discussed regularly at those meetings? So, Chief Diaz,  
7 when you said you had biweekly meetings with borough commander  
8 Chief Diaz, was stop, question, and frisk discussed in any way  
9 regularly at those meetings?

10 "A. It would come up as to how many UF250s were issued for the  
11 command.

12 "Q. Any other discussion of stop, question, and frisk at those  
13 meetings?

14 "A. No.

15 "Q. So when you say you would discuss with him how many UF250s  
16 were issued in the command, you're talking about in a two-week  
17 period?

18 "A. 28-day period.

19 "Q. So, basically, in a month, in a given month?

20 "A. Yes.

21 "Q. So how did the discussion take place? Would you present  
22 to him the statistic for the month from your precinct on  
23 UF250s?

24 "A. Well, he would say something to the effect that, Duane,  
25 you're getting killed in crime. This is something, if I'm up

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D3tWflo4

"Montgomery"

1 on the podium, if I'm getting killed in crime -- and you only  
2 go up to the podium if you have an increase in crime. So he  
3 would say, Duane, you're getting killed in crime. My crimes  
4 were grand larcenies and robberies --  
5 "Q. Let me interrupt you for a second. When you say those  
6 were your crimes, what do you mean by that?  
7 "A. Crimes that were driving my increase, that would be  
8 responsible for my increase.  
9 "Q. So you would go up to the podium and Chief Diaz would say,  
10 Duane, you're getting killed on crimes. You can continue.  
11 "A. What are you doing about it? I would tell him my plan of  
12 action. He would say, Well, what is the proof that these  
13 officers are out there working? How many  
14 stop-question-and-frisks do you have? How many arrests do you  
15 have for those crimes?  
16 "Q. Okay. And you would provide him with that information of  
17 how many stop-question-and-frisks your officers were doing?  
18 "A. Yes.  
19 "Q. And do you recall at any of these biweekly meetings Chief  
20 Diaz telling you that he thought the stop-question-and-frisk  
21 numbers were not high enough in your precinct?  
22 "A. No.  
23 "Q. Did Chief Diaz at any point at any of those meetings  
24 either direct you or advise you or suggest to you that your  
25 officers should be doing more stop-question-and-frisks?

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"Montgomery"

1 "A. No.

2 "Q. About the integrity control officers, did you have  
3 integrity control officers working for you in the 28th  
4 Precinct?5 "A. Yes. I had one, and sometimes during my reign, I had  
6 enough resources to give him an assistant. But I always had  
7 one, yes.8 "Q. Was it the same person the entire time you were the  
9 commander of the 28th?

10 "A. Yes.

11 "Q. What was that person's name?

12 "A. Lieutenant Peters.

13 "Q. To the best of your knowledge, based on your experience in  
14 the police department, what are the job duties of an integrity  
15 control officer?16 "A. He is supposed to maintain the department's performance  
17 monitoring file. He maintains the, basically, it's called the  
18 CP, central personnel, index reports on everyone assigned to  
19 that command. He devises programs for corruption and monitors  
20 that. He monitors overtime. He develops and administers the  
21 holiday integrity program.

22 "Q. Holiday integrity program?

23 "A. Right. He investigates matters that come to him from  
24 either Internal Affairs or the investigations units.

25 "Q. Are there other kinds of self-inspections that the

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1 integrity control officers are supposed to initiate?

2 "A. He's supposed to administer the department's  
3 self-inspection program.

4 "Q. What is the self-inspection program?

5 "A. There are things going on in the department that we want  
6 to monitor to make sure that they're being adhered to. For  
7 instance, you have property, you have stop-question-and-frisk  
8 forms, you have complaint reports. You want to make sure that  
9 they're classified appropriately, that the story and the body  
10 fits the crime classification.

11 "Q. You mentioned stop-question-and-frisk forms. You're  
12 talking about the UF250 forms, right?

13 "A. Yes.

14 "Q. So is it accurate for me to say that self-inspections of  
15 the stop-question-and-frisk forms that the integrity control  
16 officers do is to ensure that the forms are being filled out  
17 completely and accurately?

18 "A. Yes. But in my command, that duty was being performed by  
19 my CompStat sergeant, Sergeant Jeter.

20 "Q. Okay. Other than checking the forms to make sure they're  
21 filled out correctly, was there anything else that Sergeant  
22 Jeter would look for when he would inspect the  
23 stop-question-and-frisk forms?

24 "A. It's a she.

25 "Q. She. I'm sorry.

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1 "A. She would look for completeness and accuracy. If a form  
2 was completed incorrectly, she would give it back to the  
3 sergeant concerned, the squad sergeant of the officer, explain  
4 to them what the problem was, and that squad sergeant would in  
5 turn speak to the officer that had to correct it. So it would  
6 be onsite training.

7 "Q. So checking accuracy of the forms, did Sergeant Jeter or  
8 the integrity control officer ever examine the forms to  
9 determine whether or not stops that were done were, in fact,  
10 legal?

11 "A. Well, they would look at -- when you say legal, they would  
12 look at the forms and make sure that it fit the criteria for a  
13 stop. She would look at the -- first, one of the things they  
14 would always check, because we had had a slight problem with  
15 the rookies, was that violation, making sure it was a crime or  
16 felony as classified in a misdemeanor. When we got a new class  
17 of rookies in, they were initially stopping people for  
18 violations, filling out the form. And then we spoke to the --  
19 my training officer, my training sergeants. We spoke to them.  
20 Get them all together and spoke to them and let them know this  
21 is how a procedure reads on a stop-question-and-frisk.

22 "Q. Let me ask you a little bit about that. When you say that  
23 some rookies were stopping people on the street for violations,  
24 do you mean that they would stop people on reasonable suspicion  
25 of a violation rather than a felony or misdemeanor?

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"Montgomery"

1 "A. Yes.

2 "Q. And is it true, your understanding, that it's not  
3 permissible for officers to stop civilians for reasonable  
4 suspicion of a violation rather than a felony or a misdemeanor?

5 "A. According to our patrol guide procedure, yes.

6 "Q. So when you say this was happening, that rookies were  
7 doing this, what time period are you talking about?

8 "A. Daytime.

9 "Q. When I say time period, what year or month?

10 "A. Oh. This is -- I don't know exactly when we got the new  
11 rookies in from the academy, but whenever we got the rookies  
12 out of the academy, for about the first week.13 "Q. Did this happen the entire time that you were the  
14 commander of the 28th Precinct, or this was just an isolated  
15 incident?16 "A. It was brought to my attention only one time, so an  
17 isolated incident.18 "Q. So let me go back to Sergeant Jeter's inspection of these  
19 stop-question-and-frisk forms. So one way she would determine  
20 if the stops were legal is she would look to make sure that the  
21 stop was on suspicion of a felony or a misdemeanor?

22 "A. Right.

23 "Q. What about the reason for stops listed on the forms?

24 "A. Yes.

25 "Q. What kind of investigations did she do of those reasons?

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1 "A. She would look at the form to make sure that the checkoff  
2 boxes were done, and she would look at the form in its  
3 entirety."

4 MR. COREY: Your Honor, before I forget, we would move  
5 Defendants' Exhibit 12 into evidence, which is currently up on  
6 the Elmo.

7 MS. GROSSMAN: No objection.

8 MR. MOORE: D12.

9 THE COURT: No objection. D12 is received.

10 (Defendants' Exhibit D12 received in evidence)

11 "A. I would like to clarify one of my previous answers.

12 "Q. Sure.

13 "A. The one relative to stopping a person for a felony or  
14 misdemeanor as defined in the Penal Law. We can stop for any  
15 violation of law. However, we only prepare the UF250 for the  
16 misdemeanor or a felony. If we stop for a violation, we  
17 prepare, issue a summons.

18 "Q. Okay. Let me clarify that. So is it your understanding  
19 that an officer can stop, question, and frisk somebody if they  
20 have a reasonable suspicion that they have committed a  
21 violation, misdemeanor, or a felony? Is that your  
22 understanding?

23 "A. Yes.

24 "Q. Isn't it true that just because they have reasonable  
25 suspicion doesn't mean that upon actually stopping the person,

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1 there will be enough evidence to then rise to the level of  
2 probable cause?

3 "A. Yes.

4 "Q. So, in other words, sometimes police will stop people and  
5 then it turns out that they really were not committing a  
6 violation, a misdemeanor, or a felony, correct?

7 "A. Correct.

8 "Q. So in those situations, let's say if an officer stops  
9 someone on reasonable suspicion of a violation, but then it  
10 turned out that they were not committing the violation, the  
11 officer wouldn't issue them a summons, correct?

12 "A. Correct.

13 "Q. And they also wouldn't issue them the UF250?

14 "A. Correct.

15 "Q. So would there be any written documentation of that stop  
16 if, in fact, a summons was not issued?

17 "A. Yes. There would be a memo book notation.

18 "Q. Do you know why police department policy does not require  
19 officers to fill out a UF250 in a situation where a person was  
20 stopped on suspicion of a violation, but, in fact, no violation  
21 had occurred?

22 "A. I have no idea.

23 "Q. Do you know whether, when you were the precinct commander  
24 of the 28th, either your precinct or the Patrol Borough  
25 Manhattan North or the police department as a whole documented

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1 how many stop-question-and-frisks that were done were done for  
2 suspicion of violations?

3 "A. No.

4 "Q. So other than the memo book entries, would there be any  
5 documentation anywhere in the police department of a  
6 stop-question-and-frisk that was done for a violation in which  
7 no summons was issued?

8 "A. No.

9 "Q. When we were talking about Sergeant Jeter reviewing these  
10 forms and I had asked you about whether or not they were  
11 reviewed to determine if the stops were, in fact, legal stops,  
12 you said one of the things that she would do would be to look  
13 to make sure that there was a specific felony or misdemeanor  
14 listed in the form. Is that true?

15 "A. Yes."

16 MR. COREY: Your Honor, we would like to just show  
17 Plaintiffs' Exhibit 85.

18 "Q. And would that be the box near the top of the page that  
19 says 'specify which felony, PL, misdemeanor suspected'?

20 "A. Yes.

21 "Q. So that would be one way, there would have to be a felony  
22 or misdemeanor listed there? That would be one way that  
23 Sergeant Jeter would determine if the stops were, in fact,  
24 legal stops?

25 "A. Yes.

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1 "Q. Right below that, it says 'what were circumstances which  
2 led to stop,' and there's a bunch of them listed there. Would  
3 Sergeant Jeter review those reasons to determine whether or not  
4 a stop was legal?

5 "A. Yes.

6 "Q. How would the information listed in these boxes provide  
7 her with information to determine if the stop was legal or not?

8 "A. These boxes are normally the frequent circumstances in  
9 which people are stopped. So if one of those boxes were  
10 checked, that would lead her to conclude that the officer more  
11 than likely had reasonable suspicion for stopping the person.

12 "Q. And just to backtrack for a second, when Sergeant Jeter  
13 would review these forms, would she review them by herself, or  
14 would she review them in the presence of the officers who had  
15 filled them out?

16 "A. She would review them by herself.

17 "Q. So let's say, for example, she reviewed a form that had  
18 the box furtive movements checked. To your understanding, how  
19 would Sergeant Jeter determine whether or not the stop was  
20 legal if the only box checked was furtive movements?

21 "A. If there's no further explanation on the box, she would  
22 point it out to the sergeant of the officer concerned and have  
23 her clarify what the furtive movements were.

24 "Q. So when you were the commander of the 28th Precinct, did  
25 you direct your sergeants and your officers and your

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1 lieutenants that when they filled out the UF250 and checked the  
2 box furtive movements, they had to provide further detail of  
3 what the furtive movement was?

4 "A. No. I never did."

5 THE COURT: We're going to have to stop now, at the  
6 end of page 60, so we know where to pick up.

7 It would be helpful if I knew at the end of each  
8 session what we had planned for the next session. So can you  
9 tell me who you plan to call Monday?

10 MR. CHARNEY: Sure. So Monday morning, we're going to  
11 start with Senator Eric Adams. Then we'll have Lieutenant  
12 Guimares, who is the supervisor of Sergeant Kelly who we heard  
13 earlier. Then we were going to have two or three more  
14 plaintiffs.

15 THE COURT: You're not going to return to this reading  
16 for a while?

17 MR. CHARNEY: I don't think so. Not Monday.

18 THE COURT: Just flipping through it, I certainly  
19 notice that neither side has done much to eliminate; you're  
20 reading almost all of it. That's surprising. Usually when  
21 people talk about deposition excerpts, they're excerpts. It  
22 looks like you're reading virtually every word. I encourage  
23 you to cut it back. If you can't, you can't.

24 With that have a good holiday. We will see you  
25 Monday.

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1 MR. MOORE: Will we finish reading this on Monday?  
2 THE COURT: No. Whatever you decide. Whatever you  
3 decide.  
4 MR. MOORE: Okay. I didn't hear that.  
5 THE COURT: Okay. He said no.  
6 (Adjourned to April 1, 2013, at 10:00 a.m.)  
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DEFENDANT EXHIBITS

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