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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

New York, N.Y.
April 15, 2013
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 (Trial resumed)

2 DONALD McHUGH, resumed.

3 MS. GROSSMAN: Before we begin with the witness, we
4 just wanted to know if this is the right time to raise our
5 concerns about the Provost witness?

6 THE COURT: No. Let's get this done.

7 MS. GROSSMAN: No problem.

8 CROSS-EXAMINATION (Cont'd)

9 BY MS. GROSSMAN:

10 Q. Good morning.

11 A. Good morning.

12 Q. Did you ever tell officers at roll call that they would be
13 punished if they failed to meet a 1 and 20 requirement, for
14 example, one arrest and 20 summonses?

15 A. No.

16 Q. Did you ever punish an officer for failure to make one
17 arrest and issue 20 summonses for any month?

18 A. No.

19 Q. On your direct testimony, in sum and substance, you
20 answered yes to Mr. Charney's question, "Have you ever looked
21 at summonses statistics and concluded that the summons numbers
22 were too low in your precinct for that particular week?" Do
23 you remember that?

24 A. Yes.

25 Q. Can you explain why you look at summonses statistics and

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McHugh - cross

1 cross out I did not personally observe and put down that he was
2 informed by me of that, and I would sign the summons or
3 anything that he needed me to do, but I would always sign the
4 summons if I was asked to.

5 Q. Could you just give an example of the type of summonable
6 offense that you would observe, but an officer was not present
7 at, which if the officer then comes to the scene later on would
8 then be in a position to actually sign the summons based on
9 personal observation?

10 A. Well, I would drive around the precinct so I could detect
11 the conditions. And my purpose was to let the officers know, I
12 see these conditions out there, you should see these
13 conditions. So, for example, people drinking open containers
14 of alcohol, I would have them come to my location. They would
15 see the individual with alcohol. They could issue a ticket.
16 Someone walking a dog without a license, someone having an
17 unleashed dog, these were issues that we had, as well as people
18 in the park after hours, where a sign is posted and people are
19 inside the park after hours. Or even a driver's license. I
20 would have them come over, if the person didn't have a driver's
21 license, registration, and they would be able to observe the
22 same conduct that I did.

23 THE COURT: What is walking a dog without a license,
24 what is that?

25 THE WITNESS: Well, believe it or not, in Hunts Point,
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D4F8FL01 McHugh - cross

1 one of the problems was unleashed dogs.

2 THE COURT: I thought you said walking a dog without a
3 license.

4 THE WITNESS: A person has to have a dog license for
5 their dog. So if they don't have dog license, they can be
6 issued a summons.

7 THE COURT: Just curiosity, you have to have a dog
8 license to walk your dog?

9 THE WITNESS: Not to walk it. Absolutely not. You
10 can walk a dog, absolutely, any time you want. You're supposed
11 to have a license, and so if you don't have a dog license, you
12 can be issued a summons.

13 THE COURT: What is a dog license?

14 THE WITNESS: A dog license is that you registered the
15 dog with the city. We have frequent times where the dogs are
16 loose --

17 THE COURT: I know that. I didn't realize you're
18 supposed to register your dog and get a license. I just didn't
19 know.

20 THE WITNESS: It's in the administrative code. In
21 good faith, I am making that statement.

22 THE COURT: I never had a dog. That was all
23 curiosity, folks.

24 BY MS. GROSSMAN:

25 Q. Officer Polanco claims you called him to a location to

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McHugh - cross

1 write a summons for a person who did not have a dog license.

2 Do you recall if this happened?

3 A. I don't recall the specific event, but it's possible I came
4 to the scene, yes.

5 Q. If Officer Polanco did not want to write up a summons, what
6 options were available to him?

7 A. Well, if I observed something, I am the supervisor, he
8 should issue the summons. And he could ask the man, may I see
9 the dog, and if the dog didn't have a license on it, he could
10 make the same observation I could.

11 Q. What if he didn't observe, what if the dog was not present
12 when he arrived, what were the options available to Officer
13 Polanco if the dog wasn't present?

14 A. What he should have done and could have done is certainly
15 gotten the pedigree information and ask me to sign where it
16 says witnessing officer.

17 Q. Have other officers prepared paperwork based on your
18 personal observations and asked you to sign the paperwork?

19 A. Yes, they have.

20 Q. Did you sign the paperwork?

21 A. I am always willing to sign anything that I observe. I
22 would be the observing officer and they would be the arresting
23 officer. And I went into court and testified at grand jury
24 proceedings to that.

25 Q. Did you ever direct an officer to stop someone on the

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D4F8FL01 McHugh - cross

1 street without reasonable suspicion?

2 A. No.

3 Q. Did you ever just point to somebody on the street and say
4 to an officer, go stop that guy, without reasonable suspicion?

5 A. Absolutely not.

6 Q. Did you ever direct an officer to grab black or Hispanic
7 kids on the corner in the park or anywhere and 250 them or
8 summons them without a legal basis?

9 A. No.

10 MS. GROSSMAN: Your Honor, I just want to now go back
11 to the tracks, which I think we have transcripts of, the tapes,
12 284T.

13 THE COURT: I am not sure where I put them.

14 MR. CHARNEY: I have an extra one.

15 THE COURT: What number?

16 MS. GROSSMAN: 284T.

17 THE COURT: I have that right in front of me.

18 MS. GROSSMAN: Referring to track 3, which is page 2,
19 the top third of the page, lines 24 --

20 THE COURT: One moment. Track 3. What did you say?

21 MS. GROSSMAN: Go to the second page of track 3 and go
22 to the very top, line 24 to 25.

23 THE COURT: Does that start with "we'll take care of"?

24 MS. GROSSMAN: Yes. But we are going to start with --
25 that's in the middle of the sentence. We are going to start on

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1 call, which is when you discussed this meeting with Chief
2 Purtell and Chief Giannelli about low summons activity, right?

3 A. He did.

4 Q. When did this meeting occur?

5 A. It was sometime in '09, I believe.

6 Q. 2009?

7 A. Is there a date on these tapes? That would be just before
8 this if there was.

9 Q. There is no date on these tapes. That's why I was asking.
10 About 2009?

11 A. I believe so.

12 Q. What was your understanding of what Chief Purtell wanted
13 your command to do and why?

14 A. Well, I think they looked at our overall manpower, and they
15 felt as though, during the course of eight hours, we had some
16 officers who weren't chipping in, meaning purposefully engaging
17 in the areas where we had crime, quality of life issues, as
18 dictated in my precinct, as well as other particular precincts.
19 And we do want our people to work to address those conditions
20 and it appeared that some people were not assisting us in doing
21 that.

22 Q. Did Chief Purtell and Chief Giannelli raise any concerns
23 about 250s and arrests at this meeting or was it just limited
24 to summonses?

25 A. My recollection it was just summonses, nothing else.

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McHugh - cross

1 Q. Did you understand the message to be that your officers
2 should go out and issue unlawful summonses?

3 A. No.

4 Q. What did you intend to communicate to your officers during
5 this roll call?

6 A. Well, when people look at police officers, we want to make
7 sure that they are engaged where we are having our entrenched
8 problems. And that's what I meant by giving them the business,
9 meaning the drug dealers, the gangs that dominate the area, the
10 negative secondary effects of prostituting and pimping, the
11 truck drivers barreling through the Hunts Point area, the
12 violent robberies that I had in my precinct. So I didn't want
13 them going to where the civic locations or religious
14 institutions might be double-parking, or someone was late
15 alternate side of the street parking. I wanted them to go to
16 the areas where we were having serious problems that affected
17 the criminality as well as the quality of life for the
18 residents in Bronx.

19 Q. When you referred to "give them the business," did you mean
20 to generate money for the city?

21 A. No. You're not generating money for the city, absolutely
22 not.

23 Q. Is it your understanding that issuing summonses is a money
24 generating machine for the city?

25 A. Well, I mean, department of traffic really deals with most

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McHugh - cross

1 of the parking revenue issues. The police department give out
2 some parking tickets, but most of it is moving violations. DMV
3 and quality of life goes to Bronx criminal court, which is very
4 sensitive to the residents' communities and maybe they will get
5 a \$20 fine for drinking an open beer or something. So it's
6 certainly not a revenue generating thing and the officer
7 usually has to appear on overtime in courts so they are
8 probably losing money.

9 Q. Now, you testified that you think it's reasonable for an
10 officer to write a summons every day, or at the end of the
11 month, it would be reasonable for an officer in the 41 Precinct
12 to have issued somewhere between 20 and 25 summonses. Can you
13 explain what you meant by that?

14 A. Well, during the course of the performance of their duties,
15 in the South Bronx, they are going to see obvious conditions
16 which can be addressed, and one way we can enforce it is a
17 summons. There are other things we do, but we needed people to
18 try and correct that conduct. We had a lot of accidents there
19 so we needed people to make sure that if someone is on the cell
20 phone, distractive driving, before we have a serious accident
21 where you see the injuries that result from it, it is a
22 preventive measure we take. So it is an enforcement technique.
23 During eight hours, you can certainly take a coffee break, but
24 you have to engage in some type of work for eight hours. You
25 can't drive around blind and not do anything, or just give a

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McHugh - cross

1 summons out where you think it is good for you, instead of
2 going to the drug dealing locations, the robbery spots, the hot
3 spots, that we have to do something about.

4 Q. Are you able to direct an officer to make a set number of
5 arrests or to write a set number of tickets or a set number of
6 UF-250s?

7 A. No, I can't. But it's my personal opinion, and it has been
8 today, it has been in the depositions, that there are open,
9 obvious violations in my precinct, and everyone should do
10 something every day for these existing conditions. Whereas now
11 I am in lower Manhattan, I don't have some of the problems that
12 I experienced in the Bronx, so we are certainly not going to
13 have -- I don't have that expectation from my officers.

14 Q. While you were the CO of the 41, or any precinct for that
15 matter, did you punish officers for failing to issue a set
16 number of summonses or a set number of 250s or a set number of
17 arrests?

18 A. No. No one was ever punished in my command for not doing
19 that. Not at all.

20 Q. Are there occasions when you have assigned an officer to
21 drive a supervisor?

22 A. Yes.

23 Q. Under what circumstances have you done that?

24 A. Well, I don't think I personally said, I want you to work
25 with an officer for the day, but I would tell the sergeants,

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1 the way to better train the officers, show them the violations,
2 show them the crime conditions, give them more experience, one
3 way you can do that is work with a supervisor. So, yes, if I
4 thought someone needed guidance or assistance, some officers
5 maybe were afraid, now they would be with a supervisor and
6 would have a little more courage to engage some of the problems
7 that we had.

8 Q. Do you consider that a punishment?

9 A. No, absolutely not.

10 Q. Have you heard the term zero to describe police officers?

11 A. I have.

12 Q. What does that mean to you?

13 A. Well, that's a broad question. There are some officers who
14 come to work, and they just want to answer the radio. They
15 don't want to get out of the car and do verticals, go to the
16 locations that we are getting robberies. They don't look at
17 the crime reports to see what is going on. They are not going
18 to the drug locations. They are not following up, getting
19 detailed information on the reports. They hold jobs so that
20 other people have to work harder, and they don't purposely
21 engage in being good officers. That's something that most
22 officers are doing a very good job, they are very brave and try
23 to do the right thing, but we have a component in the police
24 department that does not want to do anything.

25 Q. Are there officers who are proactive who are actually

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1 harassed by officers who do not do any work?

2 MR. CHARNEY: Objection, your Honor. That would be
3 hearsay. How would he know?

4 MS. GROSSMAN: I am asking if he knows.

5 THE COURT: One second.

6 I will take it. If you observed anything like that.
7 Have you?

8 THE WITNESS: Observed? I have heard sometimes
9 throughout my career, yes.

10 THE COURT: All right.

11 I am going to take that and no more. Not the
12 statement, just the impression.

13 What else?

14 Q. Now, referring to the very bottom of page 2, on track 3,
15 going back to the transcript.

16 THE COURT: OK. Same place we were?

17 MS. GROSSMAN: I am now moving on.

18 THE COURT: Same page?

19 MS. GROSSMAN: Same page. Page 2, very bottom of the
20 page, lines 2 to 4.

21 Q. It says, "Because you know what? They control the overtime
22 too guys. If they think we're a bad borough they don't give us
23 overtime."

24 Can you explain what you meant by that, Inspector?

25 MR. CHARNEY: I am going to object, because when I

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1 tried to do this with him on direct, you said the transcript
2 spoke for itself. I mean, I asked him three or four questions
3 about what you did you mean by that. And you, I thought,
4 correctly said, he said what he said, it's in the transcript.
5 We should move on. I think this is the same thing.

6 THE COURT: I must admit I don't remember that. I am
7 sure if you say I said it, I did. But there is no rule against
8 him explaining his intent when he said it. Although I do think
9 this is pretty clear. The only thing one might ask is who's
10 "they"?

11 "They control the overtime." Who's "they"?

12 THE WITNESS: I was referring to headquarters.

13 THE COURT: That's about all that's worth
14 interpreting, who "they" is.

15 Q. What was the message you were intending to send --

16 THE COURT: I think he is right about that. The rest
17 is pretty clear.

18 MS. GROSSMAN: I don't think it is.

19 THE COURT: It doesn't matter what you think. I think
20 it's clear. I am the finder of fact. Headquarters controls
21 the overtime. If they think we are a bad borough, headquarters
22 won't give us overtime. It is clear to me. So we can move on.

23 It's plain English. It's probably what I said. I got
24 that. I think I said I don't need an interpreter. It's not in
25 a foreign language. I have got it.

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1 Q. Can you explain how overtime is allocated?

2 A. Yes. We receive impact spike reduction overtime. So if we
3 are up in a crime, let's say, burglaries or robberies or
4 shootings, those are generally the big violent categories, or
5 assaults, we will write a report requesting overtime or they
6 will allocate it from the borough. And we then put together a
7 plan with how we are going to use the overtime. Sometimes it's
8 enforcement, sometimes it's fixes, depending on what the
9 circumstances are. That way we can try and address the problem
10 that we are spiking up in, as I say.

11 MS. GROSSMAN: I would just ask, I know part of what
12 the plaintiffs are probably going to argue is that the message
13 that is being sent through these roll calls, what is it that is
14 being communicated to the officers? And the message, if that
15 is what the plaintiffs are going to argue, that there are
16 certain messages being communicated, which is to go out and
17 just get numbers for numbers sake --

18 THE COURT: If that's what the men testified they
19 understood, that's what they understood. I understand his
20 intent. I am not going to have him interpret those two plain
21 sentences. If you need me to rule sentence by sentence, I will
22 do it, whether it's a sentence I do understand or not
23 understand. That one is clear to me.

24 MS. GROSSMAN: It was about the witness's intention.

25 THE COURT: I don't need that. That sentence was

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1 clear to me. Can we move on and not quibble over this?

2 BY MS. GROSSMAN:

3 Q. Is the overtime honored by the police department?

4 A. Yes.

5 Q. How do you select officers for overtime?

6 A. When we get the overtime, we put up overtime sheets
7 usually, administrative lieutenant does that, and then people
8 sign up for it. But usually it's given, if I recall correctly,
9 from 8:00 at night till 4 in the morning, or to 4 in the
10 morning when we usually experience the violence. That's what
11 it was for. So if someone is working that day, obviously they
12 can't do the overtime, if they didn't have eight hours in
13 between the shift they can't. So it's a limited pool so we put
14 them on it. That's how they get the overtime.

15 Q. How often did you, when you were the CO in the 41, get
16 overtime?

17 A. It's infrequent and --

18 THE COURT: How often?

19 MS. GROSSMAN: How often did Inspector McHugh, while
20 he was the CO in the 41, actually receive overtime?

21 THE COURT: Him personally?

22 MS. GROSSMAN: His command.

23 A. It's infrequently. Like I said, it's usually when we are
24 having violent crimes, robberies, shootings in particular.
25 That's when we get the over time. I think there was one

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1 program with, I think, seat belts that the federal government
2 occasionally gave out, that they would do seat belt enforcement
3 in an area. That's the only overtime I am aware of. Those are
4 the programmatic overtime things that we have.

5 Q. Now, while you were the CO of the 41, did you have a car
6 break-in pattern?

7 A. I did.

8 Q. Can you describe the pattern?

9 MR. CHARNEY: Objection. Which period of time?

10 THE COURT: She said when you were the CO.

11 MR. CHARNEY: He was CO for two and a half years.

12 THE COURT: At any time during that two and a half
13 years, did you have that pattern of crime?

14 THE WITNESS: We did, occasionally, yes.

15 THE COURT: Were there certain times you can pinpoint
16 or just on and off during that period?

17 THE WITNESS: There were a couple of times it was
18 pinpointed.

19 THE COURT: Can you pinpoint those dates or not?

20 THE WITNESS: In '09, I know I had a car break-in
21 pattern, yes.

22 Q. Can you describe what the car break-in pattern was?

23 A. Well, the nursing home advised me that people were breaking
24 into their cars, your Honor, which if it's under a thousand
25 dollars, it's a misdemeanor. So I looked at the complaints,

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1 and I saw that we had several sectors that were having car
2 break-ins, where they would take the side view mirror or break
3 into the car and remove personal property. And I looked at the
4 dates it was happening, the days it was happening, and the
5 hours it was happening, and put together a basic MO, that
6 people were parking their cars in these geographical areas, and
7 a sector, your Honor, is like maybe four or five blocks, and
8 the people were breaking into the cars.

9 Q. Now, have you discussed stop, question and frisk and
10 reasonable suspicion with the officers in your command when you
11 were the CO at the 41 Precinct?

12 A. Stop, question and frisk, and I said this in my deposition,
13 there came a time I know where it was important to let officers
14 know that the anonymous call of 911, if I man with a gun didn't
15 lead to an automatic stop, they needed independent
16 observations, and it was a landmark case. So I do know we
17 discussed that.

18 Q. Did you have a training sergeant in the 41 Precinct when
19 you were the CO?

20 A. I did.

21 Q. Would the training sergeant be responsible for conducting
22 roll call training on various topics, including stop, question
23 and frisk and reasonable suspicion?

24 A. They are responsible for the training, yes.

25 Q. They are responsible for the training?

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1 A. They are.

2 Q. Now, when you were the CO of the 41, did squad supervisors
3 sign UF-250s?

4 A. They may have.

5 Q. Is this so even though the patrol guide procedure only
6 requires a desk sergeant to sign off on the 250?

7 A. Especially the specialty units, like the SNEU unit, the
8 street narcotic enforcement unit, and anticrime work directly
9 with a supervisor so he may have signed off on their paperwork.

10 Q. Can you estimate what the patrol strength was on average in
11 the 41 Precinct when you were in between 2008 and 2010?

12 A. We had about 155 police officers.

13 Q. Now, in the three years you were the CO of the 41 Precinct,
14 approximately how many officers received a 2.5 or below on
15 their performance evaluation?

16 MR. CHARNEY: Objection. I don't know how he would
17 know that. Can we establish the basis for that knowledge?

18 THE COURT: Do you review the ratings?

19 THE WITNESS: I do review them, yes, your Honor.

20 THE COURT: That's how he would know.

21 If you recall, do you really recall the numbers that
22 had 2.5 or less?

23 THE WITNESS: It would probably two or three. That's
24 all I would recall. I don't have any specificity on my recall.

25 Q. Now, Officer Polanco testified that when you were the CO in

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1 the 41 Precinct, supervisors there did not care about activity
2 other than arrests, summonses and the preparation of 250s. Is
3 that true?

4 A. No. It's not an entirely true statement.

5 Q. Can you explain?

6 A. Well, we look at a lot of things with an officer. We look
7 at response time. We look at gathering of intelligence,
8 ability to process evidence. Is it getting the whispers and
9 street intelligence from the street so we can go to the squad
10 and solve some of our serious crimes? So they can also do
11 various good paperwork that indicates that they take detailed
12 reports that gives it specificity with respect to a crime that
13 will assist the squad.

14 Q. Were you concerned about verticals?

15 A. Verticals are a very important component, especially where
16 we have drugs, where the officers go to the location, go inside
17 the building, and start at the bottom and go to the top.

18 Q. Officer Polanco testified that no one was interested in
19 domestic incidents. Is that true?

20 A. No. Domestic violence is very important. In law school, I
21 was in the battered women's clinic so I personally know about
22 that. We have a domestic violence officer who makes sure that
23 the domestic incident reports are submitted timely with
24 complete information. We are required to, and we do, have
25 weekend visits and daily visits. We also make sure that they

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1 have a safety net program for the victim and phone numbers that
2 they can call to us. So it's very important. And we have
3 order of protection enforcement. So if an officer does take a
4 complaint report for an OOP, that's a must arrest situation and
5 then the DV officers will go back and try and apprehend the
6 offender. It's also subject to domestic violence stat, which
7 just focuses on domestic violence in the home as opposed to
8 CompStat which is broader. So it is very important.

9 Q. What about community visits?

10 A. I got in it trouble for not having enough community visits
11 frequently. Community visits are important with our
12 businesses, our residents and schools and civic leaders, and
13 that was a very big part of what we do. It's called park, walk
14 and talk. Sometimes when you get out of the car, you can get a
15 lot of information, and that's very important to do. And
16 people have a sense of security when they see the beat cop out
17 there as opposed to the RMP that can drive in and not
18 purposefully engage in the community.

19 Q. Did you as the commanding officer monitor the issuance of
20 tickets on overtime?

21 A. Monitor?

22 Q. Did you track the issuance of tickets on overtime or
23 enforcement on overtime?

24 A. Well, they submit it at the end of their tour, and we make
25 sure that officers, you know, do that. And the other thing we

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1 look for is abuses, whether or not an officer only issues
2 summonses on overtime as opposed to during straight time when
3 he is working his eight hours. So we want to make sure they
4 are not abusing the overtime that's given to them.

5 MS. GROSSMAN: I have no further questions.

6 THE COURT: Thank you.

7 Redirect, Mr. Charney.

8 MR. CHARNEY: Thank you.

9 REDIRECT EXAMINATION

10 BY MR. CHARNEY:

11 Q. Good morning, Inspector.

12 A. Good morning.

13 Q. I want to take a look at an exhibit that was admitted
14 previously and that we looked at on direct, which is
15 Defendants' X11. I am going to pull it up on your screen.

16 If we can turn, I believe, to the third page, which
17 the Bates number I believe at the bottom is 938 at the bottom.

18 If you remember, Inspector, you were asked about this
19 handwritten comment that you put at the bottom?

20 A. Yes.

21 Q. "7 MOS in squad, no SFQs impossible," with -- is that a car
22 theft problem or car larceny problem?

23 A. That's correct.

24 Q. This document is a supervisor recap for a particular patrol
25 squad in the 41st Precinct, right?

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McHugh - redirect

1 A. It is.

2 Q. So it lists the activity, the monthly activity of all the
3 officers in that squad, correct?

4 A. Yes.

5 Q. I believe you testified, when you were asked by Ms.
6 Grossman why you wrote this comment, it was your opinion that
7 given the amount of, I guess, car theft and the number of jobs
8 and reports that had been made about car theft, that you just
9 couldn't believe that it was possible that no stops would have
10 been done in response to those complaints, right?

11 A. I stated to her? Can you read back what I said?

12 Q. It was your testimony from Wednesday. Let me ask you
13 again. Is the basis for this comment that you just couldn't
14 believe, given the amount of complaints about car theft in your
15 precinct, that officers wouldn't have done any stops in that
16 month, is that the reason you wrote this?

17 A. Well, what happened is two things. Number one, in my
18 deposition, when you asked me this question, I looked at it and
19 I said, hey, during the course of a month, with all of the
20 domestic jobs, we have shots fired, robberies, it seemed to me
21 impossible that someone might not encounter reasonable
22 suspicion.

23 When I prepared for this trial, I looked at my notes,
24 and I actually then observed that I did put out a pattern with
25 respect to information here. And I brought to my officers'

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1 attention the pattern, and I said, this plus their independent
2 observations may give them grounds that they have reasonable
3 suspicion that there was a car break-in. So that was part of
4 it, yes.

5 Q. OK. But looking at this form, you would agree that the
6 officers did engage in a lot of activity other than stop and
7 frisk during this month, right, if we scroll up and look at the
8 different categories?

9 A. Right.

10 Q. They answered a lot of radio runs, right? Each of them
11 answered some radio runs. It looks like each of them --

12 A. Can you just specify and I will comment.

13 Q. The third column over is radio runs, right?

14 A. Correct.

15 Q. It looks like the first officer did 85 in a month, and
16 that's with 12 days on patrol. So he did about seven each
17 tour?

18 A. That's correct. That's not busy. I have worked in
19 precincts where you're doing 35 jobs. So that's not that busy.

20 Q. Then you have even further down, you have got some who did,
21 one guy did 140, another guy did 137.

22 I guess my question is, they were engaging in
23 activity, correct?

24 A. No.

25 Q. They are not engaging in activity?

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D4F8FLO1 McHugh - redirect

- 1 A. What you're doing is they are responding to radio runs.
2 Activity is, at least my interpretation, your Honor, what they
3 are saying is these are the jobs they responded to from 911.
4 So 911 dispatched their respective sector this amount of times.
5 So sometimes it was seven times for an eight-hour shift,
6 sometimes it was 12 hours. Sometimes in busy places it could
7 be 40, which can be very busy. So this is indicating the
8 workload for the day, if you will.
9 Q. You would agree that responding to a radio run, first of
10 all, that is work, right?
11 A. Absolutely.
12 Q. It takes time, correct?
13 A. It absolutely can take time.
14 Q. And it involves actually speaking to whoever is on the
15 scene when you respond to the radio run, correct?
16 A. Absolutely.
17 Q. So that's police work, right?
18 A. Absolutely.
19 Q. You can gather intelligence through those kinds of radio
20 runs, correct?
21 A. You may, if you ask the right questions.
22 Q. Looking at this form, you couldn't tell one way or the
23 other, based on the activity listed here, what the quality of
24 that radio run was, right?
25 A. Not on this form, no.

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1 Q. So I guess going back to my original question about why you
2 said "no SQFs impossible," the basis for that statement was you
3 didn't believe that the officers -- the work that's listed on
4 this form was an adequate response to the car break-in pattern
5 that you had seen?

6 A. Just say that one more time.

7 Q. Sorry. The reason you wrote the comment about "no SQFs
8 impossible," it was your opinion that the activity which is
9 listed on this form did not constitute an adequate response to
10 the car break-in pattern that you were aware of?

11 A. Yeah. It reflected my state of mind definitely at the time
12 that they were complaining about car break-ins, which, listen,
13 this is a serious thing. The nursing home couldn't get people
14 to work there and some of the people couldn't afford to fix the
15 car. So it was on my mind that I was looking to get these guys
16 breaking into cars.

17 Q. You were specific that the lack of stop and frisks is what
18 made this an inadequate response, right, because that's what
19 you wrote?

20 A. I think -- I wasn't saying -- if an officer, let's say you
21 and I worked together and nothing happened, you didn't have
22 reasonable suspicion, there is nothing I can do. At least then
23 you can report I am doing it. But it seemed to me, for the 30
24 days and the time they had, if they sat on that location and
25 looked at it, maybe they would, maybe they wouldn't have

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1 reasonable suspicion, but it was definitely my state of mind
2 and that's why I wrote it.

3 Q. I think you also testified that Ms. Grossman asked you
4 about things like community visits and responding to domestic
5 incidents and vertical patrols and those kind of things, right?

6 A. Correct.

7 Q. You said those were important, right?

8 A. I did today and I did in my deposition with you three years
9 ago.

10 Q. Yes. On the recording that we read the transcript of, you
11 weren't asking officers to increase their vertical numbers,
12 right?

13 A. In which recording?

14 Q. The track we read the transcript for.

15 A. Chipping in, that one?

16 Q. Yes.

17 A. I was asking them specifically there to engage in summons
18 writing, absolutely.

19 Q. So you didn't ask them about verticals, right?

20 A. On that particular day. There were other days I may have
21 asked them. But it was a daily event, where on a weekly basis,
22 counselor, I would look at the summonses, the verticals, the
23 community visits, and I would try and make sure that we were
24 engaged in that area. Because you're accountable for it, and I
25 would want to make sure they did that. Sometimes it was

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1 difficult to get police officers to do the community visits we
2 thought and the verticals, all the categories.

3 Q. On Exhibit X11 you didn't make any comments about any of
4 the other categories other than stop and frisk, right?

5 A. On this particular squad, for this particular month, no,
6 that's the only thing it said, for this particular month,
7 absolutely.

8 Q. Now, you also testified on cross that you never punished
9 anybody for failing to meet the 1 and 20 requirement for
10 arrests and summons, right?

11 A. I disagree the requirement. As I stated in my deposition,
12 I asked everyone to chip in, and I said during the course of
13 the month, I think they should be able to do those things. But
14 there was not -- if they didn't do it, that was it. It was not
15 a requirement. It's not an absolute on this. I stated in my
16 deposition, I want to be clear on this to the Court, I stated
17 in my deposition, police work is fluid. There are days that
18 officers are down at CRV, they could be guarding a prisoner,
19 they could be in a hospital. So it's not a finite, absolute
20 number.

21 Q. So your answer is no, that nobody was ever punished?

22 A. No one was punished.

23 Q. But you did tell them increasing their summons activity was
24 nonnegotiable, right?

25 A. Absolutely.

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1 Q. You would agree that officers' performance is actually
2 evaluated on a monthly and quarterly basis?

3 A. They, they are.

4 Q. The information that's used for those evaluations are these
5 forms, correct?

6 A. These are where they document it, that's correct.

7 Q. So these forms actually tally up the numbers of different
8 categories of enforcement activity that officers engage in in
9 each month, correct?

10 A. They do.

11 Q. That's factored into their evaluations monthly and
12 quarterly, correct?

13 A. It's part of the totality of how we evaluate them, yes.

14 Q. So it would be correct that an officer could get a low
15 evaluation based on the fact that the supervisor thought their
16 numbers were too low, correct?

17 A. No. I think that is just a component. I don't think that
18 would be fair to say that because we have had
19 officers -- listen, there are some cops who just arrest people,
20 some people just issue summonses, some people gather evidence
21 and solve crimes and give it to the squad. Sometimes one
22 partner will do all the work and the other partner will do
23 nothing, but together as a tandem they're an excellent team.

24 So it's more than that. Are they addressing, with
25 sector integrity, the violence in their respective sector, as

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1 well as the quality of life issues that the community board is
2 always raising to me? So that's how I evaluate officers and
3 that's how I expect my sergeants to evaluate them.

4 Q. In order to make that determination, you look at their
5 activity?

6 A. It's definitely a component.

7 Q. When I say activity, meaning the information on these
8 forms, correct?

9 A. That's part of it, yes.

10 Q. You would agree that getting a negative performance
11 evaluation, wouldn't you agree that that is actually a form of
12 punishment for an officer who you believe is not working hard
13 enough?

14 A. Absolutely not. Listen, there can be a lot of reasons.
15 Someone may have a bad month, a good month. It is the totality
16 of what they do and sometimes there's a lot of things going on.
17 So it's a component, yes, but it's not overall. It's a lot
18 broader than that, sir.

19 Q. A couple of more questions. You would agree, Inspector,
20 that the police department is a paramilitary organization?

21 A. It is a paramilitary organization.

22 Q. It operates through a chain of command?

23 A. It does.

24 Q. So when a precinct commander tells his officers that he
25 expects their summons activity to go up and that that's

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1 nonnegotiable, your expectation is that the officers are going
2 to listen to that directive, correct?

3 A. In the context, as I said on the tape, and as I said in my
4 deposition, and in the spirit of we treat them well, we try and
5 treat them with respect, and we ask them to treat the community
6 and the problems that we are having with respect. So it is
7 nonnegotiable, and I have a job to do.

8 THE COURT: You haven't answered his question. When
9 you give an order, you expect it to be followed?

10 THE WITNESS: Yes, I do.

11 THE COURT: So if you told them to get the numbers up,
12 you would expect them to go up?

13 THE WITNESS: Obviously, if they can do it, yes.

14 MR. CHARNEY: One second, your Honor.

15 No further questions.

16 THE COURT: Anything further?

17 RECROSS-EXAMINATION

18 BY MS. GROSSMAN:

19 Q. But if you're expecting them to get their numbers up, it's
20 all about doing it legally, isn't that right?

21 THE COURT: You knew she was going to ask that.

22 MR. CHARNEY: It's so leading.

23 MS. GROSSMAN: I just want to have the answer.

24 A. Obviously, we want them to do it legally and lawfully, yes.

25 MS. GROSSMAN: Very good. No further questions.

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1 THE COURT: Are we done with the witness?

2 MR. CHARNEY: Yes.

3 THE COURT: Have a good day.

4 Now you want to argue about Ian Provost?

5 MS. PUBLICKER: I would like to raise one issue that
6 wasn't in the city's letter or it was briefly touched on.
7 Mr. Provost was deposed in October, and I had asked him at that
8 time, for example, about his arrest history, without a release
9 for his arrest records. We later, after numerous letters to
10 the Court, we got a release for him in January or February of
11 this year. We learned then after the fact that he had lied
12 about his arrest history. And defendants were not able to
13 question Mr. Provost about these false statements or about the
14 other arrest history.

15 THE COURT: If you have something to put into evidence
16 after the deposition is received, you can.

17 What do you mean he lied about his arrest? What did
18 he say at the deposition?

19 MS. PUBLICKER: He stated that he was arrested three
20 times. I asked him to explain the three arrests that he had.
21 He did explain those three arrests. I specifically asked him,
22 "Have you been arrested any other time besides those three that
23 you have just described to me?" He stated "no." Then we got
24 an arrest report for an arrest for attempted murder in the
25 second degree, which was not listed in his deposition.

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1 THE COURT: What do you mean then we got?

2 MS. PUBLICKER: Then we learned about another arrest
3 that he had not stated during his deposition.

4 THE COURT: When was that arrest?

5 MS. PUBLICKER: The arrest itself? 1987.

6 THE COURT: Was he a juvenile?

7 MS. PUBLICKER: No, he was not a juvenile.

8 THE COURT: Are you aware of this problem that he
9 didn't mention that arrest?

10 MR. MOORE: I don't have the particular passage in the
11 deposition they are referring to.

12 THE COURT: Apparently, he have described three in
13 some detail. He didn't describe the attempted murder arrest.

14 MR. MOORE: It was a disposition that ended with no
15 further activity. It was an arrest --

16 THE COURT: He was asked about arrests. Maybe he
17 didn't recall this one. I have no idea. But he didn't mention
18 it?

19 He was asked about arrests, and he either failed to
20 describe it or forgot to describe it, but he didn't describe
21 it. I will take that as a given.

22 MR. MOORE: If in fact he did that, he did that.

23 THE COURT: OK.

24 MR. MOORE: A lot of witnesses say stuff and then
25 later on -- I mean, it's happened across the board here.

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1 THE COURT: Ms. Publicker, I guess Mr. Moore's point
2 is, OK, he didn't mention that arrest. He either suppressed it
3 or didn't recall it. I don't know which. But you have the
4 proof. You can put it in the record. It was in 1987 and it
5 ended obviously favorably.

6 MS. PUBLICKER: I would also point out that I asked
7 him at his deposition if he had ever pled guilty to disorderly
8 conduct, to which he stated no, and we again later received a
9 certificate of disposition stating that he in fact had pled
10 guilty to disorderly conduct.

11 THE COURT: When did he do that?

12 MS. PUBLICKER: 2001.

13 MS. GROSSMAN: The point is, you ruled that
14 credibility, this all goes to credibility.

15 THE COURT: And you can put in all of this impeaching
16 evidence. You can put it all in. But in reading the letters
17 that were submitted over the weekend, I was persuaded that this
18 plaintiff is beyond the subpoena power of the court.

19 MR. MOORE: He is not a plaintiff. A class member.

20 THE COURT: Class member is beyond the subpoena power
21 of the court. He is not here. He is in North Carolina. The
22 plaintiffs have tried to get him. They would like to get him.
23 He won't come. That is what the rule on permitting depositions
24 to be offered is about.

25 MS. GROSSMAN: We just wanted to state that we have

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1 not had an opportunity to develop the credibility.

2 THE COURT: You have had that opportunity. You have
3 found the extrinsic evidence. You have already mentioned it to
4 me. So I know it now. But on top of that, you can put the
5 documentary proof in, and that's the impeachment that shows
6 that he didn't describe this fourth arrest for attempted
7 murder, which apparently the disposition was favorable to him,
8 and that he denied ever having pled guilty to disorderly
9 conduct but did. So you have the impeaching evidence in the
10 record, or you will by documents, and that's it. What more is
11 there to ask him about?

12 MS. GROSSMAN: We may have asked him certain
13 questions.

14 THE COURT: Usually that gives the person a chance to
15 explain away the problem. You have the impeaching evidence.
16 But on the law, whether the deposition should be received, he
17 is a resident of North Carolina. The plaintiff tried to get
18 him. We have had that evidence, so to speak, from Mr. Moore's
19 letter, which can be docketed, and they can't obtain his
20 testimony.

21 MR. MOORE: More importantly, we haven't procured his
22 absence.

23 THE COURT: Of course. You said, and you're an
24 officer of the court, you would rather have him here, but he
25 won't come.

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1 MS. GROSSMAN: Can I have a moment?

2 THE COURT: Yes.

3 MS. PUBLICKER: If that's your decision, the city
4 would just ask that the city witnesses in response to
5 Mr. Provost also be permitted to be submitted through
6 deposition.

7 THE COURT: Why is that? The rule has to do with the
8 unavailability of witnesses who are outside the subpoena power
9 of the court. If the plaintiffs' counsel for some reason would
10 consent to that to keep the trial a little shorter, I would be
11 delighted, but they are here and available. They are not
12 outside the subpoena power. I can't do that under the rule.
13 If your adversary would consent, that's a different issue. You
14 may not have yet discussed it with them.

15 MS. PUBLICKER: We have not.

16 THE COURT: So you will talk about it.

17 Can we move on to the next witness?

18 MS. BORCHETTA: The plaintiffs call Joan Thompson.

19 JOAN THOMPSON,

20 called as a witness by the plaintiffs,
21 having been duly sworn, testified as follows:

22 THE COURT: State your full name, first and last for
23 the record, spelling both.

24 THE WITNESS: Joan Thompson, J-O-A-N, T-H-O-M-P-S-O-N.

25 MR. MOORE: Just on that last point, can you direct
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1 the city to provide us with this information concerning those
2 other matters?

3 THE COURT: Sure. If you have documents, Ms.
4 Publicker, that support what you said about the disposition of
5 the dis con and on the arrest.

6 MS. PUBLICKER: I believe the arrest records are
7 already marked as exhibits.

8 THE COURT: If you would provide those two documents
9 to Mr. Moore, that would be good.

10 Thank you. Go ahead.

11 DIRECT EXAMINATION

12 BY MS. BORCHETTA:

13 Q. Good morning, Ms. Thompson.

14 A. Good morning.

15 Q. What is your current position of employment?

16 A. I am the executive director of the Civilian Complaint
17 Review Board.

18 Q. For how long have you been the executive director of CCRB?

19 A. Approximately five and a half years.

20 Q. That's been since about 2007?

21 A. Yes, at the end.

22 Q. What are your primary duties and responsibilities as the
23 executive director of the CCRB?

24 A. I do the day-to-day operations, which also includes hiring
25 and firing. I supervise staff. I do the annual budget, things

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D4F8FLO1 Thompson - direct

- 1 like that.
- 2 Q. CCRB is a city agency, correct?
- 3 A. Yes. It's an independent city agency.
- 4 Q. It's run by a board?
- 5 A. Yes, it is.
- 6 Q. How many members are on the board?
- 7 A. There's 13 members.
- 8 Q. Members of the board are appointed, correct?
- 9 A. They are appointed. Five are appointed by the City
- 10 Council, one from each borough; five are appointed by the
- 11 mayor, also one from each borough; and three are appointed by
- 12 the police commissioner.
- 13 Q. The mayor has to approve all of the members of the board?
- 14 A. That's correct.
- 15 Q. As the executive director, who do you report to?
- 16 A. I report to the board.
- 17 Q. The CCRB investigates certain categories of complaints
- 18 against NYPD officers, correct?
- 19 A. Yes.
- 20 Q. What are those categories?
- 21 A. Force, abuse of authority, discourtesy, and abusive
- 22 language. Offensive language. Excuse me.
- 23 Q. Are those categories referred to as FADO?
- 24 A. Yes, they are.
- 25 Q. What types of conduct fall within the abuse of authority

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D4F8FL01 Thompson - direct

1 category?

2 A. Illegal stops, illegal arrests.

3 Q. What types of conduct fall within the offensive language
4 category?

5 A. Offensive language would be slurs, derogatory language,
6 gestures, things like that.

7 Q. Allegations of racial profiling do not fall within FADO,
8 correct?

9 A. That's correct.

10 Q. It's fair to say that the CCRB sometimes refers cases to
11 the NYPD's Office of the Chief of Department, correct?

12 A. That's correct.

13 Q. The Office of the Chief of Department is referred to as
14 OCD, correct?

15 A. Yes.

16 Q. I would like you to look at document that has been marked
17 as Plaintiffs' 105.

18 A. Yes.

19 Q. Ms. Thompson, do you recognize this document?

20 A. Yes, I do.

21 Q. What is this document?

22 A. It's a letter sent from the CCRB to a complainant.

23 MS. BORCHETTA: I would like to admit Plaintiffs' 105.

24 MS. COOKE: No objection.

25 THE COURT: 105 is received.

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D4F8FLO1 Thompson - direct

1 (Plaintiff's Exhibit 105 received in evidence)

2 Q. In this letter, it's fair to say that you being from CCRB
3 are explaining to this person that a complaint that they sent
4 into the CCRB was not within the CCRB's jurisdiction, is that
5 right?

6 A. That's correct.

7 Q. And you're also explaining that the complaint has been sent
8 to OCD?

9 A. Right.

10 Q. And that OCD would take further action, right?

11 A. That's correct.

12 Q. I now want to show you what has been previously marked as
13 Plaintiffs' Exhibit 108. Do you recognize this document?

14 A. Yes.

15 Q. What is this?

16 A. It's one of the employees is swearing that she submitted
17 materials to the law department.

18 Q. What is the law department? Is that within the CCRB?

19 A. No. That's within the City of New York. It's the City of
20 New York's law department.

21 MS. BORCHETTA: I would like to admit Plaintiffs' 108.

22 MS. COOKE: No objection, your Honor, except I think
23 108 is actually going to the Office of the Chief of Department,
24 just to confirm with the witness that this wasn't coming to the
25 law department of the City of New York. Just to clarify.

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D4F8FLO1 Thompson - direct

1 THE COURT: Which is it?

2 Q. Ms. Thompson, is this document --

3 A. This is going to the chief of department. Excuse me.

4 Q. To clarify the record, Plaintiffs' 108 is a document that
5 went to OCD?

6 A. Yes, it is.

7 THE COURT: Anyway, 108 is received.

8 (Plaintiffs' Exhibit 108 received in evidence)

9 Q. Within this document is a complaint report, right, on the
10 third page?

11 A. Yes.

12 Q. Would you agree with me that this complaint report
13 indicates a street stop encounter?

14 A. Quickly reading it, I would say yes.

15 Q. But this was referred to OCD, right?

16 A. Yes, it was.

17 Q. You can put that document away. Thank you.

18 (Continued on next page)

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D4f9flo2 Thompson - direct

1 Q. You would refer allegations of racial profiling to OCD,
2 right?

3 A. It depends upon the specific kind of the case and what it
4 was. So we do handle some racial profiling cases. We have
5 approximately, I don't know, 30 or 40 per year.

6 Q. So in what circumstances would you refer a racial profiling
7 case to OCD?

8 A. It would have to be something that came out of -- OCD cases
9 are cases that go to the police department out of police
10 process and procedure. So it would have to be something
11 related to that.

12 Usually I would say that most racial profiling cases,
13 though, would be kept if offensive language was used or
14 something like that, they would be kept by the CCRB.

15 Q. But in some instances racial profiling would go to OCD,
16 correct?

17 A. I can't say exactly how many per se. But it might.

18 Q. Okay. Do you recall testifying at deposition in this case?

19 A. Yes.

20 Q. Do you recall testifying at deposition that you would
21 sometimes refer racial profiling allegations to OCD?

22 A. Yes, I do.

23 Q. So there would be some occasions where racial profiling
24 allegations would go to OCD, correct?

25 A. Yes.

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D4f9flo2 Thompson - direct

1 Q. What are the findings that the CCRB can reach with respect
2 to an allegation and complaint?

3 A. It can be substantiated. It can be exonerated. It can be
4 unfounded. It can be unsubstantiated.

5 Q. What does unsubstantiated mean?

6 A. That there was not enough evidence one way or the other to
7 prove the allegation.

8 Q. What does exonerated mean?

9 A. That the allegation did occur but it was within the rights
10 and the framework of the police department to do so.

11 Q. And what does unfounded mean?

12 A. That probably the allegation never happened.

13 Q. I want to briefly talk about investigations at the CCRB.

14 So a CCRB investigator investigates complaints, right?

15 A. That's correct.

16 Q. And who does a CCRB investigator ordinarily speak to in the
17 conduct of an investigation?

18 A. They would speak to several people. They have an assistant
19 supervisor. There is a supervisor. And there's a manager.

20 Q. I'm sorry. If I could cut you off. I meant who involved
21 in the incident would they speak to?

22 A. I'm sorry. They would speak, of course, to the
23 complainant, if there were any witnesses, and then they would
24 speak to the police officer or the police officers, whoever
25 were involved.

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D4f9flo2 Thompson - direct

1 Q. And if the complainant is unavailable or uncooperative the
2 CCRB does not bring in the officer to make a statement; is that
3 correct?

4 A. That's correct.

5 Q. After concluding an investigation, the CCRB investigators
6 make a recommendation for findings with respect to each
7 allegation in the complaint, right?

8 A. That's right.

9 Q. And once a CCRB investigator makes a recommendation, a
10 supervisor reviews that recommendation, right?

11 A. Yes.

12 Q. And the supervisors sometimes ask questions of the
13 investigator after that review, right?

14 A. That's correct.

15 Q. And they sometimes ask an investigator to do further
16 investigation, correct?

17 A. Yes.

18 Q. And the supervisor renders a decision concurring or not
19 concurring with the investigator's finding, right?

20 A. Yes.

21 Q. If an allegation is substantiated by the investigator
22 during this process an attorney within the CCRB reviews that,
23 correct?

24 A. Yes.

25 Q. And an attorney reviews every substantiated complaint,

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1 correct?

2 A. Yes.

3 Q. In that review the CCRB attorney determines whether the
4 allegation meets a preponderance of the evidence standard,
5 right?

6 A. That's correct.

7 Q. And in the context of a substantiated allegation of an
8 improper stop, the CCRB attorney would like to see whether
9 there was reasonable suspicion, right?

10 A. Yes.

11 Q. After the attorney's review, the complaint goes to the
12 board; is that right?

13 A. That's right.

14 Q. And is it usually a panel of three board members?

15 A. Three board members.

16 Q. And they vote on the complaint, correct?

17 A. Yes.

18 Q. And the complaint -- all complaints go to the board for
19 review, correct?

20 A. All substantiated complaints go.

21 Q. Is it only substantiated complaints?

22 A. All -- well some -- the withdrawals do not go to the board
23 at this point. I close them out. And now they're looking at
24 some of the other lesser categories.

25 Q. If -- well let me take it back for a moment.

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- 1 If at least one allegation within a complaint is
2 substantiated, the complaint is considered substantiated,
3 right?
4 A. That's correct.
5 Q. But that can be so even though there are allegations within
6 the complaint that are unsubstantiated, correct?
7 A. Yes.
8 Q. And if there is no allegation that is substantiated in a
9 complaint, the complaint would be unsubstantiated, right?
10 A. That's correct.
11 Q. So does the board look at only substantiated complaints?
12 A. They can look at unsubs as well but certainly obviously
13 more time and effort is looked at on the substantiated cases.
14 Q. But they do also vote on unsubstantiated complaints?
15 A. Yes, they can.
16 Q. And in the case of the substantiated complaints the
17 attorney's recommendation is noted on the case file, right?
18 A. Yes.
19 Q. And if the board votes to substantiate at least one
20 allegation of a complaint then that entire complaint is deemed
21 substantiated, right?
22 A. Yes.
23 Q. And then the entire substantiated complaint gets sent to
24 the NYPD's department advocate's office, correct?
25 A. Yes.

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1 Q. And am I right that the department advocate's office is
2 referred to as DAO?

3 A. That's correct.

4 Q. And the CCRB sends to DAO the entire case file on the
5 substantiated complaint, correct?

6 A. Yes.

7 Q. And if no allegation within a complaint is deemed
8 substantiated, then the complaint is deemed either exonerated,
9 unfounded or unsubstantiated, right?

10 A. Yes.

11 Q. During the investigation that occurs at CCRB an
12 investigator would not look at the stop-and-frisk activity of
13 officers working with an officer who is subject to an
14 allegation about stop and frisk, correct?

15 A. Not generally, no.

16 Q. Generally the CCRB investigator is looking only at the
17 subject officer, right?

18 A. That's correct.

19 Q. And if DAO disagrees with the CCRB's findings of
20 substantiation, they do not at that point go back to CCRB; they
21 conduct further investigation, right?

22 A. They can on certain cases if they're unsure as to how they
23 want to proceed or they're on the fence about something, they
24 may ask for clarification or to get -- or to do some further
25 investigation.

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1 Q. Once DAO has made a decision that they disagree, that an
2 allegation should be substantiated, though, they don't at that
3 point send it back to CCRB for further investigation?

4 A. No, they do not.

5 Q. Each year the CCRB issues an annual report, correct?

6 A. Yes.

7 Q. And am I correct that the CCRB annual report is a general
8 status update?

9 A. Yes, it is.

10 Q. And to your knowledge someone within the NYPD reviews every
11 CCRB annual report, correct?

12 A. Yes, that's correct.

13 MS. BORCHETTA: I now would like to admit the CCRB
14 annual reports for the years 2006, 2007, 2008, 2009, 2011, and
15 the first six months of 2012. The fastest way to do that would
16 be if the city would stipulate to their admission or otherwise
17 I will show each one individually to the witness.

18 MS. COOKE: I have no objection to the admission just
19 confirming that the appendices will be included with the 2011.

20 MS. BORCHETTA: We can work that out -- 2011. Yes,
21 the 2011. So I'll go through what those are and what exhibits
22 it is.

23 The CCRB annual report for 2006 is Plaintiffs' Trial
24 Exhibit 110.

25 THE COURT: 110 received.

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1 MS. BORCHETTA: The CCRB annual report for 2007 is
2 Plaintiffs' Trial Exhibit 111.

3 THE COURT: 111 received.

4 MS. BORCHETTA: The CCRB annual report for 2008 is
5 Plaintiffs' Trial Exhibit 113.

6 THE COURT: 113 is received.

7 MS. BORCHETTA: The CCRB annual report for 2009 is
8 Plaintiffs' Trial Exhibit 106.

9 THE COURT: 106 is received.

10 MS. BORCHETTA: And the CCRB annual report for 2011 is
11 Defendants' P12.

12 THE COURT: Defendants' P12 is received.

13 MS. BORCHETTA: And the first six months of 2012 is
14 Defendants' V13.

15 THE COURT: I'm sorry. I didn't get that letter.

16 MS. BORCHETTA: V like Victor 13.

17 THE COURT: V13 is received.

18 (Plaintiffs' Exhibits 106, 110, 111, 113 received in
19 evidence)

20 (Defendants' Exhibits P12 and V13 received in
21 evidence)

22 MS. BORCHETTA: I'm going to now hand to the court and
23 the witness the reports I'll mostly be focusing on at first,
24 which are 2008, 2011, and the first six months of 2012.

25 Q. Ms. Thompson, what is a truncated CCRB case?

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1 A. The truncated case is a case that does not go to full
2 investigation.

3 Q. And why does it not go to full investigation?

4 A. Either we couldn't get the complainant to come in, or the
5 complainant withdrew, or we couldn't find the witnesses, or we
6 couldn't identify the police officer, etc.

7 Q. Isn't it fair to say that a large portion of CCRB cases are
8 truncated cases?

9 A. Yes. That's correct.

10 Q. And isn't it true that every year a majority of CCRB cases
11 that are closed are truncated cases?

12 A. Yes. That's correct.

13 Q. And if we look at the 2008 report which I have just
14 provided a copy to you of, at page 18.

15 THE COURT: Let me see. Which one of these is that?

16 Is that 113?

17 MS. BORCHETTA: Yes.

18 THE COURT: Okay. 113.

19 MS. BORCHETTA: Page 18.

20 THE WITNESS: Yes.

21 Q. And now the truncated cases -- there's a chart at the
22 bottom of that page, correct?

23 A. Yes.

24 Q. And it shows the types of case closures from 2004 to 2008?

25 A. Mm-hmm.

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1 Q. And the truncated cases would include complaint withdrawn,
2 complainant victim/witness uncooperative, and complainant
3 victim/witness unavailable or unidentified, right?

4 A. That's correct.

5 Q. And so in this chart it's all three of those categories
6 would be included in the truncated cases, correct?

7 A. That's right.

8 Q. And that in every one of those years from 2004 to 2008 was
9 the majority of the closed cases?

10 A. That's correct.

11 THE COURT: Which was the majority?

12 THE WITNESS: All the truncated cases.

13 MS. BORCHETTA: Which is the purple, red, and green.

14 THE COURT: I see. Thank you.

15 Q. And again truncated there includes when a complaint is
16 withdrawn; when the complainant, the victim or the witness is
17 uncooperative; and when the complainant, victim, or witness was
18 unavailable or unidentified, right?

19 A. That's correct.

20 Q. That's what's included there as truncated, right?

21 A. Yes.

22 Q. And if we look at the first six months of 2012 which, your
23 Honor, is not bound -- I'm sorry. It's Defendants' V13. And
24 at page 10, there's another chart involving truncated cases,
25 correct?

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1 A. Yes.

2 Q. And there too we see from 2008 through 2012 a majority of
3 closed cases are truncated cases, correct?

4 A. That's correct.

5 Q. Is there a statute of limitations on CCRB cases, correct?

6 A. Yes, there is.

7 Q. What is that?

8 A. Eighteen months.

9 Q. That's 18 months from what and to what?

10 A. The date of the occurrence until 18 months from that date.

11 Q. But what has to happen within 18 months?

12 A. If there are charges to be served, that the charges have to
13 be served against the police officer.

14 Q. And it's fair to say that some portion of CCRB complainants
15 have criminal proceedings against them that relate to the
16 incident they're complaining about, right?

17 A. That could be, yes.

18 Q. Let's look at the 2011 report which is Defendants' P12.

19 MS. BORCHETTA: Your Honor this is the bound yellow
20 cover.

21 THE COURT: Yes.

22 Q. If you look at the 2011 report at page 4. And in the
23 second paragraph, on the left column that begins in 2011.

24 Do you see that, Ms. Thompson?

25 A. Yes.

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1 Q. There gives some statistics on the number of stop, question
2 and frisk complaints that involved an incident that led to an
3 arrest and a summons.

4 Do you see that?

5 A. Yes, I do.

6 Q. And what is the percentage of stop, question and frisk
7 complaints in which the encounter led to an arrest in 2011?

8 A. Six percent.

9 Q. No, I'm sorry.

10 Do you see the sentence that begins, "By comparison"?

11 A. "By comparison," yes.

12 Q. And it says, "There are 1,716 stop and frisk complaints,"
13 right?

14 A. Yes. And 24 percent stemmed from an encounter leading to
15 an arrest.

16 Q. How many stemmed from an encounter that led to a summons?

17 A. 14 percent.

18 Q. So in 2011 there were close to 40 percent of stop, question
19 and frisk complaints that led to the -- that stemmed from an
20 incident leading to either an arrest or a summons, right?

21 A. That's correct.

22 Q. And would you agree that those people are likely to give
23 statements to the CCRB related to the incident that's the
24 subject of the criminal proceeding against them?

25 MS. COOKE: Objection, your Honor. This calls for

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1 speculation on behalf of the witness.

2 THE COURT: Sustained.

3 Q. The CCRB is a government agency, correct?

4 A. Yes, it is.

5 Q. And, in fact, five of the people on the CCRB board are
6 appointed by the commissioner of the police department, right?

7 A. No. Three.

8 Q. I'm sorry. Three. But three of the people on the board
9 are appointed by the police commissioner, right?

10 A. That's correct.

11 Q. And the statements that complainants give to the CCRB must
12 be sworn statements, correct?

13 A. Yes.

14 Q. And there is no mechanism for people who are the subject of
15 criminal proceedings related to the incident that is the
16 subject of their CCRB complaint to toll the CCRB investigation
17 until that criminal proceeding has been resolved, right?

18 A. That's correct.

19 Well, unless it's going to the D.A. and the D.A. calls
20 us. And they're put on a D A. hold or something. But if it's
21 just a stop and frisk or something like that, usually it does
22 not toll.

23 Q. And if such a complainant refuses give a statement to the
24 CCRB their case is closed, right?

25 A. Yes, it is.

D4f9flo2 Thompson - direct

1 Q. In 2011 what was the largest portion of abuse of authority
2 allegations?

3 A. (No response).

4 Q. If you look at the 2011 report at page six.

5 The left column, fourth paragraph down.

6 THE COURT: Which paragraph?

7 MS. BORCHETTA: Fourth paragraph down that starts in
8 the abuse of authority category.

9 THE WITNESS: Allegation of stop, question and frisk
10 and search make up the largest portion.

11 THE COURT: In the abuse of authority category, right?

12 THE WITNESS: Yes.

13 THE COURT: Okay.

14 Q. And, in fact, stop, question and frisk has been the largest
15 portion of abuse of authority allegations made to CCRB for many
16 years, right?

17 A. That's correct.

18 Q. And looking at the same area of the 2011 report at page six
19 that we were just looking at, it indicates that also in -- I'm
20 sorry that in 2011 stop, question and frisk represented
21 21 percent of the allegations in the abuse of authority context
22 to CCRB, right?

23 A. Yes.

24 THE COURT: I'm sorry. That lost me. Hold on.

25 That takes it out of the abuse of authority category,

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1 is that what you're saying?

2 MS. BORCHETTA: No. Within. Also within.

3 As reading from the report, it says quote, "As a
4 percentage of total allegations --

5 THE COURT: I see the sentence. I'm not understanding
6 it. I don't know.

7 I guess that's the same as the first sentence where it
8 says it makes up the largest portion of all allegations and
9 that portion is 21 percent?

10 Is that it?

11 THE WITNESS: Yes.

12 THE COURT: Yes?

13 Okay.

14 Q. And in 2009 stop, question and frisk and search allegations
15 were 43 percent of the abuse of authority category, right?

16 A. That's correct.

17 Q. And in 2007 it was 40 percent, correct?

18 A. Yes.

19 THE COURT: But in 2011 it was 21 percent; is that
20 right?

21 THE WITNESS: Yes. That's correct.

22 Q. And looking at 2008, which is Plaintiffs' 113?

23 THE COURT: Okay.

24 Q. And at page 12. In the section of types of allegations
25 received.

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1 Do you see that?

2 A. Yes, I do.

3 Q. Going down to the paragraph that begins just below the
4 chart there, do you see it says, "As discussed above"?

5 THE COURT: I don't see it -- on the right-hand
6 column?

7 MS. BORCHETTA: On the right-hand column.

8 A. Yes.

9 Q. And there it's talking about, again, the portion of abuse
10 of authority allegations represented by stop and frisk, right?

11 A. Yes. That's correct.

12 Q. And it says that in 2008 it was 41 percent -- stop and
13 frisk was 41 percent abuse of authority allegations, right?

14 A. Yes.

15 Q. And in 2006 stop and frisk was 38 percent of the total
16 abuse of authority allegations, right?

17 A. That's correct.

18 Q. And in 2004 stop and frisk was 30 percent of the abuse of
19 authority allegations, right?

20 A. That's correct.

21 Q. In fact, since 2006 about 30 percent of all complaints to
22 the CCRB have been about stop and frisk each year, right?

23 A. That's correct.

24 THE COURT: That's all. Not just abuse of authority,
25 right?

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1 MS. BORCHETTA: Right.

2 THE COURT: All?

3 THE WITNESS: That's correct, yes.

4 Q. And so in -- if we look at a chart which is from -- this
5 one is from the 2011 report at page 4.

6 This shows 2007 to 2011, between 34 percent and
7 29 percent of all complaints to the CCRB were about stop and
8 frisk, correct?

9 THE COURT: Where is that?

10 MS. BORCHETTA: Your Honor, I also have --

11 THE COURT: I know the chart is on the screen. But
12 where do you find the numbers you just said?

13 MS. BORCHETTA: Underneath the bottom green line
14 there's a percentage.

15 THE COURT: And you said between 34 percent and?

16 MS. BORCHETTA: 29 percent.

17 THE COURT: I see.

18 THE WITNESS: That's correct.

19 THE COURT: Again, this is percentage of all
20 complaints.

21 THE WITNESS: All complaints.

22 THE COURT: Okay.

23 Q. And if we look from the 2008 report at page 11, also from
24 2005 to 2008, the range was 29.7 percent to 32.7 percent. And
25 that is the amount of stop and frisks --

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1 THE COURT: Say it again.

2 MS. BORCHETTA: So between 2005 and 2008, stop and
3 frisk represented between 29.7 percent and 32.7 percent of the
4 total complaints received to CCRB, right?

5 THE WITNESS: That's correct.

6 Q. The percentage of CCRB complaints from people who are black
7 has been consistent over the years, right?

8 A. Yes.

9 Q. And is it correct that between 2006 and 2011 the percentage
10 of CCRB complainants who are black remained consistent that
11 entire time, right?

12 A. Just about, yes.

13 Q. And during that time, again between 2006 and 2011, the
14 percentage of CCRB complainants who are black was between
15 56 percent and 58 percent, right?

16 A. Yes.

17 Q. And, in fact, going back to 2002, black people have
18 consistently made up more than 50 percent of the victims of
19 CCRB complaints, right?

20 A. Yes.

21 Q. And in 2011, what percentage of CCRB complaint victims were
22 black in stop, question and frisk complaints?

23 And I can refer you to the 2011 report at page 8.

24 A. Looks like 62 percent.

25 Q. Then if we go back to 2008 and I'll direct you to the 2008

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1 report at page 15, in 2008 it was the same percentage?

2 A. Yes. That's correct.

3 Q. So 62 percent -- I'm sorry. Let me rephrase that.

4 So black people represented 62 percent of the victims
5 in complaints to the CCRB about stop and frisk, right?

6 A. Yes.

7 Q. And that was in 2008? And that was true in 2011 also,
8 right?

9 A. Yes.

10 Q. The DAO can -- I'm sorry the NYPD can decline to prosecute
11 CCRB substantiated cases, right?

12 A. Yes, they can.

13 Q. And in 2007 the NYPD declined to pursue punishment against
14 34 percent of the cases where the CCRB had found some
15 misconduct, right?

16 A. Yes.

17 Q. Also in 2007 a majority of the cases in which the NYPD
18 declined to -- declined to discipline, declined to pursue
19 discipline, were abuse of authority cases such as stop and
20 frisk, right?

21 A. Yes. I'd have to see but probably yes.

22 Q. Well I will show you something that maybe will solidify
23 your memory. This is the 2007 report. Which is Plaintiffs'
24 Exhibit 111.

25 THE COURT: Is 111 in evidence?

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1 MS. BORCHETTA: Yes.

2 THE COURT: Already?

3 MS. BORCHETTA: Yes.

4 Q. If you go to the page that's stamped at the bottom 7676.

5 Do you see that page?

6 A. Yes, I do.

7 Q. Am I correct that this page is within the executive summary
8 from the 2007 report?

9 A. Yes, it is.

10 Q. And it's within a section referencing police department
11 dispositions, right?

12 A. Yes. That's correct.

13 Q. And am I correct that that's referring to the police
14 department's disposition of CCRB substantiated cases?

15 A. Yes.

16 Q. And do you see there in the second paragraph it says, "In
17 addition, the department has continued the trend of
18 disciplining officers with instructions rather than more
19 serious..." or I'm sorry.

20 THE COURT: That's right.

21 MS. BORCHETTA: Yes.

22 "...disciplining officers with instructions rather
23 than more serious discipline at a rate much higher than they
24 did in the past."

25 Do you see that?

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1 THE WITNESS: Yes, I do.

2 Q. Am I correct that you never heard a response from the NYPD
3 about that fact, right?

4 A. I don't know.

5 Q. Well as of 2009 you had not heard a response, right?

6 A. Okay. Yes. I don't know. I can't say that we did not
7 receive a response.

8 Q. Let me show you your deposition and see if that refreshes
9 your memory.

10 I've handed you a copy of your deposition. Do you
11 recall being deposed in this case?

12 A. Yes, I do.

13 Q. And you were under oath during that deposition, correct?

14 A. Yes.

15 Q. And you told the truth, correct?

16 A. Yes.

17 Q. If you could turn to page 96. Reading to yourself,
18 beginning at line 21, to page 97, line 2.

19 A. Okay.

20 Q. Does that refresh your recollection that you had not heard
21 any response from the NYPD about the CCRB's concern that the
22 NYPD declined to pursue discipline in the majority of cases?

23 A. Yes.

24 Q. And you had not heard a response from the NYPD on that
25 concern, right?

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1 A. That's correct.

2 Q. And in 2011, the last year for which a full year's of
3 statistics are currently available, it was still true that the
4 stop and frisk allegations are among the majority of cases in
5 which the NYPD -- NYPD declines to pursue discipline, right?

6 A. Yes.

7 Q. Going to show you a document that's been marked as
8 Defendants' U13.

9 Do you recognize this document?

10 A. Yes, I do.

11 Q. What is this document?

12 A. It's the police department discipline, the rate of
13 discipline, on substantiated cases.

14 Q. This is from 2012, correct?

15 A. That's correct.

16 MS. BORCHETTA: Your Honor, I'd move to admit
17 Defendants' U13.

18 MS. COOKE: No objection.

19 THE COURT: You said no objection?

20 MS. COOKE: No objection.

21 MS. BORCHETTA: U13.

22 THE COURT: U13 received.

23 (Plaintiffs' Exhibit U13 received in evidence)

24 MS. BORCHETTA: I have a copy for the court. The
25 print is sort of small.

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1 THE COURT: Thank you. That's helpful.

2 Q. Am I correct that this shows the police department's
3 disposition of substantiated cases by year from 2002 through
4 2012?

5 A. Yes.

6 Q. And this compares NYPD issuing discipline and NYPD not
7 issuing discipline, right?

8 A. Yes. That's correct.

9 Q. And in 2007 the rate at which the NYPD did not issue
10 discipline was 42 percent of the time, right?

11 A. Yes.

12 Q. And in 2008 the rate at which the NYPD did not issue
13 discipline was 44 percent, right?

14 A. Yes.

15 Q. And although it went down a little bit in 2009, 2010, and
16 2011, in 2012 it went back up to 29 percent, right?

17 A. Yes.

18 Q. So that as of 2012 the NYPD was still failing to issue
19 discipline in almost 30 percent of the cases, correct?

20 A. Yes.

21 Q. And that's substantiated CCRB cases, right?

22 A. That's correct.

23 Q. So that's cases where the CCRB concluded there was some
24 misconduct, right?

25 A. Yes.

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1 Q. Now turning to the types of discipline that the NYPD can
2 issue.

3 THE COURT: I guess we should have our mornings recess
4 now and we'll reconvene at quarter of on that clock.

5 (Recess)

6 Q. Welcome back, Ms. Thompson.

7 A. Thank you.

8 Q. As I was beginning to say before we took the break, I'd
9 like to talk about the forms of discipline that the NYPD can
10 issue on substantiated CCRB cases.

11 One form of discipline that the NYPD can impose on a
12 substantiated CCRB case is an instruction, right?

13 A. That's correct.

14 Q. And that's the least serious form of discipline, right?

15 A. Yes.

16 Q. And in 2007 when the NYPD was declining to pursue
17 discipline 34 percent of the time, the discipline that the NYPD
18 did issue when it did issue discipline was mostly instructions,
19 right?

20 A. Yes.

21 Q. And in 2008 when the 2007 report was issued, the CCRB
22 expressed some concern about that fact, right?

23 A. Yes.

24 Q. And if we look at the 2007 report, which is Plaintiffs'
25 Exhibit 111?

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1 THE COURT: Give me a minute. Yes.

2 Q. And we looked at this page earlier, it's the page stamped
3 at the bottom 7676.

4 A. Yes.

5 Q. Are you there?

6 And in that section on police department dispositions,
7 in the third paragraph it says, "The CCRB continues to express
8 concern about the outcome of its substantiated cases,
9 particularly in light of the fact that all CCRB cases forwarded
10 to the board with a staff recommendation of substantiated are
11 now reviewed by a unit of attorneys."

12 Do you see that?

13 A. Yes, I do.

14 Q. And I accurately read that, right?

15 A. That's correct.

16 Q. So the CCRB was expressing a concern both at the rate at
17 which the NYPD failed to pursue discipline and the rate at
18 which the NYPD was issuing instructions as opposed to more
19 serious forms of discipline, right?

20 A. Yes.

21 Q. And the CCRB, in addition to expressing that concern, in
22 this public annual report, also expressed that concern
23 specifically to Commissioner Kelly, correct?

24 A. Yes, to my knowledge.

25 Q. I'm sorry?

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1 A. Yes.

2 Q. And to your knowledge, Commissioner Kelly's response to
3 that concern was that there had been problems with the CCRB's
4 cases and he had faith in the department advocate's office,
5 right?

6 A. Yes.

7 Q. And despite expressing those concerns to the NYPD, the NYPD
8 continued year after year to issue instructions in the majority
9 of substantiated CCRB cases in which the department pursued
10 discipline, right?

11 A. Yes.

12 Q. And if we look at the 2011 report, which is the report with
13 the yellow cover, Defendants' P12. 2011. Page 18.

14 It's Exhibit P12. Page 18.

15 There's a chart on that page showing the discipline
16 that the department pursued in substantiated CCRB cases from
17 2007 to 2011, correct?

18 A. Yes.

19 Q. And in each of those years most of the time the NYPD issued
20 instructions over other forms of discipline, right?

21 A. Yes.

22 Q. And, in fact, in 2010 and 2011 the number of cases for
23 which the NYPD issued instructions over other forms of
24 discipline increased, right?

25 A. Yes, it did.

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D4f9flo2 Thompson - direct

- 1 Q. Such that in 2010 the NYPD issued instructions in 137 of
2 the cases that were substantiated, correct?
3 A. Yes.
4 Q. And in 2011 the NYPD issued instructions in 139 of the
5 substantiated CCRB cases, correct?
6 A. Yes.
7 Q. And that's years after the CCRB expressed concern about the
8 number of cases in which the NYPD issues instruction, correct?
9 A. Yes.
10 Q. And, in fact, since 2009 when the CCRB expressed concern
11 about the number of instructions that the NYPD was issuing in
12 substantiated CCRB cases, the number of instructions that the
13 NYPD issued actually almost doubled, right?
14 A. Yes.
15 Q. And also in 2009 the CCRB, in addition to publicly
16 expressing its concern about the rate at which the NYPD issued
17 instructions for CCRB substantiated cases, the CCRB also
18 publicly expressed that concern at a city council hearing,
19 correct?
20 A. Yes.
21 Q. And that was a hearing on public safety, correct?
22 A. Yes.
23 Q. And you attended that hearing, correct?
24 A. Yes, I did.
25 Q. And at that public hearing the CCRB expressed its concern

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- 1 that the NYPD's rate of declining to pursue discipline in
2 substantiated CCRB cases, and its rate of issuing instructions
3 over any other more serious form of discipline in substantiated
4 cases for which it did pursue discipline, might lead to a lack
5 of public confidence in the process, correct?
6 A. Yes.
7 Q. Now earlier you testified that the CCRB gets approximately
8 30 to 40 racial profiling allegations per year; is that right?
9 A. Yes.
10 Q. And how long has that been the case?
11 A. I'd say for the past -- I believe we started looking at it
12 about four or five years ago.
13 Q. When you say you started looking at it, what do you mean?
14 A. We started beginning to count them.
15 Q. And do you report -- does the CCRB report that number?
16 A. It's listed on our form. I don't know if it's reported
17 anywhere -- reported to whom?
18 Q. Do you inform the NYPD of the number of racial profiling
19 allegations that the CCRB received each year?
20 A. I'm not sure.
21 Q. Do you believe that that information is publicly available
22 somewhere?
23 A. I assume it is.
24 Q. Where do you assume it's publicly available?
25 A. It might be in one of the annual reports or on our website.

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D4f9flo2 Thompson - direct

1 Q. How are racial profiling complaints categorized by the
2 CCRB?

3 A. Just by racial profile.

4 Q. Am I correct that when the CCRB receives a complaint it
5 categorizes the facts within the complaint into different
6 allegations?

7 A. It categorizes the facts but also it's how the person gives
8 the allegation. If they say I was stopped because, whatever,
9 then that's how it's categorized.

10 Q. And then the complaint, am I correct, would have an
11 allegation categorized as, for example, abuse of authority.

12 A. Yes.

13 Q. So that would be one of the fatal categories, correct?

14 A. That's correct.

15 Q. And the CCRB might categorize certain facts into a forced
16 allegation, correct?

17 A. Yes. That's correct.

18 Q. So does the CCRB similarly categorize racial profiling
19 allegations?

20 A. I haven't seen any. But it doesn't mean that it's not
21 categorized.

22 Q. Would it necessarily be ascribed, one of the FADO
23 categories?

24 A. It would -- it could be, if it was a racial slur in some
25 way. Yes, it could be.

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D4f9flo2 Thompson - direct

1 Q. And then how would it be categorized?

2 A. It would be offensive language.

3 Q. And is there any other way that a racial profiling
4 allegation would be categorized?

5 A. I doubt it.

6 Q. I'm sorry.

7 Have you discussed with anyone at the NYPD the fact
8 that the CCRB gets approximately 30 to 40 racial profiling
9 cases each year?

10 A. I have not.

11 Q. Are these racial profiling cases, to your knowledge, all
12 about racial slurs or are they other conduct as well?

13 A. I don't know.

14 Q. You have heard from Commissioner Kelly that the NYPD
15 believes that the CCRB has a bias against members of the NYPD
16 in making its credibility determinations, correct?

17 A. I have not heard that, no.

18 Q. If you look at your deposition, at page 102.

19 I'll begin reading from line 11, going to line 103 --
20 I'm sorry, page 103, line 14. Do you remember the following
21 questions and the following answers?

22 "Q. Looking at the final bullet point on the last page it
23 says, 'It is readily apparent, as shown in this case and
24 others, that the CCRB has a double standard when it comes to
25 analyzing credibility, repeatedly showing a clear bias against

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Thompson - direct

1 uniformed members of the department.' Have you heard that
2 criticism of the CCRB before?

3 "A. Yes, I have.

4 "Q. From whom?

5 "A. The police department.

6 "Q. Anyone specifically from the police department?

7 "A. The commissioner, I believe.

8 "Q. Did the police commissioner tell you that directly?

9 "A. No, he did not.

10 "Q. In what form did he make that complaint?

11 "A. It's been in written form.

12 "Q. In written form? Who was that written to?

13 "A. Addressed to the chair and the board."

14 Did I read that correctly?

15 MS. COOKE: Your Honor, I would ask that the remaining
16 lines, 13 through 20 be read. Thirteen reads:

17 "Q. To the chair and the board?

18 "A. Yes.

19 "Q. When was that?

20 "A. I don't remember the date.

21 "Q. Do you agree that the CCRB has a bias against uniformed
22 members of the department?

23 "A. No, we do not."

24 BY MS. BORCHETTA:

25 Q. But you did here from Commissioner Kelly that the NYPD

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D4f9flo2

Thompson - direct

- 1 believed that the CCRB had a bias against members of the NYPD,
2 right?
3 A. Yes.
4 Q. And you heard that some time 2009 approximately or prior?
5 A. Yes.
6 Q. Were you aware -- well, first of all, do you know who Julie
7 Schwartz is?
8 A. Yes, I do.
9 Q. Who is she?
10 A. She is the deputy commissioner for the advocate's office.
11 Q. That's the department advocate's office, right?
12 A. Yes.
13 Q. And the department advocate's office is the NYPD unit
14 responsible for pursuing substantiated CCRB complaints, right?
15 A. Yes.
16 Q. And were you aware that at least as of 2009 deputy
17 commissioner Schwartz believed that the CCRB did a bad job in
18 evaluating the credibility of complainants?
19 A. Yes.
20 Q. And that according to deputy Schwartz at least as of 2009
21 the CCRB gave the complainant's version too much weight, right?
22 A. Yes.
23 Q. Has the CCRB, in your opinion, during your tenure as the
24 executive director ever had a bias against police officers?
25 A. No.

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D4f9flo2 Thompson - direct

1 Q. And has the CCRB, in your opinion, during your tenure as an
2 executive director had a bias in favor of complainants?

3 A. No.

4 Q. When the CCRB substantiates a case and sends it to the
5 NYPD, it sends the entire case file, right?

6 A. Yes, it does.

7 Q. What does that include?

8 A. It includes all the interviews, any documentation that we
9 received, any reports that were written.

10 Q. And it includes an investigator's report, right?

11 A. Yes, it does.

12 Q. The NYPD has access to the CCRB database that contains
13 information on the CCRB case, correct?

14 A. Yes.

15 Q. And what information does that database include?

16 A. Everything that we just talked about. And it's the -- it's
17 the day-to-day of the case, as it goes through it.

18 Q. So that would also include an investigator's report?

19 A. Yes, it would.

20 Q. And that's in both substantiated and unsubstantiated cases,
21 correct?

22 A. Yes.

23 Q. And the NYPD can access that database and look up a
24 particular officer and see whether that officer has had any
25 substantiated or unsubstantiated cases against him, right?

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D4f9flo2 Thompson - direct

1 A. Yes, they can.

2 Q. And can the NYPD also access that database to look up the
3 investigative files that related to any of those cases?

4 A. Yes, I believe they can.

5 Q. I now am going to show you a series of exhibits to see if
6 you recognize them as CCRB case files. The first one is
7 Plaintiffs' Exhibit 104.

8 THE COURT: Are these in evidence or for
9 identification now?

10 MS. BORCHETTA: They are for identification now.

11 Q. Do you recognize this as part of a CCRB case file?

12 A. Yes, I do.

13 MS. BORCHETTA: I would move to admit Plaintiffs' 104.

14 MS. COOKE: Your Honor, the only objection we would
15 have is that this be admitted for the limited purpose of notice
16 and not for the truth of the statements contained herein that
17 are hearsay.

18 MS. BORCHETTA: We would agree to that with this
19 exhibit and the next few that I'm --

20 THE COURT: If it's going to be the next few, can we
21 do them as a group just by showing them to Ms. Cooke, see if
22 she objects, don't even bother with the witness.

23 MS. BORCHETTA: That would be wonderful if we could do
24 it that way.

25 Plaintiffs' 170.

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1 MS. COOKE: Yes.

2 MS. BORCHETTA: For clarity of the record, so
3 Plaintiffs' 104 was admitted?

4 THE COURT: 104 is admitted. 170 is admitted.

5 When you said yes, that means no objection?

6 MS. COOKE: No objection. Just the same I made with
7 respect to identification.

8 THE COURT: That's fine.

9 MS. BORCHETTA: To notice is fine.
10 Plaintiffs' 171.

11 MS. COOKE: Yes. The same. No objection.

12 THE COURT: Okay. 171 is received.

13 MS. BORCHETTA: Plaintiffs' 172.

14 MS. COOKE: No objection other than as noted.

15 THE COURT: 172 is received.

16 MS. BORCHETTA: Plaintiffs' 455.

17 MS. COOKE: Same limitation but no objection
18 otherwise.

19 THE COURT: So 455 is received.

20 MS. BORCHETTA: Plaintiffs' 454.

21 MS. COOKE: No objection other than the limitation.

22 THE COURT: 454 is received.

23 MS. BORCHETTA: Plaintiffs' 453.

24 MS. COOKE: The same, your Honor.

25 THE COURT: 453 is received.

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Thompson - direct

1 MS. BORCHETTA: Plaintiffs' 452.

2 MS. COOKE: The same, your Honor.

3 THE COURT: 452 is received.

4 MS. BORCHETTA: And Plaintiffs' 451.

5 MS. COOKE: It's the same.

6 THE COURT: 451 is received.

7 MS. BORCHETTA: That's it.

8 (Plaintiffs' Exhibits 104, 170, 171, 172, 451, 452,
9 453, 454, 455 received in evidence)

10 MS. BORCHETTA: But I need to go back to three of them
11 which is Plaintiffs' 170, 171, and 172. And that is just with
12 respect to Ms. Cooke's limitation as to notice. These three
13 documents, I can establish this with Ms. Thompson, but we
14 believe these are CCRB business records. They simply list
15 findings of the CCRB. And they are findings letters that are
16 sent out in the ordinary course to officers advising them of
17 the results of the CCRB investigation. And we believe that
18 those should be admitted for the truth of the findings of the
19 CCRB.

20 THE COURT: Right.

21 MS. COOKE: With respect to notice to the department,
22 these witnesses will each be testifying and I assume --

23 THE COURT: The point is 170, 171, and 172 are not
24 subject to any limitation, right?

25 MS. COOKE: There is no summary of the complaint that

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D4f9flo2 Thompson - direct

1 includes hearsay, your Honor, no.

2 THE COURT: Okay. So they are accepted for all
3 purposes.

4 MS. BORCHETTA: I have no further questions at this
5 time.

6 THE COURT: Ms. Cooke.

7 MS. COOKE: Yes, thank you.

8 CROSS-EXAMINATION

9 BY MS. COOKE:

10 Q. Good morning, Ms. Thompson.

11 A. Good morning -- good afternoon.

12 Q. Thank you.

13 THE COURT: You're right about that.

14 Q. How many employees do you directly supervise at the CCRB?

15 A. Directly, I supervise approximately seven or eight people.

16 Q. And how many individuals do those seven or eight people
17 supervise?

18 A. The rest of the agency.

19 Q. And do you have an estimate as to the number of staff that
20 the agency has as of today?

21 A. We have 164 at the present time.

22 Q. And how many employees at the CCRB are investigators
23 investigating complaints by civilians of police misconduct?

24 A. 117.

25 Q. And how many supervisors supervise those 117 investigators?

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D4F9FLO2 Thompson - cross

1 A. There's different levels. There's four -- for just the
2 investigators, there's one deputy executive director. There
3 are six managers. One for each team. And there are
4 supervisors and assistant supervisors under, for each team,
5 under the manager.

6 Q. When a complaint is referred to the Office of the Chief of
7 Department by the CCRB because it doesn't fall within FADO --

8 A. Yes.

9 Q. -- who makes that determination at the CCRB?

10 A. Each -- if it goes to -- each manager will look at it and
11 see, or a supervisory person on each team and say that it is
12 not FADO.

13 Q. Am I correct that two members of the management team have
14 to make that determination together?

15 A. That's correct. At least two managers.

16 Q. And then is a memorandum written explaining why the case is
17 being referred to the office of the chief of department?

18 A. Yes, there is.

19 Q. Search and seizure allegations fall within -- relating to
20 stop, question and frisk fall within FADO jurisdiction in the
21 CCRB, correct?

22 A. Yes.

23 Q. And the NYPD refers complaints it receives regarding FADO
24 allegations to the CCRB; is that correct?

25 A. Yes, it does.

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D4F9FLO2 Thompson - cross

1 Q. And that's because complaints, civilian complaints can be
2 received by the NYPD, correct?

3 A. Yes, they can.

4 Q. Complaints can also come in as a walk-in, in person at the
5 CCRB office?

6 A. Mm-hmm. Yes.

7 Q. Or a complainant can call 311, correct?

8 A. 311. They also can call our own number.

9 Q. The CCRB's telephone number?

10 A. The CCRB's phone number. Also can come in through the web.

11 Q. CCRB has an online complaint process?

12 A. Yes, it does.

13 Q. Can a complainant mail a complaint to the CCRB?

14 A. Yes, they can.

15 Q. And when a complaint is received by the CCRB, what is the
16 intake process?

17 A. It goes through -- it's looked at to see if it's FADO. And
18 then once it is determined that it's FADO, then it is given to
19 whichever team is on -- they go -- all the teams are on
20 rotation. And then it goes -- it is assigned to that
21 particular team.

22 Q. If a complaint has multiple allegations, some of which fall
23 into the jurisdiction of FADO, some of which do not, what
24 happens to that complaint?

25 A. The complaint is still kept and it is investigated.

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D4F9FLO2 Thompson - cross

- 1 Q. Are the portions that fall outside of FADO forwarded to the
2 NYPD for investigation?
- 3 A. If they're -- yes, they can be. Or can be sometimes
4 forwarded to another, depending on what it is.
- 5 Q. Would a complaint of theft of property from a person during
6 the course of a police stop be investigated by the CCRB?
- 7 A. No. That would go to internal affairs.
- 8 Q. Internal affairs at the police department?
- 9 A. Yes, it would.
- 10 Q. But CCRB would maintain jurisdiction of the investigation
11 of the stop, correct?
- 12 A. Yes, it would.
- 13 Q. Does CCRB have two levels of investigators conducting
14 investigations?
- 15 A. Yes, they do. Level one and level two.
- 16 Q. What's the difference between the two levels?
- 17 A. Level two gets the more involved cases. Level one is
18 usually just the entry level.
- 19 Q. With respect to the determination as to whether or not a
20 complaint falls within the FADO jurisdiction, is that relying
21 on the judgment of the individual reviewing the complaint?
- 22 A. Yes, it is.
- 23 Q. Do you review determinations of whether or not a complaint
24 falls outside of the FADO jurisdiction?
- 25 A. I do not.

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D4F9FLO2 Thompson - cross

- 1 Q. Are you aware that at times different investigators they
2 find facts -- find facts differently falling within FADO
3 jurisdiction or outside?
4 A. Yes, I am.
5 Q. Are there times where the office of the chief of department
6 may disagree with the referral of a complaint by CCRB as
7 outside of the FADO jurisdiction?
8 A. Yes.
9 Q. And what happens in those circumstances?
10 A. They are sent back.
11 Q. Sent back to the CCRB?
12 A. Mm-hmm.
13 Q. And you recall that that has happened?
14 A. Yes, I do.
15 Q. You've been the executive director of the CCRB since 2007;
16 is that correct?
17 A. At the end of 2007, yes, that's correct.
18 Q. Can you describe the relationship you have between the NYPD
19 as the executive director of CCRB?
20 A. I think at this point we have a very good relationship.
21 We've just entered into the prosecution unit. The MOU has been
22 executed. And I think even prior to that we did second
23 seating. So I think that that established a very good and a
24 cordial working relationship.
25 Q. You mentioned the prosecution unit?

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D4F9FLO2

Thompson - cross

1 A. Mm-hmm.

2 Q. Could you describe what you're referring to.

3 A. Beginning probably, I think, two days ago we just received
4 the -- we had a change of rules and now all of the cases that
5 are substantiated by the board will now be tried in the trial
6 room but by our attorneys, by the CCRB attorneys.7 Q. So for certain cases that are substantiated by the board
8 are those cases where the board recommends charges and
9 specifications?

10 A. Yes, they are.

11 Q. And is charges and specifications one of the most serious
12 charges the NYPD can impose as discipline?

13 A. Yes.

14 Q. And so for cases that the board recommends charges and
15 specs, the CCRB attorneys will now prosecute those cases in the
16 NYPD trial room; is that correct?

17 A. That is correct.

18 Q. And you mentioned that there was a second seat program?

19 A. There was a second seat program prior to the APU becoming
20 effective.21 Q. And that second seat program was -- is it accurate to
22 describe it as a pilot program where CCRB attorneys
23 participated in the prosecution of charges and specs?

24 A. Yes, it was.

25 Q. What impact do you anticipate that will have on the

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D4F9FLO2 Thompson - cross

1 workload of the CCRB?

2 A. It will certainly increase the workload of the CCRB.

3 Q. Do you have any other expectations with respect to the
4 relationship of the CCRB and the NYPD with the memorandum of
5 understanding and the prosecution authority?

6 A. I would hope that it would remain as it is right now.

7 (Continued on next page)

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D4F8FLO3

Thompson - cross

- 1 Q. In your tenure as executive director of the CCRB, do you
2 believe that you have developed a strengthened dialogue between
3 the NYPD's department advocate's office and the CCRB?
4 A. Yes, we have.
5 Q. Do you believe that has resulted in increased confidence by
6 the department advocate's office of the quality of the CCRB
7 investigations?
8 A. Yes, I do. That's certainly one of the reasons.
9 Q. Counsel on direct examination asked you about the statute
10 of limitations for a CCRB complaint. It's 18 months, correct?
11 A. That's correct.
12 Q. Are you aware of what the average CCRB case investigation
13 time is presently?
14 A. I know it's approximately a year.
15 Q. With respect to the memorandum of understanding in the
16 prosecutorial authority of the CCRB, has the CCRB received
17 additional budgetary authorization to fund that prosecutorial
18 unit?
19 A. Yes, it has.
20 Q. If the NYPD receives a substantiated complaint from the
21 CCRB very close to the date of the statute of limitations, is
22 that the reason that the NYPD might not be able to impose
23 discipline in a substantiated case?
24 A. Yes, it is.
25 Q. Does the CCRB work with the NYPD to try and move cases

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D4F8FLO3 Thompson - cross

- 1 quickly that are approaching the statute of limitations
2 deadline?
3 A. Yes, it does.
4 Q. Does the NYPD work with the CCRB to try and get discipline
5 imposed prior to the deadline?
6 A. If at all possible, yes.
7 Q. Does CCRB investigators receive training prior to
8 investigating cases on behalf of the CCRB?
9 A. Yes, they do.
10 Q. Approximately how much training does an investigator
11 receive?
12 A. There is three weeks of internal training by us. They also
13 go to the police academy. They do ride-alongs. They go to the
14 range. And some of the investigators go to the citizens'
15 police academy as well.
16 Q. So the citizens' police academy, that would involve the
17 NYPD training CCRB investigators?
18 A. Yes.
19 Q. Does CCRB have a handbook for investigators to guide them
20 through their investigations?
21 A. Yes, it does.
22 Q. As part of the investigations by the CCRB, CCRB requests
23 and reviews NYPD documents, correct?
24 A. Yes.
25 Q. The CCRB investigators can take other investigative steps

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D4F8FLO3

Thompson - cross

- 1 they deem necessary to investigate a complaint?
2 A. Yes, they can.
3 Q. In fact, the NYPD's department advocate's office maintains
4 an on-site presence at the CCRB, isn't that right?
5 A. That is correct.
6 Q. They assist in providing NYPD documents in answering
7 questions for investigators at the CCRB, correct?
8 A. Yes.
9 Q. And this liaison unit by the department advocate is staffed
10 by a lieutenant, correct?
11 A. Yes.
12 Q. There are two police officers assigned full time to the
13 CCRB office?
14 A. That's correct.
15 Q. Once an investigator at the CCRB has completed their
16 investigation, it moves to the supervisor for review, correct?
17 A. Yes.
18 Q. The supervisor receives a written report from the
19 investigator?
20 A. Yes, they do.
21 Q. That written report summarizes interviews that investigator
22 may have conducted, correct?
23 A. Yes.
24 Q. And any analysis of documents that investigator undertook?
25 A. That's correct.

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D4F8FLO3 Thompson - cross

- 1 Q. Any assessment of credibility of witnesses by the
2 investigator, correct?
3 A. Yes.
4 Q. And a recommendation ultimately as to how the case should
5 be resolved?
6 A. Yes.
7 Q. When an officer identification cannot be made on a case, is
8 the case closed as officer unidentified?
9 A. Yes. That's correct.
10 Q. A case that's closed as miscellaneous, is that when an
11 officer is no longer employed by the NYPD?
12 A. Yes.
13 Q. You testified that if the supervisor concurs with the
14 investigator's recommendation that a complaint should be
15 substantiated, that it's sent to a CCRB attorney for further
16 review, is that correct?
17 A. Yes.
18 Q. When were attorneys hired by the CCRB to do this step of
19 the review?
20 A. The attorneys were hired towards the end of 2007.
21 Q. With respect to the panel of three board members who review
22 the substantiated, or I guess all investigations, the panel
23 decision with respect to the determination doesn't have to be
24 unanimous, does it?
25 A. No, it does not.

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D4F8FLO3

Thompson - cross

- 1 Q. If it's a three-person panel, a vote of two to one will
2 suffice, correct?
3 A. That's correct.
4 Q. And the board panel can agree or disagree with any of the
5 allegations in the recommended finding, correct?
6 A. Oh, definitely.
7 Q. And the board can send an investigation back to the
8 investigative unit for further investigation, correct?
9 A. Yes.
10 Q. You testified on direct examination with respect to
11 truncated cases. Do you recall that testimony?
12 A. Yes, I do.
13 Q. With respect to the number of truncated cases, often those
14 are where the complainant is unavailable, correct?
15 A. Yes.
16 Q. Where the complainant isn't interested in pursuing a
17 complaint, correct?
18 A. Yes.
19 Q. The CCRB goes to great efforts to locate complainants who
20 have made initial complaints with the CCRB, haven't they?
21 A. Yes.
22 Q. The CCRB sends letters to the complainants?
23 A. Yes.
24 Q. The CCRB makes telephone calls if the telephone number is
25 available?

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D4F8FLO3 Thompson - cross

1 A. That's correct.

2 Q. There's multiple efforts prior to closing a case as
3 truncated?

4 A. Definitely.

5 Q. Even then, the board has the discretion to reopen a
6 truncated case upon a complainant's request, correct?

7 A. That's correct.

8 Q. When the board concludes that a claim should be
9 unsubstantiated, unfounded or exonerated, that CCRB finding and
10 outcome still goes into the officer's file, correct?

11 A. Yes.

12 Q. And that file where that information is kept is available
13 to the NYPD, correct?

14 A. Yes, it is.

15 Q. The CCRB board panel approving a finding on a CCRB
16 investigation can recommend the disciplinary action associated
17 with the substantiation, correct?

18 A. Yes, they can.

19 Q. But the board does not have to recommend a specific
20 disciplinary action, correct?

21 A. That's correct.

22 Q. So a complaint might be received by the NYPD as
23 substantiated with no recommended discipline by the CCRB?

24 A. That's correct.

25 Q. And at that point, when received by the department

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D4F8FLO3 Thompson - cross

1 advocate, the CCRB investigation file is reviewed, correct?

2 A. Yes, it is.

3 Q. And sometimes the department advocate's office contacts the
4 CCRB to discuss the investigation, correct?

5 A. Sometimes, yes.

6 Q. They might ask the CCRB to conduct additional follow-up
7 investigation, right?

8 A. They might.

9 Q. The final determination of the form of discipline the
10 department advocate's office imposes is made by the police
11 commissioner?

12 A. That's correct.

13 Q. And on a monthly basis, the NYPD reports back to the CCRB
14 regarding the outcome of discipline imposed in that prior month
15 on CCRB cases, correct?

16 A. Yes, it does.

17 Q. Ms. Thompson, you believe that the discipline of
18 instructions is a good tool for substantiated CCRB findings,
19 don't you?

20 A. Yes, it can be.

21 Q. And you would agree that looking at recidivist rates would
22 be a good measure of whether or not the instructions are
23 working as discipline, correct?

24 A. Yes.

25 Q. Are you aware of the recidivism rates for officers for

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Thompson - cross

1 abuse of authority complaints with the CCRB?

2 MS. BORCHETTA: Objection.

3 THE COURT: The basis for the objection?

4 MS. BORCHETTA: Just to the extent, when she is saying
5 recidivism, I don't think it's clear what she is referring to.

6 THE COURT: A second complaint against the same
7 officer.

8 MS. BORCHETTA: Again, for the same conduct or other
9 misconduct.

10 THE COURT: Even a second complaint against the same
11 officer, are you aware of the rates when you get a second
12 complaint against the same officer for abuse of authority?

13 THE WITNESS: I don't have the rates handy. No, I do
14 not.

15 Q. Do you know if you consider the rates high or low?

16 A. I don't know. I know the recidivism rate for mediated
17 cases. I don't know general cases.

18 Q. Mediated cases --

19 THE COURT: That was a very small percent on the
20 chart, right?

21 THE WITNESS: Yes.

22 Q. Recidivism rates are a --

23 THE COURT: No. The mediated cases is a very small
24 percent of all cases. That's what I meant.

25 THE WITNESS: Yes. But the recidivism rate for the
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Thompson - cross

1 mediated cases is quite high, in terms that it doesn't happen
2 very often. Once they have been mediated, they rarely come
3 back a second time.

4 Q. So the recidivism is low for officers who participate in
5 mediation?

6 A. Yes.

7 Q. Mediation is limited to the cases where there is no injury
8 to property or where there is no arrest, correct?

9 A. That's correct.

10 Q. The CCRB is authorized to mediate claims by civilians
11 through this informal conciliation, correct?

12 A. That's correct.

13 Q. Most mediations by the CCRB are complaints of verbal
14 disputes and street stops that did not lead to an arrest or
15 summons, correct?

16 A. Yes.

17 Q. Participation in mediation is voluntary by both the
18 complainant and the officer?

19 A. That's correct.

20 THE COURT: But I raised earlier that the number of
21 mediated cases is very small. What is the percentage?

22 THE WITNESS: It's about 7 percent of all cases.

23 THE COURT: Of all cases are mediated.

24 Has that changed over time or you are giving me that
25 for the whole period?

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D4F8FLO3 Thompson - cross

1 THE WITNESS: I am just giving you the most recent.

2 THE COURT: Is that up or down?

3 THE WITNESS: It's up.

4 THE COURT: So it used to be even a smaller
5 percentage?

6 THE WITNESS: It used to be smaller, but as the
7 program got running, and people were aware of it, it started to
8 go up.

9 BY MS. COOKE:

10 Q. Turning your attention to Defendants' P12, which is the
11 2011 annual report, page 15.

12 A. Yes.

13 Q. The chart reflects mediation closures from 2007 to 2011,
14 correct?

15 A. Yes, it does.

16 Q. I believe, as you were just testifying, the number of cases
17 that have had mediation attempted has increased over this
18 five-year period, correct?

19 A. Yes.

20 Q. And the NYPD has worked closely with the CCRB to encourage
21 members of the service to take part in mediation for eligible
22 cases, correct?

23 A. That's correct.

24 Q. In fact, the CCRB's annual report, page --

25 THE COURT: Same exhibit, 2011?

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D4F8FLO3 Thompson - cross

1 MS. COOKE: Yes.

2 Q. Page 16, indicates in the final paragraph that, "CCRB
3 believes much of the five year increase in the officer
4 acceptance rate stems from the police commissioner's public
5 support of the mediation program."

6 A. That's correct.

7 Q. The CCRB has also found that the satisfaction among those
8 who go through mediation is quite high, correct?

9 A. That's right.

10 Q. Another benefit to mediation is cases are resolved quicker,
11 correct?

12 A. That's correct.

13 Q. Mediation also benefits communities because there is a
14 measure of trust and respect between the police and the
15 community, correct?

16 A. Yes. I think that is built up as part of the mediation
17 process.

18 Q. That would lead to better police community relations in the
19 view of the CCRB?

20 A. Yes. In fact, probably I was wrong. Looking at 2011, it
21 says approximately 16 percent of the total number of cases is
22 resolved.

23 THE COURT: So when you said 7, that was wrong?

24 THE WITNESS: That was wrong. 7 was in 2007 and 8
25 percent in 2008 and 7 percent in 2009. Those three years was

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D4F8FLO3 Thompson - cross

1 about 7 percent. It has gone up appreciably.

2 Q. Just for the record, you were referring to Defendants' P12
3 on page 15 under the title "mediation statistics"?

4 A. Yes. I was just looking at that.

5 Q. Turning your attention now to Defendants' Exhibit V13,
6 which is the January to June 2012 CCRB report.

7 THE COURT: Which one?

8 MS. COOKE: V13. Page 6, which is Bates stamped
9 28874.

10 Q. Looking at this chart of complaints received by the CCRB
11 between January 2008 and June 2012, there were 2,852 police
12 misconduct complaints for the period of January to June 2012,
13 correct?

14 A. Yes.

15 MS. BORCHETTA: I think you misread the number.

16 Q. 2,858 total CCRB complaints, correct?

17 THE COURT: That's the number you see, 2858?

18 THE WITNESS: Yes.

19 Q. That was the lowest level for any January to June period
20 since 2003, correct?

21 A. That's correct.

22 Q. While you testified on direct that the stop and frisk
23 complaints represent consistently approximately one-third of
24 the CCRB's cases received annually?

25 A. Yes.

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D4F8FLO3 Thompson - cross

- 1 Q. In terms of absolute numbers reflected in this chart by the
2 green line, number of complaints involving at least one
3 allegation of stop, question, frisk and/or search, the total
4 number of -- the absolute number is 877 for the January to June
5 2012 period, correct?
6 A. Yes. That's correct.
7 Q. The January to June 2008 period, the total number of those
8 complaints was 1,236, correct?
9 A. Yes.
10 Q. So would you agree with me that there has been a steady
11 decline between the January to June 2008 to the January to June
12 2012 period?
13 A. Yes.
14 Q. Similarly, there has been a decline in the total number of
15 complaints received by the CCRB in the 2008 to 2012 period,
16 correct?
17 A. That's correct.
18 Q. Looking at the green line of the complaints received by the
19 CCRB involving at least one allegation of stop, question, frisk
20 and/or search, that number has declined from 1,035 in January
21 to June of 2010 to 924 for that same period in 2011, correct?
22 A. That's correct.
23 Q. Turning to page 8 in the same exhibit V13, this is a map
24 reflecting the precincts in New York City distributed by
25 borough, correct?

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Thompson - cross

1 A. That's correct.

2 Q. And the map reflects the density of stop, question and
3 frisk complaints for an 18 month period between January 2011
4 and June 2012, correct?

5 A. Yes.

6 Q. Looking at this map, each precinct has a color, correct?

7 A. Yes, it does.

8 Q. The lightest color reflects the precinct received zero
9 to -- CCRB received zero to 25 complaints during an 18 month
10 period, correct?

11 A. Yes.

12 Q. The darkest color is red, which indicates that CCRB
13 received 90 or more complaints in that 18-month period of stop,
14 question or frisk, correct?

15 A. Yes.

16 Q. There are only four precincts in the city for this 18 month
17 period that had 90 or more complaints, correct?

18 A. Yes.

19 Q. Would you agree with me that the majority of precincts
20 reflected in this map have zero to 25 complaints during this
21 period?

22 A. Yes.

23 Q. So the complaints with respect to stop, question and frisk
24 activity for this 18 month period is not evenly distributed
25 throughout the city's precincts, correct?

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Thompson - cross

- 1 A. That's correct.
- 2 Q. Turning your attention to page 14 of this same exhibit,
- 3 this is a chart of police department pursued discipline in
- 4 substantiated CCRB cases from January 2008 through June of
- 5 2012, correct?
- 6 A. Yes.
- 7 Q. This chart reflects that the NYPD closed 122 substantiated
- 8 CCRB cases for the January to June 2012 period, correct?
- 9 A. That's correct.
- 10 Q. But that doesn't mean that complaints were received by the
- 11 NYPD between January and June 2012 necessarily, correct?
- 12 A. That's correct.
- 13 Q. Because the NYPD might be closing complaints during that
- 14 period received in a prior period, correct?
- 15 A. That's correct.
- 16 Q. Because there is some lag time between when a CCRB
- 17 complaint is substantiated and forwarded to the department
- 18 advocate's office and the time of the disposition, correct?
- 19 A. That's definitely correct.
- 20 Q. That's because an officer could pursue a trial on the
- 21 discipline, correct?
- 22 A. That's correct.
- 23 Q. Or might be negotiated and there might be time spent
- 24 negotiating the discipline?
- 25 A. Yes.

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D4F8FLO3 Thompson - cross

1 Q. According to this chart, in January to June of 2012, the
2 NYPD pursued discipline in 99 cases, correct?

3 A. Yes.

4 Q. And imposed no discipline in 23 cases, correct?

5 A. That's correct.

6 Q. Which is a discipline rate of 80 percent, is that correct?

7 A. Yes.

8 Q. Turning your attention to Defendants' Exhibit U13, which is
9 the police department discipline rates for 2002 through 2012.

10 THE COURT: I am not sure I have this one.

11 MS. COOKE: This is a single sheet.

12 THE COURT: OK. Got it.

13 Q. This chart reflects the discipline rate for the entirety of
14 2012, correct?

15 A. Yes, it does.

16 Q. You were asked questions on direct examination by counsel
17 with respect to the decline in the rate at which the NYPD
18 imposed no discipline. Do you recall those questions?

19 A. Yes, I do.

20 Q. Counsel characterized the decline between 2008 of no
21 discipline, which I believe reads 44 percent --

22 A. Yes.

23 Q. -- to 2011, where the rate at which no discipline was
24 imposed was 19 percent as a little bit. Would you agree with
25 that characterization?

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D4F8FLO3 Thompson - cross

- 1 A. No, I would not.
2 Q. Because that's in fact a 25 percent drop?
3 A. Yes.
4 Q. In the rate at which the NYPD declined to impose
5 discipline, correct?
6 A. That's correct.
7 Q. In terms of absolute numbers, the NYPD disciplined 229
8 cases in 2012, correct?
9 A. Yes.
10 Q. And that is up from 153 cases from 2008, correct?
11 A. That's correct.
12 Q. In fact, 229 cases where the NYPD imposed discipline in
13 2012, that's the highest number of discipline imposed by the
14 NYPD in substantiated CCRB cases in the past five years, isn't
15 that right?
16 A. That is correct.
17 Q. You testified that the majority of cases that the NYPD
18 declines to pursue discipline were abuse of authority cases?
19 A. Yes.
20 Q. Isn't that also the largest category of cases received by
21 the CCRB?
22 A. Yes, it is.
23 Q. Do you note by what percentage abuse of authority outranks
24 the other three categories?
25 A. I would say approximately 55 percent of all of our cases

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D4F8FLO3 Thompson - cross

1 are abuse of authority. And I believe the next highest number
2 is about 20-some-odd percent.

3 Q. Turning back to page 6 from the 2012 report, which is
4 Defendant's V13, the chart reflected total complaints received
5 between January 2008 and June 2012?

6 A. Yes.

7 Q. You just testified a few moments ago about the declining
8 number of total complaints received by the CCRB over this
9 period?

10 A. Yes.

11 Q. This is notwithstanding the fact that the CCRB has
12 increased its outreach efforts with civilians?

13 A. That's true.

14 Q. That includes efforts working with, in particular, New York
15 City Housing Authority residents, correct?

16 A. Yes.

17 Q. With respect to Defendants' P12, which is the 2011 report,
18 I am not sure that you received a copy of the appendices to
19 that report.

20 Am I correct that appendices are charts of statistics
21 summarizing that annual report's activity that accompanies the
22 report each year by the CCRB?

23 A. Yes.

24 Q. These statistics, are these compiled by someone in
25 particular at the CCRB?

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D4F8FLO3

Thompson - cross

- 1 A. Yes, it is.
- 2 Q. Who is that?
- 3 A. It's the deputy executive director for strategic
4 initiatives and policies.
- 5 Q. Is that Mr. Marcos Soler?
- 6 A. Yes, it is.
- 7 Q. Turning your attention to table 17A in those appendices,
8 they aren't paginated, but the chart is table 17A, and the
9 title is, "Reasons for police civilian encounters that led --
- 10 THE COURT: Do I have that?
- 11 MS. BORCHETTA: Yes, your Honor. It's a separate
12 packet.
- 13 THE COURT: Yes. How do I find it?
- 14 MS. COOKE: Table 17A. They are all titled at the
15 top.
- 16 THE COURT: I see that now. OK.
- 17 I have 17E.
- 18 MS. COOKE: I have a single sheet of 17A.
- 19 THE COURT: It's tiny. I see. I have got 17A.
- 20 Q. Ms. Thompson, directing your attention to the very bottom
21 line of this chart, which reflects a line which reads,
22 "Complainant and/or alleged victim believes he or she was the
23 subject of racial profiling"?
- 24 A. Yes.
- 25 Q. Then there is an asterisk. And the asterisk reads, "The
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D4F8FLO3 Thompson - cross

- 1 CCRB began capturing this information on July 1, 2004 (after a
2 board vote) and captures it only if the complainant or alleged
3 victim voluntarily expresses this belief," correct?
4 A. That's correct.
5 Q. Is this what you were referring to earlier when you
6 testified about the number of cases the CCRB receives alleging
7 racial profiling?
8 A. Yes, it is.
9 Q. Looking at this chart, we can see it reflects from 2007 to
10 2011, correct?
11 A. Yes.
12 Q. And the number of these racial profiling complaints from
13 2007 were 132, correct?
14 A. Yes.
15 Q. And that is out of a total number of complaints received by
16 the CCRB in 2007 of 7,549, correct?
17 A. That's correct.
18 Q. And 2008, the racial profiling complaints were 84, correct?
19 A. Yes.
20 Q. Out of 7,395 total complaints, correct?
21 A. Yes.
22 Q. And for 2009, there were 71 racial profiling complaints out
23 of a total of 7,660 complaints received, correct?
24 A. Yes.
25 Q. And 2010, the number was 78 for racial profiling, correct?

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Thompson - cross

1 A. Yes.

2 Q. Out of 6,467.

3 Finally, for 2011, the CCRB reported 58 complaints of
4 racial profiling out of 5,966 complaints, correct?

5 A. That's correct.

6 Q. That's about one percent of the complaints received in
7 2011?

8 A. Yes. I guess so.

9 Q. Are you aware of the number for 2012 while it's not
10 reflected in this chart?

11 A. No, I'm not.

12 Q. Do you know if it's approximately the same as or about the
13 same as 2011?

14 MR. CHARNEY: Objection.

15 THE COURT: I will allow it if she knows.

16 Do you know the number?

17 THE WITNESS: No, I don't.

18 THE COURT: We will have to take the luncheon recess
19 now. I wonder if you're almost done, but I really have to be
20 somewhere in seven minutes.21 MS. COOKE: I am almost done. I don't know how much
22 redirect there will be.

23 MS. BORCHETTA: I have a few questions.

24 THE COURT: You will have to come back after the
25 luncheon recess. I'm sorry about that.

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Thompson - cross

1 So we will reconvene at 5 after 2. Thank you.
2 (Luncheon recess)
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Thompson - cross
AFTERNOON SESSION
2:10 p.m.

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JOAN THOMPSON, resumed.

THE COURT: Ms. Cooke.

BY MS. COOKE:

Q. Good afternoon, Ms. Thompson.

A. Good afternoon.

Q. Before we broke for lunch, we were discussing the number of racial profiling complaints that the CCRB has received represented in table 17 in the 2011 report, Exhibit P12?

A. Yes.

Q. Do you recall that the CCRB has ever substantiated an allegation of an improper stop or frisk having been made on the basis of race, that is, for racial profiling?

MS. BORCHETTA: Objection.

THE COURT: What is the objection?

MS. BORCHETTA: Your Honor, the foundation for what would make it a case based on racial profiling.

THE COURT: Sustained.

Your agency wouldn't decide whether there was an improper stop and frisk, would you?

THE WITNESS: If it was improper, we would make a recommendation to the police department.

THE COURT: That it was an improper stop? Which categories would that fall under?

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D4F8FLO3 Thompson - cross

1 THE WITNESS: You're talking about racial profiling
2 itself or just stop and frisk?

3 THE COURT: Stop and frisk.

4 THE WITNESS: Stop and frisk. If we substantiated a
5 case that we thought the officer had made an improper stop or
6 an improper frisk.

7 THE COURT: What does that fall under?

8 Q. Is that abuse of authority?

9 A. That's abuse of authority.

10 THE COURT: Your agency would adjudicate whether a
11 stop is an improper stop?

12 THE WITNESS: Yes, we will. We don't at this point.
13 We will. After the APU -- the APU is now in effect. So we
14 will.

15 THE COURT: When did that happen?

16 THE WITNESS: It went into effect yesterday or the day
17 before yesterday.

18 Q. My question was, if you had substantiated an abuse of
19 authority complaint?

20 THE COURT: That's not what you asked.

21 Let me hear a new phrasing, and I will think about the
22 objection.

23 Q. Ms. Thompson, do you recall that the CCRB has ever
24 substantiated an abuse of authority claim as an improper stop
25 and frisk on the basis of race?

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D4F8FLO3 Thompson - cross

1 THE COURT: You complicated that with a part that I
2 can't allow.

3 Have you ever sustained an abuse of authority claim
4 based on racial profiling?

5 THE WITNESS: No, not to my knowledge.

6 THE COURT: What happened yesterday?

7 THE WITNESS: The APU went into effect.

8 THE COURT: What is APU?

9 THE WITNESS: Administrative prosecution unit. The
10 rules were ratified and it went into effect yesterday or the
11 day before.

12 THE COURT: And now what power does it have?

13 THE WITNESS: It now gives us the power to take the
14 cases into the trial room of the PD, and we are the attorneys.

15 THE COURT: OK.

16 BY MS. COOKE:

17 Q. Before the luncheon recess we were discussing mediation --

18 A. Yes.

19 Q. -- cases by the CCRB?

20 A. Yes.

21 Q. Would you agree that the number of cases that are suitable
22 and eligible for mediation would include a significant number
23 of stop and frisk claims?

24 A. Possibly.

25 Q. Because eligible mediation cases do not include cases

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D4F8FLO3 Thompson - cross

1 resulting in arrests or summonses?

2 A. That's correct.

3 Q. Turning your attention to page 12 of Defendants' Exhibit
4 V13, which is the 2012 report?

5 A. 2000 what report?

6 Q. 12.

7 This page contains the chart with the total number of
8 mediation unit closures between January 2008 and June 2012 and
9 some text regarding mediation, correct?

10 A. Yes.

11 Q. Looking at the left-hand column, the bottom paragraph which
12 begins, "The number of cases referred," does that paragraph
13 indicate that the proportion of cases in which the CCRB has
14 offered mediation has increased as of 2012?

15 A. Yes, it has.

16 Q. That's, in fact, 736 cases were offered mediation in 2012?

17 A. Yes. That's right.

18 Q. That represents 60 percent of all suitable and eligible
19 cases for mediation?

20 A. Yes.

21 Q. That's an increase from 56 percent for the same period in
22 2011?

23 A. Yes.

24 Q. Turning your attention to the appendices of Exhibit P12,
25 which is the 2011 report, specifically, table 28 -- I'm sorry,

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D4F8FLO3 Thompson - cross

1 26. And there are several subparts to 26, 26A and 26B and so
2 forth.

3 THE COURT: You want her to start with A?

4 MS. COOKE: I am just going to ask a general question
5 with respect to tables 26 and their enumerated sub-tables.

6 Q. These tables 26, am I correct that they represent the
7 disposition of abuse of authority allegations by year from 2007
8 through 2011?

9 A. That's correct.

10 Q. One table for each year, correct?

11 A. That's correct.

12 Q. And each table shows a breakdown of the abuse of authority
13 claims investigated by the CCRB in that year, correct?

14 A. Yes.

15 Q. It shows the substantiation rate or the exoneration rate,
16 the unsubstantiated, unfounded, and so forth for each of the
17 subcategories of abuse of authority, correct?

18 A. That's correct.

19 Q. The CCRB is reporting the subcategories, breaking it down
20 between whether or not it was abuse of authority for a question
21 or a stop or a search or frisk and so forth, correct?

22 A. Yes.

23 Q. In fact, in this category of abuse of authority, there are
24 subcategories for search of the person and search of premises
25 and search of vehicles, correct?

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D4F8FLO3 Thompson - cross

1 A. That's correct.

2 Q. So when the stop, question and frisk and search numbers are
3 reported in the annual report, the search includes those
4 subcategories of searches, correct?

5 A. Yes, it does.

6 Q. Which would be searches in addition to searches of the
7 person?

8 A. Yes.

9 Q. When you testified at your deposition in this case, you had
10 stated that the CCRB had not made any recommendations to the
11 NYPD as of that time regarding stop and frisk case activity or
12 trends. Do you recall that testimony?

13 A. Yes, I do.

14 Q. However, since that time, isn't it true that in 2010, the
15 CCRB did have discussions with the NYPD regarding an increase
16 in the number of complaints CCRB was substantiating for certain
17 stop and frisk activity?

18 A. Yes, we did.

19 Q. That was stop and frisk activity regarding NYCHA residents
20 complaining of improper stops in and around NYCHA buildings,
21 correct?

22 A. That's correct.

23 Q. The CCRB in fact recommended that the NYPD officers
24 patrolling NYCHA be retrained on an appropriate legal standard
25 for making stops, correct?

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D4F8FLO3

Thompson - cross

1 A. Yes.

2 Q. And that legal standard of training should include that
3 reasonable suspicion was required to make such stops, right?

4 A. Yes.

5 Q. And, in fact, in June of 2010, the NYPD did revise its
6 patrol guide section covering this?7 MS. BORCHETTA: Objection, to the extent this isn't
8 the NYCHA case.

9 THE COURT: It isn't.

10 MS. COOKE: With respect to stop activity reported by
11 the CCRB to the department for notice, your Honor.

12 THE COURT: I don't have a problem with that.

13 Q. In June 2010, in fact, Ms. Thompson, on the CCRB's
14 recommendation, the NYPD revised its patrol guide for stop and
15 frisks outside NYCHA, correct?

16 A. That's correct.

17 Q. And that clarified the legal standard required for officers
18 to make stop, question and frisks, correct?

19 MS. BORCHETTA: Objection.

20 THE COURT: What is the objection?

21 MS. BORCHETTA: She is asking whether it clarified a
22 standard.

23 THE COURT: I know.

24 MS. BORCHETTA: According to who I guess.

25 THE COURT: That's exactly right. I am aware of that.

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D4F8FLO3 Thompson - cross

1 But they made that attempt, obviously. That's the evidence.

2 Go ahead.

3 Q. Are you aware that the NYPD attempted to clarify the legal
4 standard for officers making stops on NYCHA property?

5 A. Yes, I am.

6 Q. Are you also aware that in the fall of 2010, the NYPD began
7 training for those thousands of officers on this revised patrol
8 guide procedures and legal standards?

9 A. Yes.

10 Q. Did the CCRB report its knowledge and understanding of the
11 NYPD's response to the trend identified by the CCRB in one of
12 its annual reports?

13 A. Yes, we did.

14 Q. Was that the 2010 annual report?

15 A. I would have to -- I think it is.

16 Q. I don't believe we have that before you, but I am going to
17 hand you a copy. Do you recognize this document?

18 A. Yes, I do.

19 Q. What is it?

20 A. It is the 2010 annual report by the CCRB.

21 MS. BORCHETTA: Objection, to the extent we repeatedly
22 requested documents like this from the city and this is the
23 first time I am seeing it.

24 Q. Is this report publicly available on CCRB's Web site?

25 A. Yes, it is.

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D4F8FLO3 Thompson - cross

1 THE COURT: What is this document?

2 MS. COOKE: I was asking if this information was
3 reported in an annual report and the witness said yes.

4 THE COURT: In an annual report?

5 MS. COOKE: From the CCRB, yes.

6 THE COURT: You were required to produce the documents
7 to the plaintiffs that they called for in their various
8 requests, and probably what you intended to use with this
9 witness. I can't allow this document.

10 MS. COOKE: I have no further questions at this time.

11 THE COURT: Thank you.

12 Redirect?

13 MS. BORCHETTA: Yes, your Honor.

14 REDIRECT EXAMINATION

15 BY MS. BORCHETTA:

16 Q. Good afternoon, Ms. Thompson.

17 A. Good afternoon.

18 Q. You testified on questioning from Ms. Cooke about a recent
19 memorandum of understanding regarding the prosecution of
20 charges and specifications, correct?

21 A. Yes.

22 Q. I would like to show you a document that's been marked as
23 Plaintiffs' 458. Do you recognize this document?

24 A. Yes, I do.

25 Q. Is that the memorandum of understanding?

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D4F8FLO3

Thompson - redirect

1 A. Yes, it is.

2 MS. BORCHETTA: I move to admit Plaintiffs' 458.

3 MS. COOKE: No objection.

4 THE COURT: 458 is received.

5 (Plaintiff's Exhibit 458 received in evidence)

6 Q. According to this memorandum of understanding, a CCRB
7 attorney can prosecute charges and specifications for which the
8 CCRB recommended charges and specifications, right?

9 A. That's correct.

10 Q. But that's only in the subset of substantiated CCRB cases
11 where the police commissioner agrees that charges and
12 specifications should be brought, right?

13 A. Yes.

14 Q. Are you aware of public criticism about that fact?

15 MS. COOKE: Objection, to the extent the question
16 calls for a hearsay answer.

17 THE COURT: It asks whether she is aware of something.

18 A. Yes, I am aware.

19 THE COURT: That's all I will take.

20 Q. And charges and specifications are only recommended by the
21 CCRB in a small fraction of cases, correct?

22 A. Yes.

23 (Continued on next page)

24

25

D4f9flo4 Thompson - redirect

1 Q. Do you recall testifying in response to questions asked by
2 Ms. Cooke about the statute of limitations that CCRB cases
3 have?

4 A. Yes, I do.

5 Q. And if you look at the 2011 report, at page 17, after --
6 this chart accounts for cases in which the statute of
7 limitations has expired, right?

8 A. Had expired already?

9 Q. Right?

10 MS. BORCHETTA: I'm sorry.

11 THE COURT: You mean they're included in the chart?

12 MS. BORCHETTA: Right.

13 THE WITNESS: I'm sorry. I thought you meant all of
14 the cases.

15 THE COURT: No, the blue.

16 MS. BORCHETTA: In other words, the statute of
17 limitations expired as reflected on this chart?

18 THE WITNESS: Yes, it is. That's correct.

19 Q. And that's separated from the cases in which the NYPD
20 declined to pursue discipline, right?

21 A. Yes. That's correct.

22 Q. And in addition the 2011 report, at page 9, there's a chart
23 showing the average number of days -- I'm sorry, the average
24 number of days it took the CCRB to investigate complaints
25 between 2007 and 2011, right?

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D4f9flo4 Thompson - redirect

- 1 A. That's correct.
2 Q. And the 2011 the average was 346, right?
3 A. Yes.
4 Q. And that's leaving a few months for the NYPD to investigate
5 those cases, right?
6 A. Yes.
7 Q. Do you recall testifying in response to questions from
8 Ms. Cooke about mediation?
9 A. Yes, I do.
10 Q. If an officer agrees to mediation, he or she will not be
11 the subject of discipline, correct?
12 A. That's correct.
13 Q. And there will be no substantiated complaint against that
14 officer, right?
15 A. That's correct.
16 Q. And if an officer decides to mediate, there is no further
17 investigation by the CCRB, right?
18 A. That's correct.
19 Q. If an officer decides to mediate does a record go into any
20 CCRB database about the alleged misconduct?
21 A. The original complaint is in the file, yes.
22 Q. Do you recall discussing in the 2012 report at page 6 the
23 chart of complaints received between January 2008 and June 2012
24 with Ms. Cooke?
25 A. Yes, I do.

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D4f9flo4 Thompson - redirect

1 Q. And do you recall testifying that the number of total
2 complaints has gone down?

3 A. Yes.

4 Q. And you'll agree with me that in January to June of 2009 it
5 reached a peak of 4,018 complaints, correct?

6 A. Yes, it did.

7 Q. And it, thereafter, the number of total complaints went
8 down, right?

9 A. Yes.

10 Q. Now, 2009 is when the CCRB publicly expressed concern that
11 the NYPD was failing to issue discipline in the large number of
12 CCRB substantiated cases, right?

13 A. Yes.

14 Q. And 2009 is when the CCRB publicly expressed concern at the
15 rate at which the NYPD chose to issue only instruction, right?

16 A. Yes.

17 Q. And so this period where it's going down is after the CCRB
18 publicly expressed concern that the public might lose faith in
19 the CCRB process because of those two facts, right?

20 MS. COOKE: Objection, your Honor. To the extent the
21 question includes hearsay statements concerning concern by the
22 public.

23 THE COURT: We already had that, the objection, I
24 already ruled on that; isn't that right? That there was --
25 that there was an earlier question about public expression of

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D4f9flo4 Thompson - redirect

1 concern or expressions?

2 MS. BORCHETTA: CCRB statement of concern.

3 MS. COOKE: I think the question was phrased as public
4 expression.

5 THE COURT: It said. So this period where it's going
6 down is after the CCRB publicly expressed concern that the
7 public might lose faith in the CCRB process because of these
8 two facts.

9 I think we had the part about the CCRB publicly
10 expressing concern before. I allowed that.

11 MS. COOKE: Correct. My objection was to the latter
12 point in the question which was about the public's --

13 THE COURT: Public might lose faith?

14 MS. COOKE: Yes.

15 MS. BORCHETTA: Ms. Thompson testified on direct that
16 that's what the CCRB stated.

17 THE COURT: I will allow it. I think that's right.
18 I'm going to allow the question.

19 Do you remember it any longer?

20 THE WITNESS: If you could restate it.

21 MS. BORCHETTA: I'm sorry. Am I restating it?

22 THE WITNESS: Yes, please.

23 Q. The period of decline in the CCRB complaints received is
24 also after the CCRB publicly expressed concern that the NYPD's
25 issuance of instructions over more severe penalties and the

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D4f9flo4 Thompson - redirect

- 1 CCRB's failure to issue discipline in a large number of
2 substantiated CCRB cases might cause the public to lose faith
3 in the CCRB process, correct?
4 A. Yes, it could.
5 Q. But that decline happened after the CCRB expressed those
6 concerns, right?
7 A. Yes, it did.
8 Q. Looking at Defendants' U13 which is the police department
9 disposition of substantiated cases between 2002 and 2012. Do
10 you recall testifying in response to Ms. Cooke's questions that
11 the decrease in the rate at which the NYPD failed to issue
12 discipline between 2009 and 2011 was about 20 percent?
13 A. That's correct. Yes.
14 Q. And the increase in the rate in which the NYPD declined to
15 issue discipline between 2011 and 2012 was ten percent?
16 A. Yes. That's right.
17 Q. And by 2009 when the rate was 39 percent, the rate at which
18 the NYPD declined to issue discipline, that's a year-and-a-half
19 after an attorney within the CCRB began reviewing all
20 substantiated complaints, right?
21 A. Yes. I do remember my dates. Yes.
22 Q. Do you recall testifying in response to Ms. Cooke's
23 questions about table 17(a) in the appendix to the 2011 report
24 about the notation of the number of racial profiling cases?
25 A. Yes, I do.

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D4f9flo4 Thompson - redirect

1 Q. But the CCRB in reporting the number of racial profiling
2 cases in that context relies on the complainant affirmatively
3 stating that its -- that they believe it's a racial profiling
4 case, right?

5 A. That's correct.

6 Q. And the CCRB doesn't do any analysis to determine beyond
7 that whether its cases relate to racial profiling, right?

8 A. That's correct. We do not.

9 Q. You testified in response to Ms. Cooke's questioning that
10 if an encounter leads to an arrest or a summons, the CCRB does
11 not pursue mediation, correct?

12 A. That's correct.

13 Q. Or does not offer mediation, correct?

14 A. That's correct.

15 Q. And in stop-question-and-frisk cases, almost 40 percent of
16 those cases lead to a summons or arrest, right?

17 A. Yes, I think so.

18 Q. So in 40 percent of stop-question-and-frisk cases, at least
19 from 2011, there would be no offer of mediation, right?

20 A. That's correct.

21 MS. BORCHETTA: Just one moment, your Honor.

22 (Pause)

23 Q. So when you testified in response to Ms. Cooke's questions
24 that CCRB never substantiated a case of racial profiling,
25 you've never substantiated a case in which a person

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1 affirmatively said that he or she believed her encounter was
2 because of racial profiling, right?

3 A. To my knowledge, that's correct.

4 Q. But that's the only kind of case of racial profiling that
5 you'd be referring to, right?

6 A. Yes.

7 Q. And you testified in response to Ms. Cooke's questioning
8 about certain retraining that the NYPD did in response to
9 complaints involving NYCHA stops, right?

10 A. Yes.

11 Q. In response to the years and years and years that black
12 people have been a disproportionate share of those who were
13 complainants in CCRB cases has the NYPD ever approached the
14 CCRB to discuss possible retraining?

15 A. Not to my knowledge.

16 MS. BORCHETTA: Your Honor, I apologize but I
17 neglected to move the admission of one CCRB document that
18 perhaps we could do the same way that we did the others, which
19 is Plaintiffs' 166.

20 MS. COOKE: No objection, your Honor. Except this is
21 an entire CCRB investigative file. So there are hearsay
22 statements in here, so with respect to the limitation on notice
23 but not to the truth of the matters.

24 THE COURT: That's fine.

25 MS. BORCHETTA: Plaintiffs' 166.

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D4f9flo4 Thompson - redirect

1 THE COURT: Received.

2 MS. BORCHETTA: No further questions. Thank you.

3 THE COURT: Anything further from this witness?

4 (Plaintiffs' Exhibit 166 received in evidence)

5 RECROSS EXAMINATION

6 BY MS. COOKE:

7 Q. Ms. Thompson, with respect to your testimony regarding a
8 claim the CCRB received that a complainant believes they might
9 have been racially profiled. Do you recall that testimony on
10 redirect?

11 A. Yes.

12 Q. Part of the investigative review process the CCRB
13 investigator interviews the complainant, correct?

14 A. That's correct.

15 Q. And makes a record of the statements that the complainant
16 makes with respect to the incident?

17 A. Yes. That's correct.

18 Q. And that would include any statements with respect to
19 racial profiling, correct?

20 A. Yes.

21 Q. And they also interview the officers on that incident at
22 well, correct?

23 A. That's correct.

24 Q. And that would include any statements by the officers with
25 respect to the allegation of racial profiling, correct?

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D4f9flo4

Thompson - recross

1 A. Yes.

2 MS. COOKE: No further questions, your Honor.

3 THE COURT: I assume we're done with this witness.

4 MS. BORCHETTA: Yes, we are, your Honor.

5 (Witness excused)

6 THE COURT: Next witness is.

7 MR. CHARNEY: Plaintiffs call officer Sean Gillespie.

8 MS. GROSSMAN: No.

9 MR. CHARNEY: We'll do Mr. Beirne first.

10 I'm sorry. We're doing Deputy Commissioner John

11 Beirne.

12 JOHN BEIRNE,

13 called as a witness by the Plaintiffs,

14 having been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. CHARNEY:

17 Q. Good afternoon, Commissioner Beirne.

18 A. Good afternoon.

19 Q. Commissioner, you are the NYPD's deputy commissioner of
20 labor relations, correct?

21 A. Yes, I am.

22 Q. How long have you held that position?

23 A. As deputy commissioner, twelve years.

24 Q. And as the deputy commissioner of labor relations you
25 oversee investigation of complaints made by NYPD officers about

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D4F9FLO3 Beirne - direct

1 the conditions of their employment, correct?

2 A. Grievances, yes.

3 Q. And that would include grievances that officers make about
4 the existence of quotas on their arrests and summonses and stop
5 an frisk activity?

6 A. It would include what the labor law defines as adverse
7 employment actions based on activity quotas.

8 Q. So if an officer files a grievance saying I, you know,
9 claiming that he or she had suffered adverse employment action
10 and that he or she believed that was the result of some kind of
11 quota on summonses or arrests or stops as defined in the labor
12 law that would be something your office would investigate?

13 A. Yes, it would.

14 Q. You have been identified by defendants in this case as a
15 person in the NYPD with personal knowledge of the policies and
16 procedures regarding the development and implementation of NYPD
17 Operations Order 52, correct?

18 MS. GROSSMAN: Your Honor the city identified
19 Commissioner Beirne as 30(b)(6) witness to answer questions
20 about this topic. Different than having personal knowledge of
21 everything under the sun on this topic. It's about -- he's
22 there as a 30(b)(6) witness.

23 MR. CHARNEY: Your Honor, I was going to offer --

24 THE COURT: I think the plaintiff is right on this.
25 The question wasn't that broad. It said personal knowledge of

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Beirne - direct

1 the policies and procedures regarding the development and
2 implementation of NYPD Operations Order 52. That's pretty
3 narrow. It's an operations order.

4 You do have personal knowledge of that, don't you?

5 THE WITNESS: Yes, I do.

6 THE COURT: I don't think there's a problem.

7 Q. Actually to make this quicker. I was going to show the
8 witness the deposition notice to make sure that there's four
9 topics listed in it that he has personal knowledge of each of
10 those.

11 Commissioner, I've handed you what's been marked as
12 Plaintiffs' Exhibit 457. Do you recognize this document?

13 A. Yes, I do.

14 Q. And am I correct that this was the deposition notice that
15 you were shown at your deposition?

16 A. I believe so, yes.

17 Q. You see there are four topics listed, they are numbered A
18 through D on this notice?

19 A. Yes, I do.

20 Q. And the notice states that there will be a deposition taken
21 of a person or persons with the most knowledge of the NYPD's
22 development and implementation of these four topics, right?

23 A. Yes.

24 Q. And the first was Operations Order 52 which you said you
25 have personal knowledge of, correct?

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Beirne - direct

1 A. Yes.

2 Q. And the second is NYPD interim order number 49 which are
3 revisions to the patrol guide section on the officers monthly
4 and quarterly performance review system.

5 Do you see that?

6 A. Yes.

7 Q. And so it's correct that you also have personal knowledge
8 about the development and implementation of that interim order?

9 A. Yes. I have some general knowledge of it, yes.

10 Q. And then the third topic listed is the NYPD's quest for
11 excellence application?

12 A. Yes.

13 Q. And you also have personal knowledge of the development and
14 implementation of that?

15 A. Yes.

16 Q. And finally listed is NYPD Operations Order number 50. The
17 quest for excellent command conditions reports.

18 Do you see that?

19 A. I do. I'm concerned -- has this been corrected from the
20 original that was given to me. The characterization of
21 different orders were different.22 Q. I'm asking you if you have personal knowledge of Operations
23 Order number 50.24 A. Yes, I do. I believe -- I have personal knowledge of the
25 quest for excellence command condition report.

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D4F9FLO3 Beirne - direct

1 Q. Okay.

2 A. And the order that was dated September 23.

3 Q. Okay. That's fine. So we'll move on then.

4 Now you were actually a member of the NYPD's quest for
5 excellence committee, correct?

6 A. Yes, I was.

7 Q. And that was a committee that also included -- I'm sorry.
8 That was a committee that developed Operations Order 52,
9 correct?

10 A. Yes, among other things.

11 Q. And that committee also developed the quest for excellence
12 program?

13 A. Yes.

14 Q. As well as the new police officer monthly conditions impact
15 measurement reports?

16 A. Yes.

17 Q. And the revisions to the NYPD's procedures for the monthly
18 and quarterly performance reviews?

19 A. I'm sorry?

20 Q. So a minute ago we mentioned this interim order about
21 revising the patrol guide section for the police officer
22 monthly and performance reviews, right?

23 A. Yes.

24 Q. And so my question was did the quest for excellence
25 committee also develop those revised procedures?

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D4F9FLO3 Beirne - direct

1 A. Yes.

2 Q. Okay.

3 And besides yourself, the quest for excellence
4 committee also included the first deputy commissioner, right?

5 A. Yes.

6 Q. And the deputy commissioner of operations?

7 A. Yes.

8 Q. And the chief of patrol?

9 A. Yes.

10 Q. Okay. And there was also a representative from the chief
11 of departments office, right?

12 A. Yes.

13 Q. And this quest for excellence committee was first convened
14 in 2010, correct?

15 A. Yes.

16 Q. And that was right after the state legislature had amended
17 the law, labor law regarding quotas?

18 A. Right after the governor signed the amended law.

19 Q. And it was, in fact, your idea to create the quest for
20 excellence program, correct?

21 A. No. It was my idea to address the change in the labor law.

22 Q. And the way you chose to address it was to develop this
23 quest for excellence system, correct?

24 A. That's the way the committee decided to address it, yes.

25 Q. And the reason you wanted to address it that way is to

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1 ensure that NYPD supervisors not impose quotas on officer
2 enforcement activity, right?

3 A. No. The reason was that NYPD supervisors should not take
4 adverse personnel actions against employees based on a quota.

5 Q. But did you also have a problem with just the use of quotas
6 generally, whether or not there was going to be an adverse
7 employment action taken?

8 A. No.

9 Q. So, in other words, when the quest for excellence committee
10 convened, it was your view that it was fine for supervisors to
11 set numerical quotas on, for example, stops as long as officers
12 would not suffer adverse employment action if they failed to
13 meet those numbers?

14 A. My feeling was that the supervisors or the department could
15 set performance goals for employees. Whether they be numerical
16 or not was not an issue.

17 Q. In other words, that was not a problem for you if they were
18 numerical?

19 A. No. It was not.

20 Q. I want to show you what's been previously admitted into
21 evidence as Plaintiffs' Exhibit 290.

22 Put it up on the screen. It should come up right on
23 your screen here.

24 If we can blow it up a little bit. Actually turn to
25 the second page. You'll probably recognize a little better.

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D4F9FLO3 Beirne - direct

1 Q. Do you recognize this document?

2 A. Yes, I do.

3 Q. Can you tell me what this document is?

4 A. It's a memo that the chief of patrol prepared and issued to
5 all of the patrol boroughs under his command regarding the
6 quota bill.

7 Q. And this memo came out in October 2010, right?

8 A. Yes. That's the date on the memo.

9 Q. And at that point in time the quest for excellence
10 committee was already meeting, correct?

11 A. Yes, it was.

12 Q. So if we turn to the next page.

13 Go to the top and I want to look at the first
14 paragraph. Under department policy.

15 A. Can I move this?

16 Q. Do you need it bigger?

17 A. That's fine. Thank you.

18 Q. I actually am interested -- if you want to read the whole
19 thing to yourself and then I'll ask you a question.

20 (Pause)

21 A. Yes.

22 Q. Do you see the second to last sentence it says, "In an
23 effort to address crime and public safety conditions in
24 precincts, supervisors have made statements that could be
25 interpreted as the setting of quotas for enforcement activity."

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Beirne - direct

1 A. Yes, he was.

2 Q. Now you would agree that if, in fact, supervisors were
3 making such statements, that would be improper, correct?

4 A. If it was strictly numbers and not related to conditions,
5 specific conditions, it would be -- it would be I guess
6 improper is a good enough word.

7 Q. Well it could also actually violate the state statute,
8 right?

9 A. No. Not necessarily.

10 Q. So it would only violate the state statute if, in fact, an
11 officer was -- suffered some sort of adverse employment action
12 if they didn't meet the number?

13 A. Yes.

14 Q. But if a supervisor simply made -- simply directed their
15 officers to meet a number, that in your view would not violate
16 the --

17 A. That would be setting performance goals.

18 Q. So, setting a performance goal is simply setting a number
19 of, for example, stops that a supervisor expects his officers
20 to meet?

21 A. In certain circumstances, yes.

22 Q. Now at the point that the quest for excellence committee
23 was meeting, were you aware of recordings that had been made
24 public from the 41st precinct in which supervisors can be heard
25 actually stating specific numbers for enforcement activity?

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D4F9FLO3

Beirne - direct

1 A. No, I was not.

2 Q. Were you aware of recordings that had been made public from
3 the 81st precinct where supervisors were making statements
4 about officers increasing their enforcement activity?

5 A. I became aware of that. I'm not sure when it was.

6 But that was not my concern when I got the change in
7 the labor law, and that -- I decided that because the
8 grievances would come to me, that we had to address that.

9 Q. Now, you were aware at the time the quest for excellence
10 committee started meeting of an arbitration decision finding
11 that there had been illegal summons quotas imposed in the 75th
12 precinct in Brooklyn, correct?

13 A. Yes. That was a couple of years earlier. And it was the
14 state of law at that time.

15 Q. Now, based on what you said earlier about the reason for
16 convening this quest for excellence committee, is it fair to
17 say that you, meaning the committee, wanted to try to reduce
18 the likelihood that supervisors would make statements that
19 officers were interpreting as quotas?

20 A. That was part of it. But more importantly there were a
21 number of people who were attempting to interpret the change in
22 the labor law to mean that we could not set performance goals
23 for any of our employees. And we wanted to make sure that that
24 was -- misunderstanding was corrected.

25 Q. And this quest for excellence committee stopped meeting in

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D4F9FLO3 Beirne - direct

1 2011; is that correct?

2 A. I believe it was 2011, shortly before the orders were
3 issued implementing the quest program.

4 Q. And so that would be the fall of 2011, correct?

5 A. Yes.

6 Q. I want to show you what's been marked as Plaintiffs'
7 Exhibit 363.

8 THE COURT: Are you going to be moving that into
9 evidence?

10 MR. CHARNEY: Yes.

11 THE COURT: Are you going to object, Ms. Grossman?

12 MS. GROSSMAN: No, your Honor. 363.

13 THE COURT: So 363 is received.

14 (Plaintiffs' Exhibit 363 received in evidence)

15 THE COURT: What is that?

16 Q. Do you recognize this document?

17 THE COURT: We can do it faster.

18 What is it?

19 THE WITNESS: It is an operations order implementing
20 the quest for excellence.

21 THE COURT: The number, operations order?

22 THE WITNESS: 50 of 2011.

23 MR. CHARNEY: Actually I apologize but I think I'm
24 going to put it on the Elmo or do we have it on the Elmo.
25 Sorry. I didn't know if I had enough copies.

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D4F9FLO3 Beirne - direct

1 Q. So, Commissioner, this is one of the orders that the quest
2 for excellence committee developed?

3 A. Yes.

4 Q. And this document provides some general information about
5 the scope and purpose of the quest for excellence program,
6 correct?

7 A. Yes.

8 Q. So based on your review of this document and your own
9 understanding of the quest for excellence program, is it fair
10 to say that the purpose of the quest for excellence program is
11 to ensure that NYPD officers are engaging in enforcement
12 activities that effectively address the crime and quality of
13 life conditions in their command?

14 A. Yes.

15 Q. And is it also fair to say that the program really has
16 three components; the first being identifying what those crime
17 and quality of life conditions to be addressed are?

18 Would that be one of the components?

19 A. Yes.

20 Q. And the second would be for supervisors to provide guidance
21 to officers by setting performance goals for their enforcement
22 activity that they want their officers to address -- to use to
23 address the crime conditions, right?

24 A. Yes.

25 Q. And then is it fair to say that the third component would

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Beirne - direct

- 1 be monitoring and evaluating officers' enforcement activity to
2 determine whether or not officers are effectively addressing
3 the crime and quality of life conditions in their command?
4 A. Yes.
5 Q. Are there any other components that I'm leaving out?
6 A. I believe that that is the -- those are the significant
7 components of it.
8 Q. So we're going to come back to the first one, the
9 identifying the conditions. But I want to talk about the other
10 two. I want to talk about the performance goals and then the
11 monitoring, evaluating of officer activity.
12 So I now want to show you what's been previously
13 admitted as Plaintiffs' Exhibit 285 and I think you'll
14 recognize this document.
15 Do you recognize this document?
16 THE COURT: Can't we go faster.
17 This is Operations Order 52, right?
18 THE WITNESS: Yes.
19 Q. You know what Operations Order 52 is, correct?
20 A. Yes.
21 Q. So I want to focus specifically on paragraph three, if we
22 can blow it up.
23 Do you see where it says --
24 A. It's jumping all over here.
25 Q. Sorry about that.

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Beirne - direct

1 Do you see where it says, "To provide guidance to
2 police officers concerning their duties, department managers
3 can and must set performance goals."

4 Do you see that?

5 A. Yes, I do.

6 Q. And then it goes on to say, "Officers should be expected to
7 act within appropriate legal standards to perform the tasks
8 cited in the above mission statement with particular attention
9 to self-initiated arrests, issuing summonses, conducting stops,
10 and engaging in other enforcement activities."

11 Do you see that?

12 A. Yes, I do.

13 Q. And so it's fair to say based on the language of this
14 paragraph that it's appropriate for supervisors to set
15 performance goals for different kinds of enforcement activity,
16 right?

17 A. Yes. That are tied to the conditions that have been
18 identified by the commanding officers.

19 Q. And so you think it's appropriate for a supervisor to set a
20 performance goal for stop-and-frisk activity to address a
21 specific crime condition, right?

22 A. If that condition is -- can be addressed by stops, then,
23 yes.

24 Q. And I think you said earlier that could include setting a
25 goal of a certain numbers of stops, right?

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Beirne - direct

1 A. Yes.

2 Q. Now are you concerned at all that if a supervisor sets a
3 goal like that where they set forth numbers of stops that that
4 could be interpreted by the officers as a quota?

5 A. It's a performance goal.

6 Q. But that's not my question.

7 My question is: If a supervisor does set such a
8 performance goal, say we have a lot of robberies in this
9 sector, I want you to do X number of stops to address that
10 condition, are you concerned at all that that would be
11 interpreted as a quota by the officers under that supervisor's
12 authority?

13 A. Not necessarily, no.

14 Q. I want to skip ahead a couple pages to paragraph 15.

15 So here -- and actually before I ask about paragraph
16 15.

17 A. Can I read that.

18 Q. Sure. But I actually wanted to ask you a question not
19 related to paragraph fifteen first.20 I think you testified earlier that a quota under the
21 state law that would be prohibited would be a quota in which an
22 officer would suffer adverse employment action if, in fact,
23 they failed to meet that quota, right?

24 A. Yes.

25 Q. So now if you want to read paragraph 15 and I want to ask

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1 you a question about it.

2 (Pause)

3 A. Yes.

4 Q. So you see in paragraph the first sentence, "Uniformed
5 members of the service who remain ineffective, who do not
6 demonstrate activities impacting on identified crime and
7 conditions, or who fail to engage in proactive activities,
8 despite the existence of crime conditions and public safety
9 concerns, will be evaluated accordingly and their assignments
10 will be reassessed."

11 So my first question is proactive activities. You see
12 it says officers who fail to engage in proactive activities?

13 A. Yes.

14 Q. Proactive activities include stops, arrests, summonses,
15 right?

16 A. Among several other activities.

17 Q. But those are three of the activities that would be
18 considered --

19 A. They are three of the several activities. Community
20 conferrals, directed patrols, etc.

21 Q. I understand.

22 My question was simply when the term "proactive
23 activities" was used that would include stops, summonses, and
24 arrests, right?

25 A. Yes, it would.

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1 Q. And so this sentence says, "That officers who fail to
2 engage in such activities, despite the existence of crime
3 conditions and public safety concerns, will be evaluated
4 accordingly."

5 So that means that if they fail to engage in, for
6 example, stops despite the presence of crime conditions in
7 their command, they will -- that will be reflected on their
8 evaluation, right?

9 A. If they fail to engage in proactive activities and the
10 crime condition that they're supposed to be addressing
11 continues unabated, then it would be reflected.

12 Q. But that's not what this says. Right.

13 This says "Officers who fail to engage in proactive
14 activities, despite the existence of crime conditions and
15 public safety concerns, will be evaluated accordingly," right?

16 This doesn't say "and the condition continues
17 unabated," right?

18 A. Well, I'm putting that in there.

19 But that does not say specifically arrests, stop,
20 question and frisk, summonses. It talks about proactive
21 activities that include those three activities but several
22 others.

23 Q. I understand.

24 But all I'm trying to establish is that this paragraph
25 states that if an officer fails to engage in proactive

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1 activities, despite the fact there's a crime condition in their
2 command, they -- that will be reflected on their performance
3 evaluation?

4 A. Yes. I think we're charged with trying to get the police
5 officers to work, do the things that they're getting paid for.

6 Q. And it also says that if they fail to engage in these
7 activities, their assignments will be reassessed, right?

8 A. Yes.

9 Q. And you would agree that a negative performance evaluation
10 would be an adverse employment action, right?

11 A. It could be.

12 Q. And would you agree that a reassignment to a different
13 command could be an adverse employment action?

14 A. Yes, it could be.

15 Q. And just to make clear, this document, this Operations
16 Order 52, is it your understanding that this was provided to
17 supervisors in all the precincts in the police department?

18 A. Yes. All operations orders are provided.

19 Q. And it was the expectation that of you and the quest for
20 excellence committee that supervisors read and implement this
21 order, correct?

22 A. Yes.

23 Q. Now I want to talk a little bit about the third piece of
24 the quest for excellence program I mentioned earlier which is
25 monitoring and evaluating officer enforcement activity.

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Beirne - direct

1 If you look at paragraph 8 of Operations Order 52
2 which is back on the previous page.

3 Do you need a minute to read?

4 A. Please.

5 Q. I just want to ask you a couple questions about that?

6 THE COURT: You said paragraph eight?

7 THE WITNESS: Yes.

8 MR. CHARNEY: Yes.

9 (Pause)

10 THE WITNESS: Yes, sir.

11 Q. So based on your review of paragraph 8, is it fair to say
12 that the way that officer activity is monitored and evaluated
13 in the quest for excellence system is through the use of the
14 police officer monthly conditions impact measurement report; is
15 that right?

16 A. Yes.

17 Q. I'm going to hand the witness what's been marked as
18 Plaintiffs' Exhibit 205.

19 THE COURT: Is that in evidence?

20 MR. CHARNEY: Not yet.

21 THE COURT: Is there going to be any objection to 205?

22 MS. GROSSMAN: Could I just have a look?

23 THE COURT: Sure.

24 MS. GROSSMAN: No objection.

25 THE COURT: Good. 205 is received.

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Beirne - direct

1 (Plaintiffs' Exhibit 205 received in evidence)

2 Q. So is it fair to say or is it correct, Commissioner, that
3 what I handed you, Exhibit 205 is an example of a police
4 officer's monthly conditions impact measurement report?

5 A. Yes, I believe it is.

6 Q. Now the information that is listed on this report when it's
7 filled out is simply the numbers of each category of
8 enforcement activity that an officer engages in each month,
9 right?

10 A. No. It indicates a lot more information. For the month,
11 the reporting month, it would indicate the officer's assignment
12 in the first column.

13 Q. You're right.

14 A. In the second column it would indicate the conditions that
15 the officer -- that the commanding officer has identified as
16 specific to the sector or post and tour that he wants the
17 officer to address.

18 And then across the smaller columns to the right of
19 that would indicate all of the different proactive or
20 performance activities that the officer would engage in,
21 whether they're to address the condition or not to address the
22 condition.

23 Q. Thank you for correcting me.

24 I guess my question is with respect to that last
25 category of information, the various categories, the small

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1 columns that go across the page there?

2 A. Yes.

3 Q. In those particular boxes, the only information that's
4 being provided is, for example, the number of arrests that an
5 officer did on a particular tour, the number of summonses they
6 wrote, the number of stop and frisks they conducted, right?

7 A. Yes. They're -- usually they're -- there would be numbers
8 entered in the row next to the date.

9 Q. So in these boxes an officer would not be indicating, for
10 example, what the suspected crime he stopped somebody was for,
11 right?

12 A. That would be in column one.

13 Q. Well column one would be the crime condition that they are
14 addressing, right?

15 A. Yes.

16 Q. But that doesn't necessarily mean that the stop that was
17 made was for the specific crime that the -- the crime condition
18 lists, correct?

19 A. It doesn't have to be for that, correct.

20 Q. And my question was simply in the box, the column on the
21 right-hand side that says stop and frisk, the only thing an
22 officer would write in that column would be how many stop and
23 frisks they did for that particular tour, right?

24 A. Yes. But then if you look in the second column where it
25 says yes or no for each one of the conditions, he would circle

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1 either yes that it did address the condition or no, it did not.

2 Q. All right. And other than those two things, listing the
3 number of stops an officer made and whether or not, in the
4 officer's view, the stops addressed the crime condition, there
5 is no other information included in the form about that stop,
6 right?

7 A. Correct.

8 Q. So, for example, the officer would not indicate whether or
9 not a weapon was recovered during the stop, right?

10 A. No.

11 Q. They wouldn't indicate if any contraband was found during
12 the stop?

13 A. I don't believe so.

14 Q. And they obviously wouldn't indicate the basis for their
15 supposed reasonable suspicion, right? They wouldn't indicate
16 that?

17 A. Not on this form, no.

18 Q. No, of course.

19 So, I want to show you now what's been marked as
20 Plaintiffs' Exhibit 315. I'm going to hand you a copy.

21 Do you recognize this document?

22 A. Yes. This is --

23 THE COURT: Which is this now?

24 MR. CHARNEY: 315.

25 THE COURT: What's it called?

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- 1 MR. CHARNEY: 315.
2 THE COURT: It's not in evidence yet?
3 MR. CHARNEY: No.
4 MS. GROSSMAN: No objection, your Honor.
5 THE COURT: 315 is received in evidence.
6 MR. CHARNEY: We'll just pull it up. Thank you.
7 (Plaintiffs' Exhibit 315 received in evidence)
8 Q. This is the interim order I was referring to at the
9 beginning of your testimony which revised the procedures for
10 doing the monthly and quarterly officer performance reviews,
11 right?
12 A. Yes.
13 Q. And this revision was made to account for the
14 implementation of the quest for excellence program, right?
15 A. Yes. This interim order supersedes what was the existing
16 order on police officers' monthly quarterly performance review
17 and rating system in the patrol guide section 205-57.
18 Q. So it's -- am I correct that this interim order sets forth
19 what the current NYPD policies and procedures are for
20 conducting monthly and quarterly police officer performance
21 reviews?
22 A. Yes, I believe so.
23 Q. Now, do you see on its -- the third page, paragraph 11.
24 A. Yes.
25 Q. Paragraph 11 sets forth what the supervisor is supposed to

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1 do when they review the police officer monthly condition impact
2 measurement report, right?

3 A. Yes.

4 Q. And so it says that -- on the second page of that police
5 officer monthly conditions impact report, the supervisor is
6 supposed to check a box stating whether in his or her view the
7 officer was effective or ineffective in addressing the crime
8 conditions for that month, correct?

9 A. Yes.

10 Q. Now, in making this assessment the only information that
11 the supervisor is required to consider is the information that
12 is contained on the police officer monthly conditions impact
13 measurement report, right?

14 A. Yes. But there is an awful lot of other information that
15 would be -- other than the numbers that I'm anticipating you
16 directing at. I mean if the officer had only two or three days
17 during the month on patrol, that would certainly weigh heavily
18 on whether or not he was effective or she was effective in
19 addressing the conditions.

20 Q. I understand. But -- and I think you already answered my
21 question. The information that the supervisor is required to
22 consider when making this monthly assessment is -- the only
23 information that he or she is required to consider is the
24 information that's on the monthly conditions impact report,
25 right?

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1 A. Yes.

2 Q. And I know that we mentioned before that the information on
3 this report is going to include the days the officer worked,
4 right?

5 A. Yes.

6 Q. It's going to include what the crime conditions were for
7 each of those days?

8 A. Yes.

9 Q. And it's going to include which -- sorry. How many of each
10 category of enforcement activity the officer conducted each
11 day, right?

12 A. Yes.

13 Q. But that's all that's on this form, right?

14 A. Yes. And that's -- that's all that's on the form.

15 Q. Okay. Now if we can turn back real quickly to op order 52.
16 I want to look a lot paragraph 13 which I think is on the third
17 or fourth page.

18 Do you see paragraph 13?

19 A. Yes. Let me just peruse it quickly.

20 (Pause)

21 A. Yes.

22 Q. Do you see that paragraph 13 says that, "Officers must be
23 made aware that when a supervisor conducts an evaluation, a
24 high degree of review and consideration will be given to the
25 member's daily efforts to address the two primary identified

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1 conditions."

2 Do you see that?

3 A. Yes.

4 Q. And those efforts are the activities which are documented
5 on the monthly conditions impact report, right?

6 A. Yes.

7 Q. And, again, those activities on that report are set forth
8 in numerical fashion, right?

9 A. Yes.

10 Q. Now I'm going to ask you this question again.

11 Do you have any concern that this particular directive
12 to give a high degree of consideration to the activity numbers
13 of an officer when doing the evaluation, do you have any
14 concern that if a supervisor does that, that that can be
15 interpreted by one of his officers as imposing a quota?

16 A. If that could be interpreted by one of the officers?

17 MS. GROSSMAN: Objection.

18 THE COURT: Sustained. Could.

19 Q. I'm asking are you concerned that that could happen. If
20 you're directing supervisors --

21 THE COURT: Does he have that concern?

22 Q. Yeah. Do you have that concern?

23 THE COURT: That I would allow.

24 THE WITNESS: It's possible that an officer might
25 interpret that as a quota.

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1 THE COURT: But is that a concern you have? That's
2 his question.

3 THE WITNESS: No.

4 THE COURT: Okay. That's the answer.

5 Q. Now if we can go back to 315. Again, I apologize for all
6 the back and forth.

7 On the same page that we're looking for, if you notice
8 there's a note at the bottom written in italics. Do you see
9 that. Let me know when you've read that.

10 (Pause)

11 A. Yes.

12 Q. Do you see where it says --

13 A. It goes on to the next page.

14 Q. You're right. Go on to the next page.

15 I just wanted to actually ask you about the first
16 paragraph.

17 A. Okay.

18 Q. So reading that note, is it correct that --

19 A. Can we go back to the first page.

20 MR. CHARNEY: Go back to the first part.

21 Q. Do you see where it says, "In cases where a uniformed
22 member's performance fails to address sector conditions, the
23 designated supervisor will notify the platoon commander,
24 special operations lieutenant."

25 A. Yes.

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D4F9FLO3 Beirne - direct

- 1 Q. And, again, the form that is used to conduct the quarterly
2 evaluation is the police officer monthly impact measurement
3 report we were looking at earlier, right?
4 A. Yes.
5 Q. And it's on the back of that form, correct?
6 A. Yes.
7 Q. So if we could go back to Exhibit 205.
8 A. Yes.
9 Q. So on the second page right at the bottom there's a section
10 says supervisor's quarterly performance review, right?
11 A. Yes.
12 Q. And then it lists seven, I guess seven items that the
13 supervisor is supposed to complete?
14 A. Yes.
15 Q. And again this is every three months?
16 A. Yes.
17 Q. And again in conducting this quarterly performance review,
18 the only information that a supervisor is required to consider
19 would be the information on the monthly conditions impact
20 measurement report, right?
21 A. On the other side of the form, yes.
22 Q. And the performance -- the quarterly review is -- the
23 scoring is done on a 17-point scale, right?
24 A. I didn't add it up but, yes.
25 Q. Is that correct?

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1 THE COURT: I'm not sure I understand. Where is the
2 17 point scale?

3 Q. The maximum score that an officer could receive would be
4 17. If it would help actually if we go to --

5 THE COURT: You mean the total?

6 I see that. That's the most points you could get.
7 That would be five threes and a two.

8 Q. Yes.

9 Is that right?

10 A. Yes.

11 Q. And isn't it also true that if an officer receives less
12 than twelve points on the quarterly review twice in one year
13 she or he will be referred to the borough personnel review
14 board?

15 A. I believe so but is -- are you referring to some other --

16 Q. I'm sorry. This -- the statement I just made is not on the
17 monthly form. But if we go again -- and I hate to keep going
18 back and forth -- to Exhibit 315.

19 A. I believe you're right if that makes any difference.

20 Q. And you would consider being referred to the personnel
21 review board to be a negative employment action, right?

22 A. Not necessarily, no.

23 Q. Well then if we look at Exhibit 315, page 7, real quick.
24 Do you see going down -- keep going. Paragraph 36 -- I'm
25 sorry. No. Need to actually go a little bit further down.

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Beirne - direct

1 A. Thirty-eight.

2 Q. Go down to paragraph 39.

3 Do you see it says, in terms of the responsibility of
4 the borough personnel review board, it says, "Review cases and
5 recommend corrective action to be taken. Corrective action may
6 include change of assignment, intraborough or interborough
7 transfer and/or disciplinary action."

8 Do you see that?

9 A. Yes. That would be an adverse personnel action. But just
10 referring them to the personnel review board would not.

11 Q. So maybe a fairer question is if somebody is referred to
12 the borough personnel review board, the borough personnel
13 review board has the power to take adverse employment action
14 against them, right?

15 A. Yes.

16 Q. And, again, a referral will happen automatically if an
17 officer receives two quarterly evaluations in which they scored
18 less than 12 points on, right?

19 A. Yes.

20 Q. And just to close the loop on this. And the basis for the
21 score on a quarterly evaluation is going to be the information
22 on the monthly conditions impact report, right?

23 A. Yes.

24 Q. Nothing in Exhibit 315, the procedures for the monthly and
25 quarterly performance review, require that a supervisor, as

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D4F9FLO3 Beirne - direct

- 1 part of this review, assess whether the stops or arrests or
2 summonses that are indicated on these forms complied with the
3 constitution, right?
4 A. Could you repeat that.
5 Q. Sure.
6 The procedure that we're looking at here --
7 A. Yes.
8 Q. -- in order 49, nothing in this procedure anywhere requires
9 that a supervisor, when they are conducting the monthly or the
10 quarterly performance reviews, assess whether the stops or the
11 arrests or the summonses that are listed on the monthly impact
12 report were constitutional or not?
13 A. Nothing on this form, no. But that would clearly be
14 something that we would be very concerned about and we would be
15 addressing as we got that information.
16 Q. But my question is that that's not set forth anywhere in
17 this procedure, right?
18 A. No.
19 Q. And it's not set forth anywhere in Operations Order 52, is
20 it?
21 A. I don't believe so, no.
22 Q. Or in Operations Order 50 that we just looked at, right?
23 A. That the activity was permissible under the constitution?
24 Q. Yes.
25 A. No. Not specifically.

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D4F9FLO3 Beirne - direct

1 Q. Now when you say we would be concerned about it, are you
2 referring to the quest for excellence committee?

3 A. No. As a manager in the New York City Police Department I
4 would be concerned about it.

5 Q. But you didn't feel it was necessary to put it in any of
6 these quest for excellence documents?

7 A. No. Because the purpose of this was not to evaluate the
8 specific constitutionality of the stops or the arrests; that
9 clearly if we were told that the arrests were made on other
10 than probable cause by the district attorney's office, we would
11 be looking to address that.

12 Q. But stops and frisks don't -- in fact, most times stops and
13 frisks don't get to the district attorney's office, right?

14 A. Sometimes they do. Sometimes they don't.

15 Q. You'd agree that about 90 percent of all stops don't result
16 in an arrest or summons, right?

17 A. I don't know what the percentage is but it's around that.

18 Q. And you would agree that those stops that don't result in
19 an arrest or a summons are not going to go to the district
20 attorney, right?

21 A. No.

22 But the supervisor who is reviewing the UF 250 is
23 going to make a determination whether or not the stop and
24 question and frisk was made based on reasonable suspicion.

25 If the supervisor didn't make that determination, and

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1 it was referred to CCRB or to some other entity and it was
2 determined that it wasn't, then we would know and we would try
3 to address that.

4 (Continued on next page)

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Beirne - direct

1 Q. Well, the first question I have is, you're aware that the
2 supervisors who are conducting the monthly and the quarterly
3 performance reviews are not necessarily the same supervisors
4 who reviewed the officers' 250 forms?

5 A. Not necessarily, but they usually are.

6 Q. You're aware that oftentimes the desk sergeant reviews the
7 250s, right?

8 A. Yes. But the desk sergeant is usually a sergeant from the
9 command who knows -- who is supervising a squad. It could well
10 be that that sergeant is supervising a squad that the officer
11 is in.

12 Q. When a supervisor is doing the monthly and the quarterly
13 review, he doesn't have the officer's UF-250 form in front of
14 him, right?

15 A. No. But he or she would know that this officer has not
16 complied with the requirements based on the review of the 250,
17 or if he consulted with the patrol sergeant or other sergeants
18 in the command, they would make it known.

19 Q. Going back to Exhibit 205, the monthly conditions impact
20 report, the second page. So looking at the quarterly
21 performance review section, do you see there is nothing here
22 that specifically addresses whether or not officer's
23 enforcement activity is constitutional or not, right?

24 A. That's correct. Other than the additional comments, which
25 I would hope, if the officer was not doing those activities

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D4F8FLO5 Beirne - direct

1 within the bounds of the law, that that would be commented on.

2 Q. You're aware that in the procedure that we looked at,
3 Exhibit 315, there is a discussion of the additional comment
4 section in there, right, and what can go in additional
5 comments? Are you familiar with that?

6 A. I don't --

7 Q. I will point you to the right page. We will come back to
8 that.

9 Have you done any assessment of completed quarterly
10 performance reviews to determine if supervisors are notating on
11 the quarterly reviews whether or not officers are committing
12 illegal stops or making false arrests or anything of that
13 nature?

14 A. No, I have not.

15 Q. I want to show you what is marked as Exhibit 234. This is
16 an example of a completed quarterly performance review and
17 monthly conditions impact report.

18 THE COURT: What is the exhibit number?

19 MR. CHARNEY: 234. I don't know if there are any
20 objections.

21 THE COURT: Did you give a copy to Ms. Grossman?

22 MR. CHARNEY: I am about to.

23 THE COURT: Then we will find out.

24 MS. GROSSMAN: This is one page of Exhibit 234?

25 MR. CHARNEY: It's two pages. It's 21053 to 21054.

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1 If we can pull it up on the screen, it has an exhibit
2 number on it.

3 This is Plaintiffs' Exhibit 234. The entire exhibit
4 is numerous completed conditions impact measurement reports. I
5 think they are by 30 or 40 different officers, and I didn't
6 want to go through all of them because I thought it would take
7 too long, so I wanted to show an example of one. This is a
8 completed form, a two-page form. It's filled out and signed
9 and dated. I don't think there is any information missing from
10 this particular form.

11 MS. GROSSMAN: I have no objection. I just wanted to
12 be clear what we are receiving.

13 THE COURT: So if there is no objection, 234 is
14 received.

15 MS. GROSSMAN: It's just an excerpt from 234.

16 MR. CHARNEY: I can give you the pages. It's Exhibit
17 234 at Bates numbers NYC_2_21053 through 21054.

18 (Plaintiffs' Exhibit 234, Bates Nos. 21053 through
19 21054, received in evidence)

20 BY MR. CHARNEY:

21 Q. Commissioner, is this an example of a completed police
22 officer monthly conditions impact measurement report?

23 A. I believe it is, yes.

24 Q. It's for an officer in the 28th Precinct, correct? You see
25 at the top where it says "command"?

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D4F8FLO5 Beirne - direct

1 A. I can't really make that out. I think I need new glasses.

2 THE COURT: It's very hard.

3 A. Yes. I see it on the screen.

4 Q. This is a patrol officer from the B2 patrol squad?

5 A. Yes.

6 Q. And this is a report for March 2012, right?

7 A. Yes.

8 Q. Turning to the second page, the sergeant listed -- he
9 indicated that this officer was effective in addressing the
10 conditions that month, right? Do you see that, about halfway
11 down the page?

12 A. Yes.

13 Q. Then he wrote a comment, he said, "The officer showed
14 improvement from last month, was proactive in combating
15 conditions which resulted in 24 summonses to address
16 conditions." Do you see that?

17 A. Yes.

18 Q. So this particular sergeant was, in fact, discussing the
19 number of summonses that were conducted by that officer during
20 that month, correct?

21 A. Yes.

22 Q. Is it your view that this is a proper way to complete the
23 monthly performance review?

24 A. It's certainly not improper.

25 Q. Then do you see at the bottom, the very bottom, in the

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1 Q. So you don't have any problem with this comment?

2 A. No.

3 Q. I want to show you one more of these sample forms. This is
4 Plaintiffs' 236.

5 MR. CHARNEY: I will give a copy to defense counsel.
6 The Bates number is NYC_2_21251 through 21261.

7 THE COURT: Any objection, Ms. Grossman?

8 MS. GROSSMAN: No objection.

9 THE COURT: All right. Pages from 236 are received.
10 (Plaintiffs' Exhibit 236, Bates Nos. 21251 through
11 21261 received in evidence)

12 Q. This first page is actually a different document, it's not
13 a monthly conditions impact report, right?

14 A. I'm confused, Mr. Charney. It says detective bureau DD-5
15 attachments. And this is --

16 Q. I guess what I am looking at is the command that's listed
17 there. You see it says 107th Precinct?

18 A. Yes.

19 Q. Then it says squad AC1. Isn't that anticrime?

20 A. That's anticrime, yes.

21 Q. So anticrime unit officers are covered by the new monthly
22 conditions impact report, right?

23 A. Yes. If they are assigned to patrol, yes.

24 Q. So this first page here is a supervisor recap form for the
25 107th Precinct anticrime unit for March of 2012, right?

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1 A. Yes.

2 Q. So this form actually lists the monthly activity for all of
3 the officers in the unit, right?

4 A. I would assume so, yes.

5 Q. It looks like there is about seven -- six officers listed?

6 A. Six.

7 Q. If you turn to the second page, we actually now see a
8 monthly conditions impact report for one of those seven
9 officers, right?

10 A. Yes.

11 Q. Do you see on the third page of this document, 21253, you
12 see that the supervisor wrote a comment under -- first of all,
13 do you see the supervisor appeared to have checked both
14 effective and ineffective? Do you see that?

15 A. Officer's impact --

16 THE COURT: I think it was changed to ineffective.

17 Q. So it must have been changed from effective to ineffective?

18 A. Yes.

19 Q. Then do you see that the reason or the comment that the
20 supervisor wrote was, "PO did not have an arrest for the month,
21 although he did have 17 250s"?

22 A. Yes.

23 Q. So the only basis that the sergeant provided, at least in
24 writing, of the reason for his determination was the number of
25 arrests and the number of 250s, right?

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1 A. For his?

2 Q. His determination.

3 A. Oh, determination.

4 Q. The only information that he provided here about his
5 effectiveness determination was the number of arrests and the
6 number of 250s for that month that this officer performed,
7 right?

8 A. Yes. But that's what an anticrime officer is supposed to
9 be doing.

10 Q. But there is no discussion here of what the 250s were for,
11 whether or not the officer saw probable cause to arrest someone
12 and failed to do it, there is nothing like that written here,
13 right?

14 A. No. But I like to believe that the officer who made the
15 arrest is making an arrest based on probable cause. The
16 officer has indicated, again, in the columns next to each date,
17 whether or not his activity, whatever it was, I guess it was
18 the UF-250s, were addressing the conditions. And in all of the
19 entries, he is indicating they did address the conditions.

20 Q. I understand that. My only question was, the supervisor,
21 when doing his monthly evaluation here, and determining that
22 this officer was ineffective in addressing the conditions in
23 the command for this month, the only rationale he has expressed
24 here for that determination is the fact that the officer had
25 not done an arrest --

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1 Q. But you would agree that even officers in the same unit are
2 not always all patrolling together, right?

3 A. Anticrime, generally, they do.

4 Q. So you're saying all six of these officers would ordinarily
5 patrol together at once?

6 A. On a given tour, yes. They would not all be in one car,
7 but they would be in two or three cars, depending upon --

8 THE COURT: You're saying they would all go to the
9 same location at the same time?

10 THE WITNESS: No. They would be addressing the
11 conditions in the precinct.

12 THE COURT: But they would separate and go to
13 different corners or streets or whatever?

14 THE WITNESS: Unless there was a specific --

15 THE COURT: Response to a radio run.

16 THE WITNESS: No. If there was a specific crime
17 condition that the commander had identified, and they wanted to
18 address it as quickly as possible, they could possibly be at
19 the same location.

20 Q. Ordinarily, two or three cars, they are not all going to go
21 to the same location during the tour; they are going to go to
22 different high-crime locations within the command?

23 A. Within the command, probably.

24 Q. It's fair to say that every officer in this anticrime unit
25 is not going to observe the same criminal behavior in each

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1 employment action that they believe was taken against them
2 because of quotas?

3 A. Yes.

4 Q. Am I correct that since 2010, there have been nine such
5 grievances filed by police officers in the New York Police
6 Department?

7 A. I believe that I said that at the deposition, but it was
8 pending the completion of my investigation on them. I said it
9 could be as high as nine. I have completed the investigation
10 and, in fact, it was only four.

11 Q. Now, when you say it was only four, are you saying there
12 were only four grievances filed where quotas were at issue?

13 A. Yes.

14 Q. So why did the number change from nine to four? I am not
15 clear about that.

16 A. One of the cases, and I don't have all of the cases in my
17 memory, but I do recall one of the cases a police officer
18 alleged that he was put into performance monitoring because he
19 failed to meet a quota. When I investigated it and found out
20 that he was put into performance monitoring because he had two
21 civilian complaints that were substantiated within a three
22 month period, that was the reason. So he wasn't put in.

23 Another case, that was really three of the cases,
24 concerned -- well, there was another case that wasn't.

25 Q. I understand. Am I getting this right that originally

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1 there were nine grievances where officers alleged quotas, but
2 then based on your investigation, you determined that there
3 were in fact just four?

4 A. Yes.

5 Q. And so those were in fact four cases where you believe that
6 there had been a quota imposed?

7 A. No. That the officer alleged that he was the subject of
8 the adverse discipline, whatever it was, because of a quota,
9 and in all four of those cases, after my investigation, I found
10 that there were other conditions that resulted in that adverse,
11 but one of them possibly was a quota claim.

12 Q. So one of the reasons that the person may have received the
13 adverse employment action was because of a quota, is that what
14 you're saying? I am just trying to understand.

15 A. His claim, if it's true, was because of a quota.

16 Q. Then the other five, even the officer himself is not making
17 any quota allegations? I don't understand the difference
18 between the five where you say there is no quota allegation and
19 the four that you say there was.

20 A. My concern is that some officers would try and use the
21 labor law section as a shield for some negative action being
22 taken against them. In the cases that I removed or say that
23 there was no quota involved, there was clearly other
24 substantial reasons why that action was taken, and they were
25 unrelated to any quotas. They had just mentioned the fact that

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1 the action was based on the quota.

2 In the four other cases, there is a possibility that
3 the action was taken as a result of a quota. I'm not so sure.
4 But those four are going through the procedure and it will be
5 determined.

6 Q. By procedure, you mean a labor arbitration procedure?

7 A. Ultimately a labor arbitration procedure. There is a
8 four-step grievance procedure and then --

9 Q. That's four quota grievances since 2010, right?

10 A. Yes.

11 Q. Prior to 2010, the only one you're aware of is from the
12 75th Precinct?

13 A. Yes.

14 Q. Some of these four have, in fact, happened even more
15 recently than 2010, is that true?

16 A. I don't have the specific dates in my head, but it's quite
17 possible.

18 Q. Now, with respect to the quest for excellence program,
19 which we have discussed, you agree that there are changes that
20 need to be made to the procedures, correct?

21 A. Yes.

22 Q. And you have characterized these procedures as a work in
23 progress, right?

24 A. Yes.

25 Q. And you believe that the best way to make these

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1 improvements would be to consult with experts, correct?

2 A. I don't know what you mean by that.

3 Q. In other words, you said that the quest for excellence
4 system is a work in progress, right?

5 A. Yes.

6 Q. And you think there are improvements that have to be made,
7 right?

8 A. Yes.

9 Q. To figure out what improvements should be made, you think
10 that it would be a good to consult with experts, right?

11 A. I think there has to be a review of the process, yes.

12 Q. And that would involve consulting experts to determine what
13 needs to be fixed?

14 A. It possibly could, but I am not contemplating that at this
15 time. I don't think that there are any experts in the quest
16 program.

17 Q. What about officer performance evaluations?

18 A. That's entirely different.

19 Q. Isn't that part of the quest program though?

20 A. It's part of it, but it's not the major part of it. The
21 quest program is a major change in the way the police
22 department manages the activities of their resources.

23 Q. But didn't we talk at the beginning of your testimony that
24 one of the components of that quest for excellence program is
25 the monitoring and evaluation of officers' performance?

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1 A. That's part of it, yes.

2 Q. So I guess my question is, that would be one of the areas
3 that you think could be improved, right?

4 A. Some of the activity reports that we have been going
5 through now, that you have presented to me, have issues that I
6 would like to see adjusted and addressed.

7 Q. You would agree, and I am sorry to repeat myself, one way
8 to go about doing that is to consult with experts in, for
9 example, performance evaluations, right?

10 A. Possibly.

11 Q. Now, you would also agree that one of the improvements you
12 would like to see in these procedures for performance
13 evaluation is to add a specific dimension that addresses
14 whether or not officer enforcement activity is constitutional,
15 right?

16 A. I don't recall saying that. Did I say that?

17 Q. I am asking if you agree with that.

18 A. Not necessarily, no.

19 Q. Because that is one of the improvements that the plaintiffs
20 in this case have suggested, right?

21 A. I believe so.

22 Q. Do you recall testifying at your deposition that you
23 thought that the questions that were raised by the plaintiffs
24 about these performance evaluations should be considered,
25 right?

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1 A. Yes. I am always wanting to improve the program.

2 Q. So one of those considerations would be whether or not to
3 add a dimension in the performance evaluation to assess the
4 constitutionality of officer enforcement, correct?

5 MS. GROSSMAN: Objection.

6 THE COURT: That's one of the ones that was suggested,
7 and you said all these suggestions should be considered, is
8 that right?

9 THE WITNESS: It should be considered, but I don't see
10 that as necessarily part of this quest program. It's important
11 to both the New York City Police Department, to me as a long
12 time member of the police department, that we are doing things
13 within the bounds of the constitution, absolutely.

14 Q. Are you aware that the performance evaluation system used
15 by the Los Angeles police department does include a dimension
16 assessing constitutionality of officer enforcement activity?

17 THE COURT: That's a yes or no. Do you know?

18 THE WITNESS: No.

19 Q. When the quest for excellence committee was developing the
20 revisions to the NYPD performance evaluation system for
21 officers, did you consult with any other municipal police
22 departments around the country?

23 A. The quest for excellence --

24 THE COURT: That's a yes or no. Did you consult with
25 other police departments around the country?

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1 THE WITNESS: No.

2 Q. Why not?

3 A. Because that was not the purpose of the quest for
4 excellence program. This is -- the annual evaluation of police
5 officers is not part of the quest for excellence program.

6 Q. Now, you also reviewed the report done by the plaintiffs'
7 remedy expert, Samuel Walker, right?

8 A. I did read it briefly several weeks ago.

9 Q. And you recall that he did address this issue performance
10 evaluations of officers, right?

11 A. I believe he did. I'm not that familiar with it.

12 Q. Do you remember testifying at your deposition that you --

13 MS. GROSSMAN: Objection, your Honor. The purpose of
14 this witness is to talk about the implementation of quest, not
15 any opinion or speculation about or a view of plaintiffs'
16 remedy expert.

17 MR. CHARNEY: The remedy expert specifically talked
18 about this program.

19 THE COURT: About the issue of performance
20 evaluations, all I know he must have said something in his
21 deposition that he doesn't recall today where he commented upon
22 that witness's view of these evaluations. Since the
23 evaluations are the topic of his testimony, I would take it.

24 Q. Do you recall that you were asked about whether or not
25 officers should assess constitutionality of enforcement

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1 activity when doing the performance evaluations, and do you
2 recall saying that, "Like Professor Walker said, that's really
3 policing 101." Do you remember saying that?

4 A. Yes.

5 Q. So you would agree that a performance evaluation system
6 should include assessing the constitutionality of officer
7 enforcement activity?

8 A. And the annual performance evaluation system that the New
9 York City Police Department has does consider that.

10 Q. Is that written in the policies and procedures that govern
11 the annual performance evaluation?

12 A. I believe so.

13 Q. We can take a look at those real quick.

14 MR. CHARNEY: This is going to be Plaintiffs', I
15 believe, Exhibit 391.

16 MS. GROSSMAN: I would just note this witness was put
17 forth as a 30(b)(6) on quest, not on performance evaluations.
18 It was narrowed for this particular witness. I just wanted to
19 put that on the record.

20 THE COURT: OK.

21 MR. CHARNEY: I am sorry, your Honor. I am trying to
22 find 391.

23 We have it on the computer. Of course, it hasn't been
24 admitted yet. It's the patrol guide section for annual officer
25 performance evaluation.

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Beirne - direct

1 THE COURT: There hasn't been any objections to the
2 patrol guide sections.

3 MS. GROSSMAN: Frankly, this witness isn't the right
4 witness to talk about that. I would object because he is not
5 someone that is in the role of handling performance
6 evaluations. He is the commissioner of labor relations. So I
7 don't think this is a good use of the Court's time. It's 4:00.
8 I would like to be able to finish with the witness so that he
9 doesn't have to come back tomorrow, and we are going on to a
10 topic that just seems like it's beyond the scope of what this
11 witness was called for.

12 MR. CHARNEY: He opened the door because he said the
13 annual performance evaluation procedures do cover this issue
14 about constitutionality.

15 THE COURT: He did say that. He said it's covered and
16 that's where it's covered.

17 MR. CHARNEY: So I just wanted to show him that and
18 ask if it's in there, which I don't think will take that long.

19 THE COURT: Just show it to him and say, do you see
20 that there?

21 MR. CHARNEY: The other option is, if the city can
22 stipulate it's not in there, we don't even have to bother this
23 witness.

24 MS. GROSSMAN: I am not willing to stipulate anything
25 right now. I haven't had a chance to look at it.

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1 THE COURT: Then show it to him.

2 MR. CHARNEY: It's not going to be admitted, but I
3 have to show it on the screen unfortunately.

4 THE COURT: Well, I won't look.

5 MR. CHARNEY: Her Honor is closing her eyes.

6 Q. Commissioner, do you recognize --

7 MS. GROSSMAN: I need to look at this first.

8 THE COURT: Look on the screen if you can see it. I
9 am really not looking. It's just to see if it's there.

10 Q. We can scroll down to allow you to read it.

11 Have you read it?

12 A. I have seen it before.

13 Q. Do you want to see the second page?

14 A. No, because really my answer is that this is the patrol
15 guide procedure on performance evaluations. There are a number
16 of other documents that go into much greater detail in how you
17 arrive at the various performance levels. This is only a very
18 brief overview of the performance evaluation.

19 Q. This is the patrol guide procedure covering the annual
20 performance evaluation, right?

21 A. Yes. But it is a small part of the performance -- the
22 annual performance evaluation.

23 MS. GROSSMAN: There is an administrative guide.
24 There are many, many documents. This is just not the right
25 forum.

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1 THE COURT: I am not looking at it. He got the answer
2 and that's it.

3 MR. CHARNEY: One more minute. I think I am almost
4 done here.

5 Q. One last question with respect to the annual. Isn't it
6 true that the monthly and quarterly performance reviews serve
7 as the primary basis for the annual evaluation?

8 A. They are part of the annual evaluation, but there is a lot
9 more to the annual evaluation than just the monthly and
10 quarterly performance evaluation.

11 Q. You would agree they are a significant part?

12 A. They are a significant part.

13 MR. CHARNEY: One minute, your Honor.

14 MR. CHARNEY: The only other thing I wanted to raise,
15 your Honor, is with respect to those exhibits that we already
16 admitted, the sample command conditions reports, I know that I
17 only showed the witness excerpts to try to save time, but the
18 entire document is quite large, but we did want to admit it
19 into evidence. I don't know if the city has a problem with
20 that.

21 THE COURT: I don't know if it's relevant to admit the
22 whole document.

23 MR. CHARNEY: It's relevant to Professor Walker's
24 testimony.

25 THE COURT: Do it then.

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1 MR. CHARNEY: Because he can't authenticate it.

2 THE COURT: But the city is not going to object. This
3 was the only relevant portion for this witness. Let's not
4 clutter it more now.

5 MR. CHARNEY: I will just put on the record the
6 numbers we will seek to admit through Professor Walker.
7 Exhibits 234 through 237, 307 to 310, and then Exhibit 437.

8 MS. GROSSMAN: The last two?

9 MR. CHARNEY: 307 through 310 and then 437.
10 No further questions.

11 CROSS-EXAMINATION

12 BY MS. GROSSMAN:

13 Q. Good afternoon.

14 The grievances that you made reference to earlier in
15 your testimony, are all of those still pending right now?

16 A. Yes, they are.

17 Q. Are they all awaiting arbitration?

18 A. Yes, they are.

19 Q. Now, Mr. Charney asked you about supervisors, when they
20 evaluate the activity of the officer on the monthly, that the
21 basis of his evaluation is based only on the content of the
22 monthly activity report. Do you remember that testimony?

23 A. Yes.

24 Q. Are supervisors also able to base the evaluation on their
25 personal observations of the officers even though it's not

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1 contained in the content of that monthly activity report?

2 A. Yes. The supervisor who is evaluating the officer is the
3 supervisor in charge of that particular squad, and he or she is
4 supposed to not only base the evaluation on their observations,
5 but they are supposed to consult with other supervisors in the
6 command to see if there was additional information that they
7 need.

8 MS. GROSSMAN: I have no further questions.

9 THE COURT: That was fast.

10 MR. CHARNEY: I have a couple of redirects.

11 REDIRECT EXAMINATION

12 BY MR. CHARNEY:

13 Q. Commissioner, the point you just made about the personal
14 observations, again, I just want to clarify, the procedures
15 that are set forth governing the monthly and quarterly
16 evaluations don't explicitly require or even advise supervisors
17 that they should be using their personal observations, right?

18 MS. GROSSMAN: This is beyond the scope and it was
19 covered extensively on direct.

20 THE COURT: Objection sustained.

21 Q. Then similarly, you just testified on cross, in response to
22 Ms. Grossman's question, that supervisors should be consulting
23 with other supervisors in the command who may have observed an
24 officer's performance?

25 A. Yes.

D4F8FLO5 Beirne - redirect

1 Q. But again, that particular requirement is also not set
2 forth in the procedures governing the performance evaluations,
3 right?

4 A. It might not be specifically, but that's the way that we do
5 evaluate people, particularly in precinct commands.

6 Q. But you haven't been a precinct commander for more than 20
7 years, right?

8 A. That's correct.

9 Q. You also haven't done any assessments of these performance
10 evaluations to determine if supervisors are in fact doing that,
11 right?

12 A. No. But in my entire career, that has been SOP in patrol
13 commands, standard operating procedures in patrol commands,
14 that you don't operate in a vacuum with the people that you
15 supervise.

16 Q. You haven't been in a patrol command in 20 years?

17 MS. GROSSMAN: He already said that.

18 THE COURT: He already said that.

19 Q. So you don't have any personal knowledge of whether or not
20 that is in fact the practice, correct?

21 A. I speak to precinct commanders on a regular basis and I
22 would be aware if that was changed. Both in my capacity as the
23 director of labor relations and also as I interview captains
24 and above for promotion, I always try and get that information
25 from them.

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D4F8FLO5 Beirne - redirect

1 Q. You get information about how they conduct officer
2 performance evaluations?

3 A. If that is an issue, yes.

4 MR. CHARNEY: One minute, your Honor.

5 No further questions.

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

7 I know you have one more witness listed for today.

8 MR. CHARNEY: We can start him.

9 THE COURT: Officer Gillespie.

10 There were a couple of things that I needed to talk to
11 you about. Maybe I will just do that first. There was a
12 letter, I think from you, Mr. Charney, where you asked for an
13 order from the Court directing the city to provide, no later
14 than Tuesday, its anticipated witness schedule and the
15 declarations in lieu of live testimony that I previously
16 ordered. And you attached the March 5 transcript where I
17 ordered the city to produce declarations from several officers,
18 in particular, Gomez, Morris, Harrison and Holmes. Now the
19 city intends to call all of them, except Harrison, but you
20 still think you are entitled to the declarations of the
21 witnesses.

22 What is the response to that letter?

23 MS. GROSSMAN: We intend to give declarations. It's
24 just that, with all the work that we have been doing and being
25 here every day, it has been a little difficult to get that

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1 done. So we would just need until next Monday, having the
2 weekend just after court to resolve that. We will do it
3 certainly well in advance of their testimony so that the
4 plaintiffs have enough time to prepare.

5 THE COURT: The other item in this letter, they ask by
6 the 16th they get your anticipated witness schedule.

7 MS. GROSSMAN: I believe we can give them the list
8 either tomorrow or the day after tomorrow. We shouldn't have a
9 problem with that. We have given them the list.

10 THE COURT: It's the order. The word is schedule.

11 MS. GROSSMAN: We are trying our best to submit one
12 tomorrow, but we may need until the day after tomorrow.

13 THE COURT: If there was a court order that they
14 provide the schedule to you no later than Wednesday the 17th at
15 5 p.m. and provide the declarations to you no later than 5 p.m.
16 on the 22nd, would that satisfy your letter?

17 MS. BORCHETTA: That's fine, your Honor. Our one
18 concern with respect to the declarations is the reason that we
19 were getting declarations in lieu of live testimony was because
20 of the late identification of these witnesses and to give us
21 sufficient time to remedy any prejudice from that to prepare to
22 question these officers. So we would be fine with getting them
23 by next Monday, as counsel has just represented they can do it
24 by, as long as we have a week before these people are
25 appearing.

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Beirne - redirect

1 THE COURT: She would like none of those witnesses who
2 are coming live to testify before the 29th.

3 MS. GROSSMAN: We will try to work with plaintiffs and
4 come up with a solution.

5 THE COURT: The Court orders that by this Wednesday 5
6 p.m. you provide the proposed schedule of witnesses, and by the
7 22nd you provide to them all of the declarations. All right?

8 On another topic, we haven't done this all this time,
9 but I must say at this point, I think a very brief five minute
10 interim summation would be helpful. I didn't entirely
11 understand what the last witness was doing. Maybe it's because
12 there has been so much evidence. I would appreciate you spend
13 five of the remaining 12 minutes, Mr. Charney, telling me what
14 I am supposed to take away from this guy. The defense is
15 welcome to rebut it, so to speak. But a summary might be
16 helpful. I listened to him, but I am not entirely sure of the
17 point. What was the point?

18 MR. CHARNEY: As you may have read our remedies
19 brief --

20 THE COURT: When did it come in?

21 MR. CHARNEY: March 4.

22 One of the things we are asking for is to either
23 repeal or significantly amend Operations Order 52.

24 THE COURT: Essentially, you're saying this testimony
25 went to remedies and not liability?

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Beirne - redirect

1 MR. CHARNEY: Because Operations Order 52 is also
2 currently in effect, we believe that it's causing --

3 THE COURT: That's what I didn't understand. If you
4 told me when you called him, we are calling him out of order,
5 it really goes to the remedy order, I might have listened with
6 a slightly different ear. But would you please tell me what it
7 had to do with the liability case? How does this prove your
8 case?

9 MR. CHARNEY: We believe, as we have alleged, that the
10 police department has a policy or practice of imposing quotas,
11 and we think that one piece of the evidence that shows that is
12 Operations Order 52, which is of course issued by the police
13 commissioner, it applies to the entire police department, and
14 we believe that, both in the way it's written and the way it's
15 been implemented, is in fact imposing quotas, productivity
16 goals.

17 THE COURT: Most of what he said had nothing to do
18 with that. You had that evidence in there. That's the one,
19 you remember, says can and must set the performance goals. I
20 have seen that weeks ago.

21 MR. CHARNEY: It was my understanding that he said it
22 was appropriate for officers to set numerical numbers, goals
23 for summonses per month, for stops per month, and that's
24 something that many witnesses have denied happened.

25 THE COURT: It was so much more than that. It was so

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D4F8FLO5 Beirne - redirect

1 lengthy. Here we are trying to be efficient. At least it
2 might have been helpful to me to say, this is a witness who
3 goes to both liability and remedies. So a lot of what you're
4 going to hear has more to do with remedies. There is a small
5 portion that has to do with liability. I heard the material
6 about the numbers. Is that the only portion, that relatively
7 small portion of his testimony that went to the liability
8 portion of the trial?

9 MR. CHARNEY: I think it's small but significant.
10 It's important because I think the way the order is written and
11 the way that it's understood and interpreted is a matter of
12 significant dispute between various witnesses.

13 THE COURT: I have to tell you, as far as use of time,
14 I thought it was terribly long for what you were trying to
15 achieve.

16 MR. CHARNEY: It also goes to the supervision piece,
17 which is another part of our claim, that in assessing officer
18 performance, they are looking at numbers, they are not looking
19 at constitutionality.

20 THE COURT: That was one question, one answer. He
21 said right away the forms don't assess constitutionality. He
22 knew that. You knew that.

23 Anybody want to be heard briefly in response to this
24 narrative that I asked counsel to give.

25 MS. GROSSMAN: I think Operations Order 52 and the
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1 relevant procedures speak for itself. The "can and must"
2 language, everything else that is in the Operations Order 52
3 and its related procedures all speak for itself. It's directed
4 towards not numbers for numbers sake, but for addressing
5 command conditions, and police officers need guidance in doing
6 that, and this is that effort at achieving that.

7 THE COURT: I guess this was a little helpful.

8 This next witness, I have ten minutes, I can get ten
9 minutes of this guy.

10 MR. CHARNEY: We can start.

11 MR. CHARNEY: Officer Sean Gillespie.

12 THE COURT: We won't finish Officer Gillespie.

13 SEAN GILLESPIE,

14 called as a witness by the plaintiffs,
15 having been duly sworn, testified as follows:

16 THE COURT: State your full name for the record,
17 spelling both the first and last name.

18 THE WITNESS: Sean Gillespie, S-E-A-N,

19 G-I-L-L-E-S-P-I-E.

20 DIRECT EXAMINATION

21 BY MR. CHARNEY:

22 Q. Good afternoon, Officer Gillespie.

23 A. Good afternoon.

24 Q. You joined the police department in July 2008?

25 A. Yes, sir.

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Gillespie - direct

- 1 Q. Your first assignment was to operation impact, correct?
2 A. Correct.
3 Q. That was in the Midtown South precinct?
4 A. Correct.
5 Q. That was in January of '09, correct?
6 A. Correct.
7 Q. And you were in that assignment for about a year and eight
8 months?
9 A. Approximately.
10 Q. All the officers in your impact squad were either right out
11 of the police academy or recently out of the police academy,
12 right?
13 A. Correct.
14 Q. Then in August of 2010, you were transferred to the 13th
15 Precinct, right?
16 A. Correct.
17 Q. I want to ask you about an encounter you had with Dominique
18 Sindayiganza on February 12, 2010. Do you remember that
19 incident?
20 A. Yes.
21 Q. You were working in the impact squad in Midtown South at
22 that time?
23 A. Correct.
24 Q. But on that evening, February 12, 2010, your squad was
25 actually patrolling near Union Square, correct?

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Gillespie - direct

- 1 A. Correct.
- 2 Q. That's in the 13th Precinct, right?
- 3 A. Yes.
- 4 Q. I want to draw your attention to about 6:30 p.m. on that
5 date, February 12, 2010.
- 6 A. OK.
- 7 Q. At that point, you were patrolling with about five or six
8 other operation impact officers, is that correct?
- 9 A. Correct. We were getting ready to end our tour for the
10 day. We were getting ready to be picked up by some other
11 officers and be brought back to Midtown South station house.
- 12 Q. So you were with five or six other officers at the time,
13 right?
- 14 A. Correct, approximately.
- 15 Q. You had been patrolling by foot that day, is that right?
- 16 A. Yes.
- 17 Q. Now, at the time 6:30 p.m. on February 12, 2010, there were
18 no supervisors present with you on the street at that point,
19 right?
- 20 A. No, not that I can recall.
- 21 Q. At the time of the encounter with Mr. Sindayiganza, you and
22 the other officers were standing on the northeast corner of
23 17th Street and Broadway, correct?
- 24 A. Correct.
- 25 Q. And you were standing right in front of the Petco store

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Gillespie - direct

1 that is located at the northeast corner of Broadway and 17th
2 Street?

3 A. The Petco store is on the corner. It goes from the
4 Broadway side and on the 17th Street side. So we were maybe
5 like 10, 15 feet from the entrance I would say.

6 Q. I am going to show you what has already been admitted as
7 Defendants' Exhibit X10. Do you recognize this photograph?

8 A. Yes, I do.

9 Q. Is this an accurate depiction of the location where the
10 encounter with Mr. Sindayiganza took place?

11 A. Yes, it is.

12 Q. So that building with the red awnings on it, that is the
13 Petco store, right?

14 A. Correct.

15 Q. Now, at some point while you were standing in front of the
16 Petco store on this evening, February 12, 2010, a Petco store
17 employee came out of the store and approached you and the other
18 officers, correct?

19 A. Yes.

20 Q. He told you that there was an unidentified woman inside the
21 store who had been complaining that a man had been following
22 her around and asking her for money, is that right?

23 A. Well, he never spoke to me directly. He addressed the
24 group of officers on the corner, and at that point Officer
25 White, and I believe another officer, I don't recall who it

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Gillespie - direct

1 was, they began to engage in a conversation.

2 Q. But you overheard this employee discussing the fact that
3 there was a woman inside who had been complaining about a man
4 following her?

5 A. Correct.

6 Q. But to be clear, you didn't actually speak to the woman
7 herself, right?

8 A. Right.

9 Q. You never saw the woman, right?

10 A. No.

11 Q. You never learned her name?

12 A. No, I did not.

13 Q. You never learned any of her personal identifying
14 information, right?

15 A. No, I did not.

16 Q. Now, did you overhear the Petco employee give any kind of
17 description of what the man who was supposedly following this
18 woman looked like?

19 A. From my recollection of the incident, I can't provide word
20 for word of what he gave us, but it was somewhere in the nature
21 of a tall male wearing dark green clothing with a backpack,
22 carrying a big bag possibly.

23 Q. You said that the description included a tall man with
24 green clothing wearing a backpack, is that right?

25 A. Correct.

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Gillespie - direct

1 Q. But you were interviewed by the CCRB in about October of
2 2010, right?

3 A. I don't know the exact date of the CCRB interview.

4 Q. I can try to refresh your recollection with the transcript.

5 THE COURT: If he tells you the transcript is dated
6 that date, would you accept that?

7 THE WITNESS: Yes.

8 MR. CHARNEY: October 22, 2010.

9 Q. Do you remember you were asked by the CCRB to tell them
10 what the description that you remember was? Do you remember
11 being asked that question to give what that description was?

12 A. Yes.

13 Q. Do you remember the only thing you could remember at that
14 time was green camouflage clothing, right?

15 A. Yes. Green, dark green in nature, somewhat representative
16 of a camouflage type.

17 THE COURT: He is saying that's the only thing you
18 could tell the CCRB at the time?

19 THE WITNESS: No. I believe if you go through the
20 transcript, I actually said there was a backpack involved.

21 Q. We are going to get to that. When you were asked about
22 what the description that the Petco employee gave you was, the
23 only thing you could remember was green camouflage, right?

24 A. Yes.

25 Q. In fact, the statement you're making about the backpack is

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Gillespie - direct

1 a statement related to what you observed when you actually saw
2 Mr. Sindayiganza, right?

3 A. I don't recall.

4 Q. I am going to show you what is marked, I think it's 264T.
5 This is your CCRB interview transcript. To refresh your
6 recollection, if you want to look at page 9, line 9 at page 9.
7 If you can read that question and answer starting on --

8 THE COURT: To himself?

9 MR. CHARNEY: To himself.

10 Q. Then I will ask if that refreshes your recollection as to
11 whether the description regarding the backpack was just your
12 recollection of what you observed when you did see Mr.
13 Sindayiganza.

14 A. Again, I don't recall the description that was provided to
15 the group of officers, the group of us standing on the corner
16 there, word for word. But in the CCRB transcript here, I do
17 state that I believe he may have had a book bag.

18 Q. Do you recall, when you were specifically asked by the CCRB
19 to tell them what the description you recall hearing was, that
20 the only thing you could remember was the green camouflage
21 clothing?

22 A. Could you clarify? I clearly told them that I believe he
23 had a book bag.

24 THE COURT: In terms of the description that was given
25 to you.

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Gillespie - direct

1 THE WITNESS: I don't recall the exact description
2 that was provided to us.

3 THE COURT: It's exactly 4:30. We will stop now and
4 we will have to pick up tomorrow.

5 (Adjourned to April 16, 2013, at 10:00 a.m.)
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1	4583345
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9	Exhibit No.		Received
10	P12 and V133278

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