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1 UNITED STATES DISTRICT COURT  
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 DAVID FLOYD, et al.,

4 Plaintiffs,

5 v.

08 CV 1034(SAS)

6 CITY OF NEW YORK, et al.,

7 Defendants.

8 -----x

New York, N.Y.  
May 1, 2013  
10:10 a.m.

10 Before:

11 HON. SHIRA A. SCHEINDLIN,

12 District Judge

13 APPEARANCES

14 BELDOCK LEVINE & HOFFMAN, LLP  
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15 BY: JONATHAN MOORE  
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20 CENTER FOR CONSTITUTIONAL RIGHTS  
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21 BY: DARIUS CHARNEY  
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APPEARANCES (Cont'd)

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1 THE COURT: Good morning everyone.

2 Please be seated.

3 MR. MOORE: Judge, could I raise an issue about  
4 scheduling. I could do it later on if you want to just start.

5 THE COURT: What is it, Mr. Moore?

6 MR. MOORE: Defendants have designated Chief William  
7 Morris to testify some time next week. In his declaration  
8 provided to us he makes reference to the Hall memo that was  
9 given to us on the eve of trial, also makes reference to some  
10 memos he wrote concerning implementing that which we have not  
11 been given any copies of. And I'm just wondering whether it  
12 makes sense to have him testify after Hall rather than before.  
13 I could talk to the city about it see if they're agreeable to  
14 it. I just want to raise it with the court.

15 THE COURT: They have Hall as virtually their last  
16 witness.

17 MR. MOORE: I understand.

18 THE COURT: So maybe they have reason for that. I  
19 don't know. All right.

20 Well they've heard your request. If you can't work it  
21 out with them I'll take it up with them at another time.

22 MS. COOKE: Your Honor, I have a point I'd like to  
23 raise with respect to tomorrow's witness, which begin our  
24 expert testimony, Professor Patel and Professor Smith.

25 We've been working with the plaintiff to make the

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1 appropriate redactions to the expert reports as we've done with  
2 Professor Fagan's. There are three issues that we have not  
3 been able to resolve and I'd like to raise with the Court. We  
4 can either do it now or at the close of the day, but we do need  
5 to prepare those documents for use for tomorrow so it's  
6 something I'd like to get resolved.

7 THE COURT: What are those issues?

8 MS. COOKE: Well two of the objections that the  
9 plaintiffs would like redacted from Professor Smith and Patel's  
10 2010 report and then another document which is a declaration  
11 from July of 2012.

12 The proposed redactions that the plaintiffs want that  
13 we've refused are redactions from Professor Smith's resume in  
14 essence. It's a statement of his experience at the beginning  
15 of the expert report which states he's assessed performance --

16 THE COURT: That doesn't need to be redacted. I'm  
17 familiar with CVs and resumes. I'm not going to be overly  
18 influenced. It's not a jury. I'm not concerned.

19 What's next?

20 MS. COOKE: The second issue is there's a statement of  
21 fact in the October 10 report appearing on page 5. And the  
22 statement of fact is that the police department is a problem  
23 solving agency focused on crime reduction and I don't think  
24 that that's an opinion.

25 THE COURT: I think it's an opinion. I don't need it.

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1 It's good to know his view. It's not what my case is about.

2 MS. COOKE: I'll redact that.

3 The third item, your Honor, is a little bit longer,  
4 redactions proposed by the plaintiffs with respect to pages 24,  
5 25, 26 and 28 of the 2010 report. And I'll summarize it as  
6 follows. It is reporting of statistics from public documents  
7 prepared by the NYPD of crime and enforcement activity that are  
8 regularly prepared and provided and publicly available,  
9 released annually. It's crime statistics related to crime  
10 victims and race. And it's also crime statistics related to  
11 victims and suspect description. Both of these.

12 THE COURT: That all comes from the police department  
13 records?

14 MS. COOKE: Yes. It goes directly to the benchmark  
15 issue.

16 THE COURT: So, what's the problem with that?

17 MR. COREY: Your Honor, if I can address this.

18 The racial composition of the victims, the only  
19 theoretical purpose we think that it could be offered for is to  
20 show that the NYPD's stop-and-frisk policies disproportionately  
21 benefit people of color and you actually expressly excluded  
22 that opinion in your August 2012 Daubert opinion.

23 MS. COOKE: Your Honor, it doesn't go to that. It  
24 goes to deployment, which is one of the mechanisms that  
25 Professor Smith and Patel are arguing that the

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1 operationalization of the variables in Professor Fagan's  
2 regression analysis is not reflecting the reality of policing.  
3 And we deploy based on where crime is occurring.

4 THE COURT: Where crime is occurring doesn't depend on  
5 the race of the victim.

6 MS. COOKE: It's not just the race of the victim.  
7 It's the race of the victim tied to the crime that was  
8 committed.

9 THE COURT: Still doesn't matter. If you deploy, you  
10 deploy by geography. Where is the crime being committed?  
11 Certain corner. Certain building. Certain housing. You want  
12 to send your troops there.

13 But the race of the victim, seems to me, is a backdoor  
14 way of saying the community really likes the stop and frisk,  
15 wants the stop and frisk, etc. and that's just not something --  
16 evidence I'm not going to take.

17 MS. COOKE: Your Honor, it's the crime statistic that  
18 is --

19 THE COURT: I'm going to take the crime statistic, but  
20 not the race of the victim.

21 MS. COOKE: Okay. So we'll redact a portion of the  
22 pages, but the remaining pages that deal with the suspect  
23 description goes directly to the benchmark.

24 THE COURT: It does.

25 MS. COOKE: Those primarily appear on paging 26 and  
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1 28.

2 THE COURT: You're right.

3 MS. COOKE: Thank you, your Honor.

4 That's it.

5 THE COURT: Now I retract what I said yesterday about  
6 the morning break. I've got too much to do. I need the five  
7 minutes. So we will break around 11:30 for very short.

8 Go ahead.

9 JOSEPH MARINO, resumed

10 CROSS-EXAMINATION CONTINUED

11 BY MR. COREY:

12 Q. Good morning, Sergeant Marino.

13 A. Good morning.

14 Q. Before we start, can I just ask if you talked to your  
15 attorneys after your testimony yesterday?

16 A. No, sir.

17 Q. So I'd like to continue talking about the 127 stops that  
18 Officer Dang did from June 30, 2009 to September 30, 2009.

19 Do you still have the hard copy in front of you?

20 A. Yes.

21 Q. So did it concern you that he found no weapons in the 127  
22 stops he made?

23 A. No, sir.

24 THE COURT: I thought it was 127.

25 MR. COREY: I'm sorry, your Honor?

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1 THE COURT: 127.

2 MR. COREY: Well in this time period Officer Dang made  
3 127 stops.

4 THE COURT: I was correcting you to 127. I thought  
5 you said 120.

6 MR. COREY: I'm sorry.

7 THE COURT: I obviously misheard.

8 MR. COREY: 127.

9 Q. Well did it concern you that he recovered no weapons in the  
10 75 frisks that he made?

11 A. No, sir.

12 Q. You testified yesterday that during this period of time  
13 this was an increase in shooting, right?

14 A. Correct.

15 Q. So wouldn't you expect him to recover at least some  
16 weapons?

17 A. No. Not necessarily.

18 Q. Okay.

19 A. A lot of times when we frisk individuals it's for our  
20 safety so there's something that that officer, to conduct a  
21 frisk, and that frisk turned out negative.

22 Q. Well did it concern you that he made only -- he issued only  
23 one summons pursuant to these stops?

24 A. No, sir.

25 Q. What about the fact that he made only six arrests pursuant

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1 to these stops? Did that concern you?

2 A. No, sir.

3 Q. Well I'd like to ask you some questions about those UF 250s  
4 where he made an arrest. I'm going to ask my colleague to pull  
5 up from Defendants' Exhibit L12, Bates 15709.

6 So the crime suspected here is CPW, right? That's  
7 criminal possession of a weapon?

8 A. Correct.

9 Q. And if you look down at the arrest data, so the suspect was  
10 arrested for ROW or return on warrant, right?

11 A. Correct.

12 Q. Now, I want to turn your attention to Bates 15751.

13 THE COURT: I'm sorry. I didn't understand the  
14 reference to criminal possession of weapon.

15 Suspected it? Right. Suspected.

16 MR. COREY: The offense that was arrested for is  
17 return on warrant.

18 Q. So now if you look at Bates 15751. Now the crime suspected  
19 here is robbery and the arrested for, again, return on warrant.

20 Now, if you could look at Bates 15865.

21 A. What was that number?

22 Q. 15865.

23 So here you have the time of stop of 2100 hours and  
24 location of Adelphi and Willoughby and it's August 29, 2009.

25 So I'm going to show you the following two UF 250s and

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1 ask you to tell me if this is the same encounter where he  
2 stopped three people.

3 I guess we'll also note crime suspected here is  
4 robbery.

5 And the arrested offense would be -- can you tell me  
6 what that is, that arrested offense?

7 A. It's some type of park rules and regulations. What exactly  
8 offense it is, I'm not a hundred percent sure.

9 Q. Would it be being in a park after hours?

10 A. It's quite possible, yes.

11 Q. If you could just go to page 215.

12 Now we have the same -- actually the exact same  
13 UF 250s because everything is redacted that's personal. So  
14 same location, time, date?

15 THE COURT: Different person though, right?

16 MR. COREY: Different person. Same suspected offense.  
17 Same arrested offense.

18 Now just go to 217.

19 MS. RICHARDSON: Your Honor, they are three 250s,  
20 15865 through 15870.

21 THE COURT: Through 71?

22 MR. COREY: So would counsel stipulate that this is  
23 one encounter where three people were stopped and arrested?

24 MS. RICHARDSON: Yes.

25 MR. COREY: For the same suspected crime of robbery

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1 and park offense.

2 So now we're up to five arrests and he had a total of  
3 six in the quarter.

4 So the last one is Bates 15901.

5 THE COURT: What are you doing?

6 MR. COREY: What am I doing?

7 THE COURT: What's going on? Going back and forth. I  
8 don't know why.

9 MR. MOORE: Trying to get to 15901.

10 THE COURT: I see. These are all different ones.

11 Q. Now what's the arrested offense here. PL160.05. What  
12 crime is that?

13 A. That's a robbery.

14 Q. And that's a suspected --

15 THE COURT: Where is the robbery?

16 MR. COREY: Well if you look at the lower.

17 THE COURT: I see it. Okay. Go ahead.

18 MR. COREY: So the suspected crime before the stop --  
19 that led to the stop was robbery. That's what the officer  
20 indicated. And he also arrested for I believe robbery in the  
21 third degree, although the sergeant will correct me.

22 Q. Is that correct?

23 A. Yes. He was arrested for robbery, correct.

24 Q. So, you said you weren't concerned that Officer Dang made  
25 only six arrests but were you at all concerned that he only

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1 arrested someone for the crimes he suspected before the stop  
2 once?

3 A. I'm sorry. Repeat that.

4 Q. Well this -- of the UF 250s we just looked at, this is the  
5 only one where the suspected offense is the same as the  
6 arrested offense, right?

7 A. Okay. Yes.

8 Q. Does that concern you at all?

9 A. No, sir.

10 Q. Going to put Plaintiffs' 565 back on the screen.

11 So, Sergeant Marino, would you have been concerned if  
12 Officer Dang checked time of day, day of week, season on a  
13 UF 250 that stated stops time of -- between the hours of 11:00  
14 a.m. and 8:45 p.m.

15 Would that have concerned you?

16 A. No, sir.

17 Q. So the fact that he submitted 41 UF 250s of that nature  
18 didn't concern you?

19 THE COURT: Forty-one of what nature?

20 MR. COREY: Well if you look at the table to the  
21 right.

22 THE COURT: I see the footnote. Footnote two.

23 MR. COREY: Yes, the footnote.

24 Q. So it doesn't concern you that he submitted 41 such  
25 UF 250s?

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1 A. Between the hours of 11:00 a.m. and 8:45?

2 Q. In which he checked off: Time of day, day of week, season?

3 A. No, sir. We had a burglary condition going on and the time  
4 of occurrence was normally daytime, afternoon hours.

5 THE COURT: I don't understand that answer. Because  
6 there's 41 of one. There's 57 of the other. Does the time of  
7 day have any meaning? Because 41 of them are from 11:00 am to  
8 9:00 p.m. but then the other 57 are still in that category,  
9 they're a different time.

10 THE WITNESS: The way I understand the question --

11 THE COURT: Forget the question. I'm asking you this  
12 question.

13 THE WITNESS: It doesn't concern me that, 41 stops.

14 THE COURT: I know. But now I'm asking a different  
15 question.

16 What meaning does time of day have if 41 are daytime  
17 and 57 are nighttime? It seems it doesn't matter what time.  
18 It's still a relevant factor.

19 THE WITNESS: It's relevant to the type of crimes that  
20 are occurring.

21 THE COURT: Okay. But I have no way to ask my  
22 question better than I'm trying to do it.

23 If half of them are daytime and half of them are  
24 nighttime, does it have any relevance at all, the time of day?  
25 Do you see what I'm saying? Forty-one are from 11:00 to 9:00.

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1 Fifty-seven must be a different time of day.

2 THE WITNESS: Yes.

3 THE COURT: That are checked off as relevant.

4 THE WITNESS: Yeah.

5 THE COURT: So in the end, is it relevant at all?

6 THE WITNESS: I understand what you're saying.

7 The best way I'm trying to explain it is certain  
8 crimes happen during the daytime hours other crimes happen  
9 during the night.

10 THE COURT: Thank you. That helped.

11 Q. Sergeant Marino, were you ever concerned that Officer Dang  
12 was excessively checking the boxes of high crime area, time of  
13 day, and ongoing investigations?

14 A. No, sir.

15 We are on the anticrime team and we focus our  
16 attention and pay special attention to areas where actually  
17 there's increases in crime. And the day of the week, and the  
18 ongoing investigation is all part of what we do.

19 Q. Were you ever concerned that Officer Dang was checking the  
20 box for furtive movements when it was not appropriate to do so?

21 A. I don't necessarily agree.

22 Q. Sorry?

23 A. You're saying it was unnecessary to do?

24 Q. That's not what I'm asking.

25 If you recall during this time period when you

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1 reviewed his UF 250s, did you ever think that he was checking  
2 that box when it was not appropriate to do so?

3 A. No, sir.

4 Q. So even now it didn't concern you that he checked it in  
5 more than a third of his 250s?

6 A. No, sir.

7 Q. You testified yesterday that the 88 precinct has gangs and  
8 crews?

9 A. Correct.

10 Q. So, can you turn your attention to --

11 THE COURT: I just want to.

12 Q. Can you turn your attention to in Defendants' Exhibit L12,  
13 15797.

14 MR. COREY: Just one moment, your Honor. I apologize.

15 (Pause)

16 MS. RICHARDSON: Your Honor, I think I'm going to  
17 raise an objection here.

18 The plaintiffs were objecting to the fact that we had  
19 identified this exhibit without referencing the specific  
20 UF 250s that we were going to question the witnesses about.  
21 And so we identified the specific UF 250s that we planned to  
22 use with these witnesses. And this is not one of those  
23 UF 250s. So I believe they're violating their own objection.  
24 This was not --

25 THE COURT: It's cross-examination. You know you have

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1 to identify exhibits under the rules but not for purposes of  
2 impeachment is what the rule says. I know this is not quite  
3 the word impeachment but it is the same idea. So even the  
4 rules give leeway when you identify exhibits in advance, if you  
5 read the federal rules, you don't have to do it if you're going  
6 to use it to cross-examine, essentially. So there is no real  
7 problem. You're familiar with these and you can follow along.  
8 It's not hard.

9 MS. RICHARDSON: For the record.  
10 THE COURT: For the record. Overruled.  
11 MS. BORCHETTA: For the record, that was not our  
12 objection. She mischaracterized our objection.  
13 THE COURT: Well, whatever. Can we go on. Where are  
14 we.  
15 MR. COREY: This is Bates 15797.  
16 THE COURT: What's the question?  
17 MR. COREY: Well the question is whether you recall  
18 this particular stop that Officer Dang did.  
19 THE COURT: He recalls it.  
20 MR. COREY: Whether he recalls reviewing the UF 250.  
21 THE COURT: That's a different question. Do you  
22 recall reviewing this UF 250?  
23 THE WITNESS: Correct.  
24 THE COURT: Correct means yes?  
25 THE WITNESS: Yes, yes.

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1 Q. Do you remember that in this encounter he stopped nine  
2 people?

3 A. Yes.

4 Q. And --

5 THE COURT: Is that on the form? Do you see nine?

6 MR. COREY: This is where it gets a little bit  
7 difficult -- it doesn't say nine. Scroll through 18 pages to  
8 show.

9 MR. MOORE: On the face of the form it says were other  
10 persons stopped. And it says yes. And then there is nine  
11 stops for that location at that time.

12 THE COURT: Where is the yes?

13 I just want to understand. I can't read it. Where do  
14 you see yes?

15 MR. MOORE: Where he says were other persons stopped.

16 THE COURT: That's helpful. I see. It says yes.

17 And if you work through the forms, you see the same  
18 location, same time, nine times.

19 So you know that nine people were stopped?

20 THE WITNESS: Yes.

21 BY MR. COREY:

22 Q. Did you remember the race of any of the nine people?

23 A. Yes. They're all black.

24 Q. Also the stop circumstance checked on all nine is furtive  
25 movements, right?

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1 A. Correct.

2 THE COURT: That's the only one on the front side?

3 THE WITNESS: Yes.

4 Q. So did you ever ask officer --

5 THE COURT: What's checked on the second side,  
6 different things?

7 THE WITNESS: On the rear side it has: Area has high  
8 incidence of reported offense type of investigation and also  
9 ongoing investigations.

10 THE COURT: Is that true for all nine?

11 MR. COREY: I could represent that it is.

12 THE COURT: What was the offense under investigation  
13 again from the front side?

14 MR. COREY: The suspected crime was CPW.

15 THE COURT: Thank you.

16 Q. Did you ever ask Officer Dang what the furtive movement was  
17 that any of these nine people made?

18 A. I don't remember if I actually asked Officer Dang. I might  
19 have actually been present at the stop. It's vaguely familiar.  
20 I do remember having a group of individuals stopped in that  
21 area. I don't remember the stop a hundred percent. So I  
22 probably did not ask him if I was present.

23 Q. But when you were reviewing these 250s did you take this to  
24 mean that all nine were actually making a furtive movement or  
25 that one made a furtive movement and he imputed that to the

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1 other eight?

2 A. Repeat that.

3 Q. When you were reviewing these 250s and you saw that furtive  
4 movements was checked for each person, did you understand that  
5 to mean that all nine were making a furtive movement?

6 A. Correct.

7 Q. So do you think it was the same furtive movement?

8 A. No. I don't believe it was the same -- I can't recall this  
9 incident a hundred percent. But there are times in situations  
10 where you stop a group of males or females, individuals, that  
11 are the same. And I had a similar situation where one time we  
12 approached a group of five males after receiving a radio run.  
13 And as we approached this group of males they congregated and  
14 one of the males threw a firearm to the ground.

15 So I'm not saying that stop was the same as this.  
16 That's the best example I can give you. I don't remember the  
17 stop a hundred percent. I remember being in this area and  
18 having a group stopped. Off the top of my head, I don't  
19 remember it a hundred percent.

20 Q. So that stop you just talked about when one threw a firearm  
21 to the ground did you stop all five?

22 A. Correct.

23 Q. What were the other four doing that was suspicious though?

24 A. As we approached the individuals, they had seen we were  
25 coming and they just congregated together. And one made a

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1 motion as if they threw a weapon to the ground, which it turned  
2 out -- as they threw an object to the ground, which turned out  
3 to be a firearm. So we reasonably feared for our safety at  
4 that point where we see one firearm, we are unable to  
5 determine -- those individuals congregated. It's not normal  
6 that individuals do that. It's out of character for any group  
7 of individuals to do that, especially when you see a firearm  
8 get thrown to the ground. So we stopped all five.

9 Q. Did they throw the firearm to the ground after they  
10 congregated?

11 A. They turned, looked at us, they all turned in towards each  
12 other, like in a group, and one individual threw a firearm to  
13 the ground.

14 Q. Let me ask you if you remember this stop. This is Bates  
15 15833.

16 Actually just to be clear on that stop you remembered,  
17 the furtive movement I guess there was congregating, right?

18 A. No. Congregating is not a furtive movement.

19 Q. Do you recall this stop? This is 347 Myrtle.

20 A. No, sir.

21 THE COURT: This is 2005 or 9.

22 MR. COREY: 9.

23 THE WITNESS: 2009.

24 THE COURT: Thank you.

25 Q. Well, you have L12 in front of you, correct?

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1 A. Correct.

2 Q. Can you look at the -- just review to yourself the  
3 following six 250s which will be the following twelve pages and  
4 just tell me if those are the same -- if that's all from the  
5 same encounter.

6 A. The ones that follow this?

7 Q. Yes. So 15821 and then all the way to 15833. But you can  
8 just look at the first side of the 250 and see if it was the  
9 same encounter.

10 A. I'm sorry. The question?

11 Q. The question was based on your review of those 250s, were  
12 those seven stops -- stops of seven people based on one  
13 encounter?

14 A. Yes, it looks like it was.

15 Q. Did you notice the race of any of the seven people that  
16 were stopped?

17 A. Yes.

18 Q. What was that?

19 A. All individuals were black.

20 Q. And did you notice the circumstances checked on side one?

21 A. Yes.

22 Q. Is it acting as lookout?

23 A. Acts indicative.

24 Q. Sorry. Yes.

25 So did you ever ask Officer Dang what he observed that

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1 led him to conclude seven people were acting as a lookout?

2 A. I might have. The thing with myself and Officer Dang, I  
3 would take Officer Dang as my operator a lot of times so most  
4 of these times I was probably present for a lot of these stops.

5 I don't recall this stop off the top of my head but if  
6 I wasn't present I probably would have asked him about it. But  
7 I might have most likely been present. I just don't remember  
8 the stop.

9 Q. Well now that you mention that. You did testify yesterday  
10 that you would deploy with Officer Dang quite often?

11 A. Correct.

12 Q. But that doesn't mean that you were with him during the  
13 whole tour, does it?

14 A. Well if I deployed with him in the beginning of the tour I  
15 would stay with him for the whole tour.

16 Q. I showed you yesterday a notation on his monthly activity  
17 report that he performs his duties with little or no  
18 supervision.

19 Do you remember that?

20 A. Yes.

21 Q. Okay.

22 A. That's in regards to when Officer Dang comes to work and we  
23 review our complaint reports, our arrest reports, he interacts  
24 with the detective squad, he interacts with the crime team the  
25 conditions team, and I don't have to direct him to do that. He

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D519fl01 Marino - cross

1 does that all on his own.

2 Q. Didn't it also say he's an aggressive police officer?

3 A. Yes.

4 Q. So that's referring to the fact that he interacts

5 aggressively with the detectives?

6 A. Well I guess when I wrote aggressive it recalls for me that

7 he's very eager. He's one of the officers that he's the first

8 one in to work and probably the last one out of work. He

9 does -- he's very dedicated to what he does. He looks into all

10 the complaint reports. He looks into all the arrest reports.

11 And he doesn't -- not that I don't supervise him, but he does

12 most of that work on his own without -- with very little

13 supervision. I don't have to direct him to do the little

14 things.

15 Q. But when you were an anticrime sergeant, you didn't usually

16 ask officers why they checked the boxes that they did check on

17 the 250s, right?

18 A. Sometimes I would ask them about the 250s themselves. Like

19 sometimes when a box is checked would lead me to ask them why

20 they stopped a group of individuals.

21 Q. Repeat that.

22 A. Sometimes the stop and frisk reports I would ask them why

23 they stop, you know, let's say I wouldn't really question what

24 they checked off, but I might be asking them questions about

25 that stop.

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D519fl01 Marino - cross

1 Q. Sergeant Marino, who was the integrity control officer in  
2 the 88 precinct when you were there?

3 A. Lieutenant Bullock.

4 Q. You met with him to discuss issues related to inadequate  
5 memo book entries of your police officers?

6 A. I wouldn't say inadequate. I would say -- he would meet up  
7 with supervisors, not like a formal meeting but about what  
8 entries should be in activity logs.

9 Q. Well but you did meet with him to discuss police officers'  
10 failure to document things in a memo book, right?

11 A. I don't know if it was necessarily for failure to  
12 documenting items.

13 Q. Well would it refresh your recollection if I showed you  
14 your deposition?

15 A. That's fine.

16 Q. Page 24, line 5.

17 So if you could just read lines 5 through 14 to  
18 yourself and tell me whether it refreshes your recollection.

19 (Pause)

20 A. Okay.

21 Q. So does that refresh your recollection as to whether  
22 Lieutenant Bullock ever met with you to discuss issues related  
23 to police officers' failure to document things in their memo  
24 book?

25 A. I see the question on line eleven, "Have you ever met with  
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D519fl01 Marino - cross

1 him to discuss police officers' failure to document things in  
2 their memo books?"

3 I did answer yes.

4 But if you turn to page 25, line 10, "Do you remember  
5 the substance of what he said to you about this issue?"

6 And it was the answer on line twelve, "Just make sure  
7 your guys are filling out the memo books correctly and they're  
8 putting all their entries in there."

9 So I might have answered yes when the question was  
10 posed as the failure to document things. I don't think he was  
11 making a reference if my guys weren't documenting things  
12 correctly. I think it was more a reference of, you know, make  
13 sure your guys are putting A, B, C entries into their activity  
14 log.

15 Q. But whatever Lieutenant Bullock told you, you never spoke  
16 to Officer Dang about those issues, did you?

17 A. I spoke to my team on occasion about activity log entries.

18 Q. Have you ever determined Officer Dang's memo book entry to  
19 be in any way insufficient?

20 A. Not that I can recall.

21 Q. Just like to show you one more document.

22 MR. COREY: This is not in evidence would you like me  
23 to display it, your Honor, or just give it to him.

24 THE COURT: Are you offering it?

25 MR. COREY: Yes, I am.

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D519flol Marino - cross

1 THE COURT: Any objection?

2 MS. RICHARDSON: No objection.

3 THE COURT: What is it?

4 MR. COREY: Defendants' K12.

5 THE COURT: Defendants' K12 is now in evidence.

6 (Defendants' Exhibit K12 received in evidence)

7 MR. COREY: First of all this, is the memo book of

8 Officer Dang for the third quarter of '09. At Bates 15626.

9 Q. So on this page there are three encounters documented where  
10 a stop was made; is that right?

11 THE COURT: Where am I supposed to be looking on this  
12 page?

13 MR. COREY: Three set of redactions, I believe refer  
14 to stops.

15 Q. And so here, that's one stop, right, sergeant?

16 A. Yes. That looks like a stop.

17 Q. Okay. Now next several lines refers to an encounter where  
18 he stopped a few people, right, more than one?

19 A. Yeah, correct, 2240 hours, I believe.

20 (Continued on next page)

21

22

23

24

25

D518FLO2 Marino - cross

1 Q. And then at the bottom there is another stop where he  
2 stopped two people, right?

3 A. At 0400 hours, yes, that looks like a stop to me.

4 Q. Here, Officer Dang, he listed the crime that he suspected,  
5 right?

6 THE COURT: For each of these you're saying?

7 Q. For each stop, pretty much burg, all the way down to dis  
8 con, disorderly conduct, and then two robberies, is that  
9 correct?

10 A. Yes.

11 Q. He didn't list his observations of these suspects in these  
12 entries, did he?

13 A. I don't see that, no.

14 Q. In your view, is that a sufficient memo book entry?

15 A. At the time -- there's been interim orders from the police  
16 department that have come down that better explain the exact  
17 entries that the department asks for today. At that particular  
18 time of September 2009, I believe they wanted the time of the  
19 stop, the individual's name, address, location, and any other  
20 pertinent information if it was helpful to that officer. Today  
21 the guidelines for what you're going to enter into you memo  
22 books have changed.

23 MS. BORCHETTA: I am sorry to interject. This goes to  
24 the testimony about enforcement of the recent memo that is the  
25 subject of Chief Hall's testimony.

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D518FLO2 Marino - cross

1 MS. RICHARDSON: It doesn't necessarily go to that.  
2 He never said that that was what he is referring to.

3 MS. BORCHETTA: It appears that he is referring --

4 THE COURT: But he didn't even get to that. He said  
5 today the guidelines have changed.

6 I won't sustain your objection, but don't go into the  
7 substance of the change.

8 Q. At that time, you didn't review activity logs and 250s  
9 simultaneously, right, you didn't view them at the same time?

10 A. I don't recall doing so. I don't.

11 MR. COREY: Just one moment, your Honor.

12 Q. Just a couple of more questions, Sergeant.

13 So you're aware that Officer Dang conducted 405 stops  
14 in 2009, right?

15 A. I wasn't aware of that number.

16 Q. Well, did anyone in the NYPD ever express any concern to  
17 you about Officer Dang's stop and frisk activities?

18 A. No, sir.

19 Q. Did you discuss it with anyone? Did you on your own  
20 initiative bring it to anyone's attention?

21 A. No, sir.

22 MR. COREY: Nothing further at this point, your Honor.

23 MS. RICHARDSON: Just briefly, your Honor.

24 REDIRECT EXAMINATION

25 BY MS. RICHARDSON:

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D518FLO2 Marino - redirect

1 Q. Sergeant Marino, you just testified that it doesn't concern  
2 you that Officer Dang only made one arrest for the crime that  
3 he originally suspected when he had originally stopped the  
4 person, is that correct?

5 A. Correct.

6 Q. Why doesn't that concern you?

7 A. I had the experience to work with Officer Dang many times.  
8 I usually took him as my driver. And a lot of times, even  
9 though I don't remember some particular stops, I was present  
10 with him for a lot of those stops, and I have seen that he was  
11 doing his job correctly, and nothing in his behavior or  
12 demeanor or the stops were a concern to me.

13 Q. I am going to show you a page from Defendants' Exhibit Y8  
14 which is already in evidence and which you were asked questions  
15 about yesterday. This is on Bates number 24974.

16 You were asked questions yesterday regarding the  
17 residential population within the 88th Precinct, which is  
18 composed of African-Americans, and that is 43.3 percent. Do  
19 you remember that?

20 A. Yes.

21 Q. You started to explain yesterday why it doesn't concern you  
22 that Officer Dang conducted more stops of black persons than  
23 are represented in the residential population. Do you remember  
24 that as well?

25 A. Correct.

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D518FLO2

Marino - redirect

1 Q. Can you explain?

2 A. Yes. I do remember getting deposed. I don't know exactly  
3 where it is in my deposition, but I did explain that although,  
4 when you look at the breakdown of the 88th Precinct, you will  
5 see 43 percent black, 32 percent white, and so on, the precinct  
6 is very diverse, it is. But in certain areas it's not as  
7 diverse, and in certain areas where crimes are taking place you  
8 might not have the diversity that you see on this paper. So  
9 sometimes you might be in an area that's one ethnic group, and  
10 when you're investigating a crime, you're not going to see as  
11 much of a diverse community as you do on paper.

12 Q. In fact, if you look at this exhibit, you will see that  
13 right here under all known crime suspects, the black population  
14 makes up 80.7 percent, is that correct?

15 MR. COREY: Your Honor --

16 THE COURT: That's what it says. There is nothing to  
17 object to.

18 MR. COREY: I don't see the relevance to this witness.

19 THE COURT: Overruled. That's what the "all known  
20 crime suspects" column says, right?

21 THE WITNESS: Yes.

22 Q. In fact, going further along that same line, the known  
23 violent crime suspects is 91.8 percent black, is that also  
24 correct?

25 A. That is correct.

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D518FLO2

Marino - redirect

1 THE COURT: Could you put that chart back up for one  
2 second? I want to look at the last column for a second.  
3 So what is the title of this? Can I look at that, the  
4 top? Thank you.  
5 So this is all of 2011?  
6 MS. RICHARDSON: Yes, your Honor. That's correct.  
7 THE COURT: One second. This is all of 2011.  
8 MS. RICHARDSON: This page is specifically for the  
9 88th Precinct.  
10 THE COURT: I understand that.  
11 OK. Thank you.  
12 MS. RICHARDSON: I have no further questions at this  
13 time. However, I am going to reserve the right to question  
14 Officer Dang about the UF-250s that Mr. Corey introduced with  
15 Sergeant Marino here today.  
16 THE COURT: That's fine.  
17 MR. COREY: Can I have actually one moment, your  
18 Honor?  
19 THE COURT: Sure.  
20 MR. COREY: Nothing further, your Honor.  
21 THE COURT: Thank you. You're done. All set.  
22 I guess somebody should consider cleaning the witness  
23 stand. It's getting a little full.  
24 Not you. That's not your job today.  
25 THE WITNESS: Have a nice day.

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D518FLO2 Marino - redirect

1 THE COURT: Thank you. You too.

2 Who is your next witness?

3 MS. GROSSMAN: Inspector Stephen Cirabisi.

4 STEPHEN CIRABISI,

5 called as a witness by the defendants,

6 having been duly sworn, testified as follows:

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

9 THE WITNESS: Deputy Inspector Stephen Cirabisi,  
10 S-T-E-P-H-E-N, C-I-R-A-B-I-S-I.

11 MS. GROSSMAN: Your Honor, just before we start, for a  
12 scheduling matter, I am contemplating recalling Commissioner  
13 McGuire for tomorrow to address some of the questions raised  
14 regarding the documents provided to Dr. Ridgeway. There was a  
15 question about a mistake in some of the suspect description  
16 data, and we are contemplating calling Commissioner McGuire to  
17 address that, and to also offer into evidence the reasonable  
18 suspicion document for 2012, it's the following year. You said  
19 you wanted to give the plaintiffs an opportunity to review it  
20 so that they could ask the questions of Commissioner McGuire.  
21 So I think that that might be a good opportunity tomorrow in  
22 the morning. It shouldn't be very long.

23 MR. CHARNEY: No objection. I guess to the extent he  
24 is going to testify about the errors in the RAND data, if there  
25 are any exhibits he is going to use, we would ask for those

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D518FLO2 Marino - redirect

1 this evening.

2 MS. GROSSMAN: When I get back to the office today, we  
3 will try to work that out.

4 DIRECT EXAMINATION

5 BY MS. GROSSMAN:

6 Q. Good morning, Inspector.

7 A. Good morning.

8 Q. Where are you currently employed?

9 A. The 114 Precinct.

10 Q. In what capacity?

11 A. I am the commanding officer.

12 Q. How long have you been the commanding officer of the 114  
13 Precinct?

14 A. A little less than three years.

15 Q. When did you begin as the CO of the 114 Precinct?

16 A. August of 2010.

17 Q. Before you were the CO of the 114 Precinct, where did you  
18 work?

19 A. I was the commanding officer of the 107th Precinct.

20 THE COURT: Where is that one?

21 THE WITNESS: That's in Jamaica Estates in Queens.

22 THE COURT: Where is the 114?

23 THE WITNESS: Astoria.

24 THE COURT: Both Queens?

25 THE WITNESS: Yes.

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D518FLO2 Cirabisi - direct

- 1 Q. How long did you serve as the CO of the 107 Precinct?  
2 A. A little less than four years.  
3 Q. When did you start as the 107 commanding officer?  
4 A. November of 2006.  
5 Q. When did you start with the police department?  
6 A. 1990, October of 1990.  
7 Q. When did you become promoted to sergeant?  
8 A. 1994.  
9 Q. Between 1990 and 1994, what commands did you work in?  
10 A. I worked in the 46th Precinct in the Bronx.  
11 Q. The whole time period?  
12 A. Yes.  
13 Q. After you became sergeant in 1994, where did you work?  
14 A. I worked in the 33rd Precinct in Washington Heights.  
15 Q. Did there come a time when you were promoted to lieutenant?  
16 A. Yes, in 1998.  
17 Q. Where did you work in 1998?  
18 A. The 75th Precinct in East New York, Brooklyn.  
19 Q. When did you next get promoted?  
20 A. I was promoted to captain in May of 2002.  
21 Q. Where did you work then?  
22 A. I worked in the Bronx, in the 40th Precinct, in the 43rd  
23 Precinct, and for three years in the narcotics division.  
24 Q. When did you next get promoted?  
25 A. I got promoted in July of 2008.

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D518FLO2 Cirabisi - direct

1 Q. To what position?

2 A. Deputy inspector.

3 Q. Then where were you assigned as of July '08?

4 A. In July of '08, I was in the 107th Precinct.

5 Q. Is that when you became the commanding officer?

6 A. No. I became the commanding officer when I was still a  
7 captain.

8 Q. What position did you serve in the 107?

9 A. Commanding officer.

10 Q. When you were promoted to deputy inspector in July '08?

11 A. I was still the commanding officer in the 107th Precinct.

12 Q. Now, what are the geographic boundaries of the 107th  
13 Precinct?

14 A. The 107 Precinct goes from Hillside Avenue, from Hillside  
15 up to Union Turnpike, down to by the Grand Central -- border of  
16 the Grand Central Parkway.

17 Q. What are the geographic boundaries of the 114 Precinct?

18 A. The 114 is Astoria, from Shore Boulevard down to Astoria  
19 Park, up to the 80th Street area, from 19th Avenue along the  
20 water down to Vernon Boulevard.

21 Q. How would you compare the size of the 107 to the 114, size  
22 of the precinct?

23 A. Size of the precinct, the size of the precincts are  
24 similar.

25 Q. What about the size of the commands?

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D518FLO2 Cirabisi - direct

1 MR. CHARNEY: Objection as to form. I don't know what  
2 that means.

3 Q. The patrol strength in each of the commands.

4 A. The 107th Precinct had about 130 police officers assigned,  
5 and the 114th Precinct has about 170 police officers assigned.

6 Q. As between the 107 and 114 Precinct, is one precinct busier  
7 than the other?

8 A. Yes. The 114th is a busier precinct.

9 Q. What were the crime conditions, generally, that you were  
10 dealing with when you were the CO of the 107?

11 A. Burglary and grand larceny would have been the two biggest  
12 crimes, along with robberies.

13 Q. What about the crime conditions in the 114?

14 A. The 114, we have a high incidence of burglaries, grand  
15 larcenies, and also shooting and felony assaults.

16 Q. Now, turning to the staffing at the 107 Precinct, you said  
17 that there are about 135 officers assigned to the 107 -- 130  
18 assigned to the 107?

19 A. Give or take a few.

20 Q. How many anticrime officers did you have at the 107?

21 A. Ten.

22 Q. How many sergeants were assigned to the ten officers?

23 A. Two sergeants.

24 Q. Who supervised the sergeants and the officers?

25 A. The special operations lieutenant.

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D518FLO2 Cirabisi - direct

- 1 Q. How many conditions teams did you have at the 107 when you  
2 were in the CO?  
3 A. I believe one conditions team and one school team.  
4 Q. How many officers were on that conditions team?  
5 A. Six.  
6 Q. How many supervisors?  
7 A. One.  
8 Q. How many officers on the school team?  
9 A. About the same, I think it was six.  
10 Q. Turning to the 114 Precinct, how many anticrime teams are  
11 in the 114 Precinct?  
12 A. Two.  
13 Q. How many officers are assigned to these anticrime teams?  
14 A. Ten officers, five on each team.  
15 Q. How many sergeants?  
16 A. One sergeant for each team.  
17 Q. How many conditions teams and school teams exist at the  
18 114?  
19 A. I have three conditions teams and one school team.  
20 Q. How many officers are on each of these conditions teams?  
21 A. About six officers in each team.  
22 Q. How many sergeants?  
23 A. One sergeant for each team.  
24 Q. The special teams are supervised by a special operations  
25 lieutenant?

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D518FLO2 Cirabisi - direct

1 A. Yes.

2 Q. Now, in the 114 Precinct, what sectors make up the highest  
3 crime areas, highest incidence of violent crime?

4 A. It would be our Sector Mike and our Sector Peter.

5 Q. What is unique about Sector Mike as compared to other  
6 sectors in the 114?

7 A. Sector Mike has a housing development, Queensbridge housing  
8 development, which is the largest housing development in the  
9 country.

10 Q. What are the demographics of the population in Sector Mike?

11 A. The majority of the population would be male black -- black  
12 and Hispanic.

13 Q. Is that 95 percent black and Hispanic?

14 A. Probably, yes.

15 Q. Now, what about Sector Peter?

16 A. Sector Peter also has a housing development within that  
17 sector. It's kind of a mixed sector, some of the areas are  
18 diversified, and the area within the housing development would  
19 be a majority of black and Hispanic.

20 Q. Is that about 95 percent black and Hispanic?

21 A. In the development, probably, yes.

22 Q. What is the kind of violent crime that you see in those  
23 particular sectors?

24 A. Shootings, felony assaults, robberies.

25 Q. Now, turning to the 107 Precinct when you were the

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1 commanding officer, what were sectors in the 107 Precinct with  
2 the highest crime?

3 A. Sector George and Henry had a large incidence of  
4 burglaries; it was one of our big crimes there. Sector Charlie  
5 had a large incidence of robberies, grand larcenies. We had  
6 several large high schools in the area where we had a lot of  
7 youth related crime.

8 Q. What are some of the crimes or complaints that were  
9 characteristic of those sectors near the schools?

10 A. It would be robberies or grand larcenies of cell phones,  
11 car break-ins, some burglaries.

12 Q. Now, was crime evenly distributed within the 107 and 114  
13 Precinct?

14 A. Certain crimes were specific to certain areas. So I  
15 wouldn't say crimes were spaced evenly throughout the command.  
16 There were certain areas that would see higher incidence of  
17 particular crimes.

18 Q. Is it fair to say that the burglaries in the housing  
19 developments in the 114 were on the low side?

20 A. Yes.

21 Q. You had a crime analysis unit within both commands?

22 A. Yes.

23 Q. How many people made up that unit when you were in the 114  
24 and the 107?

25 A. The 114 was -- 107 was one sergeant and two police

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D518FLO2

Cirabisi - direct

1 at and review.

2 Q. Now, how do you determine whether officers need to shift  
3 their assignments?

4 A. Well, we will base deployment on where the current crime  
5 patterns and trends are happening. So I will move specific  
6 units to areas to deploy to impact those crimes.

7 Q. Now, turning your attention to activity logs. As the CO of  
8 the 114 Precinct, are command disciplines now being issued for  
9 failure to fill out activity logs?

10 MR. CHARNEY: Can you repeat the question?

11 (Record read)

12 A. Yes, they are.

13 Q. What are the range of penalties for failure to fill out an  
14 activity log?

15 A. It's now a scheduled B command discipline, which the  
16 penalty can be up to loss of ten days' vacation time.

17 Q. Within the last year, approximately how many officers have  
18 received command disciplines in the 114?

19 A. I would say at least six, six to twelve have received them.

20 Q. Now, in the specialty units, are squad supervisors  
21 generally signing UF-250s?

22 A. Yes. Normally, the specialty units, the sergeant assigned  
23 to that unit, he is usually out there in the field with them.  
24 The ratio of supervisor to officer is a lot smaller, so in the  
25 specialty units a lot of times the supervisor is on the scene

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1 of those stops and closely monitoring and supervising those  
2 officers, so they are usually the ones who are signing the  
3 stop, question and frisk and their activity logs.

4 Q. How do you know that they are signing these 250s?

5 A. Because I review the 250s. I take a look at them and see  
6 that they are signed off and who signed them off.

7 Q. Do you also look at the stop, question and frisk index  
8 occasionally?

9 A. Yes.

10 Q. What kind of information is contained on the stop, question  
11 and frisk index that alerts you to the fact that the squad  
12 supervisor is signing the 250s?

13 A. The name of the supervisor that signs the 250 will be in  
14 the index.

15 Q. How does that inform you that it's the squad supervisor  
16 rather than a desk sergeant who is signing the 250s?

17 A. Well, I know who the supervisor is for those units based on  
18 who the cop is, so I will be able to determine if it's their  
19 immediate supervisor or not.

20 Q. Now, turning to community meetings, how often do you meet  
21 with members of the community?

22 A. Once or twice a week, some weeks more, some weeks less.

23 Q. Do you attend community council meetings?

24 A. I go to community council meetings, district cabinet  
25 meetings, multiple civic group meetings, town hall meetings.

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1 Q. Generally, about how many people generally attend the  
2 community council meetings in the 114 Precinct?

3 A. I'd say it ranges from 50 to 100 people.

4 Q. What about the community board meetings, about how many  
5 people generally attend?

6 A. Community boards, usually it could be a little bit less  
7 than that, maybe around 30 to 50 people.

8 Q. Have you received any complaints about stop, question and  
9 frisk at some of these meetings?

10 A. On one or two occasions, stop, question and frisk has been  
11 raised, yes.

12 Q. Can you explain?

13 A. Recently, at a town hall meeting, people had questioned  
14 some of the politicians as to their feelings, what their  
15 feelings are as far as the stop, question and frisk policy.  
16 Some people expressed -- some people expressed that they were  
17 in favor of it and some people expressed that they disagreed  
18 with the policy.

19 Q. Did anyone at the meeting bring up this lawsuit that's  
20 currently -- or this trial that's currently being tried?

21 A. Yes. One person did, yes.

22 Q. Do you make yourself available to answer any questions or  
23 address specific concerns after these meetings?

24 A. Yes. Usually at the end of the meeting, I will always be  
25 around. If anybody wants to talk, you know, in private or talk

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1 about something specific after the meeting, people will  
2 approach me and talk to me.

3 Q. Do you meet with the elected politicians in the 114  
4 Precinct, who covers the 114 Precinct?

5 A. Yes. Usually they are at a lot of the community meetings  
6 and civic meetings so I talk to them frequently.

7 Q. Now, I am going to turn to supervision. How do you know  
8 that the supervisors in your commands are supervising?

9 Let me start with the 114. How do you know that  
10 supervisors within the 114 are actually supervising the  
11 officers?

12 MR. CHARNEY: Objection as to form. I don't know what  
13 supervising means. It could be a hundred things.

14 THE COURT: What did you have in mind? Did you mean  
15 reviewing 250s, for example?

16 MS. GROSSMAN: OK. Not reviewing.

17 Q. How do you know that supervisors are supervising officers  
18 out in the street making stops?

19 THE COURT: OK.

20 A. Well, by monitoring the radio, I have the radios -- I have  
21 my radio with me monitoring what is going on out in the field  
22 all day long, which would include listening to officers  
23 stopping people, making arrests, and monitoring to see if the  
24 supervisors are responding to those locations. When I go out  
25 in the field, which is usually a couple of times a week, I will

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1 see if the supervisors are responding to incidents that they  
2 are required to, whether it's verifying arrests on certain stop  
3 situations, follow up to make sure it's being done.

4 Q. Are there typical types of jobs that you will hear over the  
5 radio that allows you to determine whether your supervisors are  
6 supervising officers with regard to stops?

7 A. Yeah. If particular jobs come over, we call them radio  
8 runs, where a crime is happening, there might be a description  
9 put over, and the officers will be responding, whether they  
10 have somebody stopped at the scene, and listen to see if the  
11 sergeant is responding over there; if there is an arrest made,  
12 that he is responding to verify the arrest.

13 Q. You can actually hear that over the radio?

14 A. Yes. You will hear the sergeant, you know, put himself  
15 that he has responded to the location. He will say 84, which  
16 means that he has arrived at the location, indicating that he  
17 is at the location.

18 Q. How do you use your integrity control officer to assist  
19 with supervision of officers out in the field?

20 A. The integrity officer, one of his responsibilities is to  
21 monitor the officers out in the field. So he will go out and  
22 do random spot-checking, drive around spot-checking on the  
23 officers out in the field to ensure that they are conducting  
24 themselves properly, to make sure that they are doing their  
25 job, make sure they are responding to radio runs timely, making

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D518FLO2 Cirabisi - direct

1 depending on how busy it is, sometimes I will get out several  
2 times for a few hours, drive around so I can see what is going  
3 on out there, follow up on conditions, see if the officers --  
4 specific conditions, see if they are being addressed, and to,  
5 you know, make sure the officer out there is doing what they  
6 are supposed to be doing.

7 Q. During these times, have you had occasion to question  
8 officers about the basis for a stop or an arrest?

9 A. Yes.

10 Q. Explain how this happens.

11 A. Well, as I am out there driving around, if I hear a radio  
12 run come over for a specific situation, the officer has  
13 somebody stopped, if there is a robbery or a burglary or a  
14 particular incident that happened and the officer responding, I  
15 will respond to those incidents to see what the officers are  
16 doing. You know, if they have somebody stopped, I will stop  
17 and see why they have the person stopped, or see if the person  
18 is the person who committed the crime. If there is an arrest,  
19 I will question them on the arrest. I will drive around and  
20 basically check up on what is going on.

21 Q. Through your years with the police department, have you had  
22 occasion to go out and verify arrests that officers that you  
23 supervise made?

24 A. As a supervisor, yes, I have been on the scene of incidents  
25 where arrests have been made, yes.

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D518FLO2

Cirabisi - direct

1 Q. How do you go about verifying that an arrest was proper?

2 A. I will question the officer, the circumstances based on  
3 whatever the crime was that occurred, and question the officer  
4 as to, you know, what he saw and if there is -- I will see if  
5 there is a witness, you know, and follow up. If it needs  
6 further investigation, if the detectives are on the scene, all  
7 those different steps to make sure that the person who is  
8 arrested, there was probable cause to make the arrest.

9 Q. Are there occasions where you have not verified an arrest  
10 and you have basically let the person go on their way?

11 A. No. If there was an arrest made and they were released,  
12 no.

13 Q. Now, do you have regularly scheduled meetings with  
14 supervisors?

15 A. I usually have a meeting about once a month with my  
16 supervisors.

17 Q. Generally, what do you discuss at these meetings about  
18 stop, question and frisk, memo books, etc.?

19 A. Well, we go through a variety of topics, some of those  
20 being stop, question and frisk, explaining to the sergeants how  
21 important it is that they are following up and checking, that  
22 the officers are reviewing the stop, question and frisk, that  
23 they are checking officers' memo books to make sure they are  
24 being filled out. The supervisors are required during their  
25 tour to stop the officers and sign their memo books. So

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D518FLO2 Cirabisi - direct

1 explain to them that they have to do that every tour, the  
2 importance of conducting stop, question and frisks within the  
3 legal guidelines, the importance that there has to be a legal  
4 basis for the stops.

5 Q. We have heard a lot of testimony about problems that some  
6 officers have had with preparing complete activity log entries.  
7 So how are you as the CO of the 114 trying to address that  
8 problem?

9 A. Well, it's brought up at our unit trainings, precinct  
10 memos, sergeants discuss that at supervisors meetings. And  
11 when we find deficiencies, the officers receive command  
12 disciplines if they are not making their memo book entries.  
13 When the officers hand in their 250s, they are required now to  
14 hand in a copy of their memo book with the 250 ensuring that  
15 the memo book entry is made.

16 MR. CHARNEY: We are going to object and move to  
17 strike because this is directly related to the substance of the  
18 memo.

19 MS. GROSSMAN: This is not, if you let me develop the  
20 testimony.

21 Q. Prior to March 5, 2013, is that something that you were  
22 doing?

23 A. Yes.

24 MR. CHARNEY: Objection to form as what something he  
25 was doing.

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1 THE COURT: I agree.

2 What were you doing prior to March 2013?

3 THE WITNESS: Since January, our borough commander had  
4 implemented a policy of handing in the copies of the memo books  
5 with the stop, question and frisk.

6 MR. CHARNEY: I am going to object on hearsay grounds.  
7 The borough commander is not here to testify about what the  
8 policy is. They have never produced a document explaining what  
9 the policy is.

10 THE COURT: He said our borough commander --

11 MR. CHARNEY: Implemented a policy. It's hearsay.

12 THE COURT: You were implementing the policy in your  
13 command, is that right?

14 THE WITNESS: Yes.

15 MR. CHARNEY: We never received the policy. We don't  
16 know what this policy is.

17 THE COURT: We will find that out.

18 The point is he is implementing something in his  
19 command as of January. He is entitled to say what they are  
20 doing in his command. And then if he says it's pursuant to the  
21 policy, I can ask that it be produced. But let's first see  
22 what he is doing.

23 MR. CHARNEY: The problem I have is, obviously, he can  
24 testify about what he is doing, but he testified that there was  
25 a policy implemented by a different person.

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1 THE COURT: Not implemented. It came from there.

2 MR. CHARNEY: That's the part I have a problem with.

3 That person is not testifying.

4 THE COURT: It doesn't matter. He is telling what is  
5 done in his command, his precinct. Where it emanated from is  
6 another issue entirely.

7 MR. CHARNEY: Can we strike the portion of where it  
8 emanated from?

9 THE COURT: No. Don't you want to know where it  
10 emanated from? I can call for the production of the policy.  
11 This is what he has implemented, this is what he is doing as of  
12 January.

13 MR. CHARNEY: We would call for the policy. To the  
14 extent there is no written policy, we would ask that the  
15 borough commander be produced to answer questions.

16 THE COURT: You started to say in January there was a  
17 new policy from the borough commander that you implemented in  
18 your precinct?

19 THE WITNESS: Yes.

20 THE COURT: What was that policy?

21 THE WITNESS: That policy was the officers had to hand  
22 in a copy of their memo book with the stop, question and frisk  
23 report.

24 THE COURT: Did you receive that order in writing?

25 THE WITNESS: Yes.

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1 THE COURT: Is it one of those numbered things?

2 THE WITNESS: I believe it was a memo came from the  
3 borough.

4 THE COURT: Your best recollection is it was in  
5 January '13 or December '12?

6 THE WITNESS: Somewhere in the middle of January.

7 THE COURT: It was short, it just said review memo  
8 books together with UF-250s?

9 THE WITNESS: Yeah. And it stated that the officers  
10 would hand in a copy of the memo book with the 250 together.

11 THE COURT: Since then you have been doing that?

12 THE WITNESS: Yes.

13 BY MS. GROSSMAN:

14 Q. Were there any guidelines given in terms of how to fill out  
15 the memo book?

16 MR. CHARNEY: Same objection. Unless it's in writing,  
17 we want it, and we want it, and we should get it.

18 THE COURT: Have you implemented any guidelines in  
19 your command telling the officers how to fill out their memo  
20 books?

21 THE WITNESS: Yeah. There is a paper with a sample of  
22 a stop -- of a memo book entry that indicates what should be  
23 entered into their memo books. So that was given to all the  
24 officers.

25 THE COURT: Where did you get it from?

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1 THE WITNESS: We got it from our borough commander,  
2 the training sergeant at the borough.

3 THE COURT: Also around January?

4 THE WITNESS: Yes.

5 THE COURT: Then you gave a copy to all the officers?

6 THE WITNESS: Yes.

7 THE COURT: Asking them to adhere to that format?

8 THE WITNESS: Yes.

9 THE COURT: I think we have actually seen that.

10 MR. CHARNEY: Not from the Queens North Patrol  
11 Borough.

12 THE COURT: It may be the same one. I know I have  
13 seen a training one that says how to prepare a memo book entry.

14 MR. MOORE: There is a document in evidence, which is  
15 similar to what he is referring to, but nothing about what  
16 happened in January of 2013.

17 THE COURT: Maybe they just forwarded the same one.  
18 Can you pull that up and ask him if that's the one? That's a  
19 tall order when there are hundreds of exhibits.

20 MR. CHARNEY: I think we know it.

21 THE COURT: Let's give them a minute and see if that  
22 is essentially the one you're referring to.

23 MR. MOORE: It's Exhibit 97.

24 MR. CHARNEY: That memo is from 2008.

25 THE COURT: Can we pull it up for a minute? It's not  
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1 a memo. It's a sample entry of a memo book. I remember it had  
2 arrows.

3 MR. MOORE: You want a copy?

4 THE COURT: I was hoping you can pull it up. Is it a  
5 sample entry in a memo book?

6 MR. CHARNEY: Is it this?

7 THE WITNESS: I believe that's it. It looks like it.

8 THE COURT: I thought you might be referring to that.  
9 It has boxes on the side telling you what to put down.

10 MS. GROSSMAN: Is that the March?

11 MR. CHARNEY: This is from 2008.

12 THE COURT: Be that as it may, is this what you're  
13 talking about?

14 THE WITNESS: It looks similar. I think that's it.

15 THE COURT: You think that's it.

16 MR. CHARNEY: Was there anything attached to the front  
17 of it, like a memo or instructions?

18 THE COURT: He already said there is a new memo that  
19 says review the memo books together with the UF-250s. There is  
20 also this telling people how to do the memo book entries.

21 MR. CHARNEY: It sounds like the March memo to us,  
22 first of all. We would just ask that they produce all of these  
23 documents.

24 THE COURT: I understand.

25 Back at your precinct, do you think you can find the

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1 January memo that said from now on please review the 250s  
2 together with the memo book?

3 THE WITNESS: I think so.

4 THE COURT: You think you can also find the sample --  
5 it may be a little different now -- that you gave to your  
6 officers?

7 THE WITNESS: Yes.

8 THE COURT: I am going to ask you to do that.

9 MS. GROSSMAN: We have no problem with that.

10 THE COURT: Other COs have been asked to go back and  
11 find things, and they have been very helpful. So if you can  
12 find those two documents, we would all appreciate it.

13 MR. CHARNEY: The last thing I will say on this is, if  
14 it turns out to be the March memo, we are going to move to  
15 strike this portion of the testimony.

16 THE COURT: It's not March because he said it was  
17 January, but we will see. I wouldn't strike his testimony  
18 anyway even if it is the March. But if it isn't, he has been  
19 implementing this since January in his precinct. It is what he  
20 is doing now. The record is quite clear.

21 BY MS. GROSSMAN:

22 Q. Have you had occasion to look at the 250s to check that the  
23 activity logs are actually being handed in?

24 A. Yes.

25 Q. You have been personally looking at them?

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Cirabisi - direct

1 A. Yes.

2 Q. Now, when you were the CO of the 114 and 107, were roll  
3 call trainings being provided to the officers?

4 A. Yes.

5 Q. What were some of the topics that were covered during the  
6 roll call training throughout the years that you were CO of 107  
7 and 114?8 A. A variety of topics, stop, question and frisk being one of  
9 them. Any time there is any new procedures or policies,  
10 interim orders are discussed at unit trainings to make sure the  
11 officers are informed of any new policies or guidelines.12 Q. How often was roll call training provided at the 114  
13 Precinct?

14 A. Roll call trainings are done every tour.

15 Q. Is that the same in the 107?

16 A. Yes.

17 THE COURT: I just need five minutes. I will try to  
18 get back in five minutes. No real promise. I will do my best.

19 MR. MOORE: We are stopping at 12:30?

20 THE COURT: We are.

21 (Recess)

22

23

24

25

D519flo3 Cirabisi - direct

1 Q. Inspector, are you notified with civilian complaints are  
2 brought against police officers?

3 A. Yes.

4 Q. How are you notified?

5 A. Every month my integrity control officer will bring me a  
6 list of all the civilian complaints for the prior month. And  
7 I'll discuss them with him.

8 Q. And on average how many CCRBs are filed against officers in  
9 your command?

10 A. Usually a couple a month, anywhere from one to three.

11 Q. And do you let the sergeants who supervise the officers who  
12 are the subject of these civilian complaints know about the  
13 civilian complaints?

14 A. Yes.

15 Q. How can you do that?

16 A. Well I'll review the complaints and then I'll discuss it  
17 with the supervisor to let him know, in case he wasn't aware  
18 that that officer under his supervision received a civilian  
19 complaint, I'd let him know what the complaint was for and that  
20 he needs to, you know, monitor the officer to make sure that  
21 this isn't, you know, a pattern developing; if there's  
22 something that needs to be addressed, that it has to be  
23 addressed.

24 Q. Now are officers on your command also placed on monitoring  
25 programs?

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1 A. Yes.

2 Q. Now referring to Defendants' Exhibit Z3 already in  
3 evidence. It's on the screen.

4 A. Yes.

5 Q. The section is Bates number NYC\_2\_00006350.

6 Are you familiar with this portion of the supervisor's  
7 guide monitoring and assistance programs?

8 A. Yes, I am.

9 Q. And are you able to see -- I can give you a copy.

10 So, moving on to level I, we can zoom in to level I.

11 Do you see the criteria -- is this the -- is this your  
12 understanding of the criteria for an officer to be placed on  
13 performance monitoring?

14 A. Yes, it is.

15 Q. And so as a CO what are your responsibilities once you  
16 learn that an officer is placed on level I performance  
17 monitoring?

18 A. Once I get notified that an officer is on level I  
19 monitoring or any of the performance monitoring levels, I'm  
20 required to sit down with that officer. I bring him into my  
21 office, sit down with him. Depending on what the monitoring is  
22 for, discuss why he's being placed on monitoring. Inform him  
23 that he's being placed on monitoring and discuss what we're  
24 going to do to correct the issues that cause him to be on  
25 performance monitoring.

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1 Q. Now you see that it says -- the second, under level I you  
2 have bullet points and it indicates 3 or more CCRBs in one year  
3 might trigger someone to be on performance monitoring.

4 Do you see that?

5 A. Yes.

6 Q. The civilian complaints, are some of those civilian  
7 complaints the subject of -- I'm sorry.

8 Are some of the CCRBs that are involved -- my  
9 apologies.

10 Are some of the civilian complaints, do they involve  
11 stops?

12 MR. CHARNEY: I'm going to object. This doesn't say  
13 civilian complaints. It says CCRB complaints.

14 MS. GROSSMAN: The Civilian Complaint and Review Board  
15 complaints.

16 THE WITNESS: Yes.

17 THE COURT: Aren't those civilian complaints?

18 MR. CHARNEY: But there's other kinds of civilian  
19 complaints that aren't through CCRB.

20 THE COURT: I see.

21 But they are civilian complaints. Okay.

22 Q. So civilian complaints about police stops are the subject  
23 of some of these CCRB complaints, right?

24 A. Yes.

25 Q. And does the employee management division provide you the

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1 information regarding officers on performance monitoring?

2 A. They'll send over usually a 49 with -- explaining why the  
3 person is being placed on monitoring.

4 If he's being placed on monitoring for the CCRBs, then  
5 I will have my integrity control officer will pull up the CCRBs  
6 and then I'll review them, look for what the CCRBs are for, and  
7 then discuss them with the officer. And then we'll come up  
8 with a plan of what we're going to do to rectify the issue, why  
9 he's getting the CCRBs.

10 Q. And so can you give an example of some of the things you'll  
11 discuss with an officer who is on performance monitoring.

12 A. Well I'll look at what the issue is that he's getting the  
13 CCRBs? Is it, whether he's being discourteous. Maybe it's the  
14 way he's dealing with people, whether -- is he explaining to  
15 people when he stops them why he's being stopped. I'll explain  
16 to the officer the impact that being in monitoring has on his  
17 career and that, you know, the department is not going to  
18 tolerate excessive getting civilian complaints. We'll come up  
19 with a plan.

20 He will work closely with his immediate supervisor,  
21 whether it's he drives for a period of time. The supervisor  
22 will take him and work with him personally for a period of time  
23 and observe him one-on-one. He might be placed with another  
24 officer who has no CCRBs and that might be able to work with  
25 him and help him how to deal with the public in a way that

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1 doesn't -- won't lend himself to getting civilian complaints.

2 Q. Now are you required to document the fact that you had that  
3 meeting with an officer?

4 A. Yes. It's -- he signs the report and I sign it that we  
5 both sat down and discussed the issues.

6 Q. And --

7 A. And it's forwarded to employee management division.

8 Q. And do you also speak to the officer's immediate supervisor  
9 to let that supervisor know that the officer is on monitoring?

10 A. Absolutely.

11 That officer is under direct supervision. So he's  
12 obviously made aware that this officer has an issue. I'll  
13 discuss with him, you know, what we're going to do to rectify  
14 the issue.

15 Q. And how long is an officer on monitoring?

16 A. (No response).

17 Q. At level I?

18 A. Level I is usually a year.

19 Q. What happens after ten months?

20 A. After ten months then I'll make -- the commanding officer  
21 of the person will make a recommendation whether he should  
22 continue in monitoring or be removed from monitoring or, if he  
23 hasn't improved, probably level II monitoring.

24 Q. What factors do you consider whether to recommend an  
25 officer should be removed from performance monitoring?

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1 A. Well if he's on monitoring for CCRBs we'll look to see if  
2 he received any more CCRBs during that period that he's on  
3 monitoring to see if the problem has been corrected.

4 Q. Now, if an officer receives another CCRB while on  
5 performance monitoring what are you then expected to do?

6 A. Well I would have him continue to be in performance  
7 monitoring and then look to see what we're doing. If he is  
8 continuing to get CCRBs, then we have to come up with another  
9 plan to rectify whatever we put in place and it's not working,  
10 then we'll have to take some other measures to rectify what the  
11 problem is.

12 Q. Now let's move down to level II. You see there is level II  
13 and level III monitoring.

14 Well level II. Do you do things any differently when  
15 an officer is on level II or level III?

16 A. Well level II is a quarterly report that we prepare. We  
17 take a look at his performance and we fill out this quarterly  
18 report that goes to employee management. And you know we  
19 continue -- the level of scrutiny and supervision on him would  
20 increase to make sure that we can correct whatever the  
21 violation is.

22 Q. Now have you ever had to remove an officer from enforcement  
23 duties as a result of too many civilian complaints?

24 A. Yes.

25 Q. Have officers who have been on performance monitoring

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1 successfully completed the performance monitoring?

2 A. Yes.

3 Q. And, again, if an officer receives another civilian  
4 complaint does it matter if it's substantiated or  
5 unsubstantiated in terms of what next steps you would take if  
6 someone is on monitoring?

7 A. Yes. Even if the complaint might be unsubstantiated, if  
8 it's a pattern of -- similar to his prior civilian complaints,  
9 then that might be indicative that there's still a problem that  
10 hasn't been corrected.

11 Q. Now, what happens when your command receives OCD  
12 investigation referrals?

13 A. When we receive the referral, the administrative operations  
14 coordinator will log it in. We log all the complaints in. It  
15 will be assigned to a supervisor to investigate.

16 Q. And who oversees the OCD investigations?

17 A. The operations coordinator.

18 Q. Now, if a supervisor was actually involved in the  
19 subject -- the incident that is the subject of an OCD complaint  
20 would that supervisor be responsible for conducting an  
21 investigation?

22 A. If he was directly involved in the incident, no, we would  
23 assign it to another supervisor.

24 Q. If the supervisor approved the paperwork but was not  
25 directly involved, would that supervisor potentially be

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1 responsible for conducting the OCD investigation?

2 A. Yes.

3 Q. Now do you have concerns that the supervisor may be biased  
4 or be unable to be -- would be impartial -- would not be able  
5 to be impartial in conducting the investigation?

6 A. No. Normally we would assign it to the person's immediate  
7 supervisor. He or she would know that officer by working  
8 directly with him. Would know if there are prior incidents.  
9 Would know how that officer performs. And would have a better  
10 idea of what's going on with that officer. And ultimately he  
11 would be responsible for that -- for the supervision. And if  
12 there is a problem he's ultimately, you know, he'll be  
13 responsible and held accountable for the officers under his  
14 supervision.

15 Q. Now, what role do you play in overseeing the OCD  
16 investigations as commanding officer?

17 A. I will spot check them, review -- randomly review some of  
18 the OCD communications. My operations coordinator would bring  
19 everything -- if there was something that she felt needed to be  
20 specifically brought to my attention would bring it in to me to  
21 review.

22 Some of the OCDs require the commanding officer to  
23 review them and sign off on them.

24 Q. Now, when -- in your years with the police department did  
25 you ever have occasion to oversee and coordinate the OCD

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1 investigations?

2 A. Yes. When I was an operations coordinator in the 75th  
3 precinct.

4 Q. And what years was that?

5 A. That was 2000 to 2002.

6 Q. Now, I'm going to show you what's been previously marked as  
7 Plaintiffs' Exhibit 251. And Plaintiffs' Exhibit 108.

8 Do you see those two documents, Inspector?

9 A. Yes.

10 Q. So the Plaintiffs' Exhibit 108. Are you familiar with that  
11 document?

12 A. Yes.

13 Q. What is it?

14 A. This is an OCD complaint.

15 Q. Looking at 108, Bates number NYC 122.

16 A. Yes.

17 Q. You can look on the screen. It says complaint report CCRB?

18 A. Yes.

19 Q. And have you -- do you recognize that document?

20 A. Yes.

21 Q. And what is that document?

22 A. This is -- was a complaint made by Marybeth Ourlicht. This  
23 is the narrative of the complaint that's called in.

24 Q. And now referring to Plaintiffs' Exhibit 251. And do you  
25 see that document?

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1 A. Yes.

2 Q. Is that familiar to you?

3 A. Yes.

4 Q. What is it?

5 A. This would be the OCD complaint sheet that's completed upon  
6 investigation.

7 Q. The disposition and penalty report?

8 A. Yes.

9 Q. And you were the commanding officer of the 107 at the time  
10 that this disposition and penalty report was prepared?

11 A. Yes.

12 Q. Do you notice that the sergeant who conducted the  
13 investigation into this OCD complaint is Sergeant Hegney?

14 A. Yes.

15 Q. And you're familiar with Sergeant Hegney?

16 A. Yes.

17 Q. Did you have any concerns with the fact that Sergeant  
18 Hegney conducted this investigation since he was the subject  
19 officer's direct supervisor at the time?

20 A. No.

21 Q. How come?

22 A. Well he worked directly with Officer Moran. He was the  
23 immediate supervisor. He knew the most about the officer by  
24 working with him. And he would, my opinion, would be the best  
25 person that would be able to conduct this investigation. He

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1 would know of any history or prior incidents with Officer Moran  
2 to, you know, might raise questions as to this incident, if  
3 there was a pattern of prior incidents.

4 THE COURT: Were you standing to raise an objection?

5 MR. CHARNEY: I guess we object because we don't know  
6 if the inspector has personal knowledge of the nature of the  
7 relationship between Officer Moran and Sergeant Hegney beyond  
8 the fact he was his direct supervisor. He went into a lot of  
9 details about --

10 THE COURT: He just said, in my opinion, would be the  
11 best person to be able to conduct this investigation. He would  
12 know of any history or prior incidents with Officer Moran.

13 So, in other words, Hegney was his first line  
14 supervisor?

15 THE WITNESS: Yes.

16 MR. CHARNEY: That part I have no problem with but all  
17 of this stuff about he would know this, he would know that, I  
18 mean --

19 THE COURT: Well he would know of any history or prior  
20 incidents with Officer Moran.

21 Wouldn't a first line supervisor know those things?

22 THE WITNESS: Yes. Absolutely.

23 THE COURT: No. I'll allow it.

24 BY MS. GROSSMAN:

25 Q. Now referring to the comments section of Plaintiffs'

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1 Exhibit 251. Now you notice on the comments section that there  
2 was a notation.

3 Are you able to tell from looking at this exhibit,  
4 front and back, how many times the sergeant attempted to reach  
5 out to the complainants?

6 A. According to this, twice.

7 Q. So you see from the first sentence it says -- there's a  
8 notation that says, "Spoke to complainant on 4-14-08 who stated  
9 she was only afraid her son would have a warrant. She worked  
10 everything out in court and drops her complaint at this time."

11 Do you see that?

12 A. Yes.

13 Q. And then turning to the back, second page, which is ending  
14 Bates number 8604. You see there's also reference to, "Spoke  
15 to complainant on 4-15 and complainant stated that she does not  
16 wish to divulge her son's information at this time and does not  
17 want the police to contact him."

18 Do you see that?

19 A. Yes.

20 Q. So do you have any concerns about the attempts to contact  
21 the mother, number of times that the sergeant attempted to  
22 contact the mother?

23 A. No. He contacted her, spoke to her on two occasions.

24 Q. Now would you have expected the sergeant to do anymore  
25 outreach to the mother or the son?

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1 A. Well based upon the second phonecall interaction and based  
2 on what officer -- what Sergeant Hegney indicates here that she  
3 did not want further contact, I would not expect that he would  
4 make further contact. It might aggravate the situation or make  
5 the situation worse if the person indicated they didn't want us  
6 to contact them anymore.

7 Q. Now, referring to Plaintiffs' Exhibit 108. NYC 121. Do  
8 you see where it says complainant/victim details?

9 A. Yes.

10 Q. Are you able to tell who actually called in the complaint  
11 from the CCRB complaint report?

12 A. (No response).

13 Q. It indicates two complainant victims, right, a Marybeth  
14 Ourlicht and David Ourlicht?

15 A. Yes.

16 Q. And do you see that the phone number that's provided as  
17 contact appears, the second -- the contact information  
18 (212)463-0520 appears to be the same number listed for David  
19 Ourlicht.

20 Do you see that?

21 A. Yes.

22 THE COURT: This is allegedly the mother, right?

23 THE WITNESS: Yes.

24 THE COURT: Because later -- so her date of birth  
25 cannot be 11-25-89, right?

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1 THE WITNESS: No.

2 THE COURT: That's an error.

3 How do you know she's white?

4 MS. GROSSMAN: Your Honor, I don't know that this is  
5 something that the inspector would know. This is lodged with  
6 the --

7 THE COURT: I'm asking him. Does he know her race?

8 THE WITNESS: No. That information would -- I would  
9 imagine was asked when the complaint was called into CCRB.

10 THE COURT: They got the date of birth wrong. They  
11 could have got the ethnicity wrong too, I guess.

12 THE WITNESS: Yeah.

13 THE COURT: Go ahead.

14 (Continued on next page)

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D518FLO4 Cirabisi - direct

1 Q. Now, I note that looking at Plaintiffs' Exhibit 251, the  
2 disposition and penalty report, there is no police paperwork  
3 attached to that. Do you see that?

4 A. Yes.

5 Q. But when sergeants do the investigation and collect police  
6 paperwork, are they always attached to the final report and  
7 then sent to OCD?

8 A. Normally, a disposition sheet would be sent and the other  
9 information, other paperwork would be maintained in a file in  
10 the precinct, normally with the administrative lieutenant.

11 Q. So when investigations are done by supervisors -- when OCD  
12 investigations are done, is there various paperwork that that  
13 investigator can collect to complete the OCD investigation?

14 A. Yes. Depending, it can be a copy of a summons, a copy of a  
15 stop, question and frisk, a complaint report, any information,  
16 documentation relevant to the investigation.

17 Q. So copies of those documents would be maintained at the  
18 command?

19 A. Yes.

20 Q. Does the results also get transmitted, the disposition and  
21 penalty report get transmitted to the borough?

22 A. Yes.

23 Q. Now, if the investigation results in a B command  
24 discipline, where does the results get recorded?

25 A. Well, a schedule B command discipline, it would be

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1 indicated in the officer's CPI or his personnel folder.

2 Q. The CPI is central personnel index?

3 A. Yes.

4 Q. Now, moving on to QAD audits.

5 MS. GROSSMAN: Can we pull up Defendants' Exhibit G6?

6 Q. Actually, before we get there, while you were the CO in the  
7 107, how many officers received a 2.5 or lower on their  
8 performance evaluations?

9 A. I would say several, two, three.

10 Q. While you have been the CO of the 114, how many officers  
11 have received a 2.5 or lower on their performance evaluations?

12 A. Probably in the same vicinity, anywhere from three to five.

13 Q. Now, as the CO of the 114 now, approximately how many  
14 officers are on performance monitoring?

15 A. At this moment, I believe two.

16 Q. So now referring to the 2010 802 audit.

17 MR. CHARNEY: Your Honor, he was transferred to the  
18 114th in August of 2010. I don't know when this audit was  
19 done, but if it's prior to August of 2010, he wouldn't have  
20 been the precinct commander. He would have still been the  
21 precinct commander at the 107.

22 THE COURT: You were transferred in the middle of  
23 2010?

24 THE WITNESS: Yes.

25 THE COURT: So half a year was in one precinct and  
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1 half was in another.

2 THE WITNESS: Yes.

3 THE COURT: The 107 is not on this list. It was in a  
4 different patrol borough?

5 THE WITNESS: Correct.

6 THE COURT: 107 was your earlier assignment.

7 THE WITNESS: Yes.

8 THE COURT: So it does depend when this thing was  
9 issued. Anybody know when it was issued?

10 MR. MOORE: 2010 was the third quarter.

11 THE COURT: I remember it was the third quarter.

12 MR. CHARNEY: I guess it would be right around the  
13 time. Was it August 2010 when you were transferred?

14 THE WITNESS: Yes.

15 MR. CHARNEY: So it's right in the middle.

16 THE COURT: Anybody can read the chart, if that's what  
17 you want. Just read it. It's in the record.

18 MR. CHARNEY: I stipulate that it was the third  
19 quarter. Since August is directly in the middle --

20 THE COURT: I get it. He was not the CO for 114 when  
21 these statistics were compiled. I get that.

22 BY MS. GROSSMAN:

23 Q. Now, let me just take a break from 802. Are you aware of  
24 the 803 activity log audits?

25 A. Yes.

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1 Q. What was your last evaluation for the 114 Precinct in the  
2 activity log rating?

3 A. I believe it was a 3.7.

4 Q. That's for the 803 activity log audit conducted by QAD?

5 A. Yes.

6 Q. What steps did you take as the CO of the 114 to try to  
7 address the concerns about completing activity logs?

8 A. We increased training. We increased supervision,  
9 supervisors checking the memo books. The integrity control  
10 officer spot-checking the memo books. Myself along with the  
11 executive officer will spot-check. Now we look at the memo  
12 books, they are handed in with the 250s, so we are looking to  
13 make sure that they are handed in with the 250.

14 Q. Now, turning back to the implementation of handing in the  
15 250 along with the activity log that we talked about a little  
16 earlier in January. Did there come a time when you became  
17 aware of a March 2013 memo from Chief Hall regarding the same  
18 requirements?

19 MR. CHARNEY: Objection.

20 THE COURT: I am going to take the yes or no. That's  
21 all it calls for right now.

22 Did you become aware of it?

23 THE WITNESS: Yes.

24 Q. What you were doing in January was consistent with what the  
25 memo asked you to do in March?

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1 A. Yes.

2 THE COURT: So it didn't cause any change in your  
3 practice?

4 THE WITNESS: No.

5 MS. GROSSMAN: Can I just have a minute?

6 I have no further questions, your Honor.

7 CROSS-EXAMINATION

8 BY MR. CHARNEY:

9 Q. Good afternoon, Inspector.

10 A. Good afternoon.

11 Q. Now, just so I have the dates right, you were the CO of the  
12 107 from November 2006 until August 2010, is that right?

13 A. Correct.

14 Q. And the 107 is in the Patrol Borough Queens South?

15 A. Correct.

16 Q. The 114, which is your current command, is in the Patrol  
17 Borough Queens North, correct?

18 A. Correct.

19 Q. When you were the CO of the 107, your borough commander of  
20 Queens South was Thomas Dale, is that right?

21 A. Correct.

22 Q. And your integrity control officer in the 107 was Carlo  
23 Barrelli, is that correct?

24 A. Correct.

25 Q. Now, you testified earlier when Ms. Grossman was asking you

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1 questions about some of the things that the ICO does to monitor  
2 officers out in the field, but I want to ask you specifically  
3 about what the ICO, Lieutenant Barrelli, did when you were in  
4 the 107 to monitor officers' stop and frisk activity.

5 Now, one of the things he did was he conducted the  
6 802A self-inspection, is that right?

7 A. I believe so, yes.

8 Q. Other than that, at times, if he observed officers in the  
9 field conducting stops, he might check their 250, right?

10 A. Correct.

11 Q. But other than those two things, doing a self-inspection  
12 and asking an officer to see a 250, Lieutenant Barrelli, at  
13 least during the time that you were the CO of the 107, would  
14 not have done anything else to review officers' stop activity,  
15 right?

16 A. Well, he would inspecting the -- he would inspect memo  
17 books and inspecting supervisor's memo books to make sure that  
18 the supervisors were in fact inspecting the police officers'  
19 memo books. So that was part of his duties, to make sure that  
20 the sergeants were performing their duties in inspecting the  
21 officers' memo books in relation to stop, question and frisk.

22 Q. But Lieutenant Barrelli wouldn't himself directly review an  
23 officer's memo book, particularly, a stop and frisk entry in  
24 that memo book, right?

25 A. He could. He could. He can look at a memo book in regards

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1 to a number of different issues, one of them being stop,  
2 question and frisk.

3 Q. But you don't know whether or not he in fact did that, do  
4 you?

5 A. A specific occasion, no.

6 Q. Then in terms of reviewing 250 forms, other than an  
7 occasion where he may have seen an officer out in the field, he  
8 wouldn't have been reviewing 250s on a regular basis, right, as  
9 the ICO?

10 A. As part of the self-inspection program he would.

11 Q. Other than those two things, looking at the 25 250s to make  
12 sure they were complete and then on occasion looking at an  
13 officer's 250, that would be it, right?

14 A. Well, he would turn out roll calls, he would talk to the  
15 officers at roll calls, do instruction with them.

16 Q. I am asking about his monitoring officers' stop and frisk  
17 activity. That's what I am asking about.

18 A. As far as I know, that would be what he would be doing.

19 Q. Let's move on. As you're aware, NYPD policy requires  
20 officers to document a stop and frisk in two places, right, a  
21 UF-250 form and their activity log?

22 A. Correct.

23 Q. Now, I want to pull up what has been previously admitted as  
24 Plaintiffs' Exhibit 74, which is the current version of the  
25 UF-250 form that officers are required to fill out when they

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1 conduct a stop.

2 Now, if an officer -- you see in the circumstances  
3 which led to stop box, if an officer checked off the box  
4 furtive movements, do you see that?

5 A. Correct.

6 Q. He or she is not required to then describe on the UF-250  
7 form what that furtive movement is, correct?

8 A. Correct.

9 Q. Then with respect to the memo books, when you were the CO  
10 of the 107, you did not instruct supervisors to tell their  
11 officers that they should put more details about a stop in  
12 their memo books than what appears on the 250 form, right?

13 A. They would be instructed -- they were instructed to enter  
14 the details, specific details of the stop.

15 Q. But you never instructed them to put more detail in their  
16 activity log than the details that were already on the 250  
17 form, right?

18 A. I instructed them to put the circumstances of the stop,  
19 whether it would be more or less than what is on the 250. They  
20 were never instructed not to put more than what is on the 250.  
21 They were instructed to put the circumstances of the stop in  
22 their memo books.

23 Q. For example, if an officer checked off furtive movements as  
24 the reason for the stop, when you were the CO of the 107, you  
25 never instructed your supervisors that officers were mandated

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1 to then in their memo book describe what that furtive movement  
2 was, right?

3 A. Specific to furtive movement, they were instructed to what  
4 they saw or what caused them to perform that stop. So if it  
5 was furtive movement, then I would expect that they would  
6 document what they saw that caused them to initiate that stop.

7 Q. What I am asking you is, you never directed your  
8 supervisors, you never told them, I expect my officers, if they  
9 are going to check off furtive movements on the UF-250, to then  
10 write in their memo book what that furtive movement was, right?

11 A. Specific to furtive movement, I don't recall if I ever.

12 Q. In fact, you never directed your supervisors to tell their  
13 officers that the level of detail in the memo book should be  
14 greater than the level of detail on the 250, right?

15 A. Never? I would say no. You're saying that I never said  
16 that? I disagree.

17 Q. So is your testimony that when you were the CO of the 107,  
18 you did instruct your supervisors at some point to tell their  
19 officers that the level of detail in the activity log should be  
20 greater than the level of detail on the 250?

21 A. I instructed them that the details of the stop should be  
22 in. Whether or not more than what is on the 250, I don't  
23 recall if I ever said you have to put more than what is on the  
24 250. They were required to document the circumstances of the  
25 stop in the 250.

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1 Q. So you would agree with me that you never told them  
2 specifically you should put more detail in your activity log  
3 than you would put on your 250?

4 A. I don't recall if I ever said that to them.

5 Q. I am going to hand you a copy of your deposition. Do you  
6 recall being deposed in this case?

7 A. Correct.

8 Q. It was in October of 2009?

9 A. Correct.

10 Q. You swore to tell the truth --

11 A. Correct.

12 Q. -- during that deposition?

13 If we can turn to page 77. I apologize for the small  
14 font. Line 7, you were asked the question:

15 "Q. Have you ever instructed your supervisors to instruct  
16 their officers that activity logs about stops and frisks should  
17 be more detailed than the information put into a UF-250?

18 "A. Put that specifically, no."

19 Do you recall giving that answer to that question?

20 A. Yes.

21 Q. Now, in addition, when you were the commander of the 107,  
22 you did not require the sergeants, when they were reviewing a  
23 250, to at the same time look at the officer's activity log  
24 entry, correct?

25 A. Correct.

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1 Q. So in a situation where a sergeant was not present on the  
2 scene for a stop, the only information he or she would have  
3 upon which to base a determination about whether the stop was  
4 reasonable or not would be the information on the 250 form,  
5 correct?

6 A. And interviewing the officer.

7 Q. When you were the commander of the 107, did you again  
8 instruct your supervisors that any time they reviewed a 250  
9 form for a stop that they were not present for they should  
10 interview the officer?

11 A. Were they specifically instructed that? No.

12 Q. Now, you also from time to time reviewed 250s when you were  
13 the CO of the 107, right?

14 A. Correct.

15 Q. But when you reviewed them, you simply looked to make sure  
16 that all the boxes were checked off, what the suspected crime  
17 was, and that everything on the form was filled out properly,  
18 right?

19 A. That's one of the things I looked at.

20 Q. Are you saying that you looked at additional information  
21 back when you were the CO of the 107?

22 A. I would look at where the stop was performed in relation to  
23 where crimes were occurring. So I would look to see the  
24 location of the stop to determine if it fit into an area where  
25 we were seeing that particular crime.

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1 Q. Other than those things that I mentioned and you mentioned,  
2 you didn't look at any other information when you reviewed 250s  
3 as the CO of the 107?

4 A. Other than looking at that 250 and the information on the  
5 250, no.

6 Q. So you didn't look at, for example, an officer's activity  
7 log entry for the stop, right?

8 A. Correct.

9 Q. Now, you testified on direct examination that you know from  
10 listening to the radio that supervisors do on occasion go out  
11 into the field and observe stops personally, right?

12 A. I know they are out in the field daily, yes.

13 Q. Do you know whether or not they are actually reviewing some  
14 stops that are being conducted -- actually viewing them in  
15 person, that they are witnessing them?

16 MS. GROSSMAN: Could you read that question back?

17 (Record read)

18 MS. GROSSMAN: I object to the form of the question.

19 MR. CHARNEY: I can rephrase.

20 THE COURT: First you said reviewing and then you said  
21 viewing.

22 MR. CHARNEY: It was badly worded.

23 Q. Is it your testimony that by listening to the radio, you  
24 know that supervisors in the 114 are actually out in the field  
25 witnessing stops being conducted by their officers?

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1 I want to ask you then about command self-inspections.  
2 I want to ask you about two of them, and also about the QAD  
3 audit that we talked about earlier.

4 As you have already testified, you're familiar with  
5 the annual audit that QAD does of stop and frisk paperwork in  
6 each precinct, right?

7 A. Correct.

8 Q. They were doing those audits when you were the CO of the  
9 107, correct?

10 A. Yes.

11 Q. You're aware that one of the items that is evaluated on  
12 that audit is the extent to which officers are entering stops  
13 into their memo books, correct?

14 A. Correct.

15 Q. I want to show you what has been previously admitted as  
16 Defendants' Exhibit G6. I will refer to Bates number NYC 4293.

17 This is the QAD audit for 2007. And you were the  
18 commanding officer of the 107 in 2007, correct?

19 A. Correct.

20 Q. So if you look at this, here we have Patrol Borough Queens  
21 South, which is where the 107 is, correct?

22 A. Correct.

23 Q. And then we have here --

24 THE COURT: What is the time frame on this one?

25 MR. CHARNEY: This is 2007.

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1 THE COURT: How do we know that?

2 MR. CHARNEY: I'm sorry. The previous page 4287,  
3 which is the first page of this, third quarter of 2007.

4 THE COURT: Very good. Thank you.

5 Q. We see here for the 107 -- actually, these numbers 4, each  
6 item is evaluated on a scale from 1 to 4, correct?

7 A. Yes.

8 Q. With 4 being the highest?

9 A. Correct.

10 Q. 1 being the lowest?

11 A. Correct.

12 Q. And anything below a 3 is considered failing that  
13 particular item, correct?

14 A. I believe so.

15 Q. If we go across here to this item here, you can see at the  
16 top it says, "Check member's activity log entries 21 through 25  
17 only"?

18 A. I see it.

19 Q. What that means is that when QAD does this audit, they  
20 review 25 250s from each precinct, right?

21 A. Correct.

22 Q. And then for the 21st through 25th 250 they review the  
23 officer's activity log to see if they made an entry about that  
24 stop, right?

25 A. Correct.

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1 Q. So for this particular one, going across here on the  
2 dark-shaded line, it looks like the 107 got a 1 on this item,  
3 right?

4 A. Correct.

5 Q. So that would mean that for this item, your precinct failed  
6 that item on the 2007 audit, correct?

7 A. Correct.

8 Q. And then I want to go forward to Bates number NYC 4311,  
9 which is the 2008 audit.

10 You were still the CO of the 107 in 2008, right?

11 A. Correct.

12 Q. This is the first page here, 2008, with Bates number 4305.  
13 So we are going to go ahead to 4311.

14 Again, this is the one that always is hard because  
15 it's so dark on top.

16 Just to show again this is Queens South. We have the  
17 107 -- it's hard to see -- right here, right?

18 And then going across again, you see up here -- I know  
19 it's really hard to read -- it says "check member's activity  
20 log entries." Do you see that?

21 A. Yes.

22 Q. Then going down again to, I believe it's this shaded line  
23 here, we go across, it looks like again the 107 got a 1, right?

24 A. Correct.

25 Q. So it's fair to say that in 2008, once again, your precinct

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1 failed that item on the audit, correct?

2 A. Correct.

3 Q. Now, prior to -- I'm sorry. Is it fair to say that one of  
4 Lieutenant Barrelli's jobs as the ICO was to be monitoring to  
5 the extent to which officers were documenting things in their  
6 activity logs?

7 A. Correct.

8 Q. So at any point when you were the CO of the 107, did  
9 Lieutenant Barrelli ever inform you that there were problems  
10 with the officers not documenting things -- with deficiencies  
11 in officers' memo books?

12 A. Yes.

13 Q. He did tell you that?

14 A. Yes.

15 Q. While you were the CO of the 107?

16 A. Yes.

17 Q. If you turn to page 92 of your deposition, line 5.  
18 Actually, if we go back to page 91, line 16, I just want to  
19 read from there because this shows that the person being  
20 referred to here is Lieutenant Barrelli. Line 16 says:

21 "Q. Did you ever ask Lieutenant Barrelli to give you  
22 information about whether or not the sergeants are complying  
23 with the procedure to review the activity logs daily?

24 "A. Yes.

25 "Q. So how often does he report to you on that issue?

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1 "A. Periodically I will ask -- you know, I will ask him, you  
2 know, has he been inspecting, you know, the officers he  
3 supervises memo books and if there is any deficiencies to let  
4 me know.

5 "Q. Has he ever in the last -- well, you have been there since  
6 '06. Since the beginning of '08, has he ever notified you that  
7 there were some problems with activity log entries in officers'  
8 memo books?

9 "A. No."

10 Do you remember giving that answer?

11 A. That's what it says here.

12 THE COURT: It's 12:30. I wish I could go further. I  
13 can't. Which means you will have to come back tomorrow morning  
14 at 10:00. I know they won't need you long, but just to finish  
15 up. I just can't stay.

16 MR. MOORE: Judge, he was supposed to go look for some  
17 documents.

18 THE COURT: That is true. Remember those two  
19 documents? If you can fax them to Ms. Grossman and Ms.  
20 Grossman can produce them.

21 MS. GROSSMAN: That's fine, your Honor.

22 (Adjourned to May 2, 2013, at 10:00 a.m.)

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