

1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK
2 -----x

3 DAVID FLOYD, et al.,
3
4 Plaintiffs,

5 v. 08 CV 1034(SAS)

6 CITY OF NEW YORK, et al.,
6
7 Defendants.

8 -----x
8 New York, N.Y.
9 April 18, 2013
9 10:08 a.m.

10 Before:

11 HON. SHIRA A. SCHEINDLIN,
12
12 District Judge

13 APPEARANCES

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D4i9flol Giacona - direct

1 (Trial resumed)

2 SCOTT GIACONA, resumed.

3 THE COURT: Good morning everyone. Please be seated.

4 MS. PATEL: Your Honor, there was a document that I
5 failed to admit through the witness that I can do now or I can
6 do it on redirect.

7 THE COURT: Go ahead. Let's see if there's an
8 objection.

9 DIRECT EXAMINATION CONTINUED

10 BY MS. PATEL:

11 Q. Officer Giacona, you testified yesterday that you effected
12 two arrests, correct?

13 A. When, ma'am?

14 Q. On August 20, 2008.

15 A. Oh, yes. Sorry.

16 Q. And this is NYC-2-25078 through 80 which is a portion of
17 Plaintiffs' Exhibit 166. I'm showing you the command log.

18 Am I correct that this is the log for those two
19 arrests on August 20, 2008?

20 A. It looks like it, yes.

21 MS. PATEL: And so I would seek to admit this for all
22 purposes, your Honor.

23 MR. KUNZ: No objection to that page.

24 THE COURT: Are we marking it as 166A or something?

25 MS. PATEL: Let's do it as CL and make sure that we --

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1 THE COURT: CL?

2 MS. PATEL: For command log.

3 THE COURT: 166CL is admitted.

4 MS. PATEL: And this is the date here.

5 THE COURT: Okay.

6 (Plaintiffs' Exhibit 166CL received in evidence)

7 MS. PATEL: I would just seek to admit all three pages
8 because they give a chronology of time.

9 THE COURT: That's fine. All three pages.

10 MS. PATEL: Thank you.

11 THE COURT: All right, Mr. Kunz.

12 CROSS-EXAMINATION

13 BY MR. KUNZ:

14 Q. Officer, you recall yesterday we were talking about an
15 incident that happened on August 20 of 2008?

16 A. Yes.

17 Q. And you were asked by Ms. Patel what vehicle you were
18 driving that day.

19 Do you recall that?

20 A. Yes.

21 Q. And what vehicle were you driving?

22 A. I believe it was RMP 8098.

23 Q. And I believe you said that was a black Crown Victoria?

24 A. Yes.

25 Q. Are black Crown Victorias common police cars?

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D4i9fl01 Giacona - cross

1 A. Yes.

2 Q. Could you explain to the court a little bit about that.

3 A. There's certain vehicles that I guess the department
4 purchases and they purchase in bulk so there's like a lot of
5 Crown Vics. Now I believe there's a lot of like Ford Fusions,
6 those are the new ones that they're using. But they buy a lot
7 of vehicles, similar vehicles and use the same vehicle.

8 Q. So when you worked in Brooklyn South gang squad was black
9 Crown Victoria -- was a black Crown Victoria a common vehicle
10 for the Brooklyn South gang squad?

11 A. I don't remember actually. I think we had a couple of them
12 but I'm not a hundred percent sure.

13 Q. And around the time of August 20, 2008 you were assigned to
14 work in the 120th precinct in Staten Island?

15 A. Yes.

16 Q. Was a black Crown Victoria a common police vehicle in the
17 120th precinct?

18 A. Yes, I would say.

19 MS. PATEL: Objection. I don't think he has
20 foundation for that knowledge if he worked in Brooklyn South
21 gang squad and he said he doesn't know if it was a common
22 vehicle in Brooklyn South gang squad. I don't think he can
23 testify about the 120th precinct because it's a completely
24 different borough.

25 THE COURT: Were you there? How long were you there?

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1 THE WITNESS: We were temporarily assigned there for a
2 couple of months, I would say.

3 THE COURT: Well in the couple months you were there
4 did that seem to be the car that was most common?

5 THE WITNESS: I don't know about most common but it
6 was, yeah, there was a couple of them, I guess.

7 THE COURT: A couple of them, I guess. I don't know
8 that that means common. So I'm going to sustain the objection.

9 Q. Well I guess the question then is so you were driving a
10 black Crown Vic, were there other black Crown Victorias that
11 were being driven around by police officers in the 120th
12 precinct during that time?

13 A. I would say yes.

14 MS. PATEL: Your Honor, I would just state the same
15 objection. He doesn't report to roll call at 120th precinct.
16 He's also testified that he doesn't remember.

17 THE COURT: All he did was ask: Were there other
18 black Crown Victorias that were driven around by police
19 officers in the 120th precinct?

20 You would see that on the street, wouldn't you?

21 THE WITNESS: Yes, ma'am.

22 THE COURT: All right. Well I'm not -- overruled on
23 that objection.

24 Q. Now, you were also asked on direct yesterday about a
25 comment that you made to the CCRB when you said that you stop

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D4i9flol1 Giacona - cross

1 and talk to people a lot in your work.

2 Can you explain to the court what you meant by that
3 statement.

4 A. I guess on a day-to-day basis I stop and talk to civilians
5 all the time, gather information, see what's going on in the
6 neighborhood, see if there's any problems, anything like that.

7 Q. And are those forcible, reasonable suspicion based stops?

8 A. No.

9 Q. And do you find interacting with the community and asking
10 about problems, is that an effective police tool?

11 A. Yeah.

12 Q. What level of suspicion do you need -- I'm sorry.

13 Withdrawn.

14 If you conduct a forcible stop of someone do you have
15 to fill out any paperwork?

16 A. Yes.

17 Q. What paperwork?

18 A. UF 250 and I believe you have to make memo book entries.

19 Q. And what was your practice in regard to UF 250s, if you
20 conducted a stop, did you fill them out?

21 A. Yes.

22 Q. And what level of suspicion do you need to forcibly stop
23 and question someone?

24 A. Reasonable.

25 Q. What do you do if someone asks you for your shield number?

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D4i9flol Giacona - cross

1 A. I give it to them.

2 Q. Does that happen?

3 A. Yeah.

4 Q. Now I believe you testified that on August 20, 2008, and we
5 just looked at some paperwork in regard to that, you conducted
6 at arrest at about 6:40 p.m.?

7 A. I believe so, yes.

8 Q. Do you remember where those arrests took place?

9 A. No.

10 Q. I'm going to show you this document. I guess it's in
11 evidence. So I'll put it on the screen.

12 Can you read that arrest location?

13 A. It looks like Brighton and York Avenue.

14 Q. Is that in the 120th precinct?

15 A. Yes.

16 Q. How far is that from the actual precinct itself?

17 A. A mile maybe, maybe three-quarters of a mile. Not that
18 far.

19 Q. So prior to conducting that arrest or those arrests, did
20 you forcibly stop and question anyone?

21 A. Not that I remember, no.

22 Q. And had you forcibly stopped and questioned someone, would
23 you have filled out the paperwork that you testified to before?

24 A. Yes.

25 Q. At any point on that day, on August 20, 2008 -- actually

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D4i9fl01 Giacona - cross

1 withdrawn.

2 I'm going to show you an excerpt from Plaintiffs'
3 Exhibit 166 which is in evidence.

4 MS. PATEL: Your Honor, I object to this photograph
5 being shown in court. It has only been introduced as a part of
6 a larger file for notice purposes. And this witness cannot
7 authenticate or even talk about the photograph in any way.
8 It's not clear -- it's not a clear photograph at all. And it's
9 very -- it's misleading and prejudicial.

10 MR. KUNZ: It's a photograph that Mr. Downs -- that
11 the CCRB took of Mr. Downs. He's demonstrating what he looked
12 like on the day when he says the stop happened. 166, the CCRB
13 file, is in evidence. I don't see why we couldn't --

14 MS. PATEL: I would also note that this witness has
15 said he doesn't recall the stop, he doesn't recall Leroy Downs.
16 He was shown a photograph of Leroy Downs, didn't recognize him.
17 I just think this is just very prejudicial.

18 THE COURT: Why is it very prejudicial if it's part of
19 a file in evidence? It's in evidence in the case now.

20 MS. PATEL: It's a misleading photograph.

21 THE COURT: Why is it misleading? What does that
22 mean? It's not a good photograph? It's not a flattering
23 photograph? What does that mean, it's misleading?

24 MS. PATEL: My belief -- what I think is going to
25 happen right now is he's going to be shown a photograph and

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D4i9fl01 Giacona - cross

1 asked a hypothetical about --

2 MR. KUNZ: That's not my intention. I'm going to ask
3 if he recognizes the man in the photograph and if he ever
4 stopped him.

5 MS. PATEL: As long as the photograph is not going to
6 be put into evidence for a purpose other than notice, which is
7 what it's in for right now, I don't have any objection.

8 THE COURT: I don't know what you mean by it's purpose
9 other than notice. It's in the record. It's in the file.

10 MS. PATEL: Meaning for the truth of what it depicts.

11 THE COURT: I don't understand.

12 It's Mr. Downs, isn't it?

13 MR. KUNZ: Yes.

14 I think honestly we'll have to revisit this issue with
15 Mr. Downs because I intend to authenticate this -- if further
16 authentication is needed, I absolutely --

17 THE COURT: I don't know why it's needed.

18 Are you contesting that it's Mr. Downs?

19 MS. PATEL: No, your Honor.

20 THE COURT: I don't understand this whole
21 conversation. Go ahead.

22 BY MR. KUNZ:

23 Q. Do you recognize this man?

24 A. No.

25 Q. Have you ever conducted a reasonable suspicion stop of this

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D4i9flol Giacona - cross

1 man?

2 A. No. I don't think so.

3 Q. On August 20 of 2008 at any point during your tour either
4 before the arrests that you made or after the arrests that you
5 made, were you ever driving and leaving the police precinct
6 when someone started to yell to you, "I have your license
7 plate"?

8 A. Not that I remember, no.

9 Q. While you were processing the arrests at the precinct that
10 night, did anyone come up to you and ask you for your shield
11 numbers?

12 A. Not that I remember.

13 Q. Were you disciplined at all for anything in relation to
14 what happened on August 20, 2008?

15 A. Yes.

16 Q. What was the discipline?

17 A. I believe they took five vacation days.

18 Q. And what was the loss of vacation days for?

19 A. Improper memo book entries, I believe.

20 Q. In preparing for this case you've had an opportunity to
21 review a CCRB statement that Mr. Leroy Downs made; is that
22 correct?

23 A. Yes.

24 Q. Having reviewed that CCRB statement, did you conduct a stop
25 at all similar to what Mr. Downs described?

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D4i9flol Giacona - cross

1 A. No, not that I remember.

2 MR. KUNZ: No further questions at this time, your
3 Honor.

4 THE COURT: Okay. Anything further of this witness?

5 REDIRECT EXAMINATION

6 BY MS. PATEL:

7 Q. You just testified that you were disciplined following the
8 August 20, 2008 incident, correct?

9 A. Yes.

10 Q. For failing to put something in your memo book?

11 A. Yes, ma'am.

12 Q. What did you fail to put in your memo book?

13 A. According to CCRB I guess or whatever their investigation,
14 they found that I did this stop that I don't remember or have
15 any knowledge of. So when you do a stop, you have to fill out
16 the 250. And then you have to make a memo book entry in your
17 memo book of the 250. So I never made the entry because I
18 don't remember doing the stop. So that's -- I guess that's
19 what I was disciplined for, not having memo book entries for
20 the stop that I don't remember doing.

21 Q. So you were disciplined for failing to include a memo book
22 entry related to the stop of Mr. Downs, correct?

23 A. Apparently, yes.

24 MS. PATEL: Okay. Thank you.

25 THE COURT: Nothing further of the witness?

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D4i9flol1 Giacona - redirect

1 MS. PATEL: One moment, your Honor.

2 (Pause)

3 MS. PATEL: That's it, your Honor.

4 THE COURT: Thank you. We're all set?

5 MR. KUNZ: Nothing further.

6 THE COURT: Okay. We're all set.

7 THE WITNESS: Thank you, ma'am.

8 (Witness excused)

9 MR. CHARNEY: Your Honor plaintiffs call Terry Riley.

10 TERRENCE RILEY,

11 called as a witness by the Plaintiffs,

12 having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. CHARNEY:

15 Q. Is it Inspector Riley?

16 A. That's correct, sir.

17 Q. Good morning, Inspector Riley. You joined the police
18 department in about 1990; is that correct?

19 A. That's correct. October 15 of 1990.

20 Q. Your current rank is inspector?

21 A. Yes, sir.

22 Q. And are you currently assigned to the special projects
23 section of the office of management analysis and planning?

24 A. No, sir.

25 Q. What is your current?

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D4i9flol Riley - direct

1 A. Currently I'm assigned as the commanding officer of the
2 resource analysis section.

3 Q. Is the special projects section part of the resource
4 analysis section?

5 A. No, it is not.

6 THE COURT: Did you once hold the title he first
7 mentioned?

8 THE WITNESS: Yes, ma'am.

9 THE COURT: When did it change?

10 THE WITNESS: It changed in August of 2010.

11 MR. CHARNEY: Thank you, your Honor.

12 Q. So you were working in the special projects section in
13 2007; is that correct?

14 A. That's correct, sir.

15 It's not a section. It's a unit. It's a smaller
16 subdivision.

17 Q. I'm sorry. A unit.

18 And so you were working there at the time that the
19 RAND Corporation was doing their study on the NYPD's
20 stop-and-frisk practices, right?

21 A. Yes, sir.

22 Q. And who was your direct supervisor at that time?

23 A. At that time it was -- special projects is odd. Really you
24 report to whatever higher ranking person asks you to do
25 something. So primarily it would be Chief Donahue or

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D4i9flol Riley - direct

1 inspector -- I'm sorry, Deputy Commissioner Michael Farrell.

2 Q. And Chief Donahue was the commanding officer of the office
3 of management analysis and planning; is that right?

4 A. At that time he held my current position. So he was the
5 commanding officer of the resource analysis section.

6 Q. Now he's the commander of OMAP?

7 A. Correct, sir.

8 MR. CHARNEY: For everybody's benefit, I'm going to
9 refer to the office of management analysis and planning as OMAP
10 so that we can move this along.

11 Q. Is that okay with you?

12 A. Yes, sir. That's accurate and I understand.

13 Q. And Deputy Commissioner Farell is the deputy commissioner
14 of strategic initiatives, correct?

15 A. Yes, sir.

16 Q. And so OMAP falls under his purview?

17 A. That is correct.

18 Q. So in 2007 when you worked in the special projects unit,
19 one of the special projects you worked on was the RAND
20 Corporation study, right?

21 A. Yes. That is correct.

22 Q. And your role in the -- in developing the RAND report or
23 working on that project was as the project coordinator; is that
24 correct?

25 A. Yes, sir. That's right.

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1 Just to be clear though there's two RAND reports.

2 Q. Okay. Thank you.

3 So there were two RAND reports. There is the
4 stop-and-frisk report, correct?

5 A. Yes, sir.

6 Q. And then there was a report done on the firearms training
7 that the police department uses?

8 A. Yes, sir.

9 Q. And both of those were conducted in 2007; is that right?

10 A. To the best of my recollection, yes.

11 Q. And so you were the project coordinator for both of those
12 reports?

13 A. Yes, sir.

14 Q. And one of your responsibilities as the project coordinator
15 included making sure that the RAND researchers got paid for
16 their work, correct?

17 A. I would process the invoices, yes.

18 Q. And that's because RAND, of course, didn't do these studies
19 for free, right?

20 A. That is correct, sir.

21 Q. RAND was hired as an independent contractor to perform both
22 of these studies?

23 A. Yes, they were.

24 Q. And for the study, the stop-and-frisk study, they were paid
25 more than \$120,000, correct?

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1 A. I do not recall how much they were paid.

2 Q. Do you have any reason to think that number, \$120,000 is
3 not right?

4 A. No, sir.

5 Q. And, in fact, it could have been more than that?

6 A. I do not know.

7 Q. Okay. I'm going to show you a document to see if it helps
8 refresh your recollection. I have a copy for the defendants.

9 I'm going to show you this. If you could just turn to
10 the last page and, actually, just the last paragraph.

11 THE COURT: What did you just show him?

12 MS. GROSSMAN: Your Honor, this is --

13 THE COURT: Excuse me.

14 MR. CHARNEY: It's a New York Times article. I'm

15 not --

16 THE COURT: I understand.

17 Did you mark it as something?

18 MR. CHARNEY: I'm not trying to move it into evidence.

19 THE COURT: Doesn't matter.

20 MR. CHARNEY: I will mark it as Plaintiffs' -- what

21 are we up to?

22 THE COURT: 469, I think.

23 MS. MARTINI: 481.

24 Your Honor, we had to mark exhibits for the deposition
25 designations.

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1 THE COURT: I thought I was paying attention to the
2 numbers.

3 481 for identification. Be sure to put a little
4 sticker on it later.

5 MR. CHARNEY: Yes, and again I'm --

6 THE COURT: I know you're not.

7 Q. So I just wanted you to look at the last paragraph and tell
8 me does that refresh your recollection whether or not RAND was
9 paid at least \$120,000 to do the stop-and-frisk report?

10 A. Sir, I believe to the best of my recollection it may have
11 been the firearms and the stop, question and frisk because
12 stop, question and frisk was -- it was an addendum to the
13 larger contract, but.

14 Q. So you're not aware that for the firearms study RAND was
15 actually paid more than half a million dollars?

16 A. No, sir.

17 Q. Okay. So your testimony is you don't know if the \$120,000
18 figure was for both studies or just for the stop and frisk
19 study?

20 A. That is correct.

21 Q. Now another responsibility you had as the project
22 coordinator for the RAND -- I'm just going to focus on the
23 stop-and-frisk study -- for that study was to provide the RAND
24 researchers with any data they requested from the NYPD or at
25 least to put them in touch with the NYPD personnel who could

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1 get them that data, correct?

2 A. Yes, sir. That is correct.

3 Q. And is it correct that you first learned that RAND was
4 going to do this stop-and-frisk study in or around March of
5 2007?

6 A. Yes. The very end of February or the very beginning of
7 March 2007. That's correct.

8 Q. And that is, in fact, when RAND executed the contract to do
9 the study, right?

10 A. I'm not certain when they executed it.

11 Q. I'm going to show you a document again just to refresh your
12 recollection. See if that helps you -- this helps you recall
13 the date around which --

14 THE COURT: Again, you have to put a number so --
15 anything you show him, a number.

16 MR. CHARNEY: I guess I'll mark this as 482.

17 THE COURT: For identification only.

18 MR. CHARNEY: Just for identification only.

19 THE COURT: Yes.

20 Q. Does this document refresh your recollection that the
21 contract was signed in March of 2007?

22 THE COURT: What is the document you're showing him?

23 MR. CHARNEY: I'm sorry. I'm showing him a copy of
24 the agreement between RAND and the --

25 THE COURT: Okay.

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1 THE WITNESS: Yes. It was signed both by RAND and the
2 foundation in March of 2007.

3 Q. And by foundation, you mean the New York Police Foundation,
4 right?

5 A. Yes, sir.

6 Q. And the New York Police Foundation is affiliated with the
7 police department, right?

8 A. No, sir. I don't think that's accurate. It's actually an
9 independent foundation.

10 Q. But one of their jobs or I'm sorry one of their missions is
11 to actually fund research that will be used to benefit the New
12 York police department?

13 A. It is to support research initiatives; one of the tasks,
14 yes.

15 Q. And, again, I'm going to hand this back to you. And
16 your -- is your recollection that this agreement between the
17 New York police department -- or the New York Police Foundation
18 entered this agreement on behalf of the police department? Is
19 that your recollection?

20 A. Yes, sir. That is correct.

21 Q. I'll take that back since we're not putting it into
22 evidence.

23 Actually, you know what, we'll leave it here for a
24 second because I might ask you some more questions.

25 So with respect to the study, the RAND study, you said

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1 that you first learned that RAND was going to do it around
2 February or March of 2007, right?

3 A. Very end of February, early March, yes.

4 Q. And in February of 2007 the New York police department
5 delivered a year's worth of stop-and-frisk data to the city
6 council for 2006, right?

7 A. I am not certain of the exact date that data was delivered
8 to the council but data was delivered to the council in early
9 2007.

10 Q. And isn't it true that since 2001 the police department has
11 been required under city law to provide stop-and-frisk data on
12 a quarterly basis to the city council?

13 A. Sir, I understand what you're referring to but I do not
14 know when it started.

15 Q. Okay. And when did you join OMAP?

16 A. I joined OMAP in 2000 -- when I returned from a
17 scholarship. So it would be about 2005.

18 Q. Okay. And at the time that you returned in 2005, were you
19 aware that under city law the police department was supposed to
20 provide stop-question-and-frisk data to the city council on a
21 quarterly basis?

22 A. No. That is something that I came to learn as being
23 someone that worked in OMAP.

24 Q. And when did you learn that?

25 A. I don't remember the exact time.

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1 Q. Well let me ask you this. The responsibility -- the entity
2 within the police department that was responsible for providing
3 this data to the city council was the resource analysis section
4 of OMAP, correct?

5 A. Yes, sir. That's correct.

6 Q. And you oversaw the resource analysis section or at least
7 that team within the resource analysis section of OMAP that
8 provided this data to the police department, right?

9 A. No, sir. That's not correct.

10 Q. Do you remember being deposed in this case?

11 A. Yes, sir.

12 Q. And you swore to tell the truth, right, during that
13 deposition?

14 A. Yes, sir. That's correct.

15 Q. I'm going to hand you a copy of your deposition. This
16 is -- I'm going to direct you to turn to page 46, line 21.

17 I'm sorry. The date -- thank you, Ms. Borchetta.

18 Do you recall that your deposition was held August 24,
19 2009. If you want to look at the first page of the deposition.

20 A. Yes, sir.

21 Q. And do you recall being asked this question, "You oversee
22 the team within the research analysis section that is
23 responsible for providing SQF to the city council?

24 "A. I do."

25 MS. GROSSMAN: Just, if you go down to page 47, line
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1 8, "Do you oversee the team within the resource analysis
2 section that is responsible for providing SQF to the city
3 council?"

4 "A. I do not."

5 MR. CHARNEY: Where is that? What page is that?

6 MS. GROSSMAN: 47, lines 8 through 12.

7 THE WITNESS: So I misspoke initially and then
8 corrected. So I worked in resource analysis section, and there
9 was a team. But I didn't oversee them.

10 Q. So your testimony is you are not sure when the New York
11 police department -- when the requirement for the police
12 department to start providing this data to the city council
13 went into effect?

14 A. There was legislation involved with it. I do not know when
15 it passed.

16 Q. You don't recall when it passed. Okay.

17 I'm going to show you another document and see if this
18 helps refresh your recollection about when the statute passed.
19 I guess I will mark this as 482.

20 Your Honor, this is a city statute. I don't know, if
21 it's a public document, do we need to mark? Can you just take
22 judicial notice?

23 THE COURT: Both.

24 Do you want to put it in evidence?

25 MR. CHARNEY: No I just wanted to ask him about it but

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1 I know you want me to mark.

2 THE COURT: Everything.

3 MR. CHARNEY: So we'll mark this as.

4 THE COURT: 483.

5 MR. CHARNEY: 483. And I'll direct you to the page.

6 It's marked page 4.

7 Q. Is that -- if you look under the section that says
8 historical note, does that refresh your recollection about what
9 year this law went into effect?

10 A. It says, The first historical note --

11 Q. Reading it to yourself.

12 A. Okay. It says November of 2001.

13 Q. Does that refresh your recollection that this law went into
14 effect in 2001 or thereabout?

15 A. Only because I'm reading it here. I wouldn't have been --

16 Q. All right.

17 A. I was separated from the police department for a year.

18 Q. I understand.

19 But sitting here today and having read that, do you
20 now recall that the law went into effect in 2001 or
21 thereabouts?

22 A. I do not recall when it went into effect.

23 Q. And so prior to the New York police department delivering
24 this stop-and-frisk data for 2006 to the city council in early
25 2007, prior to that point in time do you recall the last time

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1 before that that the New York police department delivered
2 stop-and-frisk data to the police department -- or to the city
3 council?

4 A. No. But once again that's because that was a team inside
5 the resource analysis section.

6 Q. Okay?

7 A. And at that time I was in special projects.

8 Q. All right. I'll move on then.

9 Now, it is true, though, and you know this, that the
10 decision by RAND to do the -- well RAND and the police
11 department, for RAND to do the stop-and-frisk study was made
12 shortly after the NYPD had provided this data to the city
13 council, correct?

14 A. That is my understanding, yes.

15 Q. And, in fact, this decision was made only about four months
16 after the incident involving the police department's killing of
17 Sean Bell, correct?

18 MS. GROSSMAN: Objection.

19 MR. CHARNEY: I'm just asking if that's when the time.

20 MS. GROSSMAN: The timing is the timing.

21 MR. CHARNEY: I'm asking if he recalls.

22 THE COURT: I'll allow it. Do you remember the
23 relationship in time?

24 THE WITNESS: I recall it because that incident was
25 related to the firearms analysis, not --

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1 MR. CHARNEY: Well I understand that.

2 THE COURT: So do you recall if it was about four
3 months later?

4 THE WITNESS: Yes. Because it was contemporaneous
5 with the firearms analysis.

6 THE COURT: Okay.

7 MR. CHARNEY: So it was about four months later,
8 correct?

9 THE WITNESS: Yes, sir.

10 MR. CHARNEY: Okay.

11 Q. And you recall, I'm sure, that there was, in that
12 four-month period there was a significant amount of public
13 outrage and concern about that incident, correct?

14 A. Yes, sir. That's for certain.

15 Q. And you recall that there were allegations made by various
16 people outside the police department that the police department
17 was engaging in racial profiling?

18 A. That wasn't my understanding. I thought the outrage was
19 related to the number of shots and how did this happen.

20 Q. And you don't recall that as part of the outrage about the
21 shooting there were allegations that there was racial
22 profiling, that this was a racially based killing?

23 MS. GROSSMAN: He just answered the question. It's
24 been answered.

25 MR. CHARNEY: I'm asking a separate question.

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1 THE COURT: I'll allow it.

2 THE WITNESS: I'm sorry, sir. Could you repeat that.

3 Q. I'm asking do you recall that part of the outrage expressed
4 about this shooting was that there were beliefs amongst people
5 outside the police department that this incident was in some
6 ways racially based?

7 A. I recall that there was some people that had those
8 concerns.

9 Q. And is your understanding that one of the reasons or, I'm
10 sorry, the reason that the police department commissioned the
11 RAND stop-and-frisk report was because now that the
12 stop-and-frisk data was public others would be studying it and
13 so it made sense for the police department to study it too?

14 A. Yes, sir. That's correct.

15 Q. And would you agree that one of the reasons the police
16 department wanted to study this data was to provide assurance
17 to the public that, in fact, the police department was not
18 engaging in racial profiling?

19 A. It was my opinion that now that the data was out there it
20 was going to be studied by academics and that it was -- made
21 sense for the department to do the same. But, again, no one
22 told me that. It was my opinion.

23 Q. Okay.

24 Well what about my question though that the reason
25 that they wanted to study it was to have a statistical study so

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1 that they could provide assurance to the public that the police
2 department was not racially profiling?

3 A. Certainly the study related to racial and ethnic bias
4 inside stops, yes.

5 Q. Now, do you recall that under the terms of the contract
6 between the police foundation and RAND that under that contract
7 the police department had the right to comment on drafts of the
8 report and that RAND was required to take such comments into
9 consideration when preparing their final report?

10 A. I recall that inside of the contract, yes.

11 Q. And, in fact, you and other NYPD officials did review and
12 provide comments on at least two drafts of the RAND report
13 before its final publication, correct?

14 A. Yes, sir.

15 Q. And, in fact, many of these comments were incorporated by
16 RAND into the final published version of the report; isn't that
17 correct?

18 A. Dr. Ridgeway did accept some of the comments.

19 Q. And Dr. Ridgeway, just so everybody understands, he is the
20 RAND researcher who was the lead researcher on the report,
21 correct?

22 A. Yes, sir. He's actually the only person that we dealt
23 with.

24 Q. And do you also recall that under the RAND contract with
25 the police foundation for the stop-and-frisk study that RAND

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1 was to subject its draft reports to a rigorous and objective
2 quality assurance review.

3 Do you recall that?

4 A. Yes, sir.

5 Q. And that that review would include, among other things,
6 peer reviews by both RAND staff and external reviewers who were
7 content and analytical experts in the field, correct?

8 A. Yes, sir.

9 Q. And the reason for this, according to the contract, right,
10 is that this kind of peer review would provide an independent
11 perspective on the quality of the work in the report, correct?

12 A. Yes.

13 Q. And you agree that getting that kind of independent and
14 objective review was an important thing for RAND to do, right?

15 A. Yes.

16 Q. Now, you're also -- you also agree that -- let's talk for a
17 minute about one of the analyses RAND did which is the external
18 benchmark analysis.

19 Do you recall that?

20 A. I do.

21 Q. And you recall that in conducting that analysis the
22 benchmark which RAND used was crime suspect, race description,
23 right?

24 A. That was one of the benchmarks, yes, sir.

25 Q. And in -- the NYPD provided certain data to RAND for them

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1 to use for this benchmark, right?

2 A. I facilitated delivery of data to Dr. Ridgeway, yes.

3 Q. And the data that was provided to Dr. Ridgeway by the
4 police department was suspect race data for violent crime
5 complaints only, correct?

6 A. I believe the statistical note that went with that data did
7 state that.

8 Q. Okay. And you don't have any reason to think that the
9 statistical note was inaccurate, right?

10 A. No, sir.

11 Q. But Dr. Ridgeway, in fact, asked at various times for
12 suspect race data for other categories of reported crime,
13 didn't he?

14 A. That I do not recall.

15 Q. Well if you want to maybe refresh your recollection, if you
16 want to look at page 105 of your deposition, line 5.

17 Does that refresh your recollection as to whether or
18 not Dr. Ridgeway actually asked for other categories of crime
19 suspect data besides violent crime?

20 A. That is what it says, yes, that he asked for property
21 crimes.

22 Q. So he asked for property crimes as well.

23 Are you also aware or do you also recall that he at
24 one point asked for crime suspect data regarding drug crimes?

25 A. Yes.

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1 Q. As you already testified, the only thing that the NYPD
2 ended up providing him -- not only thing. I'm sorry.

3 The only crime suspect data that was provided to
4 Dr. Ridgeway was for the violent crimes, right?

5 A. There was a series of files inside a zip file that was sent
6 from Assistant Commissioner McGuire who was actually inside our
7 crime analysis and policy planning section. He's really the
8 producer of data for the police department. And he sent that
9 file to Dr. Ridgeway, CCing me.

10 Q. Didn't you just testify that the statistical notes for that
11 file showed that only violent crime suspects was produced to
12 Dr. Ridgeway?

13 A. That is right.

14 Q. So, my question is are you aware that with respect to stops
15 and frisks that -- I'm sorry. Withdrawn.

16 Before I ask you that. Just to confirm. The study
17 that RAND did on stop-and-frisk was an analysis of the NYPD's
18 2006 stop-and-frisk data, correct?

19 A. Yes, sir.

20 Q. And are you aware that in that period of time, in the
21 mid 2000s that violent crimes were the suspected crimes in less
22 than fifteen percent of all stops and frisks recorded by the
23 police department?

24 A. I am not aware of that.

25 I'm not saying it's wrong. But I'm not aware of that.

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1 Q. All right. And are you aware that during that same period
2 property crimes, which you did not provide suspect data to
3 Dr. Ridgeway for, actually make up a larger portion of the
4 suspected crimes in the stops and frisks done by police
5 officers than do violent crimes?

6 A. Again, I'm not aware of those statistics but I'm not
7 disputing them.

8 Q. All right. And so I'm sure I know the answer to this but
9 I'll ask you any way.

10 Are you aware that "fits suspect description" is
11 listed as a stop factor in less than fifteen percent of all
12 stops recorded by NYPD officers each year?

13 A. And you are correct, sir.

14 Q. That you don't know?

15 A. No, sir.

16 Q. Okay. Now, do you also recall that the crime -- the
17 violent crime suspect data that you did give to Dr. Ridgeway
18 was organized at the precinct level?

19 A. That was my understanding, right.

20 Q. And so RAND conducted its external benchmarking analysis at
21 the precinct level, right?

22 A. I recall either he requesting also XY data or more specific
23 data. But I'm relatively certain his study was at the precinct
24 level, right.

25 Q. Now, the police department could have produced crime

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1 complaint data that was desegregated at much smaller
2 geographical units than precinct, right?

3 A. The production of data, again, it would fall under the
4 crime analysis section. So I'm not certain what they can and
5 cannot produce.

6 Q. Are you aware that in this particular litigation that
7 plaintiffs' expert Professor Jeffrey Fagan of Columbia
8 University conducted an analysis of the NYPD's stop-and-frisk
9 data in which he also used precinct as a unit of analysis?

10 A. I do know that he conducted a study. I do not know what
11 his unit of analysis was.

12 Q. I'll move on.

13 Do you recall that RAND itself in the RAND report
14 pointed out problems with using precinct as the geographic unit
15 of analysis. Do you recall that?

16 A. Yes.

17 Q. Do you recall the fact that RAND said that the racial mix
18 of the population in law enforcement practices can vary
19 substantially within a precinct?

20 A. That's the language I recall.

21 Q. But did you ever discuss with either Dr. Ridgeway or
22 Commissioner McGuire or Commissioner Farell whether or not it
23 maybe wasn't a good idea to use precinct as the unit of
24 analysis?

25 A. I never had any discussion about what the proper unit of

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1 analysis would be.

2 Q. Okay?

3 A. It wouldn't have been my role as the coordinator.

4 Q. Okay. So I want to ask you then about the draft RAND
5 reports that you said you did provide comments for.

6 Now, is it correct that there were two drafts that you
7 and other NYPD officials reviewed prior to the final
8 publication?

9 A. Yes, sir. September 20 and October 18, I believe.

10 Q. And that's 2007, right?

11 A. Yes, sir.

12 Q. And both yourself, Deputy Commissioner Farell and Assistant
13 Commissioner McGuire reviewed and provided comments on those
14 drafts, correct?

15 A. Well to be clear we met on the first draft in the very
16 first week of October after we received the September 20 draft.
17 And myself, Commissioner McGuire, and Commissioner Farrell met.
18 And my role was really probably more taking notes of their
19 comments as they went through their versions.

20 Q. But you were present and you did record those comments,
21 right?

22 A. That is correct. Yes, sir.

23 Q. I want to first of all show you what's been marked as
24 Plaintiffs' Exhibit 323.

25 Do you recognize this document?

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D4i9flol Riley - direct

1 A. Yes, sir, I do.

2 Q. What is this document?

3 A. This is the September 20 first draft that was sent to the
4 police department, sent to Commissioner Farell, CCing me.

5 Q. So this is the September 20, 2007 draft of the RAND report
6 done by Dr. Ridgeway?

7 A. Yes, sir.

8 MR. CHARNEY: Your Honor, plaintiffs would move for
9 the admission again solely for purposes of notice. Because I
10 know the RAND report is not coming in for the truth, we would
11 ask that this be admitted for the same purpose.

12 THE COURT: The draft?

13 MR. CHARNEY: Yes.

14 THE COURT: What's the notice of the draft -- what's
15 this notice argument?

16 MR. CHARNEY: The notice is to the extent there are
17 changes between the draft and the final version, and to the
18 extent that these changes relate to the issues around the
19 racial disparities, we think it affects the notice issue in
20 terms of: What were they on notice of? When? That kind of
21 thing.

22 THE COURT: To the extent it is different, I think it
23 should be admitted for the same limited purpose.

24 What exhibit number is it?

25 MR. CHARNEY: 323.

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D4i9flol

Riley - direct

- 1 THE COURT: Did you wish to be heard on that?
2 MS. GROSSMAN: No, your Honor. We have no objection.
3 THE COURT: All right.
4 (Plaintiffs' Exhibit 323 received in evidence)
5 MR. CHARNEY: So that was easy.
6 Q. I wanted to then also offer -- thank you, Ms. Grossman.
7 I'm going to show you what's been marked as
8 Plaintiffs' Exhibit 327. And if you could tell me if you
9 recognize -- this is an e-mail with an attachment to it.
10 Do you recognize this document?
11 A. Yes, sir. This is the results of the earlier mentioned
12 meeting between myself, Commissioner Farell, and Commissioner
13 McGuire.
14 Q. So this is an e-mail to Dr. Ridgeway attaching the NYPD's
15 comments to that September 20 draft, correct?
16 A. That is correct, yes.
17 MR. CHARNEY: I would move for the admission of this
18 document as well, Exhibit 327.
19 MS. GROSSMAN: No objection, your Honor.
20 THE COURT: 327 received.
21 (Plaintiffs' Exhibit 327 received in evidence)
22 Q. Looking at Exhibit 327 if you turn to -- I guess it would
23 be the -- turn to the third page of the document. Which is
24 Bates numbered NYC-23043.
25 Do you see that?

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D4i9flol Riley - direct

1 A. Yes, sir.

2 Q. Do you see there's a comment --

3 MR. MOORE: Screen.

4 MR. CHARNEY: Why don't we do that. Thank you,

5 Mr. Moore.

6 Q. Do you see there's a comment number 25, correct?

7 A. Yes, sir.

8 Q. And then next to that, in the next column, I guess that's a
9 lowercase l. Does that refer to a Roman numeral page in the
10 draft of the report, or do you not remember?

11 A. It would appear to be. It says page number in the top of
12 that column. So, yes.

13 Q. So you see the comment there, it says: Second paragraph,
14 fourth sentence, quote, while we found some, italicized,
15 disturbing evidence of unequal treatment across race groups,
16 unquote. And then there's a comment says: This statement
17 seems to be conclusive and is particularly striking when
18 considered with the analysis present throughout the report. If
19 the disturbing evidence is based -- I'm just reading what it
20 says.

21 THE COURT: She knows, but you have to read slowly.

22 "If the disturbing evidence is based upon the outliers
23 discussed in the paper, then inclusion of the associated
24 qualifications should be considered."

25 Q. Do you see that comment?

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D4i9flol Riley - direct

1 A. Yes, sir.

2 Q. So, going back to Exhibit 323 which is the draft I think.
3 Do you have that in front of you?

4 A. I do, sir.

5 Q. If we turn to the page which is numbered page 1, which is
6 near the end. I think it's -- the weird part about this
7 document is you switch back and forth between Arabic numbers
8 and then Roman numerals. So it's actually in proper order.
9 It's page 50, but it's got an 1 at the top.

10 MS. GROSSMAN: Bates number?

11 MR. CHARNEY: NYC_2_2940.

12 (Continued on next page)

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D4I8FLO2 Riley - direct

1 Q. If you go to the middle of the page, it's the second full
2 paragraph. I can put it up here.

3 You see there is a sentence in there, I think it's
4 about two thirds of the way down, it says, "Again, while we
5 found some disturbing evidence of unequal treatment across race
6 groups." Do you see that?

7 A. Yes, sir, I see that one.

8 Q. Is it your understanding that the comment we just looked at
9 in Exhibit 327 refers to this sentence?

10 A. I'd have to read the whole page to see if there are any
11 other references to disturbing. Give me one second.

12 MS. GROSSMAN: I would just say that wasn't the full
13 sentence that was read.

14 THE COURT: It wasn't.

15 MR. CHARNEY: The document is in evidence.

16 THE COURT: If you want to read the whole sentence, we
17 can. "Again, while we found some disturbing evidence of
18 unequal treatment across race groups, our analysis estimates
19 that the problem is not of a massive scale, but rather one that
20 police management can address with effective supervision,
21 monitoring of police activity, and effective interventions when
22 problems are identified."

23 Q. So having read this sentence, as well as the comment in
24 Exhibit 327, is it fair to say that the comment in Exhibit 327
25 refers to this sentence of the draft?

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D4I8FLO2

Riley - direct

1 A. Yes, sir.

2 Q. Isn't it correct that Dr. Ridgeway did accept your comment
3 and take out the word "disturbing" before "evidence of unequal
4 treatment"?

5 A. I do not know that he did. This wasn't one of my comments.

6 Q. This wasn't one of your comments?

7 A. No.

8 Q. But you did read the final version of the RAND report?

9 A. Yes, sir.

10 Q. I am going to show you this to refresh your recollection.

11 MR. CHARNEY: This has already been marked as
12 Defendants' Exhibit K6, but I just want to show it to the
13 witness to refresh his recollection.

14 THE COURT: Are you referring to something particular?
15 If you are refreshing recollection, you don't want him to read
16 the whole thing.

17 MR. CHARNEY: You're absolutely right. I want to make
18 sure I go to the right page here.

19 Q. If we turn to, the Bates number at the bottom is
20 NYC_2_28831, which is page 44 of the RAND report.

21 A. 28831. I'm on that page.

22 Q. At the top of the page, do you see there, in the end of the
23 first paragraph -- I will put it up. Well, I am not moving to
24 admit it.

25 MS. GROSSMAN: Why don't we admit it now, your Honor,
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1 because it will save time later.

2 THE COURT: Are you going to be objecting to its
3 admission?

4 MR. CHARNEY: As long as it's only for notice, I will
5 not be objecting.

6 THE COURT: When you get to K6, what are you offering
7 it for?

8 MS. GROSSMAN: For notice.

9 THE COURT: You're both on the same page, so to speak.
10 So K6 is received in evidence.

11 (Defendants' Exhibit K6 received in evidence)

12 Q. The top paragraph, you see the sentence starting "again"?

13 A. Yes.

14 Q. You see now it says, "While we found," but now it says
15 "some evidence," it doesn't say "disturbing evidence" anymore,
16 right?

17 A. That's correct. It seems to be the same sentence without
18 the disturbing.

19 Q. So you would agree that Dr. Ridgeway accepted the comment
20 that removed the word disturbing, right?

21 A. Yes, sir.

22 Q. Just so we are clear, going back to Exhibit 327, this
23 comment 25, do you remember whose comment that was?

24 A. It was not mine. So it would either be -- it would have to
25 be either Commissioner Farrell's or Commissioner McGuire's.

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1 Q. There is another comment that I want to look at here, which
2 is comment 23. We are again looking at Exhibit 327.

3 You see here, there is a comment 23 and it's from page
4 49 of the draft September 20, 2007 draft. The comment is,
5 "First paragraph, fourth and sixth sentences. There are
6 references to 'innocent pedestrians' in these two sentences.
7 How does one reconcile the term innocent when pedestrian stops
8 are based upon reasonable suspicion of committing a felony or
9 penal law misdemeanor?"

10 Do you know whose comment this was?

11 A. Again, I know it was not mine. So it would have to be
12 either Commissioner Farrell or Commissioner McGuire.

13 Q. Just so we have some context here, I am going to put
14 Exhibit 323 back up. This is the September 20, 2007 draft of
15 the report, the RAND report.

16 You see here the first paragraph, this is under the
17 section "conclusions." This is page NYC_2_2939.

18 Also, you will see this is the page 49 of the draft
19 report.

20 You see here there is a sentence that says,
21 "Furthermore, only 10 percent of the stops result in an arrest
22 or a summons. The value of those arrests compared with the
23 cost of the 'false positives' is a topic worthy of discussion
24 in the community."

25 It goes on, "Is the value of one arrest worth the cost

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1 of nine stops of innocent pedestrians?"

2 Then continuing down, I can read the whole thing, but
3 continuing down, there is another sentence at the end of that
4 paragraph, "To the innocent pedestrians stopped in New York,
5 the cost may be too high, depending on how the police handled
6 their situation."

7 MS. GROSSMAN: Just for full context, I would ask that
8 the other sentences be read.

9 MR. CHARNEY: I will read it.

10 Q. Going back to the first innocent pedestrians.

11 "The answer cannot be provided by statistical
12 analysis. In a close Democratic primary in Philadelphia,
13 Michael Nutter won on a platform that included adopting NYPD's
14 stop, question and frisk practices. At least before they have
15 experienced it, voters there seem to believe that the cost is
16 appropriate. To the innocent pedestrians stopped in New York,
17 the cost may be too high, depending on how the police handled
18 their situation."

19 So my question, Inspector, is, are those two
20 references there to innocent pedestrians the references that
21 were included in the comment that we have here on Exhibit 327,
22 number 23? Is that, to your recollection, what this comment
23 refers to?

24 A. Yes, sir. Accepting the proper page, it would appear to be
25 that.

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D4I8FLO2 Riley - direct

1 Q. So my question is, do you know why -- first of all, the
2 paragraph of the report states that only 10 percent of the
3 stops result in an arrest or a summons, correct?

4 A. Yes, sir. That's what it states.

5 Q. Based on your knowledge of both this study and your own
6 knowledge of the police department stop and frisk data, that is
7 accurate, right, that only 10 percent of stops, approximately,
8 result in an arrest or a summons?

9 A. From what I read in the media, that's what I understand.
10 Not from my personal analysis.

11 THE COURT: Not from the work of your department?

12 THE WITNESS: No.

13 THE COURT: But you have seen that figure?

14 THE WITNESS: Yes, I have seen that.

15 Q. Would you agree that if a stop does not result in an arrest
16 or a summons means that the officer who made the stop did not
17 discover any evidence of a crime, right? Once they stopped the
18 person and questioned them and chose not to arrest or summons
19 them meant that they didn't find any evidence of a crime,
20 right?

21 A. No. I think that means it didn't rise to the level of
22 probable cause.

23 THE COURT: That is what he is saying. There is no
24 evidence of a crime. If you had evidence of crime, you would
25 have probable cause. It's logic 101.

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D4I8FLO2 Riley - direct

1 Q. So I guess my question is, do you know why either yourself
2 or Commissioner McGuire or Commissioner Farrell has a problem
3 with --

4 THE COURT: No, no, no. Don't ask them about the
5 other two states of mind.

6 Q. Based on your knowledge of the police department's work and
7 their work on stop and frisk, do you know why the police
8 department doesn't consider pedestrians who are stopped but not
9 arrested or summonsed to not be innocent?

10 A. No, sir, I do not know why.

11 Q. So you don't know why this comment about removing the term
12 innocent pedestrians from the report was made? Do you know why
13 that is?

14 A. It was made at that meeting on October 3rd. I do not
15 remember the discussion that accompanied it.

16 Q. Do you know whether this change removing the term innocent
17 pedestrian from the RAND report was made to the final report?

18 A. I do not know if he made it or not.

19 THE COURT: You don't know what?

20 THE WITNESS: If he made the change or not.

21 Q. I am asking you, do you recall, having read the final
22 version of the report, whether or not that change, removing the
23 term innocent pedestrian, was made?

24 A. I do not recall if Dr. Ridgeway accepted that comment or
25 not.

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D4I8FLO2 Riley - direct

1 Q. If you can turn back to Exhibit K6, which you have in front
2 of you, and turn to page NYC_2_28830. And I will put it up on
3 the screen.

4 If we look at the first paragraph, you see the first
5 paragraph?

6 A. Yes, sir, I do.

7 Q. That's the paragraph that addresses the same issues that we
8 were looking at in the draft, right? It mentions the less than
9 10 percent, talks about the cost of false positives, right?
10 You see that?

11 A. Yes, sir.

12 Q. In the first paragraph, cost of false positives, only 10
13 percent of the stops result in an arrest or a summons, right?
14 Do you see that?

15 A. Yes, sir.

16 Q. Do you see any mention there of the innocent pedestrians or
17 the cost of this stop and frisk on innocent pedestrians, is
18 that anywhere in this paragraph?

19 A. In that paragraph, I see no reference to innocent.

20 Q. So is it fair to say, based on your review of this --

21 THE COURT: Would you leave that there for one second,
22 please?

23 Well, it does say, "Is the value of one arrest worth
24 the cost of nine stops of suspects who have committed no
25 crime?" If he committed no crime, it seems to me that equals

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D4I8FLO2 Riley - direct

1 innocent.

2 MR. CHARNEY: I guess I am just --

3 THE COURT: The word isn't there. If you want him to
4 agree the word "innocent" is not there, it's not.

5 Q. The term "innocent pedestrians" is taken out of this
6 report, right? Is that right?

7 A. Yes, sir, that's correct.

8 Q. Now, you said there was a second draft that Dr. Ridgeway
9 provided to you in October of 2007, is that right?

10 A. Yes, sir.

11 Q. I am going to show you this draft as well. I am handing
12 you what has been marked as Plaintiffs' Exhibit 324. You can
13 tell me what this document is. I'm sorry about all the paper.

14 A. It's quite all right.

15 Q. Do you recognize this document, Inspector?

16 A. This is a subsequent revision to the September 20 report
17 from October 18. So I referenced this earlier.

18 Q. So this is the second draft that you reviewed and that the
19 NYPD commented on, correct?

20 A. Yes, sir.

21 MR. CHARNEY: I would again just for notice purposes
22 move for the admission of this Exhibit 324.

23 MS. GROSSMAN: No objection.

24 THE COURT: 324 received for the limited purpose of
25 notice.

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D4I8FLO2

Riley - direct

1 (Plaintiffs' Exhibit 324 received in evidence)

2 Q. Now, when you received this draft in October of 2007,
3 Commissioner McGuire and Deputy Commissioner Farrell expressed
4 some concern about a change that Dr. Ridgeway had made in the
5 second report in his discussion of the various strengths and
6 weaknesses of external benchmarks that could be used, correct?

7 A. I don't know if it was one or both, but yes, there was such
8 a concern.

9 Q. And the concern that they raised was that in the first
10 draft, the September draft, Dr. Ridgeway had expressed a
11 preference in favor of the crime suspect benchmark, correct,
12 but in the second report, it was much more neutral, is that
13 right?

14 A. That is what I recall, yes, sir.

15 Q. I am going to show you what has been marked as Plaintiffs'
16 Exhibit 325. It's a double-sided document. If you can tell me
17 whether or not you recognize this document.

18 A. Yes. On the backside, it is an e-mail to Greg Ridgeway.

19 Q. From whom?

20 A. From myself.

21 Q. Then what about on the first page?

22 A. Then there is a reply from Dr. Ridgeway to myself, and also
23 CC'ing Andrew Morral, who is from the RAND Corporation.

24 Q. Then at the top there is a third e-mail, is that correct?

25 A. That is correct. That is from me, again to Dr. Ridgeway.

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1 Q. So it's fair to say that this document contains an e-mail
2 exchange, three e-mails between yourself and Dr. Ridgeway on
3 October 24th of 2007, correct?

4 A. Yes, sir, that's fair to say.

5 MR. CHARNEY: Plaintiffs would move for the admission
6 of Plaintiffs' Exhibit 325.

7 MS. GROSSMAN: No objection.

8 THE COURT: 325 is received.

9 (Plaintiffs' Exhibit 325 received in evidence)

10 Q. We will start with the e-mail on the back since that's the
11 one that's first in time.

12 So this is an e-mail that you, correct, Inspector
13 Riley, wrote to Dr. Ridgeway on the morning of October 24,
14 2007, correct?

15 A. Yes, sir, that's correct.

16 Q. And in this e-mail, if we look here, starting at the second
17 sentence of the e-mail, it says -- well, the first e-mail asks
18 if Dr. Ridgeway is going to be visiting New York soon, right?

19 A. Yes, sir.

20 Q. Then the second sentence explains, "The reason I ask --"
21 meaning you -- "is we would like to discuss the reasoning
22 behind the decision to not assert any particular benchmark as
23 being superior to the others." Do you see that?

24 A. Yes, sir.

25 Q. Then it says, "Commissioners Farrell and McGuire are

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D4I8FLO2

Riley - direct

1 unclear as to why there was such a departure from draft 1's
2 acceptance of crime suspect description as being superior,
3 although admittedly less than perfect, to utilizing the
4 census."

5 A. That is correct.

6 Q. Then it says, "The paper does not seem to cite any specific
7 reasons why suspect description is unreliable to the same
8 degree as the census benchmark -- which does have more specific
9 explanations." Do you see that?

10 A. Yes, sir.

11 Q. Then you go on.

12 MR. CHARNEY: I can read it if your Honor wants. The
13 exhibit is in evidence. I am trying to speed this up.

14 THE COURT: I appreciate that everybody is conscious
15 of time, but it's not all that long, and it might be relevant
16 to this examination and cross-examination.

17 MR. CHARNEY: Sure.

18 Q. "I have to admit, I too was a bit confused. There is more
19 at work in suspect descriptions than the explicit description
20 provided to an officer via 911 radio -- which, might I add, is
21 a weighty factor in an officer's decision to stop a crime
22 suspect."

23 Let me stop there. That statement, that a 911 call is
24 a weighty factor in an officer's decision to stop a crime
25 suspect, I think I asked you this already, but are you aware

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1 that fits suspect description is listed as a stop reason in
2 less than 15 percent of all stops?

3 THE COURT: You did ask that, and he was not aware.

4 A. Yes.

5 THE COURT: I remember that. OK.

6 Q. What is the basis for your statement that a description
7 provided to an officer on 911 is a weighty factor in an
8 officer's decision to stop a crime suspect?

9 A. Clearly, from what I know now, a misunderstanding of the
10 data.

11 THE COURT: Actually, I will defend you. I didn't
12 think that. I thought what you meant is when it's known, it's
13 a weighty factor in an officer's decision. Isn't that another
14 way to read that?

15 THE WITNESS: Yes, your Honor.

16 MR. CHARNEY: Fair enough.

17 Q. Then I guess a follow-up question to that -- I will ask it
18 a different way.

19 Then it says, "We bore witness to this in our field
20 assignment. There are also scores of "crime patterns" in each
21 patrol borough and precinct that are brought to the attention
22 of officers on patrol. Actually, officers are expected to be
23 very familiar with local crime patterns. (Crime patterns are
24 based upon two or more crimes suspected of being committed by
25 the same perpetrator)."

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Riley - direct

1 Is it your understanding that that is always the case,
2 that a crime pattern has to include a suspect description?

3 A. Well, patterns are put up inside the crime information
4 center. I am trying to think of how you would have a pattern
5 with no description. It's correct. You could have a pattern
6 with no description.

7 Q. You could have a pattern that just showed a string of
8 burglaries in the same, I don't know, three or four blocks?

9 A. With certain crimes it's very difficult to understand who
10 the perpetrator is, sure.

11 Q. So then this statement here, and again, I am not saying I
12 disagree with it, but it's not 100 percent accurate, right?

13 THE COURT: What? Would you rephrase that, please?

14 Q. The statement that crime patterns -- in other words, when
15 you're discussing suspect description to say that crime
16 patterns are based upon two or more crimes suspected of being
17 committed by the same perpetrator, that's not necessarily
18 accurate, right?

19 MS. GROSSMAN: Objection.

20 MR. CHARNEY: He just said --

21 THE COURT: I will allow it.

22 Is that accurate? That's the definition of what a
23 crime pattern is based on?

24 THE WITNESS: To have a pattern, certainly you have to
25 have at least two events.

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Riley - direct

1 THE COURT: There has to be two crimes committed by
2 the same perpetrator?

3 THE WITNESS: No.

4 THE COURT: OK. Because you just said, you may not
5 have any idea who the perpetrator is, but you may have a
6 cluster of the same crime in the same area and same time at
7 night.

8 THE WITNESS: I agree with that.

9 Q. "Patterns are posted in precinct crime centers, are handed
10 out to officers at roll call and are subject to extensive
11 discussions at CompStat. These patterns include descriptions
12 and often composite sketches -- and this translates to
13 pedestrian stops on patrol, as one would expect."

14 Again, I ask you, are you saying -- do you recall,
15 were you saying here that all patterns would include
16 descriptions?

17 THE COURT: Why do you want to ask it again? Twice he
18 has confirmed. It's not necessarily the case. If you ask it a
19 third time, maybe you will get a different answer a third time.

20 Q. This sentence is also inaccurate, right?

21 A. Yes, sir.

22 Q. "So then, Why would one equate these stops, which are based
23 on victim descriptions, geographic area as previous crimes and
24 often include some other suspicious behavior, with a blanket
25 census survey?"

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D4I8FLO2 Riley - direct

1 "Regardless, there were a few other issues they'd like
2 to discuss. If you have no plans to visit, perhaps we can
3 conference call? If you feel it appropriate, perhaps Jack
4 Riley, or whomever you feel would be helpful, could
5 participate.

6 "Best regards, Terry."

7 Who is Jack Riley?

8 A. Jack Riley is another -- I believe he is an executive from
9 RAND.

10 THE COURT: No relation?

11 THE WITNESS: No.

12 MR. CHARNEY: I was actually wondering the same thing.

13 Q. So then if we turn it over and look at Dr. Ridgeway's
14 response to the concerns you raised, I am going to start where
15 it says, "I didn't intend."

16 "I didn't intend for the document to suggest that all
17 of the benchmarks were equally flawed, though I see sentences
18 that indicate that (e.g., 'rather than claim the superiority of
19 any of them...') I can tidy that part up to indicate that
20 census is really ridiculous, arrest is highly problematic, and
21 suspect descriptions is more promising but still has issues.
22 (and the report does say that).

23 "Two of the three reviewers strongly indicated that
24 the report gave too much credence to the external benchmarks.
25 For example, one reviewer noted:

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D4I8FLO2 Riley - direct

1 "First, I think the paper needs to be more forthcoming
2 about the potential problems with using suspect descriptions as
3 benchmarks. It is suspect descriptions interacted with the
4 visible population in the locations where officers are deployed
5 that should determine the racial composition of stops."

6 I am going to stop there for a second.

7 Inspector, would you agree with that statement, the
8 portion that says "interacted with the visible population in
9 the locations where officers are deployed that should determine
10 the racial composition of stops"?

11 A. I, by no means, am an expert in this.

12 Q. How did you interpret this sentence?

13 A. If any given person is not visible on the street, for
14 instance, if they are in their apartment, then they have no
15 possibility of being stopped.

16 Q. Would you agree that, in order to measure the visible
17 population and location where officers are deployed, you would
18 have to look at the census data for that particular area?

19 A. I wouldn't necessarily agree with that when you have
20 places -- Manhattan, where you have large numbers of people
21 coming from outside the area. I wouldn't agree.

22 THE COURT: How would you measure the visible
23 population in the locations where officers are deployed? What
24 options do you have?

25 THE WITNESS: I really do not have one.

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1 THE COURT: OK. It may be the closest approximation
2 is the census data.

3 THE WITNESS: Entirely possible, your Honor.

4 Q. Would you agree with me that what this reviewer's comment
5 says is that there needs to be both a measure of criminal
6 activity and a measure of the population that would be, I
7 guess, available to be stopped, that both of those things need
8 to be part of the benchmark?

9 A. I would agree it appears that's what this expert is
10 suggesting.

11 Q. Going on it says, "For example, in a world in which there
12 are five blacks, three Hispanics, and two whites on each
13 patrolled street and an officer exhibits no bias but stops all
14 visible individuals who meet a suspect description, if blacks
15 account for 70 percent of suspect descriptions, Hispanics 20
16 percent and whites 10 percent, then 81 percent of stopped
17 individuals will be black."

18 Going on he says, "A more extreme example is that
19 blacks represent 50 percent of suspect descriptions and whites
20 represent 50 percent of suspect descriptions. But imagine that
21 whites stay inside or drive their cars and the blacks regularly
22 walk the streets. So if officers are stopping someone only
23 when someone matches a suspect description, they will stop 100
24 percent black pedestrians, far from the crime suspect
25 benchmark.

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D4I8FLO2 Riley - direct

1 "The other reviewer hated the arrest benchmarking, for
2 the same reasons that I indicate in the report, and thought
3 that the suspect benchmark was better.

4 "I'm available almost any time, today, tomorrow or
5 Friday. Let's do this ASAP.

6 "Greg."

7 Now, do you recall testifying earlier that you did
8 think it was important for RAND to get an independent peer
9 review of this study as part of its quality assurance process,
10 right?

11 A. Absolutely.

12 Q. So Dr. Ridgeway is telling you in this e-mail what one of
13 those independent peer reviewers told him about the crime
14 suspect benchmark, correct?

15 A. Dr. Ridgeway made an attempt to explain it to me, and I
16 replied that it didn't make sense to me.

17 Q. My question was, his explanation that he is setting forth
18 here is what an independent -- one of the peer reviewers told
19 him in reviewing the draft of the RAND report, right?

20 MS. GROSSMAN: It speaks for itself.

21 THE COURT: It says that right there. "Two of the
22 three reviewers strongly indicated that. The other reviewer
23 hated it." It does say that. This information is from three
24 reviewers.

25 Q. Dr. Ridgeway's explanation to you was based on this

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1 independent peer review, correct?

2 THE COURT: All three of them.

3 A. That is correct.

4 Q. Then you said, and I think it's up here, your answer was,
5 "The reviewer's comment you included doesn't make sense.
6 Descriptions are never solely based on race. They always
7 include a clothing description, at least, and usually a general
8 age and direction of flight as well. So weighting race as
9 determinative doesn't make sense. Can you explain this logic
10 in lay terms perhaps?"

11 Again, there you're referring to those situations
12 where the stop is made pursuant to a specific suspect
13 description, right?

14 A. Yes, sir.

15 Q. Then it says, "For the conference call, how does Friday
16 afternoon at 4:15 sound?"

17 Did you in fact have a conference call with Dr.
18 Ridgeway to discuss the crime suspect benchmark?

19 A. I did not.

20 Q. You were not on a call with him about this?

21 A. Not to my recollection, sir.

22 Q. Turn to page 112 of your deposition, line 24. I am going
23 to read starting there. This is an answer you gave.

24 "As a consequence of the directions from Commissioners
25 Farrell and McGuire, I was told to write him an e-mail and set

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D4I8FLO2 Riley - direct

1 up a conference call. Dr. Ridgeway responded to me with this
2 wonderful attempt to try and clarify what he was doing. I did
3 not understand what he was talking about. I set up a
4 conference call and I was -- I believe I was present at the
5 conference call and Commissioner Farrell and Commissioner
6 McGuire and Dr. Ridgeway are statisticians, and I was there if
7 they needed something."

8 So you were present for the conference call?

9 A. That is what this says.

10 THE COURT: Which do you think it is though? I know
11 that's what it says. I am pleased you agree it says that. Do
12 you think you were or were not?

13 THE WITNESS: At this point, I really think I wasn't.

14 THE COURT: You think you were not?

15 THE WITNESS: No, ma'am.

16 Q. This deposition was in November 2009, right?

17 A. Yes, sir.

18 Q. And that was only about two years after the conference
19 call, right?

20 A. That's correct, sir.

21 Q. But you're saying that today, almost six years later, your
22 memory is better, is that what you're saying?

23 A. That is not what I am saying. I am saying at this point, I
24 really do not have any recollection of being at that conference
25 call.

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D4I8FLO2 Riley - direct

1 Q. That's fine. But you could have been there?

2 A. It's possible, sure.

3 Q. Do you know, whether or not you were there, do you know
4 what was discussed on that conference call?

5 A. No, sir.

6 Q. Now, do you recall that, in fact, after this conference
7 call Dr. Ridgeway did make a change to the final version of the
8 RAND report with respect to his discussion of the various
9 external benchmarks?

10 A. Yes, sir.

11 Q. I want to first, before we -- actually, in the final
12 version, he does describe crime suspect benchmark in more
13 favorable terms than the other two, arrest and census, right?

14 A. That is my recollection, yes.

15 Q. I just want to show you again, going back to Exhibit 323,
16 which was the October 2007 report that this issue came up about
17 the crime suspect benchmark in relation to. I want to put up
18 on the screen here. This is Bates number NYC_2_2881.

19 Here this is the September draft, right? And it's
20 your recollection that the September draft did describe crime
21 suspect as a more favorable benchmark, right?

22 If you look here it says, "A more precise benchmark
23 for measuring racial disparities in pedestrian stops is the
24 racial distribution of crime suspect descriptions." Do you see
25 that?

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D4I8FLO2 Riley - direct

1 A. Yes, sir, inside the September 20 version.

2 Q. So that was September. But when we get to October, and
3 this is Exhibit 324, he is describing it differently.

4 THE COURT: That's in evidence too?

5 MR. CHARNEY: Yes.

6 Q. So here, right?

7 MS. GROSSMAN: Page?

8 MR. CHARNEY: This is page NYC_2_3085.

9 Q. Again, according to Dr. Ridgeway, this is after the peer
10 reviewers had given their input.

11 Here you see he says, "Rather than claim the
12 superiority of any of them, we provide comparisons with several
13 benchmarks to demonstrate the sensitivity of external
14 benchmarking and, hence, argue that the results of external
15 benchmarking should be interpreted with caution." Right?

16 A. Yes, sir. That's correct.

17 Q. Then down here it says, "Benchmarks based on crime suspect
18 descriptions have been suggested as an alternative approach
19 that avoids some of the problems of the other benchmarks while
20 possessing its own set of limitations." Right?

21 A. That is what it says.

22 Q. You testified that in the final version there was yet
23 another change, right, through the discussion of external
24 benchmarks, right?

25 A. That is my recollection.

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D4I8FLO2 Riley - direct

1 Q. So here, this is the final version. This is Exhibit K6.
2 We are at page 28779, right?

3 Now, here it says, "Benchmarks based on crime suspect
4 descriptions may provide a good measure of the rates of
5 participation in certain types of crimes by race, but being a
6 valid benchmark requires that suspects, regardless of race, are
7 equally exposed to police officers."

8 Do you see that?

9 A. Yes, sir, I do.

10 Q. Then down here, if we go further down, there is a
11 discussion of the census, right? And the way that's
12 characterized is, "The most widely used but least reliable
13 benchmark is the residential census. Census benchmarks do not
14 account for differential rates of crime participation by race
15 or for differential exposure to the police. Comparisons to the
16 residential census are not suitable for assessing racial bias."

17 Do you see that?

18 A. Yes, sir, I do.

19 Q. So you would agree that the description of the census
20 benchmark is very critical, correct?

21 THE COURT: Say that again.

22 Q. Very critical, very negative, the description of the census
23 benchmark?

24 THE COURT: Critical. OK.

25 A. I would say that is critical of the census.

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D4I8FLO2 Riley - direct

1 Q. And the description of the crime suspect is somewhat
2 positive, and the only qualification really given is that you
3 also need to include what I referred earlier to as a measure of
4 who would be exposed to these stops, who would be present on
5 the street to be stopped, right?

6 A. It is more positive, but not without issues.

7 Q. But you would agree that the issue that is raised for the
8 crime suspect is not described in as critical language as the
9 census, right?

10 A. Yes, sir.

11 THE COURT: We are going to pause now for our morning
12 recess and reconvene at quarter to 12.

13 (Recess)

14 BY MR. CHARNEY:

15 Q. Inspector, I want to ask you now about the findings of the
16 RAND report and your recollection of those.

17 The final version of the report came out in November
18 of 2007, correct?

19 A. Yes, sir.

20 Q. And it's your recollection, is it not, that while
21 Dr. Ridgeway did not find, in your estimation, systemic racial
22 profiling, he did conclude that there were areas of concern,
23 correct?

24 A. Yes, sir.

25 Q. So you recall, for example, that RAND found that Hispanic

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D4I8FLO2 Riley - direct

1 pedestrians were stopped disproportionately more than their
2 representation among violent criminal suspects, correct?

3 A. That was one of the findings.

4 Q. And you recall that another of the findings was that black
5 pedestrians were stopped on suspicion of weapons possession at
6 a greater rate than their weapons arrest rate would predict,
7 while white pedestrians were stopped on suspicion of weapons
8 possession at a lower rate than their weapons possession arrest
9 rate would predict?

10 A. I do not specifically recall that.

11 Q. That's fine. If we can turn to, this is Exhibit K6 again,
12 and look at page NYC_2_28804.

13 Looking at the bottom, the last paragraph, it says,
14 "The fourth set of bars from the top of figure 3.1."

15 And I can show you figure 3.1, it's on the next page.
16 So I think they are referring to fourth set of bars which would
17 be right here, weapons arrests. And if you notice, this color
18 bar refers to white pedestrians, the striped one refers to
19 Hispanic, and the light colored one refers to black
20 pedestrians.

21 So going back to the bottom of page 28804, it says,
22 "The fourth set of bars from the top of figure 3.1 compares
23 stops for suspected criminal possession of a weapon (the most
24 common reason for UF-250s) to arrests in which the top charge
25 was weapon possession. Officers stop black suspects for

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1 suspected weapon possession at a rate greater (8 percent
2 greater) than their weapon arrest rate. White suspects on the
3 other hand have a stop rate that is 11 percent lower than their
4 weapon arrest rate."

5 Does that refresh your recollection that RAND, in
6 fact, found that blacks were stopped more often for weapons
7 crimes than their arrest rate would suggest, or would predict?

8 A. That is what it states, yes, sir.

9 Q. And that whites were, in fact, stopped for weapons crimes
10 less frequently than their weapons arrest rate would predict?

11 A. Yes, sir.

12 Q. And you're also aware that RAND conducted what it called an
13 internal benchmarking analysis, correct?

14 A. Yes, sir.

15 Q. And that analysis used a particular computer algorithm to
16 compare the stop patterns of similarly situated officers who
17 had made 50 or more stops in 2006, correct?

18 A. That is my understanding.

19 Q. And by similarly situated, I mean officers who worked in
20 the same part of the city, same time of day, right?

21 A. Same type of assignment, yes, correct.

22 Q. And the results of that benchmarking analysis that
23 Dr. Ridgeway did find that there were 15 NYPD officers who
24 had, in fact, overstopped minority pedestrians as compared to
25 the stop activity of their similarly situated peers, correct?

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1 A. It would be helpful, if it's not too problematic, to see
2 that.

3 Q. Sure. I believe it's going to be Exhibit K6, page
4 NYC_2_8710, which is page Roman numeral 13 of the report.

5 You see here under, "Results of internal benchmarking
6 analysis," the first one says, "Five officers appear to have
7 stopped substantially more black suspects than other officers
8 did when patrolling the same areas, at the same times, and with
9 the same assignment."

10 And it says, "nine officers stopped substantially
11 fewer black suspects than expected."

12 Then it says, "Ten officers appear to have stopped
13 substantially more Hispanic suspects than other officers did
14 when patrolling the same areas, at the same times, and with the
15 same assignment, and four officers stopped substantially fewer
16 suspects than expected."

17 So would you agree with me that there were 15 officers
18 that were identified by this internal benchmarking -- well, not
19 identified. 15 officers were found, through this internal
20 benchmarking analysis, to have stopped more pedestrians of
21 color than would have been expected based on their assignment
22 and the time of day that they patrolled and where they
23 patrolled?

24 A. 15 stopped substantially more, yes, that's my
25 understanding.

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D4I8FLO2 Riley - direct

1 Q. Do you also recall that RAND did an analysis of stop
2 outcomes?

3 A. Yes, sir.

4 Q. That would include analyzing the likelihood of being
5 frisked, correct?

6 A. Yes, sir.

7 Q. The likelihood of force being used in a stop, right?

8 A. Yes.

9 Q. The likelihood of a search occurring during a stop?

10 A. Yes.

11 Q. And also whether or not a stop resulted in an arrest or a
12 summons, correct?

13 A. That is my recollection.

14 Q. And whether or not a weapon or another form of contraband
15 was recovered, right?

16 A. Yes, sir.

17 Q. Do you recall that the results of that analysis found that,
18 particularly in the borough of Staten Island, there were
19 significant racial disparities with respect to who was being
20 frisked, searched and having force used against them during
21 stops, correct?

22 A. Again, if we could, just for Staten Island.

23 Q. Sure. We are looking at the same page. So turning to page
24 NYC_2_28829, which is page 42 of the report.

25 You see under conclusions, it says in the second

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D4I8FLO2 Riley - direct

1 paragraph, "After adjusting for stop circumstances, we found
2 differences in the rates of some outcomes in some boroughs. On
3 average, non-whites experience more intrusive stops than do
4 similarly situated white suspects. Staten Island borough
5 stands out particularly with several large racial gaps in the
6 frisk, search and use of force rates."

7 Do you see that?

8 A. Yes, sir, I do.

9 Q. Now, in early 2008, you attended a meeting that
10 Commissioner Farrell called to --

11 MR. CHARNEY: I'm sorry. Withdrawn.

12 Q. In addition to these findings, RAND issued a set of
13 recommendations for the police department, correct?

14 A. Yes, they did, sir.

15 Q. Do you recall that one of those recommendations was that
16 the police department should review those boroughs that had
17 shown in RAND's analysis to have the largest racial disparities
18 in stop outcomes, which would include of course Staten Island,
19 correct?

20 A. That is correct.

21 Q. Do you recall that another of the recommendations was
22 that -- I apologize for my voice -- and I will put it up on the
23 screen, with respect to those officers that had shown out of
24 the ordinary stop patterns, in other words, officers who had
25 been shown to have stopped larger numbers of pedestrians of

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1 color than would be expected, do you see here it says, "Our
2 analysis indicates that the racial distribution of stops for
3 several officers is skewed substantially from those of their
4 colleagues. We recommend that the NYPD review these flagged
5 officers and incorporate into their early warning system a
6 component that flags officers with extreme deviations from
7 their colleagues."

8 It goes on to say, "These measured disparities are
9 evidence that these officers differ substantially from their
10 peers; however, they are not necessarily conclusive evidence
11 that these officers practice racially biased policing.
12 Supervisors may then investigate and address the disparities."

13 So you recall that RAND made that recommendation?

14 A. Yes, sir, that was one of the recommendations.

15 Q. Now I am going to ask you, in early 2008, you attended a
16 meeting that was called by Commissioner Farrell to discuss
17 these and the other RAND recommendations, correct?

18 A. Yes, sir.

19 Q. Now, the recommendation about the racial disparities in
20 post-stop outcomes was discussed at this meeting, correct?

21 A. I recall we discussed all of the recommendations, yes, sir.

22 Q. Again, just to make sure we are on the same page, the
23 recommendation about the post-stop outcomes was that RAND
24 should review the boroughs with the largest racial disparities
25 in stop outcomes, correct?

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1 A. Yes, sir, that's right.

2 Q. But to your knowledge, this recommendation was never
3 adopted, was it?

4 A. This recommendation, that is correct, yes.

5 Q. Then with respect to the recommendation about reviewing the
6 flagged officers that were flagged for the internal
7 benchmarking analysis, and remember there were 15 that were
8 flagged, correct?

9 A. Yes, sir.

10 Q. This recommendation was also discussed at that meeting,
11 right?

12 A. Regarding the 15 that overstopped, yes, sir.

13 Q. But the discussion was about whether or not the NYPD should
14 purchase Dr. Ridgeway's internal benchmarking software, right,
15 that's what the discussion was?

16 A. We did discuss purchasing the algorithm that he used to
17 identify those officers, yes.

18 Q. But that was so that going forward the NYPD could try to
19 replicate his analysis, right?

20 A. We wanted to use his algorithm to do the same, yes.

21 Q. But there was no discussion of going to the 15 officers or
22 going and taking a closer look at the 15 officers who had
23 already been flagged as having overstopped pedestrians of
24 color, right?

25 A. If my recollection serves me correct, it was, because that

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1 data was from 2006, it seemed to make more sense to get his
2 actual algorithm and do it with newer data.

3 Q. But 15 officers had already been identified as having, at
4 least for a particular year, overstopped pedestrians of color,
5 correct?

6 A. Yes. In connection with, I believe it was 13 that
7 under-stopped, there was a lot of conversation about that.

8 Q. But there was never an effort made to, first of all,
9 identify by name those 15, and then take a look at, for
10 example, their supervisors, the training they received, the
11 monitoring that they were receiving?

12 A. No. I believe he was prohibited from telling us who those
13 officers were, if my memory serves me correct.

14 Q. I understand. But the police department has the names of
15 every officer that makes stops and records 250s?

16 A. Yes, sir, we do.

17 Q. And you said you also purchased Dr. Ridgeway's algorithm?

18 A. Yes, sir, we did.

19 Q. So you could have then run the algorithm on the 2006 data
20 and identified these 15 officers, right?

21 A. We were not able to do that.

22 Q. Did you ever run it on the 2006 data?

23 A. I'm not certain which data it was run on. It wasn't done
24 in my office.

25 Q. Then how do you know that you weren't able to do that?

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D4I8FLO2

Riley - direct

- 1 A. Because I remember a conversation with -- CAT is where this
2 actual algorithm was sent. That's our crime analysis unit
3 section, and there was a conversation that they were having
4 problems either with the hardware or the software, something
5 was wrong.
- 6 Q. Didn't Dr. Ridgeway actually come and assist them in
7 running it?
- 8 A. He did visit.
- 9 Q. Then weren't they able to successfully run it?
- 10 A. I do not know if they were successful or not.
- 11 Q. Are you aware that they ran it only on the 2007 data, not
12 the 2006 data?
- 13 A. I do not know what they ran it on.
- 14 Q. Now, there was another recommendation that RAND made that I
15 wanted to show you, and this is on page NYC_2_28831. And this
16 recommendation is under the heading, "Officers should clearly
17 explain to pedestrians why they are being stopped."
- 18 Do you see that?
- 19 A. Yes, sir, I do.
- 20 Q. I am going to read it. It says, "In 90 percent of the
21 stops, the detained individual is neither arrested nor issued a
22 summons. To mitigate the discomfort of such interactions and
23 to bolster community trust, officers should explain the reason
24 for the stop, discuss specifically the suspect's manner that
25 generated the suspicion, and offer the contact information of a

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1 supervisor or appropriate complaint authority so that the
2 person stopped can convey any positive or negative comments
3 about the interaction. While the latter suggestion might
4 increase the number of official complaints, it might also
5 reduce the number of unofficial complaints that would otherwise
6 circulate in the suspect's social network. For a trial period
7 in select precincts, the NYPD could require that officers give
8 an information card to those stopped pedestrians who are
9 neither arrested nor issued a summons. An evaluation of the
10 program could identify the kinds of stops likeliest to result
11 in positive or negative feedback from stopped pedestrians."

12 I want to stop there for a second. The NYPD did, in
13 fact, start a pilot program, correct?

14 A. Yes, sir, we did.

15 Q. That was a program in which officers would give out cards
16 to individuals -- certain individuals they stopped who were not
17 arrested or summonsed?

18 A. Correct. It was required for them to give a small little
19 card.

20 Q. Was that for every stop that they conducted that did not
21 result in a summons or arrest?

22 A. Absent exigent circumstances.

23 Q. Does that card give the contact information for the
24 officer's supervisor on it?

25 A. No, sir, it does not.

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1 Q. Does it give contact information for the CCRB?

2 A. No, sir, it does not.

3 Q. Now, the last sentence there, I want to ask you about this.
4 It says, "Most important, ongoing communication and negotiation
5 with the community about SQF activities are helpful in
6 maintaining good police community relations."

7 To your knowledge, did that particular recommendation,
8 was that discussed at this 2008 meeting you had with
9 Commissioner Farrell to address the RAND recommendations?

10 A. I do not recall that specifically being discussed.

11 Q. To your knowledge, has the NYPD since 2008 implemented any
12 specific protocol creating a process or a forum for which
13 police officials can sit down and discuss stop, question and
14 frisk specifically with communities in which stop activity is
15 high?

16 A. Not that I have been involved with.

17 Q. Do you know of any such specific efforts being undertaken?

18 A. I'd be speculating.

19 Q. OK.

20 MR. CHARNEY: One minute, your Honor.

21 I apologize, your Honor. Just to make sure I have the
22 record clear. When Exhibit K6, which is the final RAND report,
23 was admitted into evidence, just to make sure we are all on the
24 same page, it's only for purposes of notice.

25 THE COURT: Correct.

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Riley - direct

1 MR. CHARNEY: No further questions.

2 MS. GROSSMAN: No questions, your Honor.

3 THE COURT: No questions. OK.

4 Thank you. You're all done.

5 MS. BORCHETTA: The plaintiffs call Helen McAleer.

6 HELEN McALEER,

7 called as a witness by the plaintiffs,

8 having been duly sworn, testified as follows:

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

11 THE WITNESS: Helen McAleer, H-E-L-E-N, M-C-A-L-E-E-R.

12 DIRECT EXAMINATION

13 BY MS. BORCHETTA:

14 Q. Good afternoon.

15 A. Good afternoon.

16 MS. BORCHETTA: Your Honor, if I may, based on your
17 previous requests with other witnesses, just give a brief
18 introduction to this witness. She is from the Office of the
19 Chief of Department, as you will hear, within the NYPD.

20 MS. COOKE: This witness can testify.

21 THE COURT: The only reason I wanted a summary from
22 the others is I hadn't heard about the stop yet.

23 MS. BORCHETTA: I just wanted to alert the Court that
24 some of our questions are directed to remedies issues. That's
25 the issue that I wanted to alert your Honor to.

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McAleer - direct

1 THE COURT: I thought Mr. Dunn asked if he could be
2 notified when we were doing some remedies proof.

3 Did anybody tell him?

4 MS. BORCHETTA: He is aware of the witnesses that we
5 are calling.

6 THE COURT: Did you tell him that you were going to
7 discuss some remedies issues, do you recall?

8 Does anybody know? He did ask me --

9 MS. BORCHETTA: We didn't specifically state that with
10 this witness.

11 MR. CHARNEY: He knew what the subject matter of her
12 testimony was.

13 THE COURT: Whatever. If we are still with this
14 witness at the break.

15 MR. CHARNEY: We will call him.

16 BY MS. BORCHETTA:

17 Q. What is your current position of employment?

18 A. I am an inspector in the New York City Police Department.

19 Q. What is your rank?

20 A. Inspector.

21 Q. Do you currently work within the Office of the Chief of
22 Department?

23 A. Yes, I do.

24 Q. That's referred to as OCD, correct?

25 A. Correct.

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D4I8FLO2 McAleer - direct

- 1 Q. How long have you worked in the New York Police Department?
2 A. 32 years.
3 Q. When did you begin working in OCD?
4 A. 17 years ago.
5 Q. That was 1995, correct?
6 A. Correct.
7 Q. You have worked in OCD continuously since 1995, correct?
8 A. Correct.
9 Q. Who do you currently report to?
10 A. Chief of department, Chief Banks.
11 Q. Prior to reporting to Chief Banks, you reported to Chief
12 Esposito, correct?
13 A. Correct.
14 Q. When did you begin reporting to Chief Esposito?
15 A. When Chief Esposito became chief of department.
16 Q. When was that?
17 A. I believe it was August of 2001.
18 Q. OCD has an investigative review section, correct?
19 A. Correct.
20 Q. That's known as IRS?
21 A. Correct.
22 Q. In part, IRS is responsible for overseeing certain
23 communications from the public, right?
24 A. Correct.
25 Q. That includes allegations from the public about

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D4I8FLO2 McAleer - direct

1 Q. You have seen complaints come into OCD in which people have
2 made an allegation of racial profiling?

3 A. Very few, but yes, I have.

4 Q. And sometimes the staff at OCD will refer cases to CCRB or
5 IAB, correct?

6 A. Yes.

7 Q. But there are no guidelines for OCD staff and how to make a
8 determination about those referrals, right?

9 A. No.

10 Q. When OCD receives a communication from the public, OCD
11 staff gives that communication a code, right?

12 A. Correct.

13 Q. OCD has a list of codes, right?

14 A. Correct.

15 Q. I am going to show you a document that's been marked as
16 Defendants' Exhibit Z12.

17 MS. COOKE: I don't have any objection to the
18 admission of this document.

19 MS. BORCHETTA: We would move for the admission of
20 this document.

21 THE COURT: Z12 is received.

22 (Defendants' Exhibit Z12 received in evidence)

23 Q. This is the list of codes that OCD uses to classify
24 complaints that come into the OCD office, right?

25 A. Correct.

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D4I8FLO2 McAleer - direct

- 1 Q. On the first page it says UMOS, right?
2 A. Yes.
3 Q. What does that mean?
4 A. Uniformed member of the service.
5 Q. Is it correct that the codes that are listed under UMOS are
6 codes that would be used when there is an allegation related to
7 a member of service?
8 A. A uniformed member of service.
9 Q. A uniformed member of service?
10 A. Yes.
11 Q. If OCD receives a communication on an improper arrest, what
12 code is that?
13 A. M-5.
14 Q. And that code is specifically called improper arrest,
15 right?
16 A. Correct.
17 Q. And if OCD receives a complaint of an improper summons,
18 what code is that?
19 A. M-6.
20 Q. And M-6 specifically says improper summons, right?
21 A. Correct.
22 Q. Now, if a member of the public makes a complaint about a
23 stop and frisk, what code is that given?
24 A. M-1, general dissatisfaction.
25 Q. That's because there is no specific code for stop and

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1 frisk, right?

2 A. Correct.

3 Q. There is no specific code for racial profiling, right?

4 A. Correct.

5 Q. And OCD does not code allegations of racial profiling in
6 any way, right?

7 A. No, we don't.

8 Q. OCD complaints are maintained in a database, right?

9 A. Yes, they are.

10 Q. And that database is called BCATS, right?

11 A. Correct.

12 (Continued on next page)

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D4i9flo3

McAleer - direct

- 1 Q. The code meaning one of the codes we've just been
2 referencing listed on Defendants' Exhibit Z12 are entered into
3 BCATS, right?
4 A. Yes it is.
5 Q. And the subject officer's name also gets logged into BCATS,
6 right?
7 A. If it's on the complaint report. Sometimes we get
8 complaint reports that don't identify officers. So at that
9 point we can't.
10 Q. But if OCD knows the name of the subject officer, the name
11 of the subject officer would get logged into BCATS, right?
12 A. Yes.
13 Q. And if a member of the public says in her communication to
14 OCD that she believes she had been subjected to racial
15 profiling, BCATS would not capture that allegation, right?
16 A. No.
17 Q. And OCD does not in any way track allegations of racial
18 profiling, right?
19 A. No. We don't.
20 Q. I want to show you a document that's previously been
21 admitted. This is Plaintiffs' 279.
22 Am I correct that this is a printout from BCATS?
23 A. Yes, it is.
24 The first page is a printout of my BCATS screen.
25 Page 637 and 638 is the hard copy of the IAB log that
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1 we received from IAB.

2 Q. So, again, just to clarify for the record the first page
3 which is stamped at the bottom NYC_2_27636, that's a printout
4 from BCATS, right?

5 A. Correct.

6 Q. And so the information on that page is the information that
7 would appear in the BCATS database, right?

8 A. Correct.

9 Q. And then you said the second two pages, which for the
10 record are NYC_2_27637 to 38, what are those two pages?

11 A. That's the allegation that my office received from IAB in
12 regards to this allegation.

13 Q. And so OCD received the two pages stamped 27637 through 38
14 from IAB?

15 A. Correct.

16 Q. And in what OCD received from IAB there's a summary, right?

17 A. Yes, there is.

18 Q. And that summary indicates, quote, the officers were from
19 the 73rd precinct. Mr. Redacted's arrest was wrongful due to
20 mistaken identity and racial profiling.

21 Do you see that?

22 A. Yes, I do.

23 Q. Is that the allegation or is that an IAB conclusion, to
24 your knowledge?

25 A. That's an IAB conclusion.

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D4i9flo3 McAleer - direct

1 Q. So IAB concluded that this was racial profiling?

2 A. No.

3 IAB concluded, if you look right above that, the
4 allegation. It says disputed arrest.

5 Q. I'm sorry. But the statement, to your knowledge, that the
6 officers were from the 73rd precinct and Mr. Redacted's
7 arrest was wrongful due to mistaken identity and racial
8 profiling. Is that sentence an IAB conclusion?

9 A. Yes, it is.

10 Q. But OCD, in handling this communication from IAB, would not
11 have recorded anywhere in the BCATS database that this was a
12 founded allegation of racial profiling, right?

13 A. No, we would not.

14 Q. And do you see on the BCATS printout that is the first page
15 there's an area for disposition?

16 A. Yes.

17 Q. What is -- what information is captured in that area of the
18 BCATS form?

19 A. In that section is the allegation, disposition, and the
20 penalty.

21 May I explain? And in this case what happens is if
22 you go to page 637 and you'll see underneath the summary that
23 there's a disputed arrest at 0638 hours. And that this
24 incident was also received by CCRB. Okay.

25 What happens is CCRB also sends me a communication on
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1 this incident. IAB is also notified.

2 So what happens is I get two communications for one
3 incident. And what my staff does is we close-out the IAB log
4 number and follow this communication with the CCRB number.

5 And what a member of my staff will do is go into our
6 BCATS screen, allegation, IAB, OCD notification, and
7 automatically condition noted, an instruction will pop up and
8 close this under the log number but we will track it under
9 the -- under the CCRB number -- or OCD number.

10 Q. From looking at this, are you able to tell whether OCD sent
11 this out to anyone for further investigation?

12 A. Yes.

13 Because in the note you can see that it says OCD. And
14 there's the number of the second communication but for the same
15 incident.

16 Q. I'm sorry. Where are you looking?

17 A. Underneath notes on page 636.

18 Q. That's an OCD number, right?

19 A. Correct.

20 Q. So that means that OCD sent this out for investigation?

21 A. My office sent it out, under investigation, under this log
22 number.

23 Q. And but generally on a BCATS form in the penalty area what
24 information is provided in the penalty area?

25 In other words, what in practice do OCD staff members

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1 input into the penalty area?

2 A. The disposition and the penalty.

3 Q. And that's the penalty the officer received related to the
4 OCD investigation, right?

5 A. Correct.

6 Q. OCD staff are not trained on how to handle allegations of
7 racial profiling, right?

8 A. Are not trained to investigate them because we don't do
9 investigations. We record the communication. We forward it.
10 And then we track it.

11 Q. I'll be asking you questions about how the investigation
12 works in a moment. But focusing just on the training that OCD
13 staff receive, they don't receive specifically any training on
14 handling racial profiling allegations, right?

15 A. No, they don't.

16 Q. And OCD staff are not trained specifically on how to handle
17 allegations related to stop and frisk, right?

18 A. No, they're not.

19 Q. And they don't receive training on reasonable suspicion,
20 right?

21 A. Well members of my staff do attend command level training
22 and if that subject is part of their command level training
23 then they'll receive it.

24 Q. But they don't -- OCD staff do not receive any training on
25 how to handle allegations that they're reviewing about

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1 reasonable suspicion, right?

2 A. No.

3 Q. And OCD has never raised any concerns to others in the NYPD
4 that officers might be engaging in racial profiling, right?

5 A. No.

6 Q. And OCD has never conducted any meetings on how OCD staff
7 should handle allegations of racial profiling, right?

8 A. I have not.

9 Q. And in your position are you currently at the top of OCD?

10 A. I'm at the top -- OCD is office of chief of department.
11 And that's Chief Banks. I'm the commanding officer of
12 investigation review section. That's a subunit under the chief
13 of department.

14 Q. I'm sorry. But you're the highest member of the IRS,
15 correct?

16 A. Correct.

17 Q. And OCD has never given any instructions -- I'm sorry. Now
18 let's turn to the investigations themselves. OCD does not
19 conduct investigations, right?

20 A. No, we do not.

21 Q. OCD simply refers allegations out to other units, right?

22 A. Correct.

23 Q. And OCD does not check when it receives allegations whether
24 a subject officer, where the subject officer's name is known,
25 has previously had a complaint against him, right?

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McAleer - direct

1 A. No, we don't.

2 Q. And OCD refers the allegation down the chain of command,
3 right?

4 A. Correct.

5 Q. And to clarify that question, OCD refers the allegation
6 down the chain of command for further investigation, right?

7 A. Correct.

8 Q. By the chain of command, right?

9 A. Yes.

10 Q. OCD complaints are sent for investigations to the
11 commanding officer of the bureau where the subject officer is
12 working, right?

13 A. Correct.

14 Q. And OCD does not send any instructions to the command when
15 complaints are forwarded, right?

16 A. We have -- on my referral sheet, we have a check-off box
17 which would be appropriate attention. Basically that's the
18 only instructions we give.

19 Q. So OCD does not send instructions about how to conduct the
20 investigation?

21 A. No, we do not.

22 Q. And you are not personally aware of what happens in the
23 conduct of the investigations once they're sent out to the
24 chain of command, right?

25 A. I do not -- I'm not.

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1 Q. You do know that it's always the officer's direct
2 supervisor who conducts the investigation that OCD has
3 referred, right?

4 A. No in all instances.

5 Q. But in some instances an officer's direct supervisor will
6 conduct the OCD-referred investigation, right?

7 A. Possibly.

8 Q. You know that that does happen, right?

9 A. Yes.

10 Q. Once the command completes the investigation, OCD receives
11 a disposition, right?

12 A. Correct.

13 Q. But upon receiving that disposition OCD doesn't conduct any
14 review of the sufficiency of the investigation that was
15 conducted, right?

16 A. No, we don't.

17 MS. BORCHETTA: I'm going to show you what is marked
18 as Plaintiffs' Exhibit 251.

19 Do you recognize this?

20 THE WITNESS: This is a disposition sheet from the
21 commanding officer of the 107 precinct.

22 Q. So looking at 251 you said this is a disposition sheet,
23 right?

24 A. Yes.

25 Q. So this is an example of an OCD disposition sheet?

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McAleer - direct

1 A. Correct.

2 Q. This is the disposition sheet that OCD receives from the
3 command after an investigation has been completed?

4 A. Yes.

5 MS. COOKE: You have a cutoff copy. Can we put the
6 revised.

7 Q. And looking -- I think I need to hand this to you for a
8 moment so you can take a look at it. But looking at this
9 exhibit can you tell whether -- well in reviewing that
10 document -- and I will give you a moment to do so -- it does
11 not appear from this that the investigating officer reviewed
12 250 -- a UF 250 or a memo book during the investigation, right?
13 From that document, you can't tell whether he did that?

14 A. Okay. Let me just read.

15 Q. And it goes onto the back of the page as well.

16 A. Could you repeat the question.

17 Q. Sure.

18 Looking at that document, there is no indication that
19 the investigating officer reviewed a UF 250 or a memo book in
20 conducting this investigation, right?

21 A. That's correct.

22 Q. And that comment section of the disposition sheet, that's
23 completed by the investigating officer, right?

24 A. Yes, it is.

25 Q. And the only way that OCD would know what an investigating

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1 officer did in conducting an investigation into an OCD
2 complaint would be if the investigator listed it in that
3 comment section, right?

4 A. Correct.

5 MS. COOKE: Your Honor, I'm going to object to form on
6 this question. She's referring to OCD would know. And this is
7 IRS. She's the commanding officer of IRS.

8 THE COURT: IRS is a part of OCD. And there is no
9 other division within OCD that's doing this. So, it is OCD.

10 MS. COOKE: To the extent that the other units in the
11 office of chief of department might have information about
12 this.

13 THE COURT: I don't think they do. I think the way
14 I've heard it, it's in her command, so to speak. So it is OCD.

15 MS. COOKE: I maintain my objection, your Honor.

16 THE COURT: Yes. Objection overruled.

17 MS. BORCHETTA: Let me clarify that for the record.

18 Q. Inspector McAleer, you're the head of IRS within OCD,
19 right.

20 A. Correct.

21 Q. And IRS is the unit within OCD that handles investigations,
22 right?

23 A. Yes.

24 Q. But if -- using this Plaintiffs' Exhibit 251 as an example,
25 OCD would not, after receiving this disposition form, take any

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1 action to check whether, in fact, the investigator reviewed the
2 UF 250 or the memo book in conducting its investigation, right?

3 A. No, we wouldn't.

4 Q. And that's because OCD doesn't take any actions after
5 receiving investigation disposition forms to determine what, in
6 fact, occurred in the investigation, right?

7 A. Correct.

8 Q. And similarly in the context of an allegation related to a
9 stop, when OCD receives a disposition form, OCD would not
10 conduct any review to determine whether the comments in the
11 disposition form are consistent with the paperwork associated
12 with the stop, right?

13 A. No, we wouldn't.

14 Q. And OCD does not keep track of what investigators have done
15 in conducting an investigation into an OCD allegation, right?

16 A. Correct.

17 Q. Going to show you what's been marked as Plaintiffs' 426.
18 Do you recognize this?

19 A. Yes, I do.

20 Q. And what -- this is an OCD document as well, right?

21 A. Yes, it is.

22 MS. BORCHETTA: Your Honor, I'd move to admit
23 Plaintiffs' 426.

24 MS. COOKE: No objection.

25 THE COURT: 426 received.

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McAleer - direct

1 (Plaintiffs' Exhibit 426 received in evidence)

2 Q. The first page of this is a BCATS printout, correct?

3 A. Correct.

4 Q. What are the pages that follow?

5 A. On page 881 that's a disposition sheet that my office
6 received from the 28 precinct.

7 On 882 is the referral sheet from Manhattan North.

8 883 is my referral sheet that I sent out to patrol
9 service bureau.

10 884 and 885 are hard copies of the log that we
11 received from IAB.

12 Q. Looking at the second page of Plaintiffs' 426, which is
13 stamped at the bottom 27881, you said this is the disposition
14 sheet, right?

15 A. Right.

16 Q. That's the disposition sheet that OCD receives, right?

17 A. Correct.

18 Q. And you can tell from looking at this, that the subject
19 officer is an officer named Pichardo, right?

20 A. Correct.

21 Q. And he was within the 28th precinct?

22 A. The 28 precinct, yes.

23 Q. And the investigator was a Sergeant Contreras, right?

24 A. Correct.

25 Q. And he was also within the 28th precinct, right?

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McAleer - direct

1 A. Yes.

2 Q. You would agree with me that looking at the comments
3 section on this disposition sheet you cannot tell what Sergeant
4 Contreras, the investigator, did to conduct this investigation,
5 right?

6 A. One second. Let me just read it.

7 Q. Sure.

8 A. Repeat your question.

9 Q. You cannot tell from looking at the comment section on this
10 disposition sheet what the investigator did to conduct the
11 investigation?12 A. In the comment section you read here that he did
13 investigate where he knows that the subject officer prepared a
14 stop, question and frisk on the defendant.15 Q. But you can't tell, for example, whether he spoke to anyone
16 about this?

17 A. No. He doesn't quote that.

18 Q. And so OCD would not have known from reviewing this whether
19 this investigator spoke to anyone in conducting this
20 investigation, right?

21 A. Correct.

22 Q. But they wouldn't take any action to follow up with the
23 investigator to determine who he may have spoken to, right?

24 A. No, he wouldn't.

25 Q. When OCD logs information into BCATS -- hold on one moment.

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D4i9flo3 McAleer - direct

- 1 I'm sorry. OCD logs the complaint into BCATS, right?
2 A. Correct.
3 Q. And OCD refers the complaint to the command, right?
4 A. Yes.
5 Q. And then OCD logs in the disposition received from the
6 command, right?
7 A. Correct.
8 Q. And that's all that OCD does with respect to the
9 investigation, right?
10 A. Correct.
11 Q. OCD does run reports of the data in the BCATS database each
12 month that indicate the number of complaints, right?
13 A. Correct.
14 Q. And where the complaints are referred, right?
15 A. Yes.
16 Q. Meaning to where the complaints are referred, right?
17 A. Yes.
18 Q. And the breakdown of the codes assigned to those
19 complaints, right?
20 A. Yes.
21 Q. And the dispositions, right?
22 A. Yes.
23 Q. And you review those monthly reports, right?
24 A. Yes, I do.
25 Q. No one else reviews them, to your knowledge?

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D4i9flo3 McAleer - direct

- 1 A. No. They are an in-house report.
2 Q. And when you review them you're only looking to see whether
3 dispositions are overdue, correct?
4 A. Correct. Open and closed.
5 Q. You do not review those monthly reports for trends in the
6 complaints, right?
7 A. No, I don't.
8 Q. And to your knowledge the NYPD has never run any report
9 other than those monthly reports using the BCATS database,
10 right?
11 A. I can't say for the whole NYPD but I can say from my
12 database.
13 Q. I'm asking: To your knowledge, the NYPD has not run any
14 report on the data in the BCATS system, right?
15 A. No.
16 Q. And to your knowledge -- again, to your knowledge no one
17 outside of the NYPD has ever run a report on the data within
18 BCATS, right?
19 A. Correct.
20 Q. And there is a narrative section in the BCATS system,
21 right?
22 A. Yes, there is -- a note section.
23 Q. So if we look, for example, at Plaintiffs' 426 there's a
24 section for notes, right?
25 A. Correct.

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D4i9flo3 McAleer - direct

1 Q. And comments can be entered into that section, right?

2 A. Yes.

3 Q. But there is no way to run a report based on the language
4 in that narrative section, to your knowledge?

5 A. No, there's not.

6 Q. In order to determine whether complaints alleging --
7 whether there were complaints alleging racial profiling, OCD
8 would need to review the original communications associated
9 with the BCATS entry, right?

10 A. Correct.

11 Q. But you've never conducted a report to determine how many
12 communications to OCD alleged racial profiling, right?

13 A. Correct.

14 Q. And to your knowledge no one in the NYPD has conducted such
15 a report, right?

16 A. I can't speak for the whole NYPD. I can speak for IRS.

17 Q. To your knowledge no one in the NYPD has conducted such a
18 report, right, as far as you're aware?

19 A. To my knowledge, yeah.

20 Q. And you've never -- you've never personally conducted a
21 review of OCD communications to determine what number contained
22 allegations of racial profiling, right?

23 A. No, I have not.

24 Q. And you're not aware of anyone else in the NYPD reviewing
25 OCD communications to determine the number that have alleged

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D4i9flo3 McAleer - direct

- 1 racial profiling, right?
2 A. I'm not.
3 Q. And you've also never reviewed OCD complaints to determine
4 the number that relate to stop and frisk, right?
5 A. Correct.
6 Q. And you're not aware of anyone in the NYPD having done
7 that, right?
8 A. I'm not aware.
9 Q. And OCD does not record the names of witnesses interviewed
10 during an investigation into an OCD complaint, right?
11 A. No, we don't.
12 Q. You're aware that the NYPD has performance monitoring
13 systems, right?
14 A. I'm aware of it.
15 Q. And in your understanding that's -- the monitoring systems
16 are run by the office of chief of personnel, right?
17 A. Yes, it is.
18 Q. And that office does not have access to BCATS, right?
19 A. No, it doesn't.
20 Q. And OCD does not inform the office of the chief of
21 personnel of substantiated OCD investigations, right?
22 A. No, we don't.
23 Q. And to your knowledge substantiated dispositions from OCD
24 do not go into an officer's personnel history, right?
25 A. Repeat the question.

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D4i9flo3 McAleer - direct

1 Q. To your knowledge substantiated OCD complaints do not go
2 into an officer's personnel file, right?

3 A. If an investigation is done on a precinct level and the
4 investigation reveals some type of discipline, a command A,
5 that would be given at the precinct level and that will be
6 included in the personnel record of the officer.

7 Q. But the OCD disposition report would not go into the
8 officer's personnel history file, to your knowledge, right?

9 A. My disposition report, no, it doesn't.

10 MS. BORCHETTA: One moment, your Honor.

11 (Pause)

12 MS. BORCHETTA: Your Honor, we do have -- similarly as
13 we did with the CCRB witness, Ms. Thompson, I have a few
14 documents that we need to admit through this witness. So I'd
15 like to do that now.

16 THE COURT: Well now is virtually the lunch break but
17 do you have many? Just two minutes? Does that end your
18 examination?

19 MS. BORCHETTA: Yes.

20 THE COURT: Okay. Have you gone over them with the
21 city?

22 MS. BORCHETTA: We've identified the exhibits that we
23 were going to use.

24 THE COURT: Is there any objection?

25 MS. COOKE: If she tells me what number -- just reads

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D4i9flo3

McAleer - direct

1 the numbers, we can.
2 MS. BORCHETTA: I can hand them to you.
3 Plaintiffs' 225.
4 MS. COOKE: No objections.
5 THE COURT: 225 is received.
6 MS. BORCHETTA: 432.
7 MS. COOKE: No objections.
8 THE COURT: 432 is received.
9 MS. BORCHETTA: 433.
10 MS. COOKE: Just one minute, your Honor.
11 433. No objections.
12 THE COURT: 433 is received.
13 MS. BORCHETTA: 434.
14 MS. COOKE: No objections.
15 Your Honor, with respect to 225. Do you have N13 in
16 your pile?
17 MS. BORCHETTA: Yes.
18 MS. COOKE: Because N13 is part of 225. It just got
19 separated.
20 MS. BORCHETTA: We can admit that now. Defendants'
21 N13.
22 THE COURT: I'm sorry?
23 MS. BORCHETTA: Defendants' N13.
24 MS. COOKE: No objections. Goes with 225.
25 MS. BORCHETTA: The last one I'm actually not sure if
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D4i9flo3 McAleer - direct

1 it's OCD so we'll see if counsel has an objection but this is
2 Plaintiffs' 168.

3 MS. COOKE: This I would object to with this witness.
4 It is not an OCD.

5 THE COURT: We'll have to pick up here after the
6 luncheon recess. We'll reconvene at five after two.

7 .
8 (Plaintiffs' Exhibits 225, 432, 433, 434 received in
9 evidence)

10 (Defendants' Exhibit N13 received in evidence)

11 (Luncheon recess)

12

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D4i9flo3

McAleer - direct

AFTERNOON SESSION

2:12 p.m.

1

2

3

(Trial resumed)

4

MS. BORCHETTA: Your Honor, during the break we worked out with the city I believe they have no objection to Plaintiffs' 168.

7

MS. COOKE: Correct.

8

THE COURT: 168 is also received.

9

(Plaintiffs' Exhibit 168 received in evidence)

10

MS. BORCHETTA: Your Honor, I have no further questions.

11

12

I'd just like to represent that also during the break we reached out to Chris Dunn. And he confirmed that he doesn't have question for this witness.

13

14

15

THE COURT: Okay. Thank you.

16

HELEN MCALEER, resumed.

17

CROSS-EXAMINATION

18

BY MS. COOKE:

19

Q. Good afternoon, Inspector McAleer.

20

A. Good afternoon, Brenda.

21

Q. Could you please provide the Court a brief background of your years with the NYPD, beginning with the position you held prior to commanding officer of IRS in the chief of department.

22

23

24

A. As said earlier, I have 32 years on the job; 17 years with the chief of department's office.

25

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D4i9flo3

McAleer - cross

1 Prior to that I worked at the police academy for two
2 years.

3 A year before that, one year, at Manhattan traffic
4 area. All in the rank of captain or above.

5 And then prior before that, my lieutenant and sergeant
6 time was spent in Brooklyn North. A sergeant in the 75
7 precinct and a personnel officer and the training officer in
8 Brooklyn North.

9 And my time as a cop is in the 113 precinct in Queens.

10 Q. Thank you. What is your educational background?

11 A. I have four-year Bachelor of Science in criminal justice
12 from St. John's University.

13 Q. With respect to your responsibilities presently as the
14 commanding officer of the investigative review section, you've
15 testified about the logging of communications.

16 Are there other responsibilities of the investigative
17 review section?

18 A. Yes. My unit oversees communications is also three other
19 subunits.

20 The firearm discharges. In the firearm discharges, I
21 coordinate and present to the chief of department's board all
22 firearms that discharges, members of the service, when they
23 occur.

24 I also oversee summonses. And that's all summonses
25 that are issued by the department of vehicles. I am the

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D4i9flo3 McAleer - cross

1 liaison with the department of motor vehicle and parking
2 violations bureau in regards to that section.

3 And my last section is the parade permit section. And
4 that is -- I process all applications for parades on Fifth
5 Avenue or any parade that has over a thousand participants and
6 then I issue the permit.

7 Q. How many people are on staff in the investigative review
8 section?

9 A. There's 23 people under me.

10 Q. Are all 23 uniformed members of service?

11 A. No. I have two lieutenants, two sergeants, nine police
12 officers, and the remainder are civilians.

13 Q. And how many of those 23 individuals that you supervise
14 spend time working on the logging of the communications that
15 you testified to?

16 A. My communication section is overseen by one lieutenant, and
17 there are five police officers assigned, and three civilians.

18 Q. With respect to the communications that are logged by the
19 IRS unit, from where do you receive the communications?

20 A. All communications come through Internal Affairs Bureau
21 IAB.

22 Q. To your knowledge, do they all originate at IAB or can
23 they --

24 A. They can come from IAB. They can come from 311. And they
25 can come from the police commissioner's office. And they can

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D4i9flo3

McAleer - cross

1 come from CCRB.

2 Q. When you receive a communication in the IRS unit through
3 IAB, who made the determination that the communication should
4 be logged and passed down for investigation in the chief of
5 department's office?

6 A. IAB.

7 Q. With respect to the nature of the communications that can
8 come from IAB, 311, CCRB or the police commissioner's office
9 can all of those include civilian complaints about police
10 misconduct?

11 A. Yes, they can.

12 Q. And with respect to the communications that are logged by
13 the IRS division, are those only related to police -- uniformed
14 police officers?

15 A. No.

16 We receive communications on uniformed police
17 officers. We receive communications on traffic agents, school
18 safety agents, auxiliary members of the service.

19 Q. You mentioned that all of the communications received from
20 the four areas IAB, 311, CCRB and the police commissioner's
21 office are funneled to OCD IRS through IAB, correct?

22 A. Correct.

23 Q. Are there instances in which you would receive
24 communication of a complaint directly from CCRB?

25 A. Yes. What happens is Monday -- when a communication --

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D4i9flo3 McAleer - cross

1 when CCRB receives a communication, they're sent to me and they
2 are also sent to IAB.

3 So in the essence of time, what happens is a member of
4 my staff will go onto the link, the web-based link of CCRB.
5 And we'll pull them off their system. And instead of waiting
6 for them to go through IAB, so we can get them out quicker, so
7 we can investigate them quicker.

8 Q. Similarly, with respect to the police commissioner's
9 communications can those come directly to office of chief of
10 department first?

11 A. Yes, they do.

12 Q. But do they also ultimately get logged with IAB and routed
13 to OCD?

14 A. Some do. Some don't.

15 Q. Approximately how many communications did the IRS log in
16 2012?

17 A. Approximately 41,000.

18 Q. Are all 41,000, approximately 41,000 communications
19 complaints of police misconduct?

20 A. No.

21 Communications can be three things. They can be
22 complaints or -- complaints. They could be commendations or.
23 They can just be for your information.

24 Q. And approximately how many of the 41,000 communications
25 logged by IRS in 2012 were communications from 311?

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D4i9flo3

McAleer - cross

- 1 A. 20 percent.
2 Q. And from CCRB?
3 A. 17 percent.
4 Q. And IAB?
5 A. 60 percent.
6 Q. And the police commissioner's office?
7 A. Approximately 3 percent, less than 3 percent.
8 Q. So it's fair to say the bulk of the communications come
9 from the 60 percent of IAB communications?
10 A. Correct.
11 Q. And when you receive a communication in the IRS unit in
12 what form do you receive it, paper or electronic?
13 A. Communication from IAB comes paper.
14 Q. And as you mentioned, the CCRB ones are retrieved from a
15 web link?
16 A. Correct.
17 Q. But when you also receive a duplicative log of that
18 communication from IAB --
19 A. It's paper.
20 Q. And with respect to the paper communication the IRS
21 receives do you maintain that piece of paper?
22 A. Yes, we do, for approximately one year.
23 Q. Does IRS have any role or responsibility in deciding who
24 will conduct the investigation into the communication?
25 A. No, I don't.

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McAleer - cross

- 1 Q. Does IRS supervise whomever is conducting the investigation
2 of the communication?
3 A. No, we don't.
4 Q. Does IRS have any role or responsibility for review of the
5 adequacy of the investigation that's conducted?
6 A. No, we don't.
7 Q. Does IRS provide training for the investigators conducting
8 the investigating?
9 A. No, we don't.
10 Q. Does IRS have any role or responsibility for the imposition
11 of discipline for substantiated investigations?
12 A. No, we don't.
13 Q. When a communication is received by IRS and reviewed, what
14 does your staff do next?
15 A. We receive the communication. We review it. And then we
16 enter it into our BCATS system.
17 Q. And is your staff making any judgments or determinations
18 about the -- about the outcome?
19 A. No. That -- the allegation is determining by IAB.
20 Q. Your staff is selecting a code for logging the
21 communication, correct?
22 A. Correct.
23 Q. And how do they determine which code to log for the
24 communication?
25 A. Well my codes mirror IAB's allegation and we match that as

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D4i9flo3 McAleer - cross

1 best we can.

2 Q. Can you or IRS staff create a new code -- turning your
3 attention to Defendants' Exhibit Z12 which is your list of
4 codes, correct?

5 A. Correct.

6 Q. If a code field doesn't exist on Exhibit Z12 could your
7 staff create it for purposes of logging a communication?

8 A. My staff cannot create it.

9 Q. You testified on direct that it's possible to run reports
10 from your BCATS system?

11 A. Yes, it is.

12 Q. And that you run reports?

13 A. Yes, I do.

14 Q. And one of the reports you run is an overdue communications
15 report?

16 A. Yes, I do.

17 Q. How often do you run that report?

18 A. Three months.

19 Q. What information is provided in that report that you run?

20 A. It gives me summary of every communication that's
21 outstanding, meaning there is no disposition, hasn't been
22 closed yet.

23 Q. What do you do with that report when you run it on a
24 quarterly basis?

25 A. I sign it and I send it off to the next level command,

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D4i9flo3

McAleer - cross

1 which is the three star chief, which would be the chief of
2 patrol, chief of housing, whoever those communications are
3 addressed to.

4 Q. So, when you run a quarterly report of overdue
5 communications, you report those communications to the chief of
6 the bureau for which they relate; is that correct?

7 A. Correct.

8 Q. So all -- on a quarterly basis the chief of patrol would
9 receive an overdue communications report from you about all
10 past due investigations of OCD forwarded complaints, correct?

11 A. Yes.

12 Q. And those complaints would be only related to the chief of
13 patrol's patrol service bureau?

14 A. Yes.

15 Q. And similarly then one would go to chief of housing?

16 A. Yes.

17 Q. And transit?

18 A. Correct.

19 Q. OCCB?

20 A. Yes.

21 Q. And what happens after you forward that quarterly report to
22 the chief of the bureau for which they relate?

23 A. What happens is the chief of patrol or whichever chief
24 they're sent to must bring this to the attention of his staff.
25 And basically then there's a telephone -- telephone calls

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D4i9flo3

McAleer - cross

1 between my staff and their staff to get these communications
2 in.

3 Q. How long does -- when you -- when IRS forwards out a
4 communication for investigation what is the time period that
5 the investigating unit would have to --

6 A. Seventy-five days.

7 Q. And after you send the quarterly reports to the chiefs of
8 the bureaus to which they relate, do you receive information
9 back on the investigations that are closed?

10 A. Yes.

11 Q. When you receive the communications regarding a complaint
12 referred to the office of chief department from CCRB, who
13 determines that that complaint should be forwarded to the
14 office of chief of department?

15 A. CCRB.

16 Q. And with respect to all other communications, the IAB, 311,
17 and police commissioner, who determines that those complaints
18 should be forwarded to office of chief of department?

19 A. IAB.

20 Q. I'd like to turn your attention to Plaintiffs' Exhibit 279
21 which I believe you still have in front of you.

22 A. Yes.

23 Q. So you testified with respect to this exhibit on direct
24 examination. And I want to ask you a follow-up question.

25 Looking at the Bates stamp, the second page Bates

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D4i9flo3 McAleer - cross

1 stamp ending 637.

2 A. Yes.

3 Q. So pages 637 and 638, this is the IAB log, correct?

4 A. Correct.

5 Q. And so what is an IAB log?

6 A. An IAB log is a communication that IAB received, reviewed
7 it, and then sent it to my section.

8 Q. And they sent it to the IRS unit for forwarding it out for
9 investigation, correct?

10 A. Correct.

11 Q. So what we're looking at here on 637 and 638 is a complaint
12 that needs to be investigated, correct?

13 A. Correct.

14 Q. So directing your attention to page 6 -- Bates stamp 637,
15 the summary paragraph?

16 A. Yes.

17 Q. Counsel on direct examination asked you about that summary
18 paragraph. Do you recall those questions?

19 A. Yes, I do.

20 Q. And am I correct that that summary paragraph, that
21 represents IAB's characterization of the complaint that needs
22 to be investigated, correct?

23 A. Yes, it does.

24 Q. So that doesn't reflect IAB's concluding of their
25 investigation into the complaint, correct?

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D4i9flo3

McAleer - cross

- 1 A. Correct.
- 2 Q. So represented in this paragraph is not a conclusion that
3 someone was racially profiled, correct?
- 4 A. Correct.
- 5 Q. This complaint, which includes a claim of mistaken identity
6 and racial profiling, was forwarded to OCD for forwarding and
7 investigation, recollect?
- 8 A. Correct.
- 9 Q. What did you do with this complaint, this log from IAB when
10 you received it?
- 11 A. This log, when I received it, it was closed at my office
12 because it has a sister complaint, if you'd like to call it
13 that, that we received from CCRB.
- 14 Q. Are you looking at page 636?
- 15 A. Yes, BCATS screen 636.
- 16 Q. How do you know that there's a related complaint?
- 17 A. If you look down to notes, you see OCD number. And that's
18 the related complaint.
- 19 Q. On direct examination you were discussing the boxes in the
20 middle of this BCATS screen with the allegation, disposition,
21 and penalty fields. Do you recall those questions?
- 22 A. Yes, I do.
- 23 Q. And you had explained that -- well can you explain what the
24 nature of the allegation of this communication is?
- 25 A. The allegation refers that -- it's a dual communication,

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D4i9flo3

McAleer - cross

1 one received from IAB and one received from OCD meaning CCRB.

2 Q. So when this document reflects the disposition as condition
3 noted and the penalty is instructed, what does that mean?

4 A. What happens is we're closing this communication out under
5 it's log number, it's IAB number and we're going to forward it
6 as an OCD number.

7 Q. So to your knowledge was this allegation disposed of as
8 condition noted and instructed?

9 A. No, that's -- what happens is when a member of my staff
10 fills out the allegation box, automatically condition noted and
11 instructed drop in.

12 Q. So the complaint was investigated under the OCD log number
13 in the notes, correct?

14 A. Correct.

15 Q. And what was the result of this investigation under the OCD
16 number?

17 A. (No response)

18 Q. From PSA 2?

19 A. PSA 2.

20 What happened with this communication, I had my staff
21 run it under OCD. And we found that there was no disposition
22 entered for this communication.

23 We made a phonecall over to the 73 precinct. And we
24 asked: Where's disposition? Do you have some paperwork for
25 us? And, unfortunately, all we could get from the 73 precinct

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D4i9flo3

McAleer - cross

1 was that it was investigated but the paperwork was destroyed
2 because of a flood that occurred in the 73 basement -- the
3 basement, and I believe it was during Sandy, and no base
4 paperwork existed. It was destroyed because of the flood.

5 Q. When did you learn that information?

6 A. I learned that information when I was reviewing for this
7 testimony.

8 (Continued on next page)

9
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D4I8FLO4

McAleer - cross

1 Q. Directing your attention to -- were you handed Plaintiffs'
2 Exhibit 432 or was that just summarily admitted?

3 A. I was not handed 432.

4 Q. Let me hand you 432.

5 Do you recognize this Exhibit 432?

6 A. Yes, I do.

7 Q. What do you recognize it to be?

8 A. This is a complaint that IAB received and also CCRB
9 received. It's almost the same instance as the one we just
10 previously mentioned. One incident, two complaint numbers, a
11 member of my staff closed out the IAB number. I can tell that
12 from the middle of the page on 723.

13 Q. Where are you looking on 723?

14 A. In the middle where it says "allegation, disposition,
15 penalty."

16 Q. So that's similar to the document --

17 A. The one we just discussed.

18 Then this one we carried under an OCD number the CCRB
19 number. And I don't know if I discussed it before. We carry
20 them under the CCRB number because that's the number that the
21 complainant knows about.

22 Q. So is there a logged communication for that CCRB number in
23 this exhibit?

24 A. Repeat.

25 Q. Is there a logged communication for that CCRB number in
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D4I8FLO4 McAleer - cross

1 this exhibit?

2 A. I don't see another BCATS screen.

3 Q. Do you see page 28726?

4 A. Sorry, yes. It was on the back of it.

5 Q. It's double-sided.

6 A. Yes. And that's my BCATS screen showing that we are
7 tracking it under the OCD number. And I can tell that by in
8 the left-hand corner you see OCD number.

9 Q. Then there's some notes written?

10 A. Yes. What happened with this one, when you look at the
11 summary, a member of my staff originally sent it to a patrol
12 services borough and it went down the chain of the command.
13 What happened was this member that they are complaining of was
14 assigned to the gang squad. What happens at that point, they
15 reroute the communication back to me, and then we sent it out
16 to the detective bureau. And then what happened at this time,
17 which I believe was back in '08, gang was removed from the
18 detective bureau and was placed into OCCB. So then we had to
19 reroute for a third time to OCCB, where the member is now
20 assigned.

21 Q. Looking at the Bates stamp page 28727 and 28728.

22 A. Yes.

23 Q. What do these pages reflect?

24 A. This is a 49 of the investigating officer's findings.

25 And on the next page 728 is the endorsement of the
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D4I8FLO4 McAleer - cross

1 next higher command making note of his investigation.

2 Q. Is my understanding correct that this communication is
3 forwarded out for investigation by IRS, and in this case, it
4 ultimately went to the commanding officer of the Brooklyn south
5 gang squad?

6 A. Correct.

7 Q. Then the communication is forwarded from that level to a
8 lower level for investigation, in this case, the gang division,
9 correct?

10 A. Correct.

11 Q. Then someone in the gang division conducts the
12 investigation, correct?

13 A. I think you have it wrong.

14 Q. The other way around?

15 A. It's the other way around.

16 Q. I'm sorry. IRS forwarded it ultimately to the gang
17 division, who forwarded it to the Brooklyn south gang squad?

18 A. Correct.

19 Q. Then this communication is reflecting the investigation
20 results coming back up through the chain of command?

21 A. Yes, it does.

22 Q. And the endorsement is the commanding officer of the gang
23 division approving the investigation?

24 A. Yes.

25 Q. Then the page Bates stamped, the next one, 729?

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D4I8FLO4

McAleer - cross

- 1 A. That's the disposition sheet that comes back to my office.
2 Q. So looking at this exhibit for a minute in its entirety,
3 other than the disposition sheet, would you have received the
4 49 and the endorsement or any of the attachments, the complaint
5 report?
6 A. They are not required. Sometimes they are attached,
7 sometimes they are not. They are not required. All that I
8 require is the disposition sheet.
9 Q. As a matter of course, you don't receive the investigative
10 file which would represent the investigation conducted?
11 A. No, I don't.
12 Q. Do you know where that investigation file is maintained?
13 A. At the precinct level, or in this case, at the lowest
14 level, which would be at the gang division.
15 Q. So it's not the responsibility of the investigative review
16 section unit to review the results of the investigation file?
17 A. No, it's not.
18 Q. You don't direct the investigations in any way?
19 A. No, I don't.
20 Q. So looking at this disposition sheet that was received,
21 page 729, what was the result of this investigation?
22 A. Unsubstantiated and no action taken.
23 Q. Is there any description provided on this sheet?
24 A. Then there's two lines of comment on the bottom.
25 Q. Could you read those for the Court?

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D4I8FLO4

McAleer - cross

- 1 A. "On April 7, 2009, the complainant victim was interviewed
2 regarding her arrest. The complainant victim stated that she
3 was frisked by a male officer and arrested for criminal
4 possession of a weapon, a knife. Complainant victim stated she
5 used a knife for work."
6 Q. That information is in the comment section, correct?
7 A. Yes, it is.
8 Q. In the comment section there is no -- your office doesn't
9 require that the comment section be filled, correct?
10 A. No, it doesn't.
11 Q. I am going to hand you what has been admitted on your
12 direct examination as Plaintiffs' Exhibit 434.
13 Do you recognize this exhibit?
14 A. Yes. This is a communication that my office received from
15 IAB.
16 Q. How do you know that?
17 A. If you look up on my BCATS screen, this isn't a log, it's
18 an M case, and you can see that on the left top corner, M
19 number 900110.
20 Q. Are you looking at Bates stamp 739?
21 A. Yes.
22 Q. And the M number is in the upper left-hand corner?
23 A. Left-hand corner.
24 Q. "M" stands for?
25 A. Misconduct.

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D4I8FLO4 McAleer - cross

- 1 Q. So this is a log received from IAB?
2 A. Yes, it is.
3 Q. And what was your IRS unit to do with this communication?
4 A. We entered this into my system and then we send it out
5 through the chain of command.
6 Q. Who was investigating this communication?
7 A. I forwarded it to the chief of patrol's office, who then
8 forwarded it to the 115 -- Queens north borough and then to the
9 115 Precinct.
10 Q. Are you identifying that information on page Bates
11 stamped --
12 A. 739.
13 Q. Where are you looking on 739?
14 A. In the middle, where it says the location, and it says
15 precinct and borough.
16 Q. Did you log a disposition with respect to this
17 investigation?
18 A. Yes, we did.
19 Q. What was the disposition?
20 A. Unsubstantiated and no action taken.
21 Q. With respect to information that is logged in BCATS
22 regarding the disposition of investigations, is BCATS the only
23 location that that information of disposition or penalty is
24 maintained at the police department?
25 A. No, it's not.

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D4I8FLO4

McAleer - cross

1 Q. Where else is that information maintained?

2 A. The penalty could be maintained in the precinct level in
3 the officer's personnel folder, and if it rises to a command
4 discipline B or higher, it could then be at the department
5 advocate's office.

6 Q. With respect to the fact that there was a complaint at all
7 that was investigated, is BCATS the only location that that
8 information of a complaint is maintained?

9 A. No. It's also logged in at IAB.

10 Q. This is the IAB log, the paper documents we have been
11 looking at attached to the BCATS?

12 A. Yes.

13 Q. Is it your testimony that IAB maintains a log of the fact
14 that a complaint was made?

15 A. Yes.

16 Q. What about referrals from CCRB, are those referral
17 complaints maintained anywhere other than in BCATS?

18 A. IAB also maintains them.

19 Q. 311s?

20 A. IAB also maintains them.

21 Q. And communications from the police commissioner's office?

22 A. Possibly IAB. If not, the PC's office maintains them
23 themselves.

24 Q. You testified on direct examination with respect to the
25 coding applied by the IRS unit complaints. You testified that

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D4I8FLO4 McAleer - cross

1 you don't code communications to reflect an allegation of
2 racial profiling, correct?

3 A. Correct.

4 Q. But you're aware that there are complaints where people
5 have mentioned race may have been a factor, correct?

6 A. Yes.

7 Q. Can you quantify how many or how frequently you see that
8 complaint?

9 A. Very, very -- very, very small number. Maybe one or two a
10 month. Out of the general dissatisfaction category, I would
11 say half of one percent is categorized as a stop because of
12 racial.

13 Q. Are you aware of the 41,000 communications, approximately,
14 that you logged in IRS in 2012, how many were categorized
15 general dissatisfaction?

16 A. Approximately, 6,000.

17 Q. So what is one half of one percent of 6,000, approximately?

18 A. 30.

19 Q. 30?

20 A. 30 communications.

21 Q. Might have related to a complaint of race?

22 A. Correct.

23 Q. All of those would have been forwarded out for
24 investigation?

25 A. Yes, they would have.

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D4I8FLO4 McAleer - cross

1 Q. The fact that some had contained an allegation relating to
2 race in their complaint, that information is maintained in the
3 IAB log summary that we have been looking at for some of these
4 communications, correct?

5 A. Correct.

6 Q. Or it could be maintained in the CCRB allegation summary
7 that's forwarded to OCD, correct?

8 A. Correct.

9 MS. COOKE: I have no further questions at this time,
10 your Honor.

11 THE COURT: Redirect.

12 REDIRECT EXAMINATION

13 BY MS. BORCHETTA:

14 Q. Good afternoon, Inspector McAleer.

15 A. Good afternoon.

16 Q. With respect to whose responsibility it is to decide the
17 code that OCD gives to allegations, if the allegation comes
18 from CCRB, who decides what code OCD will give that allegation?

19 A. A member of my staff will match it up as best to the
20 allegation that CCRB provides.

21 Q. If it comes from 311, who decides what code should apply?

22 A. A member of my staff.

23 Q. If it comes from the police commissioner's office, who
24 decides what code should apply?

25 A. A member of my service.

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D4I8FLO4

McAleer - redirect

- 1 Q. You just testified that when you receive a communication
2 from IAB, someone on your staff will use the code that IAB is
3 given, right?
- 4 A. What happens is when we receive a communication from IAB,
5 there will be a section of allegation, and then a member of my
6 staff will read this allegation and then try to match it up the
7 best they can to my codes.
- 8 Q. So IAB doesn't actually tell OCD what BCATS code to use,
9 right?
- 10 A. No.
- 11 Q. And IAB, to your knowledge, doesn't have a code for racial
12 profiling, right?
- 13 A. To my knowledge, no.
- 14 Q. IAB, to your knowledge, doesn't log racial profiling
15 complaints as racial profiling complaints, right?
- 16 A. To my knowledge, no.
- 17 Q. Taking a look at Plaintiffs' 279, this is the OCD BCATS
18 form that you just testified related to an investigation for
19 which documents were lost in a flood, right?
- 20 A. Correct.
- 21 Q. Now, you only know that there was an investigation because
22 you called the 73rd Precinct, correct?
- 23 A. A member of my staff did.
- 24 Q. So a member of your staff called the 73rd Precinct, right?
- 25 A. Yes.

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D4I8FLO4

McAleer - redirect

1 Q. And found out that there had been an investigation, right?

2 A. Correct.

3 Q. But had someone on your staff not called the 73rd Precinct,
4 your office would not know from this document that an
5 investigation even took place, right?

6 A. Correct.

7 Q. Are you aware of how the person that was contacted at the
8 73rd Precinct was able to determine that an investigation took
9 place if there were no documents related to this?

10 A. No. I can only -- no.

11 Q. And you don't know whether or not it was substantiated,
12 right?

13 A. No, I don't.

14 Q. And you don't know whether or not there was any penalty as
15 a result of this investigation?

16 A. No, I don't.

17 MS. BORCHETTA: Your Honor, I think I need to state an
18 objection for the record that maybe we can follow up with the
19 city. But the first that we heard that there were records
20 related to this that were destroyed was just now. And this is
21 an allegation of racial profiling against an officer who we are
22 claiming stopped a class member based on racial profiling a
23 year later.

24 So, obviously, to the extent documents were destroyed
25 in a flood, there is nothing the city can do about that. But

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McAleer - redirect

1 to me, if someone from the 73rd Precinct was able to determine
2 that there was an investigation, there is potentially something
3 out there that documents that there was an investigation, it
4 might have information about that investigation, and we should
5 be entitled to it.

6 THE COURT: So you're calling for them to look now to
7 see if there are any relevant documents?

8 MS. BORCHETTA: Documents, or to the extent there was
9 a person who had some knowledge that could give information
10 about the investigation, identifying that person or how they
11 were able to make that determination. I wanted to state that.
12 I can work with the city, but I wanted to state that now
13 because we have just learned about this.

14 THE COURT: OK.

15 BY MS. BORCHETTA:

16 Q. You testified in response to Ms. Cooke's questions, when
17 she was asking you about a number of racial profiling
18 allegations that you had seen, you used the phrase one or two a
19 month. My question is, is it your testimony that you believe
20 you have seen one or two racial profiling allegations per
21 month?

22 A. I personally haven't seen. When I speak to my staff, and I
23 will speak to them, and basically I will ask what is going on,
24 and they will tell me that.

25 Q. So you believe from conversations with your staff that

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McAleer - redirect

1 there are about one or two racial profiling allegations that
2 come into OCD per month?

3 A. Correct.

4 Q. Even though your office sees about one or two allegations
5 of racial profiling per month, no one in the NYPD, to your
6 knowledge, has created a code for racial profiling at OCD,
7 right?

8 A. No, we haven't.

9 Q. Even though your office has seen one or two racial
10 profiling allegations per month, no one in the NYPD has created
11 a mechanism for OCD to document that there are racial profiling
12 complaints coming in, right?

13 A. Correct.

14 MS. BORCHETTA: One moment, your Honor.

15 Q. You testified in response to Ms. Cooke's questions that you
16 receive about 6,000 allegations in the general dissatisfaction
17 code?

18 A. Correct.

19 Q. Or that you did in 2012, right?

20 A. Correct.

21 Q. For the record, does BCATS retain information beyond one
22 year?

23 A. No.

24 Q. So at the end of the year it's purged, right?

25 A. All information is contained in my computer system. Hard

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McAleer - redirect

1 paper is destroyed.

2 Q. What about the information in BCATS though?

3 A. My computer system can last forever.

4 Q. The BCATS system is not purged?

5 A. That's correct. It's not purged.

6 Q. Of the 6,000 general dissatisfaction complaints that were
7 received in 2012, do you know how many were stop related?

8 A. No.

9 Q. Why don't you know that?

10 A. Because I didn't track them.

11 MS. BORCHETTA: No further questions, your Honor.

12 MS. COOKE: No further questions for this witness.

13 THE COURT: Thank you. All set.

14 Your next witness.

15 MS. BORCHETTA: Your Honor, we have another witness.

16 As we addressed with the Court yesterday, because of
17 scheduling, the city needs to start calling its own witnesses.

18 So this will be the first one that the city is calling.

19 THE COURT: My chart still says Leroy Downs. When is
20 Leroy Downs coming?

21 MS. BORCHETTA: Tomorrow morning.

22 THE COURT: The other one on your list is Phil

23 McGuire.

24 MS. BORCHETTA: Tomorrow.

25 It's a bit confusing, but we also were calling another
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1 witness today, who is Christopher Moran.

2 THE COURT: Now?

3 MS. BORCHETTA: No. Because of scheduling, the city
4 wants to call a different NYPD witness first.

5 THE COURT: Nobody on your list?

6 MS. BORCHETTA: Right.

7 THE COURT: Who are you calling?

8 MR. KUNZ: We are calling Officer Hassan, H-A-S-S-A-N.

9 THE COURT: It would be helpful if I had the list.
10 Ms. Grossman promised it today.

11 MS. GROSSMAN: The reason why is because the
12 plaintiffs advised us that we needed to fill in the space right
13 now. So we worked very hard and didn't confirm it till this
14 morning.

15 THE COURT: Do you have the list that looks like their
16 list?

17 MS. GROSSMAN: I thought you said we could have till
18 the end of today.

19 THE COURT: I did not. It was supposed to be 5:00
20 yesterday. Then you asked very passionately at the end of the
21 session yesterday whether you could make it this morning.

22 MS. PUBLICKER: If I may, last night we learned at
23 midnight from Mr. Moore that Mr. Reiter is not available on
24 Monday. He is now available on Tuesday. And we also got
25 requests from Ms. Patel today to move four of our witnesses.

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1 So we had an effort to have a list for you, but in
2 consideration of this, we have been juggling. So I assure the
3 Court we are working to get a schedule, but based on these five
4 new witness requests in the last 12 hours, it's just been a bit
5 of reshuffling.

6 THE COURT: When am I going to have a list that looks
7 like plaintiffs' list?

8 MR. MOORE: When are we going to have a list?

9 THE COURT: I agree. It's always a moving date. The
10 city does not meet dates. It's always a request for
11 adjournment. I know that this particular story about getting
12 the list has good reason. You're juggling, accommodating the
13 plaintiffs, accommodating the Court. But I have known of no
14 date that you have met. You always say, could we just get
15 another week? Could we just get three days? But this time
16 there is absolute truth to the notion that you were helping out
17 both the Court and plaintiffs and doing a lot of juggling. I
18 understand that. Anyway, when am I getting the list?

19 MS. PUBLICKER: We can have one -- it won't be right
20 after court, but this evening.

21 THE COURT: This person Hassan, what is the first
22 name?

23 MR. KUNZ: Mohamed Hassan.

24 It is for a limited purpose. And pursuant to the
25 agreement yesterday, where I introduced one of their witnesses,

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D4I8FLO4

1 maybe Ms. Martini wants to give you a little background on why
2 he is being called.

3 THE COURT: Sure.

4 MS. MARTINI: You have actually already heard about
5 this stop.

6 THE COURT: Which stop is it?

7 MS. MARTINI: It is the very limited instance of Clive
8 Lino's NYCHA stop that you said Mr. Lino could testify about
9 the racial motivated statement that was said to him during the
10 stop, and the officers would be allowed to be called to tell
11 their side of the story, with respect to the statement only.

12 THE COURT: I don't remember, but that's OK.

13 Would the officer come up?

14 MOHAMED HASSAN,

15 called as a witness by the defendants,

16 having been duly sworn, testified as follows:

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

19 THE WITNESS: Mohamed Hassan, M-O-H-A-M-E-D,

20 H-A-S-S-A-N.

21 DIRECT EXAMINATION

22 BY MR. KUNZ:

23 Q. Could you tell the Court a little bit about your
24 educational background?

25 A. I went to college for psychology and I have a little over
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D4I8FLO4 Hassan - direct

1 100 credits.

2 Q. Where are you from?

3 A. New Jersey.

4 Q. Do you speak any other languages?

5 A. Yes, Arabic.

6 Q. Do you ever use your Arabic language on the job?

7 A. Yes.

8 Q. Can you explain to the Court when you do that?

9 A. Basically, I got qualified as an interpreter with the job,
10 so I get a lot of phone calls from detectives to translate.

11 Q. Could you very briefly walk the Court through your various
12 assignments with the NYPD?

13 A. Basically, from the academy, I went straight to housing
14 bureau PSA 2 for six months. Then I got transferred from that
15 to Manhattan IRT housing bureau also, for four years,
16 approximately over four years. Then I went to PSA 3 until the
17 current.

18 Q. The Manhattan assignment, you said that was IRT?

19 A. Yes. That's impact response team.

20 Q. Can you explain to the Court very briefly what an IRT team
21 does?

22 A. Impact response team is basically, if there are high areas
23 of crimes, we are deployed to that area.

24 Q. Now, do you recall an occasion when you were working for
25 IRT where you had an interaction with a man named Clive Lino?

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D4I8FLO4 Hassan - direct

1 A. Yes.

2 Q. During that interaction, did you get a phone call on your
3 personal cell phone?

4 A. No.

5 Q. Before I get there, when you were out on duty in 2008, did
6 you carry your personal cell phone with you?

7 A. Yes, I did.

8 Q. Did the personal cell phone that you had in 2008, did it
9 have any specialized ring tones on it?

10 A. No. I usually just use the standard classic ring tone.

11 Q. Would you ever, when you were on duty, play music through
12 your phone?

13 A. Absolutely not. It's not professional.

14 Q. During your interaction with Clive Lino, did you or your
15 partner play a rap song for him?

16 A. Absolutely not.

17 Q. During your interaction with Clive Lino, did you or your
18 partner say, "This should calm you down"?

19 A. No.

20 MR. KUNZ: One second, your Honor.

21 Q. I am going to show you a document. This does not have an
22 exhibit tab on it, but we will put one on it.

23 THE COURT: What number?

24 MS. MARTINI: Can I ask what the purpose of this is?
25 Are you refreshing his recollection?

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D4I8FLO4

Hassan - direct

1 MR. KUNZ: No. I am just going to put his memo book
2 in.

3 MS. MARTINI: I object. Your motion in limine said
4 they were allowed to be called for the limited statement
5 denying.

6 THE COURT: I guess that's part of the limited
7 purpose, to see what he was doing about that date and time.
8 What is the next exhibit number?

9 MR. KUNZ: D14.

10 THE COURT: It will be marked as D14.
11 Q. Do you recognize this?

12 A. Yes, I do.

13 Q. What is it?

14 A. It's my memo book.

15 MR. KUNZ: We would move this into evidence.

16 THE COURT: From what date?

17 Q. For August 20, 2008?

18 A. Yes.

19 THE COURT: Is there a relevant entry?

20 MR. KUNZ: Yes.

21 THE COURT: Let me see it.

22 MR. MOORE: Can we also get a copy?

23 MS. BORCHETTA: Could we just look at it before it
24 gets shown to the Court?

25 THE COURT: That's fine.

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D4I8FLO4 Hassan - direct

1 MS. MARTINI: I would just like to renew my objection.
2 Mr. Lino was not permitted to testify about the stop
3 whatsoever. So the officer I don't think should be allowed to
4 explain anything about his memo book related to the stop.
5 There were no facts about the stop entered into evidence or
6 testified to.

7 THE COURT: What is the relevance then of the memo
8 book entry?

9 MR. KUNZ: Memo books have become a big part of this
10 case.

11 THE COURT: If he didn't give the story line of the
12 stop, then why would I take one side's recollection of the stop
13 and not the other side's recollection of the stop?

14 MR. KUNZ: That's a fair point.

15 THE COURT: All right. Then the exhibit will not be
16 received after all. So you can use that number on the next
17 exhibit.

18 MR. KUNZ: The only thinking was since memo books have
19 become an issue --

20 THE COURT: They have, but it's not fair to put in one
21 side's summary of the stop if the other side never testified
22 about that stop.

23 MR. KUNZ: I have no further questions.

24 MS. MARTINI: I will be very brief.

25 (Continued on next page)

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D4I8FLO4 Hassan - direct

1 CROSS-EXAMINATION

2 BY MS. MARTINI:

3 Q. Good afternoon, Officer Hassan.

4 A. Good afternoon.

5 Q. During your encounter with Mr. Lino, did either you or your
6 partner that night say to Mr. Lino, in sum or substance, "See,
7 that's your problem, your attitude is the reason you get
8 stopped"?

9 A. No.

10 Q. And you deny that at any point during your encounter a rap
11 song was played from a cell phone device?

12 A. Yes, I deny it.

13 Q. And that either you or your partner said, in sum or
14 substance, "Here is a little rap for you, this should calm you
15 down"?

16 A. Never happened.

17 Q. Do you think that that would have been an appropriate
18 comment for either you or your partner to make?

19 A. Absolutely not. It's not professional.

20 Q. If you had made an inappropriate comment while interacting
21 with a member of the public in your capacity as a police
22 officer, you could get in trouble for that, right?

23 A. Absolutely.

24 Q. And if you had made a racially inappropriate comment while
25 interacting with the public in your capacity as a police

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D4I8FLO4 Hassan - cross
1 officer, you could get in trouble for that also?

2 A. Correct.

3 Q. You're currently a member of the NYPD?

4 A. Yes.

5 Q. And you would not want to get in trouble at your job,
6 correct?

7 A. Correct.

8 MS. MARTINI: That's it.

9 THE COURT: Anything further?

10 REDIRECT EXAMINATION

11 BY MR. KUNZ:

12 Q. You mentioned professionalism just now?

13 A. Yes.

14 Q. Can you talk about courtesy, professionalism and respect
15 and how you interpret that in your job as a police officer?

16 A. Basically, when I walk the streets or I am assisting pretty
17 much any civilian or doing whatever I have to do on the street,
18 courtesy, professionalism and respect is the first key factor,
19 and that's what I do on the streets.

20 MR. KUNZ: No further questions.

21 I know we took Officer Hassan out of order. His
22 partner Officer Colon is also here.

23 THE COURT: For the same?

24 MR. KUNZ: Yes.

25 (Continued on next page)

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D4I8FLO4 Hassan - redirect

1 JOSE COLON,

2 called as a witness by the defendants,

3 having been duly sworn, testified as follows:

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

6 THE WITNESS: Jose Colon, J-O-S-E, C-O-L-O-N.

7 DIRECT EXAMINATION

8 BY MR. KUNZ:

9 Q. Officer, could you just briefly tell the Court where you're
10 from?

11 A. I am from Brooklyn, New York, born and raised.

12 Q. In which part of Brooklyn?

13 A. Bushwick area.

14 Q. Could you tell the Court your educational background?

15 A. I have my associate's degree in liberal arts and science.

16 Q. Briefly walk the Court through your various assignments in
17 the NYPD.

18 A. I started the police academy in July 2007. Then from there
19 I went to -- I transferred to housing borough Manhattan, IRT.
20 Then I got transferred to South Bronx PSA 7. And now currently
21 I work in Coney Island PSA 1.

22 Q. It seems like you have done a lot of work in the police
23 service areas which cover the housing developments?

24 A. Yes.

25 Q. Do you have any personal experience in the housing

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D4I8FLO4 Colon - direct

1 developments?

2 A. I grew up in the housing developments.

3 Q. Do you speak any languages besides English?

4 A. Spanish.

5 Q. Do you ever use your Spanish in your job as a police
6 officer?

7 A. Very frequently.

8 Q. Tell the Court briefly what you do.

9 A. I respond to radio runs sometimes, family disputes, and the
10 parties usually need a translator. I am there and I help them
11 out.

12 Q. Back in 2008, I believe you were with housing bureau
13 Manhattan in an impact response team?

14 A. Yes.

15 Q. Do you recall interacting with a man named Clive Lino?

16 A. No.

17 Q. In 2008, when you were in impact response, did you carry a
18 cell phone?

19 A. Yes.

20 Q. Did you have any special ring tones on your cell phone?

21 A. No.

22 Q. Have you ever had any rap music song for your ring tone?

23 A. No.

24 Q. When you were working for Manhattan housing bureau IRT, did
25 you ever have occasion to work with Officer Hassan?

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D4I8FLO4 Colon - direct

1 A. Yes.

2 Q. How often would you work with him?

3 A. It was a large -- it's a lot of us. Not too frequently.

4 Q. So you and Officer Hassan were both part of a larger team?

5 A. Yes, we were.

6 Q. But occasionally --

7 A. Occasionally we will work together, correct.

8 Q. Did you ever hear Officer Hassan have a rap music ring
9 tone?

10 A. No.

11 Q. During a stop, question and frisk encounter that you have
12 conducted -- have you ever conducted a stop, question and frisk
13 with Officer Hassan, the two of you together?

14 A. Yes.

15 Q. Now, during any of those occasions, have you ever heard
16 Officer Hassan's cell phone go off and it be a rap music ring
17 tone?

18 A. No.

19 Q. Have you ever said or ever heard Officer Hassan say, after
20 playing a song on his cell phone, that "this should calm you
21 down"?

22 A. No.

23 MR. KUNZ: No further questions.

24 THE COURT: All right.

25 (Continued on next page)

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D4I8FLO4 Colon - direct

1 CROSS-EXAMINATION

2 BY MS. MARTINI:

3 Q. Good afternoon.

4 You're trained in your capacity as a police officer
5 that you have an obligation to report any improper conduct that
6 you see other officers committing on the job, correct?

7 A. Correct.

8 Q. I'm sorry?

9 A. Correct.

10 Q. If you had observed another officer commit inappropriate
11 conduct or say inappropriate comments and you did not report
12 it, you could get in trouble for that, correct?

13 A. Correct.

14 Q. In August of 2008, you had been working with the NYPD for
15 approximately one year, is that right?

16 A. 2008, yes.

17 MS. MARTINI: No further questions.

18 MR. KUNZ: Nothing further.

19 THE COURT: Thank you.

20 MR. MOORE: The plaintiff would call Officer
21 Christopher Moran.

22 THE COURT: This is a stop I haven't heard about?

23 MR. MOORE: That's correct.

24 THE COURT: You're going to cross-examine?

25 MR. MARUTOLLO: Yes.

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D4I8FLO4 Colon - direct

1 THE COURT: Can you give me a brief summary of this?

2 MR. MARUTOLLO: This is the stop involving David
3 Ourlicht, on January 30, 2008, where he was stopped for a
4 variety of reasons and ultimately issued a summons for
5 disorderly conduct.

6 CHRISTOPHER MORAN,

7 called as a witness by the plaintiffs,

8 having been duly sworn, testified as follows:

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

11 THE WITNESS: Christopher Moran,

12 C-H-R-I-S-T-O-P-H-E-R, M-O-R-A-N.

13 DIRECT EXAMINATION

14 BY MR. MOORE:

15 Q. Good afternoon, Officer Moran.

16 A. Good afternoon.

17 Q. What is your present employment?

18 A. I am a sergeant with the New York City Police Department.

19 Q. I called you a patrol officer. Sergeant Moran. When were
20 you promoted?

21 A. November of 2010.

22 Q. Congratulations.

23 A. Thank you, sir.

24 Q. Back in January of 2008, you were a patrol officer in the
25 NYPD, correct?

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D4I8FLO4

Moran - direct

1 A. Yes.

2 Q. When did you join the NYPD?

3 A. July of 2004.

4 Q. So as of January of 2008, you had been there a little over
5 three-and-a-half years, correct?

6 A. Yes.

7 Q. What was your assignment in January of 2008?

8 A. I was assigned to the youth team.

9 Q. Tell us what the youth team is.

10 A. The youth team was turned out of the 107th Precinct. It
11 was a youth oriented team that would return students to --
12 truant students to the schools, would handle any jobs or radio
13 runs at the school. We would also conduct home visits to
14 youths who were chronically truant, who were getting arrested,
15 who were having problems in school. We would make a visit to
16 the home, speak with the parents and the child, see what the
17 problem was, see if we could offer any services, and try to put
18 them on the right track.

19 Q. Were you part of the school unit of the 107th Precinct?

20 A. Yes.

21 Q. Within the school unit, you focused on what is called a
22 youth team?23 A. I was on the school team for a few years. Then I
24 transferred to the youth team, which was still under the school
25 unit, but it was a little different work.

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D4I8FLO4 Moran - direct

1 Q. But in January of 2008, you were working on the youth team,
2 not the school unit generally, correct?

3 A. Yes. I was assigned to youth.

4 Q. That's a regular detail tour from 8 in the morning till 4
5 in the afternoon or thereabouts?

6 A. Yeah, approximately. There were different tours that we
7 would do.

8 Q. It's primarily focused on dealing with children in -- kids
9 in school, right?

10 A. Youths within the community. We handle any kind of school
11 jobs. We would go speak at schools any time principals or
12 teachers would reach out to us.

13 Q. In the course of your duties as a member of the school
14 unit, you would go on regular patrol, is that correct?

15 A. Yes. We were out there patrolling.

16 Q. So even though you were assigned to the school unit, you
17 would still be expected to, if you saw some illegality, you
18 would be expected to respond to it, correct?

19 A. Yes.

20 Q. So even though you weren't on a regular patrol, you would
21 still on occasion see something that would lead you to stop and
22 question somebody, correct?

23 A. Correct.

24 Q. You received training in the police department on stop,
25 question and frisk, right?

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D4I8FLO4

Moran - direct

- 1 A. Yes.
- 2 Q. And in that training, you learned about the different
3 levels of suspicion that regulate when an officer, what contact
4 they can have with a civilian on the street, correct?
- 5 A. Yes.
- 6 Q. You learned about what a UF-250 was, correct?
- 7 A. Yes.
- 8 Q. In your training, you also learned about memo books and the
9 importance of memo books, correct?
- 10 A. Yes.
- 11 Q. And you learned about the importance of documenting your
12 work in the appropriate forms that the police department has,
13 correct?
- 14 A. Yes.
- 15 Q. In fact, you're given, as a member of the police
16 department, you're given a patrol guide, which is a very thick
17 volume of guidelines that you're supposed to follow?
- 18 A. Yes, it is.
- 19 Q. And you, of course, have read that back to front, right?
- 20 A. Yes, sir.
- 21 Q. And you also became aware since you have been a police
22 officer of the police department's policy against racial
23 profiling, correct?
- 24 A. Yes.
- 25 Q. You haven't actually seen a written copy of it, but you're

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1 aware of the policy, correct?

2 MR. MARUTOLLO: Objection to the form of the question.

3 It lacks foundation.

4 THE COURT: What do you mean it lacks foundation?

5 The question was: You haven't actually seen a written
6 copy of it, but you're aware of the policy, correct? That was
7 the question. Which part of it lacks foundation?

8 MR. MARUTOLLO: You haven't seen a copy of it.

9 THE COURT: If that's the problem, we will ask that
10 first.

11 Have you seen a written copy of it?

12 THE WITNESS: Yes, I have.

13 THE COURT: OK.

14 Q. As of the date of your deposition, you hadn't actually seen
15 a written copy, right?

16 A. I believe it came out -- there was always a procedure about
17 racial profiling. In 2012 --

18 Q. I am talking about back in 2009, when you gave your
19 deposition, as of that date, you hadn't seen a written copy of
20 the NYPD policy against racial profiling, correct?

21 A. We learned in the academy about it.

22 Q. The question is, had you seen a written copy of the
23 department's policy?

24 A. I don't recall.

25 Q. OK. But you were aware of it, right?

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Moran - direct

1 A. Yes.

2 Q. From time to time, as a police officer, the police
3 department passes out additional materials on various subjects
4 for you to study and to learn about, correct?

5 A. Yes.

6 Q. As with many jobs, when you get out of the academy and you
7 get on the job, you learn additional things about how to carry
8 out your job, correct?9 A. Oh, yeah, training is ongoing, through roll calls,
10 in-service training.11 Q. But you also get what is commonly referred to as on-the-job
12 training by watching veteran officers how they do their job,
13 correct?14 A. That along with being supervised, and going to training
15 sessions through the training department, and going to the
16 range twice a year, and in-service training as well.17 Q. I just want to focus on the on-the-job training. The
18 training that you would get from watching your senior officers,
19 how they perform their job, watching veteran officers, that's
20 part of the training. I know there are other parts, but that's
21 part of what you rely on too, correct?22 A. Senior officers would show you the correct way to do
23 things.24 Q. We can speed this along if you would simply just try to
25 answer the question yes or no. If you can't, then that's fine.

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1 If you can answer the question yes or no, that would certainly
2 speed it along.

3 MR. MARUTOLLO: Objection.

4 THE COURT: That's a fair instruction.

5 Q. One of the things you learned about when you got out of the
6 police department was the concept of tossing somebody on the
7 street, right?

8 A. That's a term that's used.

9 THE COURT: What does it mean?

10 THE WITNESS: Tossing to me, it means to search the
11 person. When a person is arrested, we are putting them in a
12 department vehicle. He is obviously under arrest. We have to
13 search him to make sure he doesn't have any other contraband or
14 weapons that could hurt another officer or hurt the individual
15 himself. When we bring him into the precinct, he is searched
16 again in front of the desk to make sure that we didn't miss any
17 weapons or other contraband that he could hurt himself, one of
18 us, or anybody else in the cells.

19 Q. It also refers to when you frisk somebody, correct?

20 A. People can use that any way they want.

21 Q. That may be true, but in the police department, in your
22 experience, when people use the word tossing somebody, they
23 also refer to frisking somebody, correct?

24 A. To me a toss would mean, did you search him?

25 Q. My question was, have you heard the term tossing used in

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1 reference to not just searching somebody, but actually frisking
2 somebody?

3 THE COURT: Have you heard others use it that way is
4 what he is saying.

5 THE WITNESS: No.

6 Q. Does that term tossing mean to you frisking somebody?

7 A. No, it doesn't.

8 Q. Do you recall giving a deposition in this case?

9 A. Yes, sir.

10 Q. Actually, I took that deposition. Do you recall that?

11 A. Yes.

12 Q. That was back in June of 2009, right?

13 A. Yes.

14 Q. You were present and you were represented by a lawyer for
15 the city, correct?

16 A. Yes.

17 Q. Like today, you took an oath to tell the truth?

18 A. Yes.

19 Q. And you took that oath seriously?

20 A. Yes.

21 Q. Do you recall being asked this question and giving these
22 answers on page 77.

23 "Q. Have you heard the term tossing?

24 "A. Yes.

25 "Q. What does that refer to? How have you heard that term?

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D4I8FLO4 Moran - direct

1 "A. It is a frisk."

2 MR. MARUTOLLO: Your Honor --

3 THE COURT: He asked to see it. He asked if he could
4 see it while you're reading.

5 MR. MOORE: I'm sorry.

6 A. What page are we looking at?

7 Q. Page 77. It's line 10. I read to you line 10 through line
8 15.

9 Do you recall being asked the question, "Have you
10 heard the term tossing?"

11 And you said, "Yes."

12 And I asked you, "What does that refer to?"

13 You said, "It is a frisk."

14 Do you recall being asked those questions and giving
15 those answers in your deposition?

16 A. Yes.

17 MR. MARUTOLLO: Just on this point, just for
18 clarification for the record as well, the next page, on page
19 78, line 11, the question:

20 "Q. Have you ever heard the term referred to as the activities
21 of officers on the street stopping and frisking and searching
22 people?"

23 "A. When arrests are made, we search them out on the street."

24 That's also referring to the term or the definition of
25 tossing.

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D4I8FLO4

Moran - direct

1 THE COURT: That was unnecessary.

2 I got your point, Mr. Moore. He said it included
3 frisk.

4 BY MR. MOORE:

5 Q. So you recall being asked those questions and giving those
6 answers back in your deposition?

7 A. Yes.

8 Q. Now, let's talk a little about the UF-250 form. That's a
9 form that you fill out as a police officer when you engage in a
10 stop, question and frisk, correct?

11 A. Yes.

12 Q. You were instructed by the police department while you were
13 in the police academy how to fill out that form, correct?

14 A. Yes.

15 Q. Do you recall since the police academy --

16 MR. MOORE: One second, Judge.

17 Q. Since the time in the police academy, am I accurate, am I
18 correct in saying that you don't recall receiving any further
19 instruction from the police department concerning how to fill
20 out a UF-250 form, since you have been in the police academy?

21 A. We have had ongoing training since graduation.

22 Q. Let me direct your attention to page 65 of your deposition.
23 Do you have that page?

24 I direct your attention to page 65, line 2. You were
25 asked this question and did you give this answer.

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D4I8FLO4

Moran - direct

1 "Q. Since you have been in the police department after the
2 time you were in the police academy, have you received any
3 further instruction on how to fill out a UF-250 form?

4 "A. I don't recall."

5 Then you were asked this further question:

6 "Q. Do you recall any legal bulletins that have been issued
7 since the time you have been out of the police academy in the
8 police department on the question of stop, question and frisk?
9 I am sorry. Concerning the issue of how to fill out a UF-250
10 form?

11 "A. I don't recall."

12 Do you recall being asked those questions and giving
13 those answers at your deposition?

14 A. Yes.

15 Q. Your supervisor reviews your 250 form, correct?

16 A. Yes.

17 Q. They don't always review that with you in person, correct?

18 A. Sergeants?

19 Q. Pardon?

20 A. The sergeants?

21 Q. Whoever the supervisor is, whether it's -- yes, sergeants.
22 You don't always do it in person, correct?

23 A. When we hand them the 250, they look it over. They might
24 have a conversation with you about it, about the stop, make
25 some recommendations. And then they review it before they sign

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D4I8FLO4 Moran - direct

1 it.

2 Q. But they don't always have a conversation with you about
3 the substance. Sometimes they do, but sometimes they don't,
4 correct?

5 A. Not always.

6 Q. Your answer is not always?

7 A. Not always.

8 Q. You don't always give the 250 form that you fill out to
9 your squad supervisor, right?

10 A. My squad supervisor, the desk officer, whoever is available
11 at that time.

12 Q. So it could be different supervisors and that could change
13 every day, right?

14 A. Yes.

15 Q. When they are reviewing the 250 form that you give them,
16 they don't review any other documents that you have concerning
17 that stop, correct, they just look at the 250 form?

18 A. Yes. That was the old policy.

19 Q. That's the policy that was in existence as of the time of
20 the deposition in 2009, right?

21 A. Yes.

22 Q. When you say the old policy, what are you referring to?
23 Has there been a recent change?

24 A. We have a new policy.

25 Q. Just yes or no, has there been a recent change?

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D4I8FLO4

Moran - direct

1 A. Yes.

2 Q. When did that change take place?

3 A. A few months ago.

4 Q. I will hold off on that for a moment.

5 Let me show you what has been marked as Plaintiffs'
6 Exhibit 250 in evidence.7 Now, this is not the handwritten copy. We don't have
8 the handwritten copy. But this is the computerized version of
9 your 250 form, correct?

10 A. Yes.

11 Q. You're familiar with these documents, right?

12 A. Yes.

13 MR. MOORE: This is Plaintiffs' Exhibit 250 in
14 evidence, Judge.15 Q. Now, it's your understanding, is it not, that you fill out
16 a 250 not just when you have reasonable suspicion to stop
17 somebody, but any time you have a conversation with an
18 individual on the street, correct?19 A. Not always. Back then, sometimes -- a 250 is filled out at
20 reasonable suspicion. Since the stop, I have had several
21 training seminars, whether it be in the command or through the
22 training bureau, at Rodman's Neck at the range, and I have
23 learned through the experience that at reasonable suspicion all
24 250s should be filled out.

25 Q. I don't know what your experience has been since the

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D4I8FLO4

Moran - direct

1 deposition. But as of the deposition, you had been a police
2 officer for, what, four-and-a-half years?

3 A. Approximately.

4 Q. At least at that deposition, you indicated that you fill
5 out a 250 any time you have a conversation with anybody on the
6 street, right? That was your testimony at your deposition.

7 A. Yes. I agree that I said that, but I wouldn't just fill
8 one out just talking to somebody in the community, a store
9 owner. I wouldn't fill out a 250 on that, any interaction with
10 a member of the community.

11 Q. But you believed at the time, at least at your deposition,
12 that the policy about documenting 250s -- about documenting
13 stops with a 250, it's filled out when you have a conversation
14 with somebody out there and you ask them a few questions,
15 that's what you testified to in your deposition, correct?

16 A. Yes, I agree to that. But I wouldn't always just -- if I
17 was talking to somebody and asking them investigatory
18 questions, obviously I started out with suspicion, I felt they
19 were doing something wrong, that something was not right.

20 Q. At least at the time of your deposition, even if you didn't
21 have reasonable suspicion to stop somebody, it was your
22 understanding and practice at the time to still fill out a 250,
23 right?

24 A. I said that. But I wouldn't always fill out 250 with
25 everybody I interacted with that day.

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D4I8FLO4 Moran - direct

1 Q. I am just asking at this point what you said.

2 A. I agree with that.

3 Q. And that's what you told us back in 2009, right?

4 A. Yes.

5 Q. At least as of that point, nobody in the police department
6 had ever told you there was anything wrong with doing that,
7 right?

8 A. I have never been spoken to about my 250s.

9 Q. No supervisor ever told you what you were doing was in
10 violation of departmental policy or what you were doing was
11 wrong, correct, at least as of 2009, right?

12 A. I wasn't told that I was doing anything wrong.

13 Q. Now, you learned about the idea of reasonable suspicion, or
14 the concept of reasonable suspicion, you learned about that
15 when you were in the academy, correct, you had training on
16 that?

17 A. Yes, in the academy, after the academy at the range,
18 several other training seminars.

19 Q. You also increased your knowledge of what reasonable
20 suspicion was once you became a police officer and you were out
21 on the street, correct?

22 A. Yes.

23 Q. And you learned about it from observing more experienced
24 officers, that's in part how you learned about it, correct?

25 A. Yes.

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D4I8FLO4 Moran - direct

1 Q. And you would agree with me that your understanding of what
2 reasonable suspicion is is a broad concept, correct?

3 A. I since have different opinions on it and a new background
4 of information. Reasonable suspicion to me is I reasonably
5 suspect that a crime has occurred or is about to occur.

6 Q. As you testified at your deposition, it could include
7 almost anything, like people acting nervous could be reasonable
8 suspicion, correct?

9 A. Of course. That's one of the traits.

10 Q. People running away from a crime scene, that would be
11 reasonable suspicion, right?

12 A. Not just running away.

13 Q. Just if you could listen to my question and try to respond
14 to my question. OK?

15 A. OK.

16 MR. MARUTOLLO: Objection. I think he was trying to
17 respond to the question.

18 THE COURT: Are you limiting it to the deposition
19 testimony?

20 MR. MOORE: I am limiting it to his understanding as
21 of the time of the deposition.

22 THE COURT: What was the date of the deposition?

23 MR. MOORE: June of 2009.

24 THE COURT: So he is trying to take you back then.

25 At that time, June of '09, was it your understanding

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D4I8FLO4

Moran - direct

1 that somebody running away would be reasonable suspicion for a
2 stop? At that time, is that what you believed?

3 THE WITNESS: It would have to be coupled with a
4 couple of other things.

5 THE COURT: At that time, is that your belief, that
6 running away was enough for reasonable suspicion?

7 THE WITNESS: I wouldn't be at reasonable suspicion
8 then.

9 THE COURT: Even then. So you wouldn't have thought
10 that was enough?

11 THE WITNESS: Something else would have come in.

12 THE COURT: I am just trying to get what you thought
13 then.

14 (Continued on next page)

15
16
17
18
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20
21
22
23
24
25

D4i9flo5

Moran - direct

1 Q. Is it your opinion that reasonable suspicion could include
2 looking at -- seeing a situation -- that the situation you're
3 viewing is not what it seems? Would that be reasonable
4 suspicion?

5 THE COURT: Meaning was that what he thought then?

6 MR. MOORE: I'm going to ask him now.

7 THE COURT: Is that what you think right now?

8 THE WITNESS: That wouldn't be reasonable suspicion to
9 me.

10 Q. But you recall testifying at your deposition that that --
11 that reasonable suspicion could include that the situation is
12 not what it seems? That's what you testified to at your
13 deposition, correct?

14 A. I don't recall what I stated.

15 Q. Why don't you look at page 98.

16 MR. MARUTOLLO: What line?

17 THE WITNESS: Which line, sir?

18 MR. MOORE: I'm sorry, page 99. Look at the answer --
19 to yourself read the question beginning on line 6 and then the
20 answer begins on line 10 and goes to line 17.

21 THE WITNESS: I said here that I believe a crime has
22 occurred and that somebody might be hiding something from me.
23 The situation is kind of not what it seems. But the person
24 could have been giving me evasive answers. He could have been
25 looking from side to side. He was shaking a little bit. He

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D4i9flo5 Moran - direct

1 wasn't -- he was nervous.

2 Q. So does that refresh your recollection that when you talk
3 about reasonable suspicion part of what it includes is
4 believing that the situation is not what it seems.

5 Does that refresh your recollection?

6 A. It says it right here. And I explained that what I believe
7 when it says it's not what it seems. Other factors have to
8 come in for me to suspect that something is not right, the
9 person's demeanor. Is he sweating from just running down the
10 block?

11 Q. So let me -- Judge, I just want to read the question and
12 the answer. On page --

13 MR. MARUTOLLO: Objection, your Honor. I think it's
14 improper impeachment at this point. He answered what he just
15 said.

16 THE COURT: I don't know that.

17 MR. MOORE: I think he added some stuff to it.

18 THE COURT: I don't know that until I hear it.

19 MR. MOORE: The question that was posed to you back at
20 your deposition on page 99 beginning on line 6, "Let's talk
21 about the stop and frisk generally. Can you give me what you
22 understand to be a definition of reasonable suspicion?"

23 "A. Where, when contradicting factors exist that you believe a
24 crime has occurred in, or somebody is hiding something from
25 you. That the situation is not what it seems. That there is

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D4i9flo5

Moran - direct

- 1 evidence of something could have happened and that you are not
2 seeing. That the situation in front of you is not what it
3 seems."
- 4 Q. Do you recall being asked that question and giving that
5 answer back in June of 2009?
- 6 A. Yes.
- 7 Q. I read that accurately, correct?
- 8 A. Yes.
- 9 Q. And that's the answer you gave back then, right?
- 10 A. That was the answer back in 2009.
- 11 Q. Is that still your answer today to that question?
- 12 A. No. I would address it better. I have an expanded
13 definition now.
- 14 Q. Now from time to time if you have questions about your --
15 how you perform your police duty you would go to your sergeant
16 or your supervisor, correct?
- 17 A. Yes.
- 18 Q. And the sergeants would not be there with you while you
19 were out on patrol but you would see them once or twice during
20 the tour, correct?
- 21 A. They would visit us frequently.
- 22 Q. And in addition to talking about reasonable suspicion, you
23 also came to understand what the term furtive movement meant,
24 correct?
- 25 A. Yes.

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1 Q. And you believe that the concept of furtive movement is a
2 very broad concept, right?

3 A. It could mean different --

4 Q. Can you answer that question yes or no. Is it a very broad
5 concept?

6 A. That's what I said.

7 Q. It could be someone who is changing direction, right?

8 A. Yes.

9 Q. It could be someone walking a certain way?

10 A. Yes.

11 Q. It could be something -- acting a little suspicious, right?

12 A. It could be going in and out of his pocket. He could be
13 going in and out of a location.

14 Q. I'm asking you. It could be somebody acting a little
15 suspicious, right?

16 A. Furtive movements to me is making a movement that is not
17 regular. They're very fidgety. They're doing -- moving in and
18 out of a car too quickly or a house. They're constantly
19 looking over their shoulder. You might be -- they might walk
20 up to you on the street and all of a sudden they're adjusting
21 their hip or their belt or they're maybe trying to hide
22 something from you. That's a furtive movement to me.

23 Q. Is acting a little suspicious -- if you could just answer
24 this question -- is acting a little suspicious what you would
25 consider to be a furtive movement?

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1 A. How suspicious?

2 Q. Can you answer that yes or no?

3 A. Suspicious?

4 Q. Acting a little suspicious.

5 A. If somebody is acting suspicious to me --

6 MR. MOORE: Judge.

7 THE COURT: He's trying. Go ahead.

8 THE WITNESS: I would, you know, excuse me.

9 Suspicious means to me, like I just stated, you know, maybe
10 they're changing the direction at the sight of an officer.
11 They looking back and forth constantly. They're looking over
12 their shoulder.

13 THE COURT: So the point is any of those activities
14 that are acting suspicious would be enough for reasonable
15 suspicion; is that right?

16 THE WITNESS: It would help me establish suspicion on
17 the person and during the conversation I would have with them.

18 Q. Do you recall being asked in your deposition the following
19 question and giving the following answer on page 97, line 23?

20 "Q. Why don't you hand me this document for a minute? Can you
21 tell me what you understand to be furtive behavior?

22 "A. Somebody who is maybe changing direction at the sight of
23 an officer, someone who is walking a certain way. Acting a
24 little suspicious. Turning a part of their body away from you.
25 Grabbing at a certain pocket or something at their waist.

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1 Getting a little nervous, maybe shaking. Walking toward you.
2 They see you and they stop and they rethink what they are going
3 to do, maybe turn the other way."

4 Do you recall being asked that question and giving
5 that answer?

6 A. Yes.

7 Q. Okay. In fact, you believe a furtive movement can even be
8 how somebody answers a question, right?

9 A. Depending on how they answered it.

10 Q. So it doesn't have to be a movement. It could be just a
11 movement of their mouth, right?

12 In other words, it's vocal? A furtive movement can be
13 vocal, correct?

14 A. Depending on how they said it, if they stuttered. That
15 could arise my suspicion.

16 Q. So if you're presented with a situation and it's a
17 situation that's not what it seems, that may -- that would be a
18 furtive movement to you, correct?

19 A. I didn't say it would be a furtive movement.

20 It could be -- a couple other things would have to
21 come in there. To me they are acting a little bit out of the
22 normal, they could be moving their mouth or you know their
23 heart could be pounding and they could be stuttering. That
24 could be -- I can consider that -- fall under the umbrella of a
25 furtive movement.

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D4i9flo5 Moran - direct

- 1 Q. Let's look at the incident involving Mr. Ourlicht that
2 occurred on January 30, 2008. You were working in the school
3 unit on that day, correct?
4 A. The youth unit.
5 Q. And you were riding in a scooter, right?
6 A. Yes.
7 Q. Not a police -- the car but a scooter?
8 A. Three-wheel enclosed scooter.
9 Q. And you had an encounter that day with an individual named
10 David Ourlicht, correct?
11 A. Yes.
12 Q. And that occurred about 2:15 in the afternoon, correct?
13 A. Yes.
14 Q. And at the location of the intersection of 85th Avenue and
15 164th Street in Queens, New York, correct?
16 A. Correct.
17 Q. And prior to that time you had observed Mr. Ourlicht --
18 prior to going up to him you had observed him for a couple of
19 minutes, correct?
20 A. Yes. Approximately two minutes.
21 Q. And that was a winter day, right, January 30, 2008?
22 A. Yes.
23 Q. And do you recall whether it was cold outside?
24 A. I don't recall the exact temperature.
25 Q. And what precinct is that in?

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Moran - direct

- 1 A. 107th.
2 Q. And you were going north on 164th Street, correct?
3 A. Yes.
4 Q. In your scooter?
5 A. Correct.
6 Q. And you saw this gentleman walking north on the sidewalk to
7 your right, correct?
8 A. Yes.
9 Q. And how was he dressed? Do you remember?
10 A. He had a dark colored coat on. Perhaps a baseball hat.
11 Some kind of jeans or pants.
12 Q. And is that near St. John's University?
13 A. It's in the area. About a mile away.
14 Q. And how old did David Ourlicht appear to you to be at that
15 point?
16 A. Teens.
17 Q. In his teens?
18 A. You know, 18, 19.
19 Q. And when you first saw him you observed him, you came up to
20 him from behind, correct?
21 A. I was driving northbound on the scooter in the right-hand
22 lane.
23 Q. So you were coming up from behind him, right?
24 A. Yes.
25 Q. And you noticed as you were coming up that he was favoring

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1 the right side, correct?

2 A. Yeah. He was blading his body to the right.

3 Q. You used term blading. Can you tell us what blading is.

4 A. Blading is a term that I learned in my training and
5 experience.

6 Q. After you left the academy?

7 A. In the academy. Even out of the academy. Through tactical
8 training classes that we attend.

9 Q. Tell us what blading is.

10 A. Blading is when you're turning a certain part of your body
11 protecting it.

12 In this case Mr. Ourlicht was blading the right side
13 of his body. He was holding it to the rear. His left hip was
14 a little forward and his right hip was slanted towards the
15 rear. And it looked like he was favoring something, protecting
16 something on his right-hand side.

17 And as he was walking, he was walking a little weird.
18 It wasn't normal. Every time he took a step it looked like
19 something on that right hip waist area was preventing him from
20 taking a normal step. And he was showing favoritism to that
21 right hip.

22 Q. Let me just describe for the record what you did because
23 you made some movements and I just want to try to describe for
24 the record.

25 MR. MOORE: Is that appropriate, Judge?

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1 THE COURT: Yes.

2 Q. So you were saying that favoring the right side. You
3 turned your body from right to left so that your left shoulder
4 was sort of in front of your right shoulder, correct?

5 A. Yeah. If I can, your Honor?

6 His left shoulder, left hip were in front -- were
7 pointing out and his right hip, right shoulder was towards the
8 rear that he was trying to kind of hide something from like
9 somebody maybe that was approaching him or somebody from the
10 side to him, that he didn't want them to see.

11 Q. Right. And you thought he was hiding something on the
12 right side of his body, right?

13 A. Yes.

14 Q. To the right of him was some kind of retainer wall,
15 correct?

16 A. Yes.

17 Q. And to the left was the street, correct?

18 A. Yes.

19 Q. And he was, as you say, keeping to sort of the right side
20 of the wall, correct?

21 A. Yes, he was to the right side of the wall.

22 Q. And you pulled up to him, correct?

23 A. I passed him.

24 Q. You pulled your car up to him and you continued to drive
25 past him?

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Moran - direct

1 A. I passed him. I came up from behind. I drove past him. I
2 observed him.

3 Q. Try to answer my question, Officer.

4 THE WITNESS: Judge, could I finish my answer?

5 THE COURT: Please.

6 THE WITNESS: I drove from behind him. I observed
7 him. I observed him blading his body to the right. I observed
8 a bulge coming from his right waist hip area that was
9 protruding out from under his clothes. I proceeded up the
10 street to the next intersection where I pulled over. I exited
11 the vehicle. And Mr. Ourlicht walked up.

12 MR. MOORE: Judge could we end the narrative at this
13 point so I could ask some questions about this.

14 Q. So you pulled in front of him, correct?

15 And you were in a vehicle that was identified as a New
16 York police department vehicle, correct?

17 A. Yes. I proceeded --

18 Q. You went by him, right?

19 A. I proceeded to the next intersection.

20 Q. And you went to the next intersection.

21 How far did you go up to the next intersection?

22 A. About 15, 20 feet, approximately.

23 Q. And as you did that, you observed him in the mirror,
24 correct?

25 A. I kept sight of him the whole time.

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Moran - direct

- 1 Q. And you didn't see him turn away from you as you passed
2 him, right?
- 3 A. Turn away how?
- 4 Q. You didn't -- did you see him turn away from you as you
5 drove by?
- 6 A. He continued walking north on 164th Street.
- 7 Q. And he continued to walk up the street in the same manner
8 as he had been walking up the street before you got there,
9 correct?
- 10 A. He was walking up the street how I observed him when I
11 first saw him.
- 12 Q. So he didn't change the manner in which he was walking,
13 correct?
- 14 A. No.
- 15 Q. And he wasn't doing anything differently after you passed
16 him than he was before you passed him, right?
- 17 A. No.
- 18 Q. He didn't move his hands at any point while you were --
19 after you passed him, right, as you were observing him?
20 Correct?
- 21 A. I don't recall.
- 22 Q. He was just walking in the same, what you described as the
23 same suspicious style that you had first observed him in,
24 right?
- 25 A. It wasn't normal. It was weird.

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Moran - direct

1 Q. Did you use the term suspicious style?

2 A. It was a little suspicious to me. It made me feel uneasy
3 and that the way he was walking and the bulge sticking out from
4 underneath his clothes just the way he was favoring the --

5 Q. So the bulge was sticking out from underneath his clothes?

6 A. I'm sorry. It was underneath like his jacket. It was
7 protruding out from under.

8 Q. You just said the bulge was sticking out underneath his
9 clothes. That was a misstatement, right?

10 A. The bulge was underneath -- something was tucked -- I
11 observed something that was tucked in underneath the jacket.

12 Q. In fact, you observed something that ran -- this is what
13 you testified to at the deposition -- that ran from his hip,
14 along his ribs, up to his armpit, right?

15 A. Yeah. The rib cage.

16 Q. So this was not just like a cellphone or something?

17 A. No.

18 Q. This was an object that was, you know, a foot-and-a-half,
19 two feet, correct?

20 A. It was definitely big.

21 Q. Right. And so based on that you decided to stop him?

22 A. Yes. By the way he was walking, the way --

23 Q. The answer to that is you decided to stop him, right?

24 A. Yes. He walked up to me.

25 Q. In fact, he just walked up to you, right?

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Moran - direct

- 1 A. Yes.
- 2 Q. He didn't try to go in another direction, right?
- 3 A. No, he walked --
- 4 Q. He didn't turn around and walk away?
- 5 A. No. He walked up to me.
- 6 Q. And then you had a conversation with him at that point,
- 7 right?
- 8 A. Yes.
- 9 Q. And you said to him -- you asked him what he was doing
- 10 there, right?
- 11 A. Might have been one of the questions.
- 12 Q. Well was that one of the questions you asked him, What are
- 13 you doing here?
- 14 A. I don't recall what my exact words were but --
- 15 Q. In sum and substance you asked him, What are you doing
- 16 here, right?
- 17 A. I don't recall what exactly I said.
- 18 Q. Do you recall him saying to you: What?
- 19 And then you saying to him: Do you go to school
- 20 around here?
- 21 Do you recall him saying that?
- 22 A. I don't recall.
- 23 Q. Did he mention that he went to school at St. John's?
- 24 A. I don't --
- 25 Q. He had a St. John's ID, didn't he?

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Moran - direct

1 MR. MARUTOLLO: Objection. I don't think he even
2 answered the question.
3 MR. MOORE: I'm sorry.
4 THE WITNESS: I don't recall the ID he had.
5 Q. Did he have a St. John's ID? You don't recall that, right?
6 A. I don't recall.
7 Q. Did he ask you why are you pulling me over?
8 A. He did state that.
9 Q. And he -- did he say: I haven't done anything wrong. Why
10 are you pulling me over?
11 A. Right from the start --
12 Q. Or words to that effect. Did he say: I haven't done
13 anything wrong.
14 A. Perhaps he said that.
15 Q. Okay. And did you tell him you were pulling him over
16 because he looked like he had a gun and he was acting
17 suspicious? Did you tell him that?
18 A. I didn't pull him over.
19 Q. Well, you stopped him and you --
20 A. He walked up to me.
21 Q. Stopped him from walking because -- did you tell him you
22 stopped him because he looked like he had a gun and he was
23 acting suspicious? Did you tell him that?
24 A. Yes. I informed him of why I was having a conversation
25 with him. I explained it in a calm manner. And he was very

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Moran - direct

1 irate. He was using obscene language. He was screaming.

2 Q. He wasn't doing that until you stopped him, right?

3 A. He did that upon our conversation.

4 Q. He was just walking down the street when you first saw him,
5 right?

6 A. Yes.

7 Q. And he got irate when you stopped him. And he said: Why
8 are you stopping me? I haven't done anything wrong.

9 Is that your testimony?

10 A. I forget what the exact --

11 Q. But in sum and substance that's why he got irate, because
12 he felt in your judgment --

13 A. He did say: I haven't done anything wrong.

14 Q. Right.

15 And then he told you that he was just walking back to
16 his apartment, right?

17 A. I don't recall that.

18 Q. Did he tell you he was a student at St. John's?

19 MR. MARUTOLLO: Objection. Asked and answered.

20 MR. MOORE: No I asked him about the student ID.

21 MR. MARUTOLLO: You did ask him that but you didn't
22 let him finish his answer.

23 THE COURT: You said you didn't recall a student ID.

24 THE WITNESS: I didn't recall.

25 THE COURT: But did he tell you he was a student at
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D4i9flo5 Moran - direct
1 St. John's?

2 THE WITNESS: I don't recall.

3 Q. Did he tell you he lived right around the corner at 165-15
4 Chapin Court?

5 A. No. He didn't state that. He stated he lived at another
6 address.

7 Q. Well he gave you an ID that had another address, right?

8 A. I believe he verbally said that to me.

9 Q. 165-15 Chapin Court, is that right around the corner from
10 where you were?

11 A. That's in the area.

12 Q. And when he came up to you, you frisked him, right?

13 A. I began a conversation. And for my safety and the safety
14 of the members of the community I frisked the bulge on the
15 right side of him.

16 Q. Now, when he came up to you, you weren't concerned about
17 whether he fit some description of somebody who had just
18 committed a crime, right?

19 A. No.

20 Q. You weren't aware of any preexisting call or any
21 description that went over the radio saying look for this
22 person, he just committed a crime? You weren't aware of that,
23 right?

24 A. No.

25 Q. He didn't fit the description of someone who had just been

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1 reported to you over the radio, correct?

2 A. No.

3 Q. And he wasn't carrying anything in his hands, right?

4 A. I don't recall.

5 Q. You don't recall? You don't recall -- really? You didn't
6 recall him carrying anything in his hands?

7 MR. MARUTOLLO: Objection, your Honor. Asked and
8 answered.

9 THE COURT: He just said that.

10 Q. Isn't that the first thing you would look at as a police
11 officer when you stop somebody?

12 A. Of course it was. He didn't have anything that could hurt
13 me or anybody else.

14 THE COURT: Maybe what the lawyer is saying, it's not
15 a matter of don't recall. Maybe you do know that he wasn't
16 carrying anything in his hands.

17 THE WITNESS: I just don't remember -- what I meant to
18 say is I don't remember -- obviously, I look at people's hands
19 all the time. That's the first thing I look at when I'm having
20 a conversation with somebody.

21 THE COURT: So you would recall if he had something in
22 his hands, wouldn't you?

23 THE WITNESS: If he had a cellphone in his hand or a
24 pair of gloves in his hand, he might have. But it wasn't a
25 threat to me. So I really couldn't remember. I didn't want to

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1 say yes because I really didn't remember.

2 THE COURT: I see.

3 Q. So you stopped him and you frisked him because he -- of the
4 bulge and the fact that you thought he was walking suspiciously
5 up the street, right?

6 A. Yeah. It wasn't a normal walk.

7 Q. But isn't that one and the same thing? Wasn't he walking
8 suspiciously because there appeared to be something on his
9 right side? So isn't that one and the same thing?

10 A. Well it's suspicious to me and coupled with the bulge.

11 Q. My question is -- maybe I'm not clear.

12 Wasn't the walking suspiciously caused by what you
13 believed was some kind of bulge on his right side?

14 A. The bulge and also --

15 MR. MARUTOLLO: Objection, your Honor. Calls for
16 speculation.

17 THE COURT: I guess what the lawyer is saying is you
18 believed that the unusual walk was caused by the bulge?

19 THE WITNESS: Yes.

20 THE COURT: Okay.

21 Q. And so you frisked him and you didn't find anything, right?

22 A. No.

23 Q. So the situation was not what it seemed, right?

24 A. How so?

25 THE COURT: I mean -- was there any object on that
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D4i9flo5 Moran - direct

1 side where you thought there was?

2 THE WITNESS: I don't recall what was there.

3 THE COURT: Well --

4 THE WITNESS: There was nothing that was a dangerous
5 weapon or any contraband, nothing there that could hurt
6 anybody.

7 Q. There was nothing there period, was there Officer?

8 A. Sorry?

9 Q. There was nothing there?

10 A. I don't recall what was there.

11 Q. You didn't write anything down about what was there?

12 A. No, I didn't.

13 Q. You didn't enter that in your UF 250 or your memo book or
14 any form that you wrote, correct?

15 A. I didn't write that down.

16 Q. One of the things do you recall Mr. Ourlicht saying to you
17 is -- withdraw that.

18 You say that Mr. Ourlicht got irate, correct?

19 A. Yes.

20 Q. Did you see him take out a piece of paper and a pen and
21 begin to write your name and shield number down? That's one of
22 the things he did, right?

23 A. I don't recall that.

24 Q. You don't recall that.

25 Do you recall him saying to you: You you're getting

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1 my information now I want yours.

2 A. I don't recall that.

3 Q. And do you recall saying to him: All right. Now you're
4 going to get the full treatment.

5 Do you recall saying that to him?

6 A. I don't recall that.

7 Q. Do you know what the full treatment is? Have you ever
8 heard that term in the police department?

9 A. No, I haven't.

10 Q. The full treatment, did you understand the full treatment
11 here to be you were going to search him from head to toe?

12 A. I don't recall saying that.

13 Q. Is that -- you've never heard that term in the police
14 department, the full treatment?

15 MR. MARUTOLLO: Objection. Asked and answered.

16 THE COURT: Well just want to be sure.

17 The full treatment, that's a term you haven't heard?

18 THE WITNESS: I have not heard that term.

19 Q. And you've never used that term, right?

20 A. I don't recall using it.

21 Q. In conjunction with your police work?

22 A. I don't recall using that.

23 Q. So you might have, right?

24 MR. MARUTOLLO: Objection, your Honor.

25 THE COURT: Well when you say I don't recall, it's

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1 kind of a -- not a clear answer.

2 THE WITNESS: I don't remember it in that aspect of
3 interacting with people. I don't use that word.

4 THE COURT: Okay. So then you do recall. You haven't
5 used that term in your police work, right?

6 THE WITNESS: Yeah. No.

7 THE COURT: Okay. He hasn't.

8 Q. Now, so you filled out this UF 250 form, correct?

9 A. Yes.

10 Q. And looking at Plaintiffs' Exhibit 250, you put all his
11 pedigree information in there, correct?

12 A. Yes.

13 Q. And you indicated the circumstances leading to the stop.
14 Do you see that?

15 A. Yes.

16 Q. And you put -- now we don't have your actual -- the one,
17 the form that you actually filled out by hand. Do you recall
18 filling out, checking both boxes?

19 A. I recall filling the card out completely.

20 Q. So you think you filled out both those boxes where it says
21 circumstances leading to stop?

22 A. Yes, I believe I did.

23 Q. You never described what was the bulge, right?

24 A. No.

25 Q. Well, you never described it because there was nothing

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1 there, right, nothing to describe?

2 A. I don't recall what was there.

3 Q. Did you put down that there was nothing there? Did you put
4 that down anywhere?

5 A. That's not written here.

6 Q. Okay. If in doing a frisk when you see somebody who is --
7 whom you suspect has a bulge and that's suspicious to you, a
8 suspicious bulge, and there was nothing there, would you write
9 that down anywhere? Stopped him because of suspicious bulge
10 but there was nothing there?

11 A. In this case I didn't.

12 Q. Is that what you're instructed to do though as a police
13 officer?

14 A. We're instructed to identify.

15 Q. But if there's nothing there are you instructed to put
16 nothing there, there was nothing there?

17 A. You're instructed to put whatever is relevant. Maybe write
18 that in your memo book to help you recollect at a later time.

19 Q. Would it be relevant to put down if you stopped somebody
20 because they had a suspicious bulge and there was nothing
21 there, particularly one that ran from their armpit to their
22 hip, would it be relevant to put either in your 250 or your
23 memo book searched, frisked him, and there was nothing there?

24 MR. MARUTOLLO: Objection, your Honor. First to the
25 form of the question but also I think it lacks foundation

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Moran - direct

1 because the officer has testified that he doesn't remember
2 whether there was or wasn't something there, not that there was
3 nothing there.

4 THE COURT: This time I would allow the hypothetical
5 question.

6 If it turned out there was nothing there, would that
7 be important to note in the memo book, do you think?

8 THE WITNESS: Yeah whatever helps the officer
9 recollect.

10 THE COURT: So your answer is yes.

11 THE WITNESS: Yes.

12 MR. MOORE: Thank you, Judge.

13 Q. Now you never actually -- other than just saying --
14 withdraw that.

15 You also -- you carry a memo book as a police officer,
16 correct?

17 A. Yes.

18 Q. Showing you what's previously been introduced into
19 evidence, I think, Plaintiffs' Exhibit 249.

20 Is that the front page of your memo book for the
21 relevant period?

22 A. Yes.

23 Q. And that's the supervisory officers. Whose signatures are
24 those?

25 A. I don't know who is up top. On the bottom is --

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D4i9flo5 Moran - direct

1 Q. Sergeant Hegney, right?

2 MR. MARUTOLLO: I'm sorry. Just to clarify. Was the
3 question for both supervisory officers?

4 MR. MOORE: You didn't recognize the one on the top,
5 right?

6 THE WITNESS: No.

7 Q. But you recognize the one on the bottom, right?

8 A. Yes.

9 Q. And that's Sergeant Hegney? He was your supervisor of the
10 school unit that day, correct?

11 A. Yes.

12 Q. This is the beginning of your entry for that day, right,
13 January 30, 2008?

14 A. Correct. I was assigned to family court.

15 Q. And then there's an entry that appears at 1415. Do you see
16 that?

17 A. Yes.

18 Q. Why don't you read that to us.

19 A. Male stopped. 164th Street.

20 Q. Read it slowly because the court reporter --

21 A. 1415. Male stopped. 164. 85th Avenue. Suspicious bulge.
22 93 Queens is I filled out a report. 96 is a summons was
23 issued.

24 Q. And then that's all the facts related to the actual stop,
25 correct?

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D4i9flo5

Moran - direct

1 A. Yes.

2 MR. MARUTOLLO: Objection, your Honor.

3 THE WITNESS: The respondent was screaming and yelling
4 in public causing -- using obscene language, causing a crowd to
5 gather.

6 Q. And that occurred after you had already stopped him, right?

7 A. Yes.

8 Q. He wasn't yelling and screaming before you went up to him,
9 right?10 A. Once I started a conversation he became very irate,
11 noncompliant.12 Q. Well noncompliant. What do you mean by noncompliant? You
13 told him to get up against the wall -- up against that wall and
14 you searched him, right?

15 A. Not in the beginning.

16 Q. Did he get up against the wall and you searched him? Yes
17 or no, Officer.18 A. In the beginning I started to question -- asked him a
19 question. Began a conversation. I frisked him. He became
20 very irate. He was yelling obscenities, acting in a
21 threatening behavior. He stated he wanted to fight me.

22 Q. Right. You felt threatened, right?

23 A. Yes. I was threatened. I was by myself.

24 Q. You never handcuffed him, right?

25 A. I did not handcuff him.

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D4i9flo5

Moran - direct

1 At that time when he was making threats and said he
2 wanted to fight me, and after I had frisked him and found
3 nothing, I reasonably suspected at that time that he was hiding
4 something else from me.

5 Q. You didn't write that down anywhere, right?

6 A. No.

7 Q. So just in terms of what you wrote about the stop, what you
8 wrote -- how you -- the reason for the stop is suspicious
9 bulge, right?

10 A. Yes.

11 Q. And nothing else is described in there, correct?

12 A. That's what it says.

13 Q. And at the time of the stop you didn't -- you don't recall,
14 you don't remember if you were required to make a memo book
15 entry about the stop -- an entry about the stop in your memo
16 book, right? You weren't aware that you had a requirement to
17 do that, to make an entry in your memo book about the stop,
18 right?

19 A. We have to document jobs that we have, that we do. It's
20 required.

21 Q. Direct your attention to page 147.

22 Again at your deposition, which was in June of 2009.

23 A. 147?

24 Q. Yes. Directing your attention to line 8.

25 "Q. Now when you fill out a UF 250, you are also supposed to

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Moran - direct

1 fill out into the details of that stop, fill out the details of
2 that stop in your activity log -- it says long but it's
3 obviously log -- is that correct?

4 "A. I don't recall if it was required to make the entry into
5 the memo book."

6 Do you recall being asked that question and giving
7 that answer at your deposition?

8 A. Yes.

9 Q. And as of the date of this stop, January 30, 2008, you had
10 been a police officer for almost four years, right?

11 A. Yes.

12 Q. And you had made numerous stops over that time, correct?

13 A. Correct.

14 Q. And you had numerous UF 250s and memo books reviewed by
15 your supervisors, right?

16 A. Correct.

17 Q. And you never recall being told to make an entry into your
18 memo book about a stop, right?

19 A. That's what I said.

20 Q. Yeah, right.

21 A. At that time.

22 Q. You were not even aware, were you, that a complaint had
23 been made against you by Mr. Ourlicht, correct?

24 A. I was aware at some time.

25 Q. You were aware at your deposition, right?

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D4i9flo5

Moran - direct

1 A. Of course.

2 Q. You weren't aware at the time of the complaint though, were
3 you?

4 A. I was asked for my memo book once.

5 Q. You were not aware that a complaint had been filed against
6 you as of the date of the deposition, correct?

7 A. No.

8 Q. That's correct, right?

9 A. My memo book, somebody asked me for my memo book.

10 THE COURT: But you weren't aware there was a
11 complaint filed?

12 THE WITNESS: No.

13 THE COURT: Okay.

14 Q. You talked at some point to your ICO about it. But that
15 wasn't your supervisor, right?

16 A. No, he wasn't.

17 Q. You never -- you don't recall ever talking to Sergeant
18 Hegney about this stop, do you?

19 A. No.

20 Q. You don't recall being questioned by him about this stop,
21 do you?

22 A. No, I don't remember.

23 Q. Do you recall telling Sergeant Hegney at any point that the
24 perp fit the description of a man with a gun.

25 Do you recall telling Sergeant Hegney that at any

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D4i9flo5 Moran - direct

1 point?

2 A. I don't recall that.

3 Q. Did he ever tell you that that's what he wrote in a form
4 that he filled -- with respect to a complaint made against you,
5 did he ever tell you that?

6 A. I don't recall a conversation with him about that.

7 Q. You became aware that that's what Sergeant Hegney said at
8 your deposition, right?

9 A. Yes.

10 Q. And at that time you were still being supervised by
11 Sergeant Hegney, right?

12 A. No.

13 Q. Was he still in the 107th precinct?

14 A. No. He was transferred.

15 Q. So you never went and -- after the deposition after you
16 became aware of that, you didn't go ask Sergeant Hegney why he
17 said that, right?

18 A. No.

19 MR. MOORE: Judge, I have nothing further.

20 THE COURT: Just before you start let me just review
21 who are the witnesses tomorrow that you expect.

22 MS. BORCHETTA: The witnesses tomorrow will be -- if
23 we don't finish Officer Moran, Officer Moran or Sergeant, I'm
24 sorry.

25 Then class member Leroy Downs. Class member David

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D4i9flo5 Moran - direct

1 Ourlicht. And Inspector McGuire.

2 MS. PUBLICKER: Deputy.

3 MS. BORCHETTA: Deputy. Sorry. McGuire.

4 THE COURT: That's it?

5 MS. BORCHETTA: Ourlicht is a named plaintiff.

6 THE COURT: So I understand. Downs, Ourlicht and

7 McGuire is the expectation?

8 MS. BORCHETTA: Yes, your Honor. Although we don't
9 think that that will take an entire day and my understanding
10 from the city is that they will be --

11 MR. MARUTOLLO: Your Honor, if I may, Detective
12 Vizcarrondo, who was originally on Plaintiffs' Exhibit witness
13 list but is now on ours or will be on our witness list that
14 will be submitted to you did come this afternoon. He should, I
15 believe, be available tomorrow afternoon, should the need
16 arise. But that may change.

17 THE COURT: I understand.

18 Okay. Thank you. Go ahead.

19 CROSS-EXAMINATION

20 BY MR. MARUTOLLO:

21 Q. Good afternoon again, Sergeant Moran.

22 A. Good afternoon.

23 Q. What is your educational background?

24 A. I have a bachelor degree from the University of
25 Massachusetts at Amherst.

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D4i9flo5

Moran - cross

1 Q. How long have you been employed by the NYPD?

2 A. Approximately nine years.

3 Q. And did you attend and graduate from the police academy?

4 A. Yes.

5 Q. Can you briefly describe your assignments at the NYPD since
6 graduating from the police academy?

7 A. 103rd precinct. I was assigned to patrol.

8 I was transferred approximately eight months later to
9 the 107th precinct, where I was assigned to patrol and in the
10 school unit, youth unit. I was there until June of 2009 when I
11 went to the medical division, where I was administrative
12 officer.

13 Then two months after that I was at the housing
14 borough Brooklyn in another administrative capacity.

15 Then I was assigned back to the 107th precinct in
16 August of 2009. And I went into the -- back to the school
17 unit.

18 And in November of 2010 I was promoted to sergeant.
19 And I was placed at the 83rd precinct.

20 Q. And, I'm sorry, when were you promoted to sergeant,
21 November 2010?

22 A. Yes.

23 Q. And since becoming sergeant what have been your general
24 duties and responsibilities?

25 A. Supervising officers under my command. Assigning duties

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D4i9flo5 Moran - cross

1 and tasks that day. Training. Ensuring everybody gets back
2 alive at the end of the tour. Everybody knows what they're
3 doing. Frequently visiting them while out on patrol and making
4 sure they're filling out department forms and handling
5 complaints by the community correctly.

6 Q. Now as a sergeant have you ever told an officer that you
7 supervised that he should increase the number of stops he
8 performs?

9 A. No.

10 Q. Now, on January 30, 2008 you testified that you were in the
11 youth team of the school detail unit; is that right?

12 A. Yes.

13 Q. And while in the school unit or the youth unit, did you
14 attend meetings at the start of your tour?

15 A. Yes.

16 Q. What would be discussed at these meetings at the start of
17 your tour?

18 A. Assignments for the day would be given out. Precinct crime
19 trends would be talked about. Areas where we need to have more
20 presence. We talked about training or any kind of incidents
21 that happened, we talked them over, and have our questions
22 answered.

23 Q. I'd like to show you, Sergeant Moran, a document that's
24 been premarked as Defendants' Exhibit Z10. So I'm handing you
25 what's been premarked as Defendants' Exhibit Z10. What is this

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D4i9flo5 Moran - cross

1 document?

2 A. This was a monthly activity report.

3 Q. And what months are listed in this document?

4 A. December 2007, January 2008, February 2008.

5 MR. MARUTOLLO: So, your Honor we would just like to
6 enter into evidence parts of Exhibit Z10 which is NYC 8320
7 through NYC 8335. The rest of the document I believe may have
8 already been entered into evidence from a different officer.

9 THE COURT: Any objection?

10 MR. MOORE: The problem is that the document has -- it
11 has these performance sheets for other officers.

12 MR. MARUTOLLO: We're not admitting those other
13 officers. Only for Officer Moran.

14 THE COURT: By the time he puts it in the record as a
15 physical exhibit it's just going to be this officer.

16 MR. MOORE: All right.

17 THE COURT: So those --

18 MR. MOORE: No.

19 THE COURT: So those portions of Z10 that relate to
20 this officer are admitted.

21 (Defendants' Exhibit Z10 received in evidence)

22 Q. Officer Moran, if you could just turn your attention to
23 January of 2008, that monthly activity report. What were your
24 declared conditions in January of 2008?

25 A. Quality of life conditions, index crimes, youth related

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D4i9flo5

Moran - cross

1 home visits.

2 Q. And what does youth related home visits mean?

3 A. I was part of the youth unit. We made home visits to youth
4 students in the areas that were chronically truant. They were
5 getting in trouble at school. They were getting arrested.
6 They were having juvenile reports generated.

7 We would go out to the home, talk with mom and dad and
8 the child, try to see what was wrong, why they were getting
9 into trouble, why they are always late to school. Try to
10 recommend some activities via the PAL, after-school sports,
11 trying to steer them -- get them back on the right track and
12 kind of right the wrong.

13 Q. Okay. Thank you.

14 And on the left-hand column, January 2008, where it
15 says youth, what does that mean?

16 A. I was part of the youth -- it was the youth -- for that
17 assignment that day I was like the youth car out there.

18 Q. So you were on assignment those days?

19 A. I was doing youth work, admin work, maybe we were doing
20 truants, or we were handling jobs in the schools in the area.

21 Q. Now were there any days in January 2008 where you did not
22 fill out a UF 250?

23 A. Yes.

24 Q. And on those days were you punished in any way by your
25 supervisors?

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D4i9flo5

Moran - cross

1 A. No.

2 Q. And in January 2008 or for that matter any month did any
3 superior officer ever tell you that you needed to make a
4 certain number of stops?

5 A. No.

6 Q. Okay. So now turning your attention to the January 30,
7 2008 incident. Where were you when you first observed
8 Mr. Ourlicht?

9 A. I was driving northbound on 164th Street.

10 Q. And were you in uniform?

11 A. Yes.

12 Q. And you testified that you were in a scooter; is that
13 right?

14 A. Yes.

15 Q. What time did you first see Mr. Ourlicht?

16 A. Approximately 2:15 p.m.

17 Q. And from where did you observe him?

18 A. I came up from behind him.

19 Q. And did there come a point where you drove past him?

20 A. Yes.

21 Q. How long did you observe him for?

22 A. Approximately two minutes.

23 Q. So what, if anything, did you observe about Mr. Ourlicht?

24 A. He was -- as I said before, he was blading his body, which
25 was he was protecting something in his right waist hip area.

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D4i9flo5

Moran - cross

- 1 He had something bulging from that area as well, underneath his
2 clothes. He was kind of protecting it. He was walking weird.
3 It wasn't normal. Every time he took a step it looked like
4 something was preventing him from taking a normal step.
5 Q. Now after you first observed Mr. Ourlicht what happened
6 next?
7 A. I drove past him, kept him in sight, drove thought next
8 intersection, exited my vehicle.
9 Q. Did Mr. Ourlicht approach you or did you approach
10 Mr. Ourlicht?
11 A. He approached me.
12 Q. And what tone were you using throughout this encounter?
13 A. I was calm.
14 Q. What tone was Mr. Ourlicht using?
15 A. He was irate, noncompliant, showing disrespect.
16 Q. Was he using obscenities?
17 A. Yes.
18 Q. Did there come a point where you frisked Mr. Ourlicht?
19 A. Yes.
20 Q. Why did you frisk Mr. Ourlicht?
21 A. I reasonably suspected by the way he was walking and
22 protecting the right side of his body and through the bulge
23 that I saw underneath his clothes that he had a weapon.
24 Q. And where did you frisk Mr. Ourlicht?
25 A. On the right side waist area.

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D4i9flo5

Moran - cross

1 Q. And how was Mr. Ourlicht acting during the frisk?

2 A. He was irrational, yelling, cursing, screaming.

3 Q. And -- I'm sorry. Go ahead.

4 At this point did you have probable cause to issue
5 Mr. Ourlicht a summons?

6 A. He was yelling and screaming. He threatened to fight me.
7 He was acting in threatening behavior. People that were on the
8 street were looking at him and looking at us. He was being
9 disorderly. He was guilty of disorderly conduct.

10 Q. And did there come a point where you radioed for
11 assistance?

12 A. Yes.

13 Q. And why did you do that?

14 A. By the way Mr. Ourlicht was acting and making the
15 threatening remarks and saying he wanted to fight me. I was by
16 myself. I asked for another car to come over.

17 Q. Were you concerned at all for your safety?

18 A. Yes, I was.

19 Q. Did there come a point where you decided to search
20 Mr. Ourlicht?

21 A. Yes.

22 Q. Why did you search him?

23 A. After he was yelling and screaming and threatening to fight
24 me, I reasonably suspected that he had something still on him,
25 that he was hiding something from me. Through my training and

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D4i9flo5

Moran - cross

- 1 experience I've noticed that, that people sometimes will try to
2 do that to kind of get the attention off of, you know,
3 something they might have, try to divert you.
4 Q. Did you decide to issue Mr. Ourlicht a summons?
5 A. Yes.
6 Q. I'd like to just show you what's already been marked as
7 Plaintiffs' Exhibit 248. What is this document?
8 A. This is a criminal court summons.
9 Q. Is that the summons you issued to Mr. Ourlicht?
10 A. Yes, it is.
11 MR. MARUTOLLO: Your Honor, we move to have this
12 exhibit entered into evidence.
13 MR. MOORE: No objection.
14 THE COURT: 248 is received.
15 (Plaintiffs' Exhibit 248 received in evidence)
16 Q. So why did you issue Mr. Ourlicht the summons?
17 A. He was yelling, screaming in public. He was acting -- he
18 was making threatening remarks to me. Unreasonably loud and
19 acting tumultuous and threatening behavior.
20 Q. What happened after the search was conducted?
21 A. I did a warrant check on Mr. Ourlicht and issued him a
22 summons.
23 Q. And you did indeed fill out a memo book entry about this
24 incident, correct?
25 A. Yes.

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D4i9flo5

Moran - cross

1 Q. What training have you received from the NYPD regarding
2 stop, question and frisk throughout your career?

3 A. We were trained in the police academy. We go to the range
4 twice a year for -- to re-qual and it's also a tactic training,
5 go over stop question and frisk. I've been to the
6 stop-question-and-frisk workshop. We've had several training
7 sessions in the precinct by the training sergeant. And I
8 conduct training with my officers during role calls about stop,
9 question and frisk. Other incidents that we talk about to help
10 others understand the right way to do -- handle certain jobs,
11 if anybody had any questions regarding something we did the
12 night before.

13 Q. Now, throughout your career did you ever speak to
14 supervisors about stops that were conducted?

15 A. Yes.

16 Q. And you mentioned a few things that you discuss currently
17 as a sergeant about your supervision of officers. How do you
18 ensure that officers under your supervision are properly
19 conducting stop, question and frisks?

20 A. Well it's my job to frequently visit them.

21 MR. MOORE: Judge, I'm going to -- I think this is far
22 afield. This is talking about his position now as a sergeant
23 not -- he wasn't a sergeant back in 2008. I didn't ask him
24 about what he was doing as a sergeant.

25 THE COURT: No. But we've gone through this before.

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D4i9flo5

Moran - cross

1 The city could call this witness as their witness and I said we
2 were doing this all at once and although you didn't ask him
3 we're going to bring this whole thing current at the end of the
4 day. If there's ever a liability verdict, we're going to talk
5 about remedy. So this goes into that idea. He wants to know
6 what the current practice is now that he's a sergeant.

7 MR. MOORE: Fair enough, Judge.

8 THE COURT: Okay.

9 MR. MOORE: I just didn't know he was promoted. They
10 didn't tell me he was promoted.

11 MR. MARUTOLLO: We actually put sergeant on our
12 pretrial order and on our witness list.

13 THE COURT: When did you become sergeant?

14 THE WITNESS: November 2010.

15 THE COURT: That's a long time ago. Go ahead.

16 Whatever.

17 MR. MOORE: Whatever.

18 THE WITNESS: Could you repeat the question.

19 Q. How do you ensure that officers under your supervision are
20 properly conducting stop, questions, and frisks?

21 A. I have to visit them frequently while out on patrol. If I
22 hear they're stopping somebody, I might stop over. When I
23 review and sign 250s, I'll talk it over with the officer.
24 During role call. I always ask -- we talk about incidents and
25 I ask for questions and comments. I ask for feedback from the

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D4i9flo5 Moran - cross

1 officers.

2 Q. And I believe you discussed a little bit about racial --
3 the NYPD's policy prohibiting racial profiling during your
4 direct examination but have you discussed the policy
5 prohibiting racial profiling with your officers?

6 A. Yes.

7 Q. As a sergeant?

8 A. Yes.

9 MR. MARUTOLLO: May I have one moment, your Honor?
10 (Pause)

11 MR. MARUTOLLO: No further questions, your Honor.

12 REDIRECT EXAMINATION

13 BY MR. MOORE:

14 Q. Your supervisor didn't talk to you about this stop, right?

15 A. Sorry, sir?

16 Q. Your supervisor didn't talk to you about the stop you made
17 on January 30, 2008 of David Ourlicht, right?

18 A. Conversation how?

19 THE COURT: Did your supervisor talk to you about the
20 stop?

21 THE WITNESS: He signed the 250.

22 THE COURT: Nobody asked you that. Nobody asked you
23 that.

24 THE WITNESS: I don't recall if he asked me any
25 questions about it at that time.

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D4i9flo5

Moran - redirect

1 BY MR. MOORE:

2 Q. And the position you now have in the 83rd precinct, just
3 tell me what that is.

4 A. I'm a SNEU sergeant.

5 Q. I'm sorry. What?

6 A. SNEU sergeant.

7 THE COURT: SNEU.

8 Q. So that's not a regular patrol function, correct? That's a
9 detail?

10 A. Yes.

11 Q. And as a member of SNEU you're primarily making probable
12 cause stops, correct?

13 A. Yes.

14 Q. So you don't have occasion to do very many stop and frisks,
15 right? Mostly probable cause stops, right?

16 A. Yes.

17 MR. MOORE: Nothing further, Judge.

18 THE COURT: Anything further?

19 MR. MARUTOLLO: Just one quick question.

20 RECROSS EXAMINATION

21 BY MR. MARUTOLLO:

22 Q. Prior to being a SNEU sergeant were you working in any
23 other capacity as a sergeant?

24 A. Patrol.

25 MR. MARUTOLLO: Thank you, your Honor.

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D4i9flo5

Moran - recross

1 No further questions.
2 THE COURT: Okay. We're done for today. Thank you.
3 (Witness excused)
4 So well reconvene tomorrow at 10:00 with the witnesses
5 that you've told me you're calling.
6 Ms. Cooke what about that discovery request that
7 Ms. Borchetta talked about?
8 MS. COOKE: I think Ms. Publicker --
9 MS. PUBLICKER: I will -- I actually believe -- we'll
10 put together an affidavit and get it done as soon as possible.
11 THE COURT: Okay.
12 (Adjourned to April 19, 2013 at 10:00)

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1 Recross By Mr. Marutollo4086

2 PLAINTIFF EXHIBITS

3 Exhibit No. Received

4 166CL3888

5 3233920

6 3273920

7 3243932

8 3253933

9 4263977

10 225, 432, 433, 4343985

11 1683986

12 2484082

13 DEFENDANT EXHIBITS

14 Exhibit No. Received

15 K63925

16 Z123963

17 Z104077

18

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