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1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

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2
3 DAVID FLOYD, et al.,

3
4 Plaintiffs,

4
5 v.

08 CV 1034(SAS)

5
6 CITY OF NEW YORK, et al.,

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7 Defendants.

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8 -----x

8 New York, N.Y.
9 May 9, 2013
9 10:10 a.m.

10
10 Before:

11
11 HON. SHIRA A. SCHEINDLIN,

12
12 District Judge

13
13 APPEARANCES

14
14 BELDOCK LEVINE & HOFFMAN, LLP
15 Attorneys for Plaintiffs
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16 JENN ROLNICK BORCHETTA

17
17 COVINGTON & BURLING, LLP
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19 GRETCHEN HOFF VARNER
19 ERIC HELLERMAN
20 BRUCE COREY

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21 CENTER FOR CONSTITUTIONAL RIGHTS
21 Attorneys for Plaintiffs
22 BY: DARIUS CHARNEY
22 SUNITA PATEL
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APPEARANCES (Cont'd)

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1 (Trial resumed)

2 THE COURT: Good morning, everyone. Please be seated.

3 During the one day recess, you have managed to do
4 nothing but write letters. So I guess it was a bad idea to
5 give you the day off because you used the time to pepper
6 chambers with letters, and I have made a list of the issues,
7 and I would like to rule on them.

8 One relates to the testimony of this witness and what
9 he can and can't go into. That's the first issue.

10 The second issue relates to the Provost deposition and
11 what can or can't be designated.

12 The third issue relates to the response to the Court's
13 request for statistical information regarding frisks.

14 And the fourth relates to the proposed rebuttal
15 testimony of Dr. Fagan.

16 I am prepared to address all but the fourth, that is
17 the proposed rebuttal testimony of Dr. Fagan, because the
18 plaintiffs' response is coming in by 2:00 today, and I think
19 it's important that I read that because this is, of course, all
20 about statistics and tables and whatnot, and I can't really
21 decide without looking at both sides. So that one I am not
22 ready to do. But for the other three, I am ready, and I will
23 try to rule very quickly in reverse order.

24 On the issue about the statistics, I think the
25 plaintiffs want to put in a letter on that too, but I don't see

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1 the purpose, because I only asked for a breakdown of what
2 percentage of stops resulted in frisks, and the city was able
3 to do that. But they also added what percentage of stops
4 resulted in searches, and of those, what percentage resulted in
5 the seizure of either contraband or weapons. And the
6 plaintiffs objected to the submission of the charts that were
7 beyond the scope of the Court's request.

8 The reality is I don't see any problem because the
9 information in those charts is also already in the testimony.
10 It's there in the record. And the city put that in their
11 response. I can't tell from this the date.

12 Here it says, excerpt from April 4, 2013 trial
13 transcript, at page 2310:

14 The question of Dr. Fagan, "So the hit rate for gun
15 and weapons seizures for the people who were searched is
16 approximately 9 percent, isn't that right?" And he said,
17 "Yes."

18 Then it goes on and says, "For the people who were
19 searched, the hit rate jumps to 14 percent." That's referring
20 to contraband. And he says, "Right."

21 So actually the two figures in the chart that I didn't
22 ask for are already in the evidence. So I can't see that there
23 is any prejudice from the chart which simply charts it out by
24 year.

25 So what I learned from the charts that I received is

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1 that 51.5 percent of the total stops from 2004 to 2012 resulted
2 in frisks. And tell me if I am right about this. And 8.3
3 percent of the 4 million stops resulted in the search?

4 MS. COOKE: Correct.

5 THE COURT: And of the ones that were searched, guns
6 were seized 9 percent of the time.

7 MS. COOKE: Weapons.

8 THE COURT: Weapons. Thank you.

9 And of those who were searched, 14 percent had some
10 contraband on them.

11 MS. COOKE: Correct.

12 THE COURT: But that's only of the small subset of
13 those who were searched, and the chart makes that very clear.

14 MS. COOKE: The number of the total --

15 THE COURT: Anybody is welcome to do the math and say,
16 of the total number who were stopped, weapons were seized X
17 percent of the time, or of the total number who were stopped,
18 contraband was seized X percent of the time. That would just
19 be math since we have the numbers, the actual numbers are
20 there.

21 MR. HELLERMAN: I am sorry I am late. We have done
22 the math and the numbers, the 9 percent, the 8 percent is
23 actually smaller than Professor Fagan's seizure rate.

24 THE COURT: If that's just math, I will take it. Tell
25 Ms. Cooke the math you came up with and she can do the same

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1 math. It's really simple math.

2 MR. HELLERMAN: You're absolutely right.

3 THE COURT: But share your figure with her. If you
4 agree, then that figure can go in the record too, and then
5 there shouldn't be any objection. Just share your figure
6 because it is misleading to say 14 percent resulted in
7 contraband. That's just 14 percent of the 8 percent. I
8 understand that. So I wouldn't mind having the total figure.
9 I would like to have it for the record.

10 MS. COOKE: I think, your Honor, that is in the
11 record.

12 THE COURT: It's probably true, but I don't have it
13 handy. Since I have now all of these handy in these charts,
14 essentially, it would be two more charts that would say, of the
15 4 million, X percent resulted in a weapons seizure, or of the 4
16 million, X percent resulted in contraband. My recollection is
17 they are both going to be in the 1 percent area, but I don't
18 remember.

19 MR. HELLERMAN: That's right. What is in the record
20 is the seizure rates with respect to the entire 4.43 million.

21 THE COURT: I don't know that number, do you?

22 MR. HELLERMAN: I believe it's 1.18 for guns and 1.80
23 for contraband.

24 THE COURT: It sounds about right. You don't need to
25 write any more letters on the charts. It's all in the record

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1 anyway.

2 MS. COOKE: With respect to the charts that were
3 attached to my e-mail, would you like me to place a defendants'
4 exhibit sticker and provide them to everyone?

5 THE COURT: Sure.

6 With respect to the Provost deposition, which is one
7 of the issues I mentioned, the city has the best of this one
8 too, primarily because of my prior ruling on April 15. If I
9 was ruling de novo, I might have reached a different result
10 when I read the letter. I said to myself, oh, well, that
11 wasn't what I originally said back, who knows when, in January,
12 February. I said only, is it clear the person is denying any
13 arrest, and it turns out there was an arrest.

14 Be that as it may, on April 15 I clearly said on the
15 record, as the city quoted in its letter, "You have found the
16 extrinsic evidence. You have already mentioned it to me. So I
17 know it now. But on top of that, you can put the documentary
18 proof in, and that's the impeachment that shows that he didn't
19 describe this fourth arrest for attempted murder, which
20 apparently the disposition was favorable to him, and that he
21 denied ever having pled guilty to disorderly conduct but he
22 did. So you have the impeaching evidence in the record, or you
23 will by documents, and that's it."

24 Now, if I said that April 15, that's the ruling.

25 MS. BORCHETTA: We would only raise two issues. One

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1 is that our understanding of what the Court was saying at that
2 time is that, if the representation of the deposition was in
3 fact as Ms. Publicker was representing at that time, which that
4 was the first time the city was raising the issue, so we hadn't
5 looked back yet at the deposition in order to determine it --

6 THE COURT: He didn't mention the fourth arrest for
7 attempted murder, and he didn't admit that he pled guilty to
8 disorderly conduct. So that's that.

9 MS. BORCHETTA: Disorderly conduct is beside the fact
10 of the other arrest for attempted murder. What was not
11 previously represented about the deposition testimony is that
12 he was asked how many times he had been arrested, and he said
13 four, and then described the three.

14 MS. PUBLICKER: He actually said three to four, your
15 Honor.

16 THE COURT: Three to four times includes the word
17 four.

18 MS. BORCHETTA: We would just submit that, because
19 that was not previously represented to the Court, we just add
20 that because we do believe that puts it within the Court's
21 March ruling.

22 And the other request we would make on this is to the
23 extent we can submit these records under seal, again, because
24 if it is coming in, we believe that all of these records need
25 to come in because it gives context to whether the Court should

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1 find him credible, which we believe the Court should.

2 THE COURT: An arrest is only an arrest.

3 MS. BORCHETTA: Right. I understand that. I also
4 believe that this is a very public case.

5 THE COURT: It is.

6 MS. BORCHETTA: We believe that there is some -- if we
7 can submit the records under seal for the Court's consideration
8 of what we believe is a narrow impeachment point.

9 THE COURT: It is narrow. I think this is blown out
10 of all proportion. The man now I know said three to four
11 arrests. He didn't remember the exact number. He described
12 three of them, didn't describe the fourth. And it didn't
13 result in a prosecution. It ended favorably to him. He is not
14 a murderer. That's the good news. The idea is whether he lied
15 at deposition when he said three to four and described three.
16 That's for the fact finder to determine. It's no point in
17 arguing it any further. I will make a decision on credibility.
18 I know the facts. He said three to four and didn't describe
19 the fourth.

20 MS. BORCHETTA: My only question is whether the Court
21 would accept the records under seal.

22 THE COURT: It doesn't matter to me. It matters to
23 him I suppose.

24 MR. MOORE: I think it matters a lot. The fact is
25 out.

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1 THE COURT: We are discussing it right now on the
2 record.

3 MS. BORCHETTA: It's a different thing to have all of
4 his arrest records going back to 1987 a part of the public
5 record.

6 THE COURT: I agree. I see no reason for that at all.
7 If somebody wants to write an article about Mr. Provost, we are
8 all stuck now. We are discussing it here on the trial record.

9 Again, the city is directed to file the arrest records
10 under seal.

11 MS. PUBLICKER: I would only point out if --

12 THE COURT: Ms. Publicker, I have had enough of this
13 issue. Thank you. You will file it under seal. The record of
14 today's transcript is not under seal.

15 So that takes care of the statistics. That takes care
16 of Mr. Provost. I am not going to address the proposed Fagan
17 rebuttal till I get the response letter.

18 That leaves the witness who is here. On this issue, I
19 have to say I agree with the plaintiffs and not the city. I
20 think that you're going beyond what I had originally ruled
21 could be done. You're going into the facts and details of a
22 number of stops as to which the plaintiffs do not have the
23 information to rebut the testimony. There is even a part of
24 this letter that says that he was able to refer back to his
25 memo book, and when he referred back to his memo books and

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1 found the names and found the details, then he was able to
2 testify to the details. This doesn't seem appropriate. So
3 there has to be a way to do this in the generalities that I
4 originally said could be done and not in the level of detail
5 that we had, whenever we last had it, Tuesday.

6 So my ruling on this one is in favor of the plaintiff.

7 MS. COOKE: I would just like to add, I don't know if
8 it was contained in Ms. Richardson's letter to the Court, but
9 with respect to the fact that the plaintiffs' expert, Professor
10 Fagan, has opined and drawn expert conclusions with respect to
11 the 4.3 million stops and their apparent reasonable suspicion,
12 there is a category of stops he determined apparently lacked
13 reasonable suspicion, and he is critical of the checking of
14 boxes such as furtive movements or high crime areas.

15 So to the extent that these stops contain those
16 checked boxes, the testimony by Detective Dang with respect to
17 his intent and his use of those boxes would certainly go to
18 rebuttal of Professor Fagan's --

19 THE COURT: One is a statistical analysis based solely
20 on UF-250s of four and a half million stops. One is calling
21 one officer asking him to describe particular stops and when he
22 checked particular boxes. I don't think that rebuts the
23 statistical study.

24 MS. COOKE: If you do recall, professor Fagan has put
25 forward an opinion that officers are using a script.

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1 THE COURT: I understand that, because he is analyzing
2 4.4 million UF-250s, and he is seeing patterns within 4.4
3 million, and there is a statistical analysis at times of the
4 repeating combinations that he saw.

5 MS. COOKE: This witness has been identified for the
6 frequency of his stops being one of the highest UF-250s in the
7 third quarter of 2009 for the entire police department. And
8 the plaintiffs have prepared demonstratives trying to argue
9 with respect to the frequency and the checking of certain
10 boxes. We know that's an opinion that has been offered by the
11 plaintiffs' expert with respect to the aggregate. Here is an
12 officer who has been identified as an officer who has a higher
13 number of stops, and the plaintiffs are in fact attacking the
14 meaning to which he was attributing or lack of meaning --

15 THE COURT: I can't have one rule for the plaintiffs
16 and one rule for the defendants. There was no way for the
17 plaintiffs to investigate the specifics of the stops that he
18 wants to go into. The names are redacted. They can't find the
19 people. They can't even attempt to have the two sides of the
20 story. He does have available to him the names. He can go
21 back to his memo book. He can go back to his records. He can
22 refresh his recollection. It's an argument the city has made
23 itself.

24 What is it, Mr. Hellerman?

25 MR. HELLERMAN: I just want to correct the record. I
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1 believe Ms. Cooke misspoke because Professor Fagan did not
2 opine about a percentage of stops that was based on reasonable
3 suspicion. He opined about a percentage of stops that he
4 believed were apparently justified.

5 THE COURT: That's true.

6 MR. HELLERMAN: He specifically said at the end of his
7 testimony that he does not believe that those apparently
8 justified stops were based on reasonable suspicion.

9 THE COURT: That's a fair correction. I remember him
10 very carefully using the phrase apparently justified.

11 MS. COOKE: I thought I used the word apparent.

12 At any rate, with respect to this witness, if this
13 witness would be able to testify with respect to his intent of
14 the use of those boxes, that would certainly --

15 THE COURT: I think he can in generalities. That's
16 what I said in the first place, and I say it again today. If
17 he wants to describe in general what he means by furtive
18 movements, if he wants to describe in general what he means by
19 suspicious bulge, if he wants to describe in generalities what
20 he means by fits description. He can say, in my experience,
21 that can be either a radio run description, a wanted poster
22 description, a neighborhood source, either anonymous or known
23 description. He can explain what fits description means in
24 various contexts, but not a particular stop, on a particular
25 day, at a particular hour.

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1 MS. COOKE: I think it would be permissible for him to
2 explain the use of that box given the crime suspected that he
3 indicated on that 250, which is available to all parties to
4 review. He can describe what his practice is with respect to
5 furtive movements for burglary.

6 THE COURT: I agree. But not a particular stop, at a
7 particular hour, on a particular day, but his practices. When
8 I am investigating burglary, what kind of movement would I
9 think is a furtive movement.

10 MS. COOKE: I think the location of the stop.

11 THE COURT: Those are generalities. That's fine.

12 MR. COREY: Plaintiffs would just ask, now that we
13 understand your ruling that much of the testimony he gave
14 Tuesday was inappropriate, that we be given some time to
15 identify the certain lines we think should be stricken.

16 THE COURT: Correct.

17 MS. RICHARDSON: I believe that much of the testimony
18 that he did give was intermixed.

19 THE COURT: It was. You have a real problem. I
20 frankly would strike the whole thing and start again. I think
21 that would be the neater way to do it. Just say, we are
22 striking pages X, line Y, through page Z, line A, and then let
23 her do the generalities that we just discussed.

24 MR. COREY: Plaintiffs have no problem with that, your
25 Honor.

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1 MS. RICHARDSON: To be clear, the pages would be
2 stricken starting from when we started utilizing the 250s.

3 THE COURT: I think that's right. It doesn't mean you
4 can't cover much of the same ground because I agree with you
5 that it was intermixed. Some of the material was the
6 generalities. What do you mean by furtive movements? What do
7 you mean by fits description? What do you mean by suspicious
8 bulge? Just divorce it from a specific stop. That's all I am
9 asking. I would cover the same ground again, Ms. Richardson.

10 MS. GROSSMAN: I would just raise the fact of the
11 demonstrative the plaintiffs used with this witness.

12 THE COURT: The one that showed the combination of
13 what he checked most often and showed that 98 percent of the
14 time he checked this or that?

15 MS. GROSSMAN: Yes.

16 THE COURT: You can put it up so I know what we are
17 talking about.

18 MR. COREY: We haven't showed that witness that
19 demonstrative.

20 THE COURT: We have seen it at length.

21 MR. COREY: That's true. We have seen it with the
22 supervisor.

23 MS. GROSSMAN: My concern is that there is testimony
24 that the supervisor gave about stops that Detective Dang made,
25 and there are inferences that I think the plaintiffs are going

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1 to argue and ask the Court to draw inferences from the --

2 THE COURT: The frequency of the combination?

3 MS. GROSSMAN: Not just the frequency, but the fact
4 that there was the gun retrieval or contraband retrieval or
5 about how many led to an arrest.

6 THE COURT: We know all of that. It's a bunch of
7 zeros. Let's put it up there.

8 There it is.

9 MR. MOORE: There are two charts. You're thinking of
10 the other chart. This is from Officer Dang.

11 THE COURT: This is Officer Dang?

12 Which one was I thinking of?

13 MS. MARTINI: The one use with Lieutenant Telford.

14 THE COURT: What was it?

15 MR. COREY: There were similar patterns expressed.

16 THE COURT: Was it about this officer also?

17 MR. COREY: No, your Honor.

18 MR. MOORE: It was about a different officer.

19 THE COURT: What officer?

20 MS. RICHARDSON: The chart that was used with
21 Lieutenant Telford was with respect to two officers, Officer
22 Gonzalez and Officer Noboa, and those are two officers that
23 Lieutenant Telford supervised. This chart was admitted through
24 Sergeant Marino.

25 THE COURT: I don't remember this as well because that

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1 was a little ways back. The other one was more recent.

2 Let me just look at this one for a minute.

3 There was one that had 132.

4 MS. MARTINI: I can find it.

5 THE COURT: Do you know which one I am thinking of?

6 MS. MARTINI: Yes.

7 MR. COREY: While she looks, if the city wants to
8 rebut the inferences we are asking your Honor to draw on these
9 patterns, the proper way to do that would have been to have
10 identified the people so we can get their side of the story.

11 THE COURT: Anyway, that's the one I was thinking of
12 at. Was that this officer?

13 MS. MARTINI: No.

14 THE COURT: Who is this?

15 MS. MARTINI: If I may, your Honor, these refer to
16 UF-250s filled out by Officer Edgar Gonzalez, who we submitted
17 deposition designation testimony for, and his sergeant who
18 oversaw his --

19 THE COURT: This is the one I had in my mind. This is
20 the image. But we can take this down because this isn't this
21 officer. It is not relevant today.

22 Let's go back to the one that relates to him so we can
23 look at it again.

24 With Officer Gonzalez, where we just saw the chart, we
25 didn't have rebuttal where he tried to go into every specific

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1 stop, a sampling of specific stops with the details, did we?

2 MS. RICHARDSON: No. Officer Gonzalez is not being
3 called. We agreed to the designations.

4 THE COURT: I mean, in the portion that is designated,
5 there is no rebuttal where he defends individual stops in
6 detail.

7 MS. GROSSMAN: We have to look at the designations. I
8 personally have not looked at the designated testimony.

9 MS. MARTINI: I believe that's correct.

10 THE COURT: Correct what I said?

11 MS. MARTINI: Yes.

12 THE COURT: I have ruled as to what he can do and what
13 he can't do.

14 MS. GROSSMAN: I understand. The inferences that the
15 plaintiffs will be asking the Court to draw based on this
16 chart, we believe that we need to ask these questions and let
17 the testimony stand to rebut that.

18 THE COURT: I understand what you believe, and I have
19 ruled. The ruling is clear in the record. The record is
20 closed on this issue. I am ready to proceed with questioning
21 the witness. I have given three rulings this morning. You
22 might have noticed, two were favorable to the defense, one was
23 favorable to the plaintiffs, and I am ready to proceed.

24 You can leave that up if it's helpful to him.

25 KHA DANG, resumed.

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1 MS. RICHARDSON: I am going to move to admit this. We
2 have marked this as Defendants' L14. This is the same
3 demonstrative that was just on the screen for plaintiffs,
4 except that we have added an additional line to it.

5 THE COURT: OK.

6 MR. COREY: No objection.

7 THE COURT: Are we calling this L14?

8 MS. RICHARDSON: We are because it's different from
9 the one --

10 THE COURT: What was the other one?

11 MR. COREY: Plaintiffs' 565.

12 THE COURT: L14 is admitted.

13 (Defendants' Exhibit L14 received in evidence)

14 DIRECT EXAMINATION (Cont'd)

15 BY MS. RICHARDSON:

16 Q. Officer Dang, do you still have the excerpts from
17 Defendants' Exhibit L12, the UF-250 excerpts, in front of you?

18 A. I don't think so.

19 Q. I believe it should be these here.

20 So looking at Defendants' Exhibit L14, we can see a
21 variety of statistics here which are drawn from the UF-250s
22 that you filled out for the third quarter of 2009, which is
23 July, August and September of that year.

24 I want to direct your attention to the first statistic
25 here, which is average number of people stopped.

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1 THE COURT: Can I interrupt for just a minute?

2 Where does it say the dates, that it's the third

3 quarter of 2009? Is it on the chart?

4 MS. RICHARDSON: I don't believe it's on the chart.

5 THE COURT: I am just worried that when I am looking

6 at this weeks from now I won't remember.

7 MS. RICHARDSON: We could write on it.

8 THE COURT: Just put 3Q 2009.

9 And everybody agrees with that, right?

10 MR. COREY: There is one UF-250 in there that is from

11 June 30.

12 THE COURT: Otherwise you essentially agree with it.

13 MR. MOORE: She also has the best handwriting.

14 THE COURT: Very good. OK. Thank you for that.

15 Your question was?

16 Q. Looking here at the average number of people stopped, you

17 can see that it says, on average, for those UF-250s, you

18 stopped 3.12 people at a time, correct?

19 A. Yes.

20 Q. Can you explain why you might stop more than one person at

21 a time?

22 A. Well, specifically to that quarter 2009, there was a

23 robbery pattern that we had around Fort Greene Park that

24 involved three to four teenagers. They were going around

25 robbing people, punching them in the face, sending them to the

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1 hospital with concussions and bloody noses, and they were all
2 saying that they were attacked by a group of teenagers. So
3 when we address a crime condition like that, we are going to
4 look for a group of teenagers that seem to be casing a
5 location. If it's late at night, there are teenagers that
6 appear to be young and it's past midnight or 1:00, and they are
7 walking around up and down the street, we are going to stop
8 those individuals because they fit the description for this
9 particular crime pattern.

10 Now, also during that quarter, we had a number of
11 shootings that were very public with, you know, a lot of people
12 around. For instance, there was a shooting inside Fort Greene
13 Park. There was a couple of shootings inside Ingersoll-Whitman
14 housing development during the day. They are public areas
15 where there are park benches, basketball courts, parks, public
16 sidewalks, so there are going to be a number of people hanging
17 around. Those individuals that we stopped in multiple -- where
18 there's multiple people stopped, they are usually going to be
19 gang members that we identify as being as part of this ongoing
20 shooting violence that's been happening in our precinct, which
21 we believe are very likely to commit more shootings because of
22 the ongoing turf battle that they have going on.

23 MR. MOORE: I think this is an example of how he is
24 getting into specifics based upon his knowledge of these cases,
25 about certain people doing this and that in the park.

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D598FLO1 Dang - direct

1 THE COURT: This is his beat, so to speak. This is
2 the generalities of the quarter and the location that he was
3 working in.

4 I have a different question. How many stops are in
5 this? I don't see the total number of stops. Like on the
6 Gonzalez chart, I knew it was 132 or 134.

7 MS. RICHARDSON: This is 127.

8 THE COURT: Does it say it anywhere?

9 MR. MOORE: No.

10 THE COURT: Can you write slash 127?

11 Thank you. I appreciate that. I realize it has only
12 31 encounters in which two or more UF-250s were completed,
13 right?

14 MS. RICHARDSON: Yes.

15 THE COURT: So only one quarter of those total stops
16 were two or more, right?

17 MS. RICHARDSON: Correct. So if I may, the average
18 number of people stopped is 3.12 for those groups.

19 THE COURT: For those 31 stops. It's 31 of 127. OK.

20 BY MS. RICHARDSON:

21 Q. Now, Officer Dang, you just talked briefly about gangs and
22 turf wars. As an officer in the anticrime unit in the 88th
23 Precinct, how would you become familiar with gangs?

24 A. Well, I mean, anybody can just walk into the anticrime
25 office now and you're going to see a bunch of pictures hanging

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1 on the walls. You're going to see individuals that we have
2 identified as part of these gangs. You're going to see crime
3 maps. You're going to see police reports related to these gang
4 members. So we do our homework on them. Whether it be
5 information that we gather from the detective squad, whether it
6 be information we gather from confidential informants, we put
7 all of this stuff together, and we identify individuals that we
8 have to pay special attention to.

9 Having said that, it's not that -- these are
10 individuals that are always around Ingersoll-Whitman. Their
11 everyday schedule is just hanging out. We are in there all the
12 time. It doesn't mean that we just stop them all the time
13 because we know their history. There has to be an additional
14 set of circumstances that lead us to stop individuals. Even if
15 we know them to be bad guys we need additional circumstances to
16 stop them.

17 Q. So what might be some additional circumstances that would
18 lead you to stop a group of known gang members?

19 A. Well, for instance, in this third quarter, where you had
20 these gang members who were arrested back in 2004 in a big drug
21 conspiracy sweep, who are now five years later slowly but
22 surely getting out of jail, within the context of this summer,
23 they started to reestablish their turf. They started off new
24 beefs. They tried to stop old beefs. So it was a very tense
25 time in the Ingersoll-Whitman housing development because of

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1 the number of shootings that were occurring.

2 Having said that though, when we see these individuals
3 every day, all the time, we don't stop them all the time. We
4 are used to them. They are used to us. We have a general idea
5 of their behavior on a normal daily basis. In some instances,
6 we will either drive by or walk by and all of a sudden they are
7 exhibiting weird behavior that yesterday we saw them and didn't
8 do the same thing. So that would lead us to become more
9 suspicious of them and it might lead us to stop them.

10 Q. So when you say that sometimes when you drive by you might
11 see them exhibiting weird behavior that they weren't exhibiting
12 the day before, would there be a box on the UF-250 that you
13 would generally check off in that circumstance to indicate that
14 that was one of the reasons why you stopped those individuals?

15 A. Usually furtive movements would be one of them.

16 Q. Not talking about the details of this stop specifically,
17 but just using this UF-250 as an example. This is ending in
18 Bates stamp number 15668, and this is drawn from Defendants'
19 Exhibit L12. It should be right in front of you.

20 If you look on the back of the UF-250, you can see
21 that there is a line for "suspect is associating with persons
22 known for their criminal activity." When would you check off
23 that box?

24 A. That's usually in a situation where I definitely know the
25 history of the person that I have stopped or the person that

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1 was stopped with him.

2 Q. So turning to the front of that UF-250, this is ending in
3 15667, again, not getting into the specifics of this stop, but
4 can you tell what crime was suspected?

5 A. Criminal possession of a weapon.

6 Q. So you can see that on the front you checked off furtive
7 movements. Generally speaking, when you suspect someone of
8 criminal possession of a weapon, what are some things that you
9 might consider to be furtive movements?

10 A. I guess without getting into -- I don't know how specific I
11 can get, but --

12 THE COURT: Just describe the type of movements, when
13 you're thinking about criminal possession of a weapon, that you
14 would notice.

15 A. Well, looking at the date on this 250, a week prior, inside
16 Fort Greene Park, the shooting that I spoke of earlier, one of
17 the members --

18 MR. MOORE: That's exactly --

19 THE COURT: Can't you just tell me what are the
20 furtive movements that you notice when you're investigating
21 criminal possession of weapon that make you feel like stopping
22 somebody? What kinds of things do you notice that catch your
23 eye?

24 THE WITNESS: It's usually, you know, if they are
25 hanging out in front of the building, sitting on the benches or

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1 something like that. In our experience, we have recovered
2 weapons from the bushes, from trash cans, from inside lobbies.

3 THE COURT: What is the furtive movement of the
4 person? What is the person doing when you decide to stop that
5 person? Not a specific person, but any person. What kind of
6 movements do you notice?

7 THE WITNESS: General speaking, not regarding this
8 stop at all?

9 THE COURT: Not regarding that stop. What kind of
10 movements do you notice when you're thinking of stopping
11 somebody for criminal possession of a weapon, what catches your
12 eye, what kind of movements?

13 THE WITNESS: Movements towards a certain area of the
14 body.

15 THE COURT: Explain. What area?

16 THE WITNESS: Usually the waistband or pants pocket,
17 depending on if it's winter or summertime.

18 THE COURT: Say it again?

19 THE WITNESS: Depending if it's winter or summertime.

20 If they are standing near benches, near trash cans, a
21 quick movement of, you know, bending down and quickly standing
22 back up, the appearance of placing something on the ground
23 quickly, going inside the lobby of the building and then
24 quickly coming back out, as if they had secreted something in
25 the lobby of the building, just things like that. Just things

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1 that in everyday situations, where we would see individuals
2 acting normally in this situation, they just all of a sudden
3 become very nervous, very aware; if they have weapons or
4 something on their body, they might portray themselves by
5 favoring a pocket on their body or things like that.

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

7 BY MS. RICHARDSON:

8 Q. So turning back to the chart, if we look here, we can see
9 that in 45 out of the 127 UF-250s you checked off furtive
10 movements.

11 Now, would those furtive movements that you just
12 described, would those furtive movements be different depending
13 on the crime suspected?

14 A. Yes, they would.

15 Q. So I believe that you mentioned during this time period
16 that you were investigating a robbery pattern. What are some
17 furtive movements -- what are some things that might lead you
18 to mark off furtive movements on a UF-250 when you're
19 investigating a robbery?

20 A. One has to do with the idea of them casing a location.
21 They will walk up and down the street. They are constantly
22 looking left and right, in like a small area, between one or
23 two cross streets. They don't look like they are lost. They
24 look like they are specifically looking for something and tell
25 us they are specifically looking for a victim.

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1 MR. MOORE: Can I suggest that maybe you want to put
2 Officer Dang's name on that chart?

3 THE COURT: That's true too. Sure.

4 Q. Now, looking at the line below, which is for high crime
5 area. You can see that for the third quarter of 2009, you
6 checked off this box 82.68 percent of the time. Can you
7 explain a little bit about what you mean when you check off the
8 box area has a high incidence of crime of type suspected?

9 A. Being in a unit like anticrime, we are deployed in areas
10 where there is going to be high crime. High crime can be,
11 because of a specific pattern spike in a particular crime
12 that's going on in a certain area of the precinct, that could
13 mean it's high crime area right now. Or it could be a general
14 location of the precinct that has been known for this type of
15 crime throughout the year regardless if it's a pattern going on
16 or not. That's what I would describe a high crime area.

17 Q. So again, turning to a UF-250, this is an excerpt from
18 Defendants' Exhibit L12, and this one is ending in 15865.

19 Again, not talking specifically about this stop, but
20 if you look on the top of the UF-250, you can see that there is
21 an area to put an address or intersection where the stop
22 occurred, correct?

23 A. Correct.

24 Q. So thinking about Adelphi and Willoughby Street, what might
25 lead you to check off high crime area on a UF-250 for this

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1 area?

2 A. Well, Adelphi and Willoughby is approximately two blocks
3 away from Fort Greene Park, which is for us traditionally --
4 it's traditionally and at this given time there was a
5 particular crime pattern we were investigating that led this
6 location to be a high crime area.

7 Q. Now, looking at the next line, time of day, day of week,
8 season. And on the UF-250, you can see that this box is time
9 of day, day of week, season corresponding to reports of
10 criminal activity, right?

11 A. Correct.

12 Q. So what might lead you to check off that box on the UF-250?

13 A. It all goes to when we investigate patterns. Patterns are
14 location specific. They can be time specific to the day or
15 night. The reason why we check these off is because it gives
16 an idea we are investigating an ongoing pattern for a certain
17 crime that leads us to the context of when we see suspicious
18 activity out there that we think it's going to lead to a crime
19 that's going to happen in this pattern.

20 Q. So if we look down at this bottom section of Defendants'
21 Exhibit L12, you can see that -- L14, if you look at this line,
22 you can see that time of day, day of week and season was
23 checked off on 41 of the 250s that stated the stop time between
24 the hours of 11 a.m. and 8:45 p.m., and 29 of those 41 stops
25 were made on a day other than Friday or Saturday.

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D598FL01 Dang - direct

1 Is it rare to check off those boxes on a non-weekend
2 day?

3 A. A non-weekend day? I think crime happens every day all the
4 time. I don't think there is any -- I don't think there is any
5 reading too much into statistics like that.

6 Q. In fact, can patterns take place during the daytime?

7 A. Correct. Yes.

8 Q. You can also see here that you checked off the boxes for
9 casing and/or acting as a lookout 48.82 percent of the time.
10 Can you tell us a little bit about when you might check off
11 that box?

12 A. Sure. Usually casing or acting as a lookout, mainly, in
13 anticrime unit we deal with burglaries and robberies and
14 usually we will see -- if there is a group of individuals out
15 there robbing people, what they will do is they might split up
16 the intersection, one individual per each corner of an
17 intersection, and they will designate one guy, it's your turn
18 to do the robbery this time, and the other individual is
19 standing around looking for either cops or other witnesses.
20 And they will set up these little, basically, traps for
21 unsuspecting individuals to come through, and then one person
22 will rob them while the other three are -- during the event the
23 other three are basically watching for cops or other witnesses
24 to come by.

25 As far as -- about two weeks ago there was a gunpoint

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D598FLO1 Dang - direct

1 robbery of -- I don't know how specific I can get. For
2 instance, you can also case a location where you want to do a
3 gunpoint robbery, individuals who will hang out in front of a
4 building or in front of a storefront and wait till -- they will
5 walk back and forth to see how many customers are inside the
6 restaurant, and they will wait till everybody leaves, and then
7 they will come in and commit the crime. That's basically what
8 I describe as casing and acting as a lookout.
9 Q. Now, I am going to show another 250. This one ends in
10 Bates stamp 15901.

11 You can see here that the time of this stop was at
12 4:15 a.m., correct?

13 A. Correct.

14 Q. During the third quarter of 2009, what was your regular
15 tour of duty?

16 A. We had two tours. One week we would do a 9:30 a.m. start
17 to 6 p.m. Then the next week we would do 5:30 in the afternoon
18 till 1:00 in the morning.

19 Q. So is there ever a time that your tour had changed based on
20 crime conditions?

21 A. Yes. This particular quarter, we had a robbery condition
22 that occurred between 3 to 6 in the morning, in and around Fort
23 Greene Park. So we obviously had to change our schedule to try
24 to stop those crimes from happening.

25 MS. RICHARDSON: Can I have one minute, your Honor?

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D598FL01 Dang - direct

1 Q. Officer Dang, thinking back to when you were a regular
2 patrol officer, not in the detective squad, did you ever feel
3 that if you did not conduct a certain number of stops,
4 summonses or arrests that you would be punished?

5 A. No.

6 MS. RICHARDSON: Nothing further right now, your
7 Honor.

8 THE COURT: Thank you.

9 MR. COREY: Can I have one moment to consult with Mr.
10 Hellerman?

11 THE COURT: Of course.

12 CROSS-EXAMINATION

13 BY MR. COREY:

14 Q. Good morning, Officer Dang.

15 A. Good morning.

16 Q. I am just going to put back on the elmo Defendants' Exhibit
17 L14, and I want to ask you some questions about some of the
18 statistics on here.

19 Officer Dang, did anyone in the NYPD express any
20 concerns to you that 90.5 percent of the people you stopped in
21 this time period were black?

22 A. No.

23 Q. Did anyone in the NYPD ever ask you why you stopped only
24 people of color in this time period?

25 A. We have discussed and the discussion was that crime

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D598FL01 Dang - cross

1 patterns and crime statistics, we do discuss about criminal
2 profiles, things like that, which leads us to stopping
3 individuals when we are attacking crime patterns.

4 Q. Has anyone asked you why you stopped only people of color?

5 A. That specific question?

6 Q. Yes.

7 A. I don't think so.

8 (Continued on next page)

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D599flo2

Dang - cross

- 1 Q. Has anyone in the NYPD ever expressed any concerns to you
2 regarding the fact that in this time period you recovered no
3 weapons in your stops?
4 A. No.
5 Q. And that's true even though you made 75 frisks, right? No
6 one expressed any concern about that either?
7 A. No. Frisks are very limited in our scope so it doesn't
8 mean that you're going to always recover weapons or contraband.
9 Q. Well in this case you recovered none, right?
10 A. Correct.
11 Q. So no one was concerned about that, to your knowledge?
12 A. No.
13 Q. You testified on Tuesday -- well, first let me ask: Did
14 anyone express my concern regarding the fact that you checked
15 high crime area almost 83 percent of the time?
16 A. No. I don't see why they would. Because my job is to be
17 in high crime areas most of the time.
18 Q. You testified on Tuesday that it's not unusual to have a
19 crime pattern that's citywide. Do you remember that?
20 A. Yes.
21 Q. So if there is a citywide crime pattern, can that be one
22 basis to suspect anyone in the city of criminal activity?
23 A. No.
24 Q. Did anyone in the NYPD ever express any concern regarding
25 the fact that you made one summons in this time period?

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D599flo2 Dang - cross

1 A. No. Again, anticrime we don't -- we use our discretion
2 when it comes to minor violations. We're not a unit that would
3 write a lot of summonses regardless.

4 Q. What about arrests? You only made 4.7 arrests?

5 THE COURT: No six.

6 MR. COREY: Well, six arrests -- I'm sorry. You're
7 right, your Honor.

8 THE WITNESS: One of those arrests --

9 MS. RICHARDSON: Objection. Mischaracterizing the
10 evidence in the record.

11 THE COURT: Six arrests, which is 4.72 percent of the
12 stops.

13 MS. RICHARDSON: From these specific 250s.

14 THE COURT: Of course. These are all 250s for that
15 quarter.

16 MS. RICHARDSON: Right. What I'm saying, he may have
17 made arrests without conducting a reasonable suspicion stop.

18 THE COURT: Of course. Everybody knows that. We're
19 talking about these 127 stops.

20 Anyway what was -- I've now lost the question.

21 Anybody discuss with you of these 127 stops only six resulted
22 in arrests?

23 Yes or no. Did anybody ever discuss it with you.

24 That's all I asked.

25 THE WITNESS: Not in such a context, no.

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D599flo2 Dang - cross

1 THE COURT: Okay.

2 Q. You testified that during this time period there was a
3 spike in crime?

4 A. Correct.

5 Q. So, did even fewer of your stops lead to an arrest in the
6 other quarters of 2009?

7 THE COURT: I'm sorry. Say that again.

8 MR. COREY: Did even fewer of your stops lead to
9 arrests in the other quarters of 2009.

10 THE COURT: First, second and fourth quarters?

11 MR. COREY: And first.

12 THE COURT: Excuse me. What are you asking? First
13 second and fourth or just --

14 MR. COREY: Yes, your Honor.

15 THE COURT: Do you remember --

16 THE WITNESS: I don't.

17 THE COURT: -- the arrest rate in the first, second
18 and fourth quarter?

19 THE WITNESS: In my career I've had over two hundred
20 arrests.

21 THE COURT: So you don't know the rate in the first,
22 second or fourth quarter?

23 THE WITNESS: No, I don't.

24 THE COURT: No. That's fine.

25 MR. COREY: Fair enough.

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D599flo2 Dang - cross

1 Q. So you also testified on direct that a crime pattern can be
2 identified based on the time of day that the crimes were
3 occurring.

4 Do you remember that?

5 A. Yes. That's one of the aspects, yes.

6 Q. And you checked off time of day in 77 percent of your stops
7 in this time period, right?

8 A. Yes.

9 Q. And in 41 of the UF 250s you checked off time of day
10 between the hours of 11:00 a.m. and 8:45 p.m., right?

11 A. It appears so.

12 Q. That means that since you checked off time of day 98 times
13 that means there was -- well 57 -- 57 times where you checked
14 it off between the hours of 9:00 p.m. and 10:59 a.m., right?

15 MS. RICHARDSON: Objection, your Honor.

16 THE COURT: I'm sorry. Repeat the question.

17 MR. COREY: Well he checked off time of day 98 times
18 total. So that means, given the footnote, that means that he
19 checked off time of day 57 times between the hours of 9:00 p.m.
20 and 10:30, roughly, a.m..

21 THE COURT: Is that right?

22 THE WITNESS: That's just one box. You have to take
23 that in relation to the other boxes.

24 Q. I understand. But --

25 THE COURT: But for the box indicating time of day,
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D599flo2

Dang - cross

1 all he's trying to do is the math. Is he right the way he said
2 the math? That if 41 were between 11:00 a.m. and 8:45 p.m.
3 were the remainder of those, which you said was 57, between
4 9:00 p.m. and, you know, 11:00 a.m. the other part of the day?

5 THE WITNESS: I'll take his word for it.

6 THE COURT: That's just math, 98 -- he's just saying
7 98 minus 41 is 57. Does that mean the other 57 clearly were
8 not between 11:00 a.m. and 8:45 so they must have been.

9 THE WITNESS: I didn't review my UF 250s.

10 THE COURT: No. But if that's accurate on the 41
11 then. He's saying the other 57 were at a different time of
12 day.

13 THE WITNESS: I take his word for it. That's correct.

14 THE COURT: Okay.

15 Q. You checked off furtive movements in more than a third of
16 your stops, right, for this time period?

17 A. Yes.

18 Q. And it's your understanding that a furtive movement alone
19 can justify a stop, correct?

20 A. No.

21 Q. Well, do you remember giving a deposition in this case?

22 THE COURT: Do you remember what?

23 MR. COREY: Do you remember giving a deposition in
24 this case?

25 THE WITNESS: Yes. Back in 2010.

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D599flo2 Dang - cross

1 Q. Did you take an oath to tell the truth?

2 A. I did.

3 Q. And did you tell the truth?

4 A. Yes.

5 Q. I'm going to hand you a copy of your deposition.

6 Do you recall giving the following answer to the
7 following question. And this is page 58 starting at line 14.

8 Officer Dang, are you at the line?

9 A. Yes, I see it.

10 "Q. Are there certain crimes that furtive movements alone
11 would be enough to justify you stopping somebody?"

12 There's an objection to the form.

13 "A. Just -- it all depends. There are other factors how the
14 crime can -- if it came over, or over the radio; did you
15 observe it yourself. The idea that -- it is possible, and in
16 some cases that you could just stop somebody for furtive
17 movements, but it all depends on the crime."

18 Do you recall giving that answer to that question?

19 A. I'm reading it, yes.

20 Q. You don't recall Sergeant Marino ever asking you to explain
21 why you checked off furtive movements, do you?

22 A. Well, every once in a while Sergeant Marino will review my
23 250s. I'm not going to remember any specific instance where
24 he's going to review how I checked off a box or how I described
25 a person or why I made the stop.

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D599flo2 Dang - cross

1 Q. Okay. You testified on direct that one of the reasons you
2 checked off furtive movement for robbery is because you might
3 observe actions that looked like someone's casing?

4 A. Correct.

5 Q. But isn't there a separate box for casing on the UF 250?

6 A. Yes, there is.

7 Q. So you checked --

8 A. Furtive movements and casing?

9 Q. Yes.

10 A. Yes.

11 Q. And your attorney asked you some questions about when you
12 stopped more than one person in a particular encounter. And do
13 you recall saying that that was in part because you had a
14 robbery pattern in Fort Greene where teenagers were beating
15 people up and you suspected them of robbery?

16 A. Which incident was that?

17 Q. Well, you weren't referring to a specific incident -- do
18 you recall your attorney asking you whether -- whether it was
19 unusual for you to stop groups of people.

20 Do you remember that question?

21 A. Yes.

22 Q. And do you remember saying that at this time there was a
23 robbery pattern around Fort Greene Park where there was
24 multiple people committing robberies?

25 A. Correct.

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D599flo2 Dang - cross

1 Q. But you said they were teenagers, right?

2 A. In that instance, I believe -- well she -- if you're
3 talking about the stop where she asked me about identifying --

4 Q. I'm not asking about a specific stop. I'm just asking
5 about your testimony that you observed or you understood to be
6 a crime pattern of teenagers committing robberies?

7 A. Yes.

8 Q. And you also said that you stopped groups of people around
9 the housing projects because you suspected them of being gangs,
10 correct?

11 A. Correct.

12 Q. How old are the gang members usually that you think you're
13 stopping because they're gangs?

14 A. It depends on which gang you're talking about. They could
15 be young teenagers, you know from 14 to 15. They could be a
16 different gang where they're 17 to 19. It could be another
17 gang where they're all 40 to 50.

18 THE COURT: You see gangs with people who are 40s to
19 50s?

20 THE WITNESS: Yes.

21 MR. COREY: Can I have one moment, your Honor?

22 (Pause)

23 Q. Officer Dang, you were asked by your counsel what furtive
24 movements you look for when you suspect a certain crime,
25 correct?

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D599flo2

Dang - cross

1 A. Yes.

2 Q. And you talked about what furtive movements you look for
3 when you suspect CPW or criminal possession of a weapon?

4 A. Yes.

5 Q. So do you suspect a crime before you see the furtive
6 movements?

7 A. No.

8 Q. Then you testified also on Tuesday that sometimes you get a
9 call from maybe a resident that kids are smoking drugs and you
10 approach them and say you're smoking drugs, stop it or in sum
11 and substance that's what you testified to on Tuesday?12 A. I would say that no -- I testified that somebody called 911
13 to say that you guys might be doing drugs out here so if you
14 are, stop it.15 Q. But your testimony wasn't if you are. Your testimony,
16 correct me if I'm wrong, was that you are smoking drugs. You
17 accused them of smoking drugs.18 A. I don't recall if I specifically said I accused them or if
19 I was asking.20 MS. RICHARDSON: Is Mr. Corey reading from a
21 transcript from the record? I'm not sure that was the exact
22 question or answer.

23 MR. COREY: So let's look at the transcript.

24 I seem to have lost the page. I apologize.

25 So let's assume that you asked: Are you smoking

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Dang - cross

1 drugs?

2 MS. RICHARDSON: Objection.

3 MR. COREY: Was there not testimony about this very
4 topic? Did he not answer a question about it?5 MS. RICHARDSON: There was. We don't know that that
6 was the language. If you don't have a page, I don't --7 THE COURT: Actually I recall that. I thought he
8 said, in my recollection, not a transcript --9 MR. COREY: I found it. Page 6374 of the transcript,
10 line 12.11 "Q. So in those situations you haven't started questioning.
12 They see you and they walk away. Is that what you mean?13 "A. I mean if it's -- in my experience say we get a 911 call
14 that, you know, there's a group of kids smoking weed in front
15 of such and such a building.16 "We show up and obviously the kids -- we see them and
17 you'll see one kid walk away and it's most likely that he
18 probably had the drugs on him. But we'll go talk to the kids.
19 Be like: Hey, we're getting 911 calls that maybe one of you or
20 all of you are smoking drugs. Cut it out. Leave. Do
21 whatever. But stop it."

22 Do you recall that testimony?

23 A. Yes. But I don't think I was accusing them. I was
24 informing them of the 911 calls.

25 Q. You don't think you were accusing them of smoking drugs

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D599flo2 Dang - cross

1 when you said we're getting 911 calls that you -- maybe one of
2 you are smoking drugs?

3 A. I'm informing them that there's a 911 call, that that's why
4 we're showing up. We're not just coming out of the blue. I'm
5 just saying: Guys, there 911 calls. Maybe one of yous are
6 using drugs. If you are, you know, stop it, whatever. And
7 just leave.

8 Q. Fair enough, Officer.

9 But my question is: In an encounter like this, is it
10 your understanding that you've stopped them?

11 A. I've approached them.

12 Q. You have not stopped them, have you? That's your
13 understanding?

14 A. They were not stopped because obviously, the situation,
15 these individuals can walk away.

16 MR. COREY: Nothing further.

17 THE COURT: All right. Anything further of this
18 witness?

19 MS. RICHARDSON: Yes. Just a few questions.

20 REDIRECT EXAMINATION

21 BY MS. RICHARDSON:

22 Q. Officer Dang, you just referred to a gang that you're aware
23 of with 40 to 50 year olds. What gang are you referring to?

24 A. They're leaders of a gang that we call the black guerrilla
25 family that operates in the Fleet Walk side of

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1 Ingersoll-Whitman housing development.

2 THE COURT: You said the leaders?

3 THE WITNESS: Yes.

4 THE COURT: The leaders are that age. What about the
5 members?

6 THE WITNESS: You can go down basically generations.
7 So from 40, 50 are the leaders. You can go down to the
8 mid level guys probably in their 30s. Go younger, guys are in
9 their 20s. Then even younger, in their fifteens -- different
10 levels of hierarchy in this particular gang.

11 THE COURT: Thank you.

12 Q. How did you become aware of that hierarchy?

13 A. Well obviously there is that -- back in 2004, there was a
14 drug sweep, conspiracy arrests of a number of these
15 individuals. So there was a lot of homework already on them
16 from the other detectives who had more experience than me in
17 the precinct. So it's just knowledge that gets passed down
18 through other officers that come through.

19 And then, obviously, I had some experience with
20 arresting these individuals, stopping them on occasion, you
21 know, that type of knowledge.

22 Q. And generally speaking what crimes would you, on occasion,
23 suspect them of committing and therefore stop them?

24 A. Usually they're known for robberies, shootings, drug sales.

25 Q. Now, would you ever patrol with your supervisor, Sergeant

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1 Marino?

2 A. Yes.

3 MR. COREY: Your Honor I think this is outside the
4 scope of my cross.

5 THE COURT: It is. But is there something you
6 particularly want to bring out about him riding with Marino?

7 MS. RICHARDSON: Mr. Corey asked Officer Dang whether
8 or not he ever discusses his arrests with his supervisor and
9 this is directly related to that point.

10 MR. COREY: My questions were actually about the low
11 hit rate. I don't see how the sergeant riding with him has
12 anything to do with that.

13 THE COURT: Maybe she'll connect it up.

14 Q. Would Sergeant Marino, when he was patrolling with you,
15 ever be present for the stops or arrests that you would
16 conduct?

17 A. Yes, he would.

18 Q. And did he ever discuss -- I'm sorry. Did you ever discuss
19 your arrests or stops with Sergeant Marino?

20 A. Yes, I do, on a regular basis.

21 MS. RICHARDSON: No further questions, your Honor.

22 THE COURT: Anything further of this witness?

23 MR. COREY: One moment, your Honor, please.

24 Nothing further.

25 THE COURT: Okay. You're all set. Thank you.

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1 (Witness excused)

2 MS. GROSSMAN: Defendants call Inspector Juanita
3 Holmes.

4 MR. MOORE: Judge, I would ask that Assistant Chief
5 Morris, who is in the audience who will be the next witness or
6 very shortly after the next witness, be excluded from the
7 courtroom because a lot of what's going to be covered I believe
8 with Inspector Holmes will be covered with Assistant Chief
9 Morris.

10 MS. GROSSMAN: Well, your Honor, Assistant Chief
11 Morris is from Manhattan North. Inspector Holmes is from --

12 THE COURT: So what. They're going to go over the
13 same ground so to speak, similar questions. We have a
14 sequestration order. So why shouldn't --

15 MS. GROSSMAN: I thought it was related to just the
16 individual stops.

17 THE COURT: No. Everything but experts if they're
18 going to cover the same -- pretty much the same types of
19 questions.

20 So anyway he should step out.

21 MR. MOORE: Thank you, Judge.

22 THE COURT: All right.

23 JUANITA HOLMES,

24 called as a witness by the Defendants,
25 having been duly sworn, testified as follows:

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1 DIRECT EXAMINATION

2 BY MS. GROSSMAN:

3 Q. Good morning, Inspector.

4 A. Good morning.

5 Q. Where are you employed and what position do you hold?

6 A. New York City Police Department. I'm the commanding
7 officer of the 81st precinct.

8 Q. Can you describe your educational background.

9 A. Yes. I have a bachelor's in science St. Joseph's College.
10 I attended the Police Management Institute MBA with Columbia
11 University.

12 Q. When did you receive your bachelor's of science from St.
13 Joseph's College?

14 A. 2006.

15 Q. When did you graduate from the PMI program at Columbia
16 University?

17 A. I believe 2011.

18 Q. Was it from March 2011 to February 2012?

19 A. That's correct.

20 Q. Can you please briefly describe the various positions with
21 the police department.

22 A. Yes. I was a police officer in Manhattan South.

23 Later went to Queens South.

24 I got promoted to sergeant and I was assigned to the
25 113 precinct.

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1 And two years later I was assigned to Bronx
2 investigations unit.

3 Q. Now when did you actually start with the police department?

4 A. 1987.

5 Q. And when did you get promoted to sergeant?

6 A. 1996.

7 Q. And where were you assigned when you were promoted to
8 sergeant?

9 A. 113 precinct.

10 Q. Did you also at some time become assigned to the Bronx
11 investigative unit?

12 A. Yes.

13 Q. And was that part -- what unit was that part of?

14 A. That unit was an internal investigative unit; so, basically
15 you would investigate allegations made against officers, more
16 misconduct related.

17 Q. Did there come a time when you were promoted to lieutenant?

18 A. Yes.

19 Q. When was that?

20 A. In 2002.

21 Q. Where were you assigned when you were promoted to
22 lieutenant?

23 A. PSA 8.

24 Q. And what position did you hold as lieutenant in PSA 8?

25 A. Integrity control officer.

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1 Q. What were your responsibilities as the integrity control
2 officer?

3 A. Basically just responsible for the integrity of the
4 command, patrol monitoring, sick, corruption complaints,
5 misconduct complaints.

6 Q. At that time when you were the ICO did you investigate
7 office of chief of department complaints?

8 A. Yes.

9 Q. Now, can you just briefly define what a PSA is?

10 A. It's a public service area that's responsible for
11 developments in a particular borough.

12 Q. Would that be housing developments?

13 A. Housing, yes.

14 Q. And how many PSAs exist?

15 A. Nine PSAs.

16 Q. And that's throughout the city?

17 A. Throughout the city, yes.

18 Q. What geographic area did PSA 8 cover?

19 A. The southern area of the Bronx.

20 Q. Did there come a time when you were assigned to the
21 overhead command of the housing borough Bronx Queens?

22 A. Yes. In 2003, I believe.

23 Q. And what position did you hold there?

24 A. I was the borough administrative lieutenant.

25 Q. And which PSAs did the borough have responsibility over?

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- 1 A. We were responsible for PSA 7, 8, and 9.
2 Q. And which geographic areas did PSA 7, 8, and 9 cover?
3 A. The entire borough of Bronx and Queens.
4 Q. And as administrative lieutenant of the housing borough in
5 2003 what were your responsibilities then?
6 A. Basically we were responsible for collecting, collating
7 overtime, communications reports to the commands, the
8 supporting commands.
9 Q. And did you have any responsibilities with respect to
10 office of chief of department complaints then?
11 A. Yes. We would distribute it to the appropriate command and
12 then in turn we would collect it and review it just to make
13 sure the investigation was conducted properly.
14 Q. Did there come a time when you were promoted to captain?
15 A. Yes.
16 Q. And when was that?
17 A. 2007.
18 Q. Where were you assigned when you were promoted to captain?
19 A. The borough Queens South, 103 precinct -- well actually the
20 100 precinct for two months and then the 103 precinct.
21 Q. Did there come a time when you served as a commanding
22 officer?
23 A. Yes.
24 Q. And when did you first serve as a commanding officer?
25 A. I was assigned to PSA 2 in 2008. June 2008.

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1 Q. And what geographic area does PSA 2 cover?

2 A. It covered Brooklyn North, East New York, Brownsville, and
3 Crown Heights.

4 Q. And what precincts were those housing developments in?

5 A. 73, 75, and 77.

6 Q. And approximately how many officers were under your command
7 at that time?

8 A. It varied from probably about 160 to 200.

9 Q. How long did you serve as the CO of PSA 2?

10 A. Two years and one month.

11 Q. And until what time did you serve as CO of PSA 2?

12 A. Until July of 2010.

13 Q. Did there come a time when you were transferred to the 81
14 precinct to serve as the CO?

15 A. Yes. July 2010.

16 Q. And what are the boundaries of the 81 precinct?

17 A. The boundaries, it runs from the north side of Atlantic
18 Avenue up until Broadway. And then from Saratoga to the -- I
19 believe it's the east side of Marcus Garvey.

20 Q. And you're currently the commanding officer of the 81
21 precinct, correct?

22 A. Yes, I am.

23 Q. What's the neighborhood in the 81 precinct known as?

24 A. Bedford-Stuyvesant.

25 Q. What are the demographics of 81 precinct?

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- 1 A. Demographics. About 77 percent African-American. Maybe
2 17 percent Hispanic. And about 3 percent Caucasian.
3 Q. Generally, what are the crime conditions that you're
4 addressing in the 81 precinct?
5 A. Usually felony assaults, robberies, shootings.
6 Q. How many officers are assigned to the 81 precinct?
7 A. Total members of service, probably approximately 200.
8 Q. Approximately how many represent officers, sergeants, and
9 lieutenants?
10 A. I have 159 officers, 30 sergeants, 7 lieutenants. I no
11 longer have an XO. So it's just me.
12 Q. That position is open? You expect to fill that?
13 A. Yes.
14 Q. And does the 200 officers assigned to the 81 precinct also
15 include impact officers?
16 A. Correct. Yes. About 46 impact officers.
17 Q. And how many anticrime officers do you have at the 81
18 precinct?
19 A. Usually at full compliment one -- well actually two
20 sergeants and ten officers, two different shifts.
21 Q. That represents two teams?
22 A. Two teams, yes.
23 Q. So that's about one sergeant --
24 A. To five officers, yes.
25 Q. And how many officers are assigned to the SNEU?

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1 A. One supervisor, eight police officers.

2 Q. Does the 81 precinct have any impact zones?

3 A. Yes. One impact zone.

4 Q. Where is the impact zone located?

5 A. It pretty much is in the southern end of the precinct. It
6 runs from Herkimer up to Jefferson. So it runs kind of midway
7 up. Then from parts of Saratoga over to Pageant.

8 Q. Now, do you have a sector map that you rely upon when
9 making decisions about how to run the precinct?

10 A. Yes.

11 Q. And I'm going to show you what's been marked as T14.

12 Does that document look familiar to you?

13 A. Yes.

14 Q. What is it?

15 A. It's a sector map.

16 Q. And this is a sector map of the 81 precinct?

17 A. Correct.

18 MS. GROSSMAN: Your Honor, I move to admit.

19 MR. MOORE: No objection, Judge.

20 THE COURT: T14 is received.

21 (Defendant's Exhibit T14 received in evidence)

22 Q. Are you able to identify the impact zone on this -- well
23 first of all let's just look at the map. We see letters on
24 this map?

25 A. Yes.

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1 Q. What do those letters represent?

2 A. They represent sectors, total of ten sectors.

3 Q. And located down here at the bottom of the map it looks
4 like it says Long Island Railroad. Are there -- is that the
5 Long Island Railroad?

6 A. Yes, it is. Atlantic.

7 Q. Now, in terms of identifying the impact zone, are you able
8 to -- let me give you a highlighter and perhaps you can just
9 highlight the impact zone so we can illustrate that for the
10 Court.

11 MS. GROSSMAN: Your Honor, I apologize but I think
12 it's just very small.

13 THE WITNESS: This will be to the best of my
14 recollection, the best I can do.

15 This is the best of my recollection.

16 MS. GROSSMAN: Okay. Very good.

17 Q. So the yellow highlighter represents the approximate
18 boundaries of the impact zone in the 81 precinct?

19 A. Yes.

20 Q. And can you explain how it is that you determined where to
21 send officers in that particular impact zone?

22 A. Well the impact zone was developed as related to high
23 violence; shootings, robberies, things of that nature. It's
24 the southern end of the precinct. It normally drives the crime
25 in the 81 precinct historically.

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1 It used to encompass just sector Ida John. We
2 included George because of an increase in shootings in that
3 particular area.

4 The officers are deployed on post, one-man posts
5 throughout that -- throughout the impact zone.

6 And we have, at any given time we have maybe 25
7 officers, I would say, working at any given time because they
8 actually belong to three separate squads. And naturally
9 there's always one squad off. You have to take into
10 consideration courts and things of that nature.

11 So we have probably about maybe almost -- maybe
12 approximately 50 posts identified in priority order.

13 Q. And the sergeants that -- how many sergeants are assigned
14 to officers -- impact officers on any particular tour?

15 A. Usually on any particular tour, two to three.

16 Q. And would you agree that there are about ten sectors
17 represented in this sector map?

18 A. Correct.

19 Q. How many officers are usually assigned to the ten sectors?

20 A. Usually eight to ten when you're talking patrol officers.

21 Q. And are they divided into about four patrol cars?

22 A. Yes. If there's eight officers, it's four patrol cars.

23 And if it's ten, there's five.

24 Q. And are the sector cars assigned to the particular sectors?

25 A. Yes. It can be Adam Boy, Charlie David, Eddy Frank George.

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1 And then usually Henrietta John.

2 Q. So on average, how many officers are usually assigned to
3 patrol, on any given tour, on average. How many officers are
4 assigned to patrol, impact, and the speciality units?

5 A. On any given -- let's see. Say max maybe 40, 50.

6 THE COURT: I'm sorry. Let's take our morning recess
7 now. Reconvene at quarter to twelve. So we are going to get
8 you right back.

9 (Recess)

10 Q. So, Inspector, I'm just going to mark over here this yellow
11 highlighted area on the sector map, I'm going to note that
12 that's the impact zone.

13 A. Yes.

14 Q. Now are you also aware of locations where shootings have
15 occurred? Are you able to identify where shootings have
16 occurred in the 81 precinct on the sector map?

17 MR. MOORE: Judge, I'm going to object to this line of
18 questioning. We were provided a declaration from of Inspector
19 Holmes with regard to her testimony. As you recall this is
20 somebody we were not able to depose. And there was nothing
21 indicated in that declaration that this would be an area she
22 was going to testify to.

23 MS. GROSSMAN: We did talk about deployment and we
24 mentioned in the declaration that there was going to be general
25 discussion about deployment. This is just a general discussion

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1 about how it is, setting up about how this inspector will
2 deploy officers into the area generally.

3 THE COURT: Well then why don't you do it that way.
4 How did you decide on deployment decisions?

5 THE WITNESS: Based on crimes. Recent crimes.

6 Q. And when there are shootings in the 81 precinct -- excuse
7 me, Mr. Moore?

8 MR. MOORE: Well, Judge, there's nothing in the
9 declaration about this.

10 THE COURT: There is something about the word
11 deployment, is there not? Will I find the word deployment?

12 MR. MOORE: I don't see it in here.

13 THE COURT: That's what I thought Ms. Grossman said.
14 I thought she said she talked about deployment. That's why I
15 believed it.

16 MS. GROSSMAN: In the history of the 81, when we talk
17 about in some of the discussions of the 81 precinct, questioned
18 about proactive policing, reducing crime conditions, improving
19 quality of life, performance goals, result-oriented.

20 It is all in the context of discussing about how
21 activity and deployment is made and conducted. Robbery
22 patterns, how it is --

23 THE COURT: I need to see the declaration. I don't
24 hear anything about deployment.

25 MR. MOORE: Mine is marked up, Judge.

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D599f1o2

Holmes - direct

1 THE COURT: Pardon me? Yours is marked up?
2 Is there a clean one?
3 MR. MOORE: Judge, I would note --
4 THE COURT: It does say deploy.
5 MR. MOORE: Paragraph 12.
6 THE COURT: I see that.
7 MR. MOORE: I withdraw my objection, Judge.
8 THE COURT: Fine. So let's go back to deployment.
9 How do you decide how to deploy your officers?
10 THE WITNESS: Well we basically go on a daily basis as
11 far as crime trends, different crime trends, violent shootings.
12 You know, crime is monitored on a daily basis.
13 Currently my shootings are in sector Frank, Boy and
14 John. BFJ. Total I think about nine shootings year to date.
15 MR. MOORE: I'm going to object to what currently is
16 going on in the 81 precinct, Judge. Because it was not made
17 available to us to look at.
18 MS. GROSSMAN: This is just a general --
19 THE COURT: Does it really matter? We know what
20 sectors today have a lot of shootings? Does it matter in the
21 great scheme of this case that sector FB and something or other
22 have shootings right now in 2013?
23 I don't think it does, so.
24 Q. So where are some of the shootings occurring, and how is it
25 reflected on this sector map?

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1 A. In sector Boy.

2 Q. Okay.

3 A. Which is up north.

4 Sector Frank.

5 And sector John, which is the southern end of the
6 precinct.

7 Q. Now are there particular areas where crime is clustered in
8 the 81 precinct?

9 A. It can fluctuate from up north, sector Boy, which is in the
10 vicinity of Roosevelt houses, housing development.

11 But a lot of it is basically down in the southern end
12 of the precinct which encompasses the impact zone.

13 Q. Is there anything about subways and transportation hubs?

14 A. Yes. Down in the southern end of the precinct there are
15 transportation hubs. It's a housing development. We also have
16 two schools there. It's a small commercial strip there on
17 Fulton. So there's a lot of transient traffic, high traffic
18 area.

19 Q. Now, we've heard testimony about Chauncey Street regarding
20 the 81 precinct. Is this where Chauncey Street is
21 approximately?

22 A. Yes.

23 MR. MOORE: Object to the form. Is this? What does
24 this mean?

25 MS. GROSSMAN: The yellow highlight.

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1 THE WITNESS: Chauncey Street. Yes. It starts at
2 that point and it runs through to Saratoga.

3 I've had two sections of Chauncey Street that were
4 high crime areas. There's a location at 120 Chauncey Street.
5 And that's a -- it's like a federally subsidized residential
6 unit. A lot of crime there including shootings. And then I
7 had one particular corner on Howard and Chauncey that was high
8 crime.

9 Q. Just over here, the bottom south part of the precinct at
10 the bottom of the map. I'm going -- right above the railroad,
11 this area.

12 A. Right above Atlantic?

13 Q. What is that area that I've just highlighted? I'm going to
14 mark it with a T?

15 A. That's Utica Avenue. It's a transportation hub.

16 MR. MOORE: I don't mind the witness looking at the
17 exhibit and marking it. But I don't think it's appropriate for
18 counsel to mark it and then ask the question about it.

19 THE COURT: She's saving time.

20 MS. GROSSMAN: I was. It's very hard to see. And I'm
21 just trying to facilitate this.

22 THE COURT: Is it accurate where the T is?

23 THE WITNESS: Yes. That's transportation hub, Fulton
24 and Utica.

25 Q. If I put the word train, train station?

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1 A. Yes.

2 MR. MOORE: As opposed to T?

3 MS. GROSSMAN: Right.

4 Q. And are there -- where is the housing development in the 81
5 precinct, the Jackie Robinson housing development?

6 A. It's actually -- it's not a housing development. It's just
7 federally subsidized.

8 It's actually adjacent to -- it's a block over from
9 Greenpoint houses. You have the school. You see where you see
10 P.S. 21. It sits off of -- you have Chauncey and -- I can't
11 see this cross street.

12 MR. MOORE: Malcolm X?

13 THE WITNESS: Malcolm X Boulevard, which is Reid. So
14 it's in that vicinity there.

15 Q. Is it in this general area over here?

16 A. A little up towards the -- yes. Down -- just a little up.
17 Because you have the --

18 Q. Up here? Let me give it to you and you can mark it.

19 (Pause)

20 And that's Jackie --

21 A. Jackie Robinson houses.

22 MR. MOORE: Can you share that with everybody else?

23 THE COURT: She will. She'll put it on the screen.

24 MS. GROSSMAN: Sorry. My penmanship is not as good as
25 others.

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1 Q. Jackie Robinson houses right over here near the sector H?

2 THE COURT: Is that right? Where she's pointing?

3 THE WITNESS: Yeah. It's in that vicinity. Maybe a
4 little lower. But that's the general vicinity.

5 Q. Now, how is it that you use these -- the characteristics of
6 the precinct to figure out where it is that you're going to
7 deploy your officers and the type of officers in your command?

8 A. Well it depends on, you know, the demographics of the area
9 as far as whether it's high traffic area, the type of crimes
10 that's being taken. Naturally, where there's more people
11 crime, robbery, shootings, that's going to take precedence over
12 property crimes such as grand larcenies, things of that nature.

13 Q. Now, what do you review in order to assess how to deploy
14 your officers?

15 A. Daily crime reports. It's provided to me through my crime
16 analysis team. So on a daily basis crime is reviewed.

17 Q. And do you learn about the conditions from your supervisors
18 as well?

19 A. Yes, from supervisors, from community; community complaints
20 called in.

21 Q. And do you also learn about concerns or crime conditions
22 from 911 complaints and 311 complaints?

23 A. Yes.

24 MR. MOORE: Object to the form, Judge, leading.

25 THE WITNESS: That's the same as community.

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1 THE COURT: I'll allow it.

2 Go ahead. Objection overruled.

3 So you said -- she asked if you learned about concerns
4 about crime conditions from 911 and 311?

5 THE WITNESS: Correct. Yes. That's a community
6 complaint.

7 THE COURT: Okay.

8 Q. And who assists you in -- well let me rephrase.

9 Who decides where to send the officers?

10 A. Myself, my special operations lieutenant will sit down and
11 discuss deployment. My executive officer when I have one.

12 Q. And how do the location, the time of day, factor into where
13 you send officers?

14 A. That's all gathered from the complaint reports. So we look
15 at the reports, the time of day that crime is occurring. And
16 that's where we want our deployment focused.

17 Q. And are there occasions where you have to adjust the
18 schedules of the officers who are working?

19 A. Sometimes. It depends. Various reasons. Search warrants,
20 things of that nature.

21 Q. Now, when you're making determinations on how to deploy
22 officers, are you looking at crime information from seven to
23 eight weeks earlier in terms of how to respond to a crime
24 that's occurring the night before?

25 MR. MOORE: Object to the form, Judge.

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1 It's well outside the scope of what's in her
2 declaration.

3 THE COURT: Yes. I think this is not -- there is no
4 notice of this topic, the time lag of looking. So I'm going to
5 sustain the objection.

6 Q. What information do you --

7 How is it -- do you respond to crime in real time?

8 A. Yes.

9 MR. MOORE: Object to the form, Judge.

10 THE COURT: No. I'll allow that. Obviously people
11 respond to crime in real time. All right.

12 Q. How do you define real time?

13 A. Real time is a daily basis. I mean we operate week to week
14 usually, you know, on a 28-day basis. But real time for me is
15 crime that's coming in you know throughout the week.

16 Q. And would it be fair to say the majority of your command
17 resources are in response to these real time crime conditions?

18 A. Yes.

19 Q. Is crime equally distributed through the 81 precinct?

20 A. No. It fluctuates. It can vary. Like I said, the busiest
21 area is usually the southern end of the precinct. At times it
22 can be the northern end in sector Boy.

23 Q. And what sectors experience the least amount of crime in
24 the 81 precinct relative to the other sectors?

25 A. Probably --

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1 MR. MOORE: I just don't know what the relevance of
2 this is, what sectors have less crime or more crime.

3 THE COURT: Neither do I to tell you the truth. Can
4 you make a proffer, please. I don't know why we're doing this.

5 MS. GROSSMAN: Well I think that it's important in
6 terms of what we want to argue is that crime is addressed --
7 crime occurs in certain areas and the officers are being sent
8 to those particular areas and the idea --

9 THE COURT: I think the record has plenty of evidence
10 to that effect already.

11 What is it, Mr. Charney?

12 MR. CHARNEY: The only other thing I would say your
13 Honor is we've repeatedly stated throughout this case that
14 we're not challenging the fact that they deploy officers to
15 high crime areas.

16 So, again, the relevance of this topic is completely a
17 mystery to us.

18 MS. GROSSMAN: Your Honor, this is a citywide --

19 THE COURT: I'm not going to allow it. It's not
20 relevant to the issues before me.

21 MS. COOKE: I just would note that the plaintiffs'
22 expert does again challenge the use of that high crime area box
23 on the UF 250, both in the aggregate and that's part of the
24 script. So to the extent that this witness is providing
25 specific testimony about areas of high crime in this precinct

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1 and what that means then for deployment and the officers who
2 are using stops, I think that that would be relevant, your
3 Honor.

4 THE COURT: I sustain the objection.

5 Q. Now would it concern you if one out of every ten stops lead
6 to an arrest or summons? Does it raise questions in your mind
7 as to whether officers have reasonable suspicion to make a
8 stop?

9 A. No.

10 MR. MOORE: Object to the form of that question,
11 Judge.

12 Q. How come?

13 A. Well, first of all, the standard proof for arrest is
14 probable cause. In addition to that, stops can be more
15 qualitative as far as deterring crime that may have been about to
16 happen. So I don't see how that's relevant.

17 MR. MOORE: Judge, can I ask that the question and
18 answer be read back because I --

19 MS. GROSSMAN: I'll withdraw it.

20 THE COURT: No. No. It's on the record. He can ask
21 that it be read back. The record is the record.

22 Go ahead.

23 (Record read)

24 MR. MOORE: Thank you, Judge.

25 Q. And the standard for making a stop is?

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1 A. Reasonable suspicion.

2 Q. Now have you or your officers responded to crime complaints
3 or jobs where more than one officer may respond to a single
4 complaint?

5 MR. MOORE: Judge, again. I'm sorry. I apologize for
6 this. But none of this was covered in the declaration and this
7 is all new to us.

8 THE COURT: Nor do I see the relevance of this
9 question either, so objection sustained.

10 Q. Now in terms of the number of stops that generate an arrest
11 or a summons, what explains that phenomenon in your precinct?

12 MR. MOORE: Object to the form, Judge.

13 THE COURT: I'm interested in this question.

14 THE WITNESS: Well, you know if you get a radio run a
15 lot of times or sometimes I should say there -- complaints
16 involve whether there's description of multiple suspects. So
17 one radio run can generate a stop of four to six individuals,
18 depending on the description and what information the
19 complainant is feeding to the -- you know, being fed to the
20 officers.

21 Q. Can you give an example?

22 A. Example can be a robbery. I had a robbery that took place
23 where a teenager was robbed for a cellphone. He said it was
24 six individuals. They gave a description. The description was
25 khaki pants and light blue golf shirts which is consistent with

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1 the uniform of the middle school students. He said it was
2 about four to six individuals.

3 Q. And so how might that generate --

4 THE COURT: Are you aware of what percentage of
5 reasonable suspicion stops are based on radio run calls?

6 THE WITNESS: No.

7 Q. And might that also be responsive to a pattern that's not
8 necessarily related to a 911 call?

9 MR. MOORE: Objection.

10 THE COURT: I don't understand that question.

11 BY MS. GROSSMAN:

12 Q. Might that situation --

13 THE COURT: What situation?

14 MS. GROSSMAN: I'm responding to what your question
15 was, your Honor.

16 THE COURT: I know. What situation are you talking
17 about?

18 BY MS. GROSSMAN:

19 Q. Well if the percent -- there are occasions when officers
20 respond to crime pattern that may generate multiple stops,
21 right.

22 A. Right. I mean we may have an existing pattern in the
23 precinct where we have -- I had a robbery pattern 95, maybe
24 over a year ago. And there was a group of males that were
25 attacking single males getting off the train, you know, in the

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1 vicinity of a particular area and not just robbing but
2 assaulting and robbing them so. You know it was multiple
3 suspects in that particular pattern.

4 Q. So would it surprise you if numerous stops were made in
5 connection with that particular situation?

6 MR. MOORE: Again, Judge, I don't see the relevance of
7 this testimony.

8 MS. GROSSMAN: Well, it's --

9 THE COURT: The relevance is -- it all goes back to
10 the question about would she be troubled by the fact that
11 90 percent of the stops do not result in arrest or summons and
12 she's explaining why she would not be troubled. That's what it
13 relates to. So I'll allow it.

14 MS. GROSSMAN: You can answer the question.

15 THE WITNESS: Oh, yes.

16 Q. So the answer would it concern you -- can you read back
17 that last question please.

18 (Record read)

19 A. No.

20 Q. And what other examples would explain this phenomenon of
21 one arrest for every ten stops?

22 MR. MOORE: Object, Judge. First of all, she's not an
23 expert. She wasn't -- there's nothing in her declaration where
24 she was -- that would indicate she was going to talk about
25 explaining why there's a 90 percent rate of no summons and no

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1 arrest from stops.

2 MS. GROSSMAN: Your Honor, I was just also --

3 THE COURT: I don't think you can ask the generality
4 of her explaining of a citywide phenomenon. If you want to ask
5 her about her precinct, something that you haven't already
6 asked, which you've already covered radio run descriptions,
7 you've already covered crime patterns. What else do you want
8 to cover?

9 MS. GROSSMAN: Sure.

10 Q. Are there other occasions in your precinct where there may
11 be complaints about disorderly groups of people that might
12 generate more than one stop per complaint?

13 MR. MOORE: Object to the leading nature of that
14 question, Judge.

15 THE COURT: I'll allow it.

16 THE WITNESS: Yes.

17 Q. And can you explain -- give an example.

18 A. Just we can get a disturbance at a location. Again it
19 could be a group of kids. We have several schools throughout
20 the precinct. So school dismissal is a major time for us. So
21 you can get a call just in the area where people may think that
22 there's something about to happen or they see a kid surrounded
23 or maybe they're antagonizing an individual, a group of
24 individuals. So there are times where disorderlies can
25 generate that.

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1 Q. Now, as you testified earlier you became the commanding
2 officer of the 81 precinct about three years ago, 2010, right?

3 A. Correct.

4 Q. And who was the commanding officer of the 81 precinct
5 immediately before you?

6 A. Deputy Inspector Steven Mauriello.

7 Q. At the time that you took over the command were you aware
8 of allegations about quotas being in place at the 81 precinct?

9 A. Through the media I was aware.

10 Q. And who appointed you to the 81 precinct as the commanding
11 officer?

12 A. The police commissioner.

13 Q. Did he or any of your superiors discuss the quota
14 allegations with you before you took over the command?

15 MR. MOORE: I guess she can answer that question but
16 if she's going to talk about what they said I would object to.

17 THE WITNESS: No.

18 MR. MOORE: I'm sorry. The answer was no?

19 THE WITNESS: No.

20 Q. Were you generally informed about any investigation -- were
21 you generally informed about any kind of ongoing investigation
22 commenced by Officer Schoolcraft?

23 A. Correct, yes.

24 MR. MOORE: Judge, once again, there is no mention in
25 the affidavit about any investigation she might have done.

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1 MS. GROSSMAN: It's about being informed.

2 MR. MOORE: Let me just finish.

3 THE COURT: You're both speaking at once.

4 Mr. Moore was speaking first. Please finish.

5 MR. MOORE: There was nothing in this declaration
6 about her being -- testifying about any investigation she might
7 have been asked to do or did.

8 THE COURT: Nor was that the question.

9 The question was were you generally informed about any
10 investigation -- were you generally informed about any kind of
11 ongoing investigation commenced by Officer Schoolcraft.

12 MR. MOORE: Of Schoolcraft. There is no indication of
13 that in the declaration.

14 THE COURT: I got that. She's not being asked
15 anything other than was she informed, generally informed.

16 I'll take a yes or no and move on.

17 Were you generally informed of any such thing?

18 THE WITNESS: Yes, Judge.

19 THE COURT: I'm leaving it at that.

20 Q. Upon your assignment to the 81 precinct, how did you go
21 about assessing the way that command was functioning when you
22 arrived?

23 A. I came into the precinct naturally. At that time moral was
24 kind of low. But, you know, you assessed your crime, the
25 officers. I looked at a lot of officers in certain positions,

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1 lieutenants, and sergeants. Just looked at their history as
2 far as their disciplinary history, skill sets, things of that
3 nature.

4 Q. Now when you first came to the command, did any officers
5 complain to you that quotas had been in place?

6 A. No.

7 Q. When you first arrived at the 81 precinct did you notice
8 any signs that officers believed that they had to meet a quota
9 of any kind?

10 A. No. No.

11 Q. And did you institute a quota?

12 A. No.

13 Q. Were you -- what were some of the plans that you put --
14 what are some of the changes that you put in place at the 81
15 precinct when you arrived?

16 A. Well I changed my special operations lieutenant.

17 I put in place some community outreach programs such
18 as a -- like a mini JRIP program that I was -- that I had when
19 I was a CO in PSA 2.

20 I had a girl talk program.

21 Things of that nature. Just trying to build
22 relationships with the -- rebuild strong relationships with the
23 community.

24 Q. And how would you use the -- how would you invite -- how
25 would you use the community at roll call?

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1 A. They were invited to speak. Several clergy members,
2 elected officials would come in and address the troops.

3 Q. Did you personally conduct the role calls?

4 A. Yes. Several.

5 Q. And did you hold meetings with your supervisors and
6 specialty units to talk about what your expectations were?

7 A. Yes, I did.

8 Q. Now, did you have any concerns when you arrived that the
9 officers were not fully aware of the conditions that were
10 present in the 81 precinct?

11 A. Yes. Well, that was based on my questions and the answers
12 that I received at roll call.

13 I thought it was just a lack in collaboration between
14 the specialty units, detective squad, the officers on patrol.
15 They weren't as informed as they should have been, according to
16 my standards.

17 Q. And what did you do to communicate the information to the
18 officers?

19 A. I made sure it was incorporated in their briefings. I put
20 a daily conditions report in place that was updated on a daily
21 basis through crime analysis, given to the supervisors,
22 incorporated into the roll call briefings. Took role calls
23 myself. Made sure our confident -- the CIC center was up to
24 date, which is crime information center.

25 Q. Now when you arrived was Quest for Excellence in place yet?

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1 A. No.

2 Q. Now did you make any staffing changes when you arrived at
3 the 81 precinct?

4 A. I did.

5 Q. What kind?

6 A. My SOL -- my special operations lieutenant, he was changed,
7 and my administrative lieutenant.8 Q. Now during this trial we heard some audiotapes that
9 discussed the location known as 120 Chauncey. Is that a hot
10 spot in your command?

11 A. Yeah. It's busy. I mean it's -- historically it has been.

12 Q. Did you do anything to address the crime that occurred when
13 you arrived?

14 A. Yes, I gave --

15 MR. MOORE: Judge, I don't think this is relevant,
16 what she did to address conditions at 120 Chauncey when she
17 became commanding officer of the 81 precinct.

18 THE COURT: What's the relevance?

19 MS. GROSSMAN: Your Honor, Inspector Mauriello left
20 under certain allegations and it is now -- and there were
21 allegations of quotas. And so now there is a new commanding
22 officer coming to the precinct. And we want to discuss what --
23 how it was addressed, how concerns might have been addressed.24 And the testimony of this witness is important to
25 explain what steps this officer -- this commanding officer took

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1 to address concerns that were raised from the quota
2 allegations.

3 THE COURT: I didn't hear that in the question. Is
4 this a response to the allegation about quotas?

5 MS. GROSSMAN: No, it's not necessarily.

6 THE COURT: Well then don't say it is if it isn't.

7 First you said it was in response to quota
8 allegations. And then when I asked you, you said it's not a
9 response to the quota allegations.

10 MS. GROSSMAN: Sorry.

11 THE COURT: One or the other. If it's not, I don't
12 want it.

13 MS. GROSSMAN: Well, generally the condition of the
14 command at the time that moral is low.

15 THE COURT: That's not an issue here. I need to focus
16 on the issues in this trial. We're at the end of a long
17 stretch. Materials that don't go to the issues before me are
18 not of interest.

19 Q. What's your view of Quest for Excellence?

20 A. It's a condition report. It gives the officers direction.
21 Very informative as to the conditions that's going on in the
22 precinct.

23 Q. How did you communicate the conditions to the officers in
24 your command after Quest was put into place?

25 A. There's a commander's conditions report. So it's indicated

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1 there.

2 Q. Now are you aware of the 802 QAD audits?

3 A. Yes.

4 Q. Referring to Defendants' Exhibit G6.

5 Now when you first arrived to the 81 precinct did you
6 meet with QAD?

7 A. Yes.

8 Q. How come?

9 A. That's standard procedure to meet with them and you get
10 abreast of your administrative conditions in the precinct.

11 Q. Now referring to -- prior to your arrival at the 81
12 precinct you were at the PSA 2, correct?

13 A. Correct.

14 Q. Can we pull up 2008. Bates number ending 4315.

15 Now do you see --

16 MR. MOORE: Hold on, hold on, hold on.

17 Okay.

18 Q. Now do you see over to the right PSA 2 -- sorry. So did
19 you receive a 4.0 in the activity log rating when you were at
20 PSA 2?

21 A. Yes.

22 Q. That was when you were the commanding officer of PSA 2?

23 A. Correct.

24 Q. And that's at Bates number ending, like I said, 4315. And
25 the overall rating was a 3.7?

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A. Yes.

Q. For the overall stop-question-frisk audit?

A. Correct.

(Continued on next page)

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1 Q. Now, moving on to the 2009 802 audit at 18534.

2 PSA 2 received a 3.0 on the activity log rating. Do
3 you see that?

4 A. Yes.

5 Q. And a 3.7 overall in the 802 stop, question and frisk
6 audit?

7 A. Yes.

8 Q. Then in 2010, that's when you moved to the 81st Precinct,
9 right?

10 A. Correct.

11 Q. So now let's move on to 21746.

12 When you arrived, the 81st Precinct had received a 1.0
13 in the activity log rating. Do you see that?

14 A. Yes.

15 Q. And a 2.4 overall in the stop, question and frisk 802,
16 right?

17 A. Yes.

18 Q. Now, moving on to 2011, at 221 --

19 MR. MOORE: Judge, before she goes on, Ms. Grossman
20 asked, and when you arrived, the precinct got a 1.0 rating.
21 She arrived in July. This is a rating for the third quarter,
22 which is July, August and September. So it's not accurate that
23 it was when she arrived.

24 THE COURT: You're saying it's not a condition she
25 found, but it was a condition she was managing, so to speak?

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1 MR. MOORE: Absolutely.

2 THE COURT: I understand.

3 Now you're showing what year? This is 2011?

4 MS. GROSSMAN: 2011.

5 THE COURT: Is this a quarter?

6 MS. GROSSMAN: Yes.

7 THE COURT: Which quarter?

8 MS. GROSSMAN: It is the fourth quarter.

9 THE COURT: So this is the end of 2011.

10 MS. GROSSMAN: 22188.

11 Q. It looks like the command received a 2.0 in the activity
12 log rating?

13 A. Correct.

14 Q. And an overall rate of 3.0?

15 A. Yes.

16 Q. And then moving on to 2012, which is third quarter, at
17 27861, you command received a 2.0 in the activity log rating?

18 A. Yes.

19 Q. And an overall rating of 3.4?

20 A. Correct.

21 Q. And so upon arriving, what steps did you -- what efforts or
22 steps did you take to remediate the activity log deficiency?

23 A. Well, we put in place some spot-checking. So I had the
24 integrity control officer, as well as my administrative
25 lieutenant, actually pulling samples, pulling 250s from

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1 particular squads, and we will pull from the anticrime and from
2 various platoon squads, and then they would request of the
3 officer the corresponding activity log entry, just to try and
4 improve our rating.

5 In addition to that, at roll calls, the training
6 sergeant and myself, we pretty much reiterated the importance
7 of detailing the stop in the activity log as well as on the
8 stop, question and frisk report. At supervisor meetings,
9 stressed the importance of when you inspect the logs, inspect
10 also for the corresponding entry related to the 250 as far as
11 the details.

12 Q. And were any officers disciplined for failure to make
13 complete activity log entries?

14 A. Yes.

15 Q. Do you believe that these changes were responsible for
16 bringing about some of the improvements that you have seen?

17 MR. MOORE: Object to the form, Judge.

18 A. Yes.

19 THE COURT: Sustained. The answer is stricken.

20 Q. What is your understanding about what brought about the
21 changes in the activity log ratings?

22 A. Just the procedures that we put in place.

23 Q. Now, did you have an understanding as to what the
24 deficiency in the activity logs were? Was it, for example,
25 failure to complete an activity log at all or incomplete

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1 activity logs?

2 MR. MOORE: Objection. Leading.

3 THE COURT: It is leading. Why don't you let her tell
4 us.

5 A. What actually happened, what we discovered was that during
6 our inspections, there would be a part entry. It would be just
7 the stop itself, the time they stopped, a brief pedigree, and
8 it didn't include the details, and that's why we were failing
9 because it was important to include the details.

10 Q. Now, are you aware of the 803 audits?

11 A. Yes.

12 Q. How is your command doing in 2012 on the 803 audits?

13 A. Pretty well.

14 MR. MOORE: Also, there is nothing in the declaration
15 about the 803 audits.

16 THE COURT: It apparently improved under her command.
17 That's nice.

18 So it's better?

19 THE WITNESS: Yes. Thank you.

20 Q. Now, officers in your command are currently submitting 250s
21 along with the corresponding activity log to the desk officer?

22 A. Correct.

23 Q. When did officers in your command start doing this?

24 A. Well, what happened, I went to a commanders' meeting and it
25 was mentioned about another borough that had implemented

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1 something that proved to be effective as far as the officers
2 complying with detailing the reports. So my borough commander
3 made mention of it to me. So I would say maybe the end of
4 February, sometime in February, after attending a commanding
5 officers meeting.

6 MR. MOORE: I apologize for this. This is very
7 specific with respect to certain recent changes, and there is
8 nothing in the declaration that sets that forth. So we are at
9 a real disadvantage in terms of being able to cross-examine her
10 on information we are learning for the first time here in
11 court.

12 THE COURT: I am going to cut it off, but I am going
13 to leave in place what she has already said. Basically, what
14 I'm left with is the place improved under her command.

15 Q. Now, did you receive a memo from the chief of patrol dated
16 March 5, 2013?

17 A. Yes.

18 Q. Are the officers in your command in compliance with that
19 memo?

20 A. Yes.

21 MR. MOORE: Judge, how could she know whether --

22 THE COURT: All right. Objection sustained and the
23 answer is stricken.

24 MS. GROSSMAN: Your Honor, I understand that, in terms
25 of the declaration, it's to give the plaintiffs notice of

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1 general topics.

2 THE COURT: And furthermore, current data that
3 occurred in 2013 that hasn't been turned over has not been
4 allowed throughout the trial, and it's not changing now.

5 MS. GROSSMAN: I am not providing data.

6 THE COURT: It is data. That's really what you're
7 calling for. I am not going to allow it.

8 MS. GROSSMAN: I would just submit, your Honor, that
9 this is a case seeking injunctive relief, and what is currently
10 going and what was going on in January would be relevant.

11 MR. CHARNEY: The problem is we can't in any way
12 verify the veracity of this because they haven't produced any
13 250s.

14 THE COURT: I understand that. Discovery had to end
15 at some point and the information that goes into the trial
16 record has to have a date cutoff. Otherwise we can start all
17 over again and take into account the first six months of 2013.
18 And then that would get old and we can take into account the
19 last six months of '13, and we could be trying this case in
20 January '14. I can't do that. I understand this is injunctive
21 relief, but I can't bring it current all around. We would be
22 here for months. And the materials have never been produced to
23 the plaintiffs. There is no way for them to cross-examine, no
24 way to double-check the figures. Maybe one precinct is better,
25 maybe another precinct is not. They would have to look at it

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1 citywide to make an argument. You can't open up the second
2 quarter of 2013. And I have said this. It is a consistent
3 ruling. You have tried before, and I have said no. There has
4 to be a cutoff and the cutoff was the close of discovery.

5 MS. GROSSMAN: Discovery closed, your Honor, many
6 years ago.

7 THE COURT: No, it did not. Depositions were
8 continuing. Documents were continuing. It seems to me through
9 2012, lots was produced. I can't get into '13. I can't do it.
10 Today is a new day. Maybe we can have statistics about May
11 2013. I can't do that. We are in the middle of a trial. The
12 trial started in March. So at some point you have to draw a
13 line and say, look at the evidence up to a certain point in
14 time.

15 Why are we having this conversation? I think I have
16 already made a ruling. If you would move on to your next
17 question I would appreciate it.

18 BY MS. GROSSMAN:

19 Q. How do you know the supervisors in your command are
20 supervising officers who are engaging in stops?

21 A. Well, stops are put over the radio. So my radio is on
22 pretty much at all times when I am working, and you can hear
23 the officers go over, as far as their stops are related, you
24 can hear when a supervisor responds.

25 Q. What about your lieutenants, how do your lieutenants

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1 oversee stops?

2 A. Lieutenants, they take the role of patrol supervisors also,
3 so a lot of times they are in the same capacity where they can
4 respond to the stop.

5 THE COURT: By respond, you mean go there?

6 THE WITNESS: Yes.

7 Q. How does it allow the lieutenants to observe what is
8 happening at the scene?

9 A. They have firsthand knowledge; they are there.

10 THE COURT: "How does it allow the lieutenants to
11 observe what is happening at the scene?" What is "it"?

12 MS. GROSSMAN: I am sorry. Let me rephrase that
13 question.

14 Q. So responding to the scene -- let me rephrase that.

15 Are there also occasions where lieutenants will
16 respond to arrest situations?

17 A. Yes.

18 Q. How does that permit the lieutenant to assess whether an
19 officer has made a stop based on reasonable suspicion?

20 A. He has firsthand knowledge. If he is present during the
21 stop, he has a visual of what occurred. If not, then the
22 officer -- he is informed by the officer as to what he observed
23 or what occurred, what led him to believe that he had probable
24 cause to make an arrest.

25 THE COURT: In the vast number of stops, given the
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1 number of officers, sergeants and lieutenants, I assume the
2 lieutenants are not there at the initiation of the stop
3 typically?

4 THE WITNESS: Typically not.

5 THE COURT: Then they are called and then they come?

6 THE WITNESS: Correct.

7 THE COURT: Usually they are getting a description
8 from the officer after the stop is made?

9 THE WITNESS: Yes.

10 THE COURT: Thank you.

11 Q. Then your anticrime officers very often work with
12 sergeants?

13 A. Yes.

14 Q. So is that another opportunity for the sergeants to observe
15 the stops happening?

16 A. Yes. Because they are in plain clothes, they have to have
17 a supervisor assigned to them.

18 THE COURT: Explain that to me again.

19 A. Because they are in plain clothes, they have direct
20 supervision, the anticrime officers. So there has to be a
21 supervisor with them.

22 THE COURT: With them?

23 THE WITNESS: Yes.

24 THE COURT: I think you said about 150 officers. How
25 many of those are anticrime?

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1 THE WITNESS: Ten.

2 Q. What about the other specialty units, are there any in
3 plain clothes?

4 A. No. They are in uniform.

5 THE COURT: It's just the ten that would actually have
6 the supervisor with them?

7 THE WITNESS: Correct.

8 Q. Now, how do the integrity control officers monitor officers
9 at the 81?

10 A. He basically monitors patrol. He will go out and respond
11 to radios runs. He stands roll calls. He answers our
12 communications. Administrative duties.

13 Q. How do you know the ICO is monitoring the officers?

14 A. Just based on the feedback that I get from him,
15 disciplinary records, you know, where he has made observations,
16 and there has been some discipline as a result of it.

17 Q. Do you meet with your ICO?

18 A. Every day that I am working we meet. If he is working, I'm
19 working, we speak.

20 Q. Are supervisors required to inspect memo books?

21 A. Yes, they are.

22 Q. How do you know this is happening?

23 A. Well, after it's inspected by them it's inspected -- well,
24 supervisor, meaning sergeant, the first line of supervision.

25 And then, in addition to that, the lieutenant inspects the

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1 sergeant's memo book. The XO will inspect the lieutenant's
2 memo book. The ICO inspects memo books. I inspect memo books
3 when I'm out on patrol.

4 Q. Now, you mentioned earlier that you once served as the ICO
5 at PSA 8. And you had responsibility for conducting OCD
6 investigations then?

7 A. Yes.

8 Q. How many did you conduct when you were the ICO?

9 A. It could approximate, anywhere from 70 to 100.

10 Q. Now, at the 81 Precinct, who is responsible for managing
11 the intake and distribution of the OCD investigations?

12 A. The administrative office.

13 Q. The administrative lieutenant?

14 A. Lieutenant, yes.

15 Q. What else is the administrative lieutenant required to do
16 with the results of the OCD investigation?

17 A. It gets forwarded to the chief of department.

18 Q. Who is actually responsible for conducting the OCD
19 investigations at the 81 Precinct?

20 A. The OCD at the 81 Precinct, the lieutenant pretty much
21 conducts the investigation for probably 90 percent of my OCD
22 communications.

23 Q. What about the assistant ICO, is that person also
24 responsible?

25 A. Yes.

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1 Q. Would allegations of improper stop, question and frisk be
2 investigated by that ICO or assistant ICO?

3 A. Correct.

4 Q. Has the ICO or the assistant ICO received training from IAB
5 on how to conduct investigations?

6 A. Yes.

7 Q. What is the administrative lieutenant required to do in
8 order to ensure that the investigation is done adequately?

9 A. The administrative lieutenant?

10 Q. Yes.

11 A. As far as making sure?

12 Q. That the paperwork is included in the investigation.

13 A. Yes. Really, the administrative lieutenant, once it comes
14 to the command, she distributes it to the ICO. He is
15 responsible for collecting whatever data he needs, as far as to
16 conduct his investigation. Once he completes his
17 investigation, that paperwork gets filed with the command's
18 copy, and then he forwards a disposition sheet to the Office of
19 the Chief of Department.

20 Q. Do squad supervisors in the 81st Precinct investigate OCD
21 complaints against officers he or she directly supervises?

22 A. Occasionally, if it's not involving them.

23 Q. Now, how are the OCD investigations conducted at the 81st
24 Precinct?

25 A. Can you restate the question?

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1 Q. What are the steps taken to investigate an OCD complaint?

2 A. It could be numerous steps. Sometimes it comes
3 unidentified officer. It will give us a time, media, RMP
4 number. So at that time, you may have to look at roll calls,
5 look at the vehicle distribution log, memo book entries may be
6 retrieved.

7 Q. What about other paperwork generated by the police
8 department?

9 A. Arrest reports, stop, question and frisk reports.

10 Q. Are interviews conducted of the officers?

11 A. Sometimes, yes. Basically, yeah, informal interviews.

12 Q. What about contact with the complainant, does that happen?

13 A. Yes. Attempts are made. Sometimes it's unsuccessful, but
14 for the most part, contact is definitely made.

15 Q. When attempts to contact the complainant are made, is that
16 documented anywhere?

17 A. Well, the integrity control officer has his way of keeping
18 records. He keeps -- naturally, the disposition sheet he can
19 put, you know, when he is unable to speak to a complainant or
20 when he did speak with a complainant. As far as when you have
21 to make numerous attempts, I know firsthand I would document
22 that on my paperwork, that was part of my package.

23 Q. Do interviews with the complainant occur over the phone or
24 in person?

25 A. Mostly over the phone.

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1 Q. How come?

2 A. That's the form of contact that they give us, and most of
3 the time that's what is preferred. If they prefer to speak
4 with you personally, I know that there is time made to speak
5 with them personally.

6 Q. If the ICO is unable to reach the complainant by phone,
7 would he or she go to their home for an interview?

8 A. Sometimes. Sometimes they will send a sector car over
9 there to see if they actually live there, if there is another
10 number or form of contact where they can be reached or
11 preferred time.

12 Q. If an ICO is unable to reach out to the complaining
13 witness, does the investigation still continue?

14 A. Yes. The investigation still continues related to him
15 collecting the proper paperwork needed and interviewing the
16 officer.

17 Q. Now, do you review the OCD complaints that are referred to
18 the 81st Precinct?

19 A. I read -- basically, 90 percent of the complaints that come
20 in I read.

21 Q. What about the results of the investigation, do you review
22 any of them?

23 A. Not all of them. Ones that stick out to me, that I take
24 personal interest in, then I naturally speak with the ICO and I
25 want to know what the results are.

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- 1 Q. Do you have conversations with your ICO about some of the
2 investigations?
3 A. Yes.
4 Q. Generally, what would you discuss with the ICO?
5 A. Just the results, what he has done. If I think he could
6 have done more, I will suggest that.
7 Q. What is done with all the paperwork collected in connection
8 with the OCD investigation?
9 A. He files it.
10 Q. Does that paperwork actually get transmitted along with the
11 report, the final disposition report?
12 A. No.
13 Q. Are there occasions when you substantiate OCD findings
14 against an officer?
15 A. Yes.
16 Q. Have you issued command disciplines for substantiated OCD
17 complaints?
18 A. Yes.
19 Q. Now, in the 81st Precinct, if an officer signed the UF-250
20 for an officer, would that supervisor be permitted to conduct
21 an OCD investigation into allegations made against the officer?
22 A. No. He shouldn't be. It's not common practice.
23 Q. Are you aware of occasions when an OCD investigation was
24 returned to a supervisor for further investigation?
25 A. Yes.

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1 Q. Now, has your command received OCD complaints alleging that
2 a person was stopped for no reason?

3 A. I actually looked into this. I received a total of 12
4 complaints last year related to stops.

5 MR. MOORE: When did she look into it? We were not
6 given the results of her survey. Once again, this is all being
7 caught by surprise.

8 THE COURT: The question was, "Has your command
9 received OCD complaints alleging that a person was stopped for
10 no reason?"

11 And you said, "I received a total of 12 complaints
12 last year related to stops"?

13 THE WITNESS: Yes. It was related to the fact that
14 the complaints alleged that they shouldn't have been arrested
15 or they shouldn't -- summonses related.

16 THE COURT: We are not talking about summonses or
17 arrests. The question was, have you received complaints where
18 people were stopped for no reason?

19 THE WITNESS: I recall a complaint where an
20 individual --

21 THE COURT: One single complaint?

22 THE WITNESS: It wasn't the person stopped that made
23 the complaint. It was someone who had observed the stop.

24 THE COURT: What year was that?

25 THE WITNESS: 2012.

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1 THE COURT: Sometime in 2012, someone who observed a
2 stop had complained and that reached you?

3 THE WITNESS: Yes.

4 Q. Are you aware that the patrol guide procedure regarding
5 stop, question and frisk requires the desk officer to sign the
6 250s?

7 A. Yes.

8 Q. But in practice, are squad supervisors actually signing the
9 250s in your command?

10 A. Sometimes. Mostly, it's the specialty units, where the
11 anticrime boss, conditions boss will inspect and sign their
12 250s.

13 Q. That includes conditions, SNEU, anticrime?

14 A. Yes.

15 Q. Does that also include impact officers?

16 A. Impact officers, they have their immediate supervisors.
17 They may at times sign their 250s.

18 Q. Now, while you were the CO in the 81st Precinct, how many
19 officers received a 2.5 or lower?

20 MS. GROSSMAN: Let me rephrase that.

21 Q. For last year, how many?

22 THE COURT: 2012.

23 A. No one that I recall received 2.5.

24 Q. Now, as the commanding officer of the 81st Precinct, are
25 you responsible for performance monitoring?

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1 A. Yes.

2 Q. I am going to refer you to Defendants' Exhibit Z3.

3 THE COURT: Is that in evidence already?

4 MS. GROSSMAN: It is in evidence. Just as a courtesy.

5 Q. So referring to Bates number ending in 6350, do you see on
6 the screen, on the elmo, the list of criteria for an officer to
7 be on performance monitoring?

8 A. Yes.

9 Q. Now, are you notified when civilian complaints are brought
10 against a police officer?

11 A. Yes, through my ICO.

12 Q. How does the ICO receive notice that an officer has
13 received civilian complaints in your command?

14 A. He logs into the CCRB -- you know, we have an application
15 where he can actually log in and retrieve the 81st Precinct
16 complaints.

17 Q. Are reports sent also to the ICO listing the CCRBs?

18 A. Yes.

19 Q. Now, have officers on your command been placed on
20 performance monitoring?

21 A. Yes.

22 Q. Approximately how many?

23 A. Eight.

24 THE COURT: Eight?

25 THE WITNESS: Eight.

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Holmes - direct

1 THE COURT: Since you have been there?

2 THE WITNESS: Yes.

3 Q. Are civilian complaints about police stops the subject of
4 some of these civilian complaints that you just referred to?

5 MR. MOORE: If she is going to get into the details --

6 MS. GROSSMAN: It's just generally.

7 MR. MOORE: Again, it's going into an area that we
8 haven't had the opportunity --

9 THE COURT: I asked that about police stops also.

10 I thought, actually, she said already there was only
11 one complaint about a stop.

12 MS. GROSSMAN: That's an OCD complaint. Now I am
13 talking about CCRBs.

14 THE COURT: You're talking about civilian complaints.
15 Your question did not say CCRB. It said civilian complaints.

16 In fact, you said one civilian who observed a stop
17 complained to you. You were aware of that. Now I guess she
18 meant CCRB. Have you known about CCRB complaints about stops?

19 THE WITNESS: No. I conferred with my lieutenant, and
20 he assured me that there are no CCRBs related to an individual
21 being stopped for no reason.

22 MR. MOORE: Objection.

23 THE COURT: It's hearsay. Now it's hearsay.

24 You weren't made aware of any CCRB?

25 THE WITNESS: No.

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1 THE COURT: I will allow that.

2 Q. How do you learn that someone is placed on a monitoring
3 program?

4 A. I learn that through the integrity control officer,
5 employee management division gives us a call and sends us
6 correspondence related to that.

7 Q. What is your role in the performance monitoring process?

8 A. Well, you want to speak to the officer and inform them of
9 the negative impact that it can have on your career. You meet
10 with him. You can meet with his supervisor. You can sometimes
11 change his position, where he is in a more supervised position.
12 The integrity control officer does, I believe it's quarterly
13 reports that they actually get.

14 Q. Are you required to document the fact that you have had a
15 meeting with an officer on performance monitoring?

16 A. Yes.

17 Q. How do you document that?

18 A. It's just a written 49. The ICO will type it up and put it
19 in their folder.

20 Q. How long is the officer on monitoring?

21 A. Usually it's 12 months.

22 Q. After 10 months, are you required to provide some sort of
23 recommendation about whether the officer should be removed?

24 A. Yes. Usually -- I'm sorry. Yes. Usually you will get a
25 request from EMD saying that they are pending removal and your

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Holmes - direct

1 recommendation.

2 Q. If an officer receives a civilian complaint from the
3 Civilian Complaint Review Board, while on performance
4 monitoring, what are you expected to do about that?

5 A. I am a little confused.

6 Q. If you learn that an officer has received another civilian
7 complaint from the Civilian Complaint Review Board, how does
8 that impact your recommendation as to whether the officer
9 should remain on performance monitoring or not?

10 A. It may be an indication that there is still some
11 improvement, as far as for the behavior or performance,
12 whatever reason they are on performance monitoring for.

13 Q. Does it matter if that CCRB complaint was substantiated or
14 unsubstantiated?

15 A. No.

16 Q. Now, turning to the OCD complaints, civilian complaints
17 that you learn about through the OCD process. Might that
18 impact your recommendation as to whether an officer should
19 remain on performance monitoring?

20 A. Yes.

21 MR. MOORE: I am just going to note that there is
22 nothing in this document before you that mentions anything
23 about OCD complaints leading to any further --

24 THE COURT: Your objection on this one is that it's
25 not in the declaration?

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Holmes - direct

1 MR. MOORE: That too. But it's also not covered by
2 this whole topic.

3 THE COURT: It is covered in the declaration?

4 MR. CHARNEY: No.

5 THE COURT: I am not going to allow this. We have had
6 plenty of testimony about this. I am not allowing it.

7 Q. Are you notified when officers are going to be evaluated by
8 the CCRB profile and assessment committee?

9 A. Yes.

10 Q. How so?

11 A. Just like through an integrity control officer or
12 personally.

13 Q. What are you expected to do when you are put on notice that
14 an officer may be evaluated by the CCRB profile and assessment
15 committee?

16 A. Usually we have to get together their evaluations, just
17 history and command performance history.

18 Q. Are you expected to make some kind of recommendation for
19 the committee?

20 A. Correct. Yes.

21 Q. How many officers were evaluated by the CCRB profile and
22 assessment committee in the 81st Precinct last year?

23 A. Last year, I recall one officer that I had to speak with
24 and the borough spoke with.

25 Q. Now, have you or your ICO adjudicated command disciplines

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1 for failure to make activity logs?

2 A. My ICO has.

3 Q. What are the penalties?

4 A. They can vary. They can vary, from a one and admonish to
5 days being taken.

6 Q. Since you have become the commanding officer of the 81st
7 Precinct, how have you reinforced the racial profiling policy?

8 A. When I first was assigned there, I reinforced it. That was
9 basically because there were so many community complaints at
10 that time; not written complaints, but just through the media,
11 things that were being said. So it was reiterated. And now
12 it's done pretty much annually by the training sergeant.

13 THE COURT: I want to talk about the community
14 complaints. Were you getting complaints from the community in
15 general terms?

16 THE WITNESS: No. What I heard was through the media.

17 THE COURT: You weren't getting any community
18 complaints?

19 THE WITNESS: No.

20 Q. What were some of the comments from the community that
21 were -- were there any complaints from the community about
22 police?

23 MR. MOORE: I thought you just asked that.

24 THE COURT: I just did word for word. She said she
25 received no complaints from the community.

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1 Is that right?

2 THE WITNESS: That's correct.

3 Q. What kind of community meetings do you attend?

4 A. Can I change one answer? I just thought of something.

5 THE COURT: Sure.

6 A. I did receive one complaint from the community. I do
7 recall an individual coming into the precinct and he
8 complained, and I overheard it because my office is right
9 there, and he stated that the officers stopped him once, wrote
10 him a summons for drinking a beer, and he said, granted, that
11 was correct for them to do that. And at that time, I think
12 marijuana he had, or something like that. He said, but does
13 that give them the right every time they see me to stop me? So
14 I addressed him and I said, no.

15 He referenced two particular officers, and they were
16 part of my specialty unit, and I brought them into the office
17 and I spoke with them about complaints. At that time, they had
18 what I consider to be a large number of civilian complaints,
19 and I told them there was zero tolerance for that, especially
20 being in a specialty unit, and they didn't get any complaints
21 after that. They have since moved on to detective squads,
22 things of that nature.

23 Q. When you go to the community meetings -- do you attend
24 community meetings?

25 A. Yes.

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1 Q. What kind of community meetings do you generally attend?

2 A. Different forms. Block association. I have a monthly
3 community meeting. I have a clergy meeting monthly.

4 Q. What are the nature of the complaints that you are
5 receiving at these meetings?

6 A. Sometimes discourteous, the officer wasn't courteous.

7 THE COURT: Did you ever hear criticisms of stop and
8 frisk?

9 THE WITNESS: Initially, when I was assigned to the
10 81, I would get someone in the audience. I think it was more
11 media though. They would stand up and -- they didn't complain.
12 They would want me to address the allegations of stop, question
13 and frisk.

14 THE COURT: They would raise it though?

15 THE WITNESS: Yes. Then it was dismissed. That was
16 it.

17 Q. What do you mean by it was dismissed?

18 A. It was dismissed either by myself or my community council
19 president, or I would say, if it was something referencing
20 Schoolcraft, I would say that's currently under investigation,
21 it's not open for discussion.

22 MR. MOORE: My understanding is that that is not
23 supposed to be a part of this case, what happened to that
24 particular individual, and I know it's now been mentioned a
25 couple of times.

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1 THE COURT: I don't think anybody has mentioned the
2 content of it, just that there was an ongoing investigation.

3 The point is the stop and frisk issue came up at some
4 of the community meetings because people said, look at this
5 article from the press, and they wanted to hear your side?

6 THE WITNESS: And what is being done about it.

7 THE COURT: And what is being done about it?

8 THE WITNESS: Correct.

9 Q. At any of these meetings, was the issue of racial profiling
10 brought up?

11 A. No.

12 Q. Now, are you aware that State Senator Eric Adams testified
13 in this case in March about a meeting that he attended in 2010
14 at Medgar Evers at which he alleged that the police
15 commissioner said, in sum and substance, that the NYPD targeted
16 minority youth for stop, question and frisk?

17 MR. MOORE: I object to the compound nature of the
18 question.

19 THE COURT: It was very long.

20 Are you aware of his testimony?

21 THE WITNESS: Yes.

22 Q. Were you at that meeting?

23 THE COURT: At what meeting?

24 Q. The Medgar Evers meeting?

25 A. Yes, I was.

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D598FLO3 Holmes - direct

1 Q. And this meeting at Medgar Evers, it occurred in 2010?

2 A. Correct.

3 Q. August 2010?

4 A. Yes.

5 Q. What did you understand the police commissioner to be
6 saying?

7 THE COURT: I am not going into that. If he wants to
8 come in and discuss it, he can. But what other people
9 understood him to say, I am not going to allow it.

10 Q. When you were present at the meeting, what were some of the
11 concerns raised by the elected officials?

12 THE COURT: I will allow that. That's general notice
13 to her and others in the police department.

14 A. One elected official, Letitia --

15 THE COURT: Letitia James?

16 THE WITNESS: Yes.

17 A. She had concerns. I remember one of the points she
18 stressed was that young black males, 13, 14 year olds, were
19 being stopped by the police, and they are afraid of the police,
20 and they shouldn't be afraid of the police. So I remember she
21 expressed that. And then I remember, I believe it was Senator
22 Montgomery who made mention about there are no positive
23 programs for the youths, you know, within the police
24 department.

25 So the police commissioner went on to explain the JRIP

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Holmes - direct

1 program, and I interjected, or I respectfully asked to
2 interject, because I was the former CO at PSA 2 where the JRIP
3 program was initiated. So I went on to speak about and
4 elaborate what the program stood for. In addition to that, I
5 spoke about how I am a black mother and that I have a black
6 son, and if you think I am in the business of stopping black
7 youths, then you're terribly mistaken. But I also went on to
8 assure them that I have actually locked up individuals, 13 and
9 14 year olds, for shootings. So that pretty much what was
10 discussed at the meeting.

11 THE COURT: I was going to take the luncheon recess.
12 You weren't on your last question?

13 MS. GROSSMAN: No.

14 THE COURT: It's 5 of 1. We will start at 5 after 2.
15 (Luncheon recess)

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D598FLO3

Holmes - direct
AFTERNOON SESSION
2:05 p.m.

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JUANITA HOLMES, resumed.

MR. HELLERMAN: Can I just make a short comment?

I handed up to Mr. Brazeal the letter that was due at
2:00 to day. Part of the relief --

THE COURT: I saw. Was not to do it on Friday.

MR. HELLERMAN: I can make Professor Fagan available
on Monday morning.

THE COURT: What is his schedule next week?

MR. HELLERMAN: Unfortunately, Monday morning is the
only time next week he can do it. But he can do it.

THE COURT: Let's say whatever else I have ruled is
not going to come tomorrow.

Are we ready?

MS. GROSSMAN: Yes.

BY MS. GROSSMAN:

Q. Inspector, before the break we were talking about the
meeting at Medgar Evers College in 2010 when the police
commissioner was present?

A. Yes.

Q. As a result of that meeting, did you understand the police
commissioner to be sending a message to you and to people at
the meeting that he wanted the police --

MR. MOORE: I object. He could only be based on what
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1 he said.

2 THE COURT: Sustained.

3 I thought I said earlier I am not going to have her
4 interpreting what he said. If he wants to come in and testify,
5 he is welcome.

6 MS. GROSSMAN: I understand that. I am not asking
7 what the commissioner said. I am asking what the inspector's
8 understanding was --

9 THE COURT: We already did that. I sustained the
10 objection to her understanding of what he said.

11 MS. GROSSMAN: But in terms of her understanding and
12 what she now brings back -- OK.

13 Q. Have you ever communicated to the officers in your command
14 that the NYPD should target young men of color or target them
15 for purposes of instilling fear in them?

16 A. Absolutely not.

17 Q. In your years with the police department and your contact
18 with the police commissioner, has the police commissioner ever
19 communicated to you that he wanted you to send that message to
20 individuals in your command?

21 MR. MOORE: Objection.

22 THE COURT: Sustained to what the police commissioner
23 communicated to her.

24 Q. Did you ever have an understanding as the CO of the 81
25 Precinct, or in any capacity in the police department, that the

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1 policy of the NYPD was to target young men of color or to
2 instill fear in them?

3 MR. MOORE: Object.

4 THE COURT: I will allow that.

5 Was that, as far as you're concerned, ever the policy
6 of the NYPD?

7 THE WITNESS: No, never.

8 Q. Were those words ever communicated to you that you should
9 then communicate those same words to the officers in your
10 command?

11 THE COURT: What words? That it wasn't the policy?

12 I think you have tried five times to ask the same
13 question. Five times I have sustained objection. I continue
14 to do so. But she has testified, to her knowledge, it was
15 never the policy of the NYPD to target young black males, and
16 she doesn't believe that she ever did it either. It was never
17 the policy and she never said it was the policy. And that's
18 it.

19 MS. GROSSMAN: I have no further questions.

20 CROSS-EXAMINATION

21 BY MR. MOORE:

22 Q. Good afternoon, Inspector Holmes.

23 A. Good afternoon.

24 Q. Let me just ask you a few questions first about some stuff
25 you said on your direct.

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D598FLO3

Holmes - cross

1 I might have misheard you, but you were talking about
2 the ratio of supervisors to officers who were performing impact
3 duty?

4 A. Yes.

5 Q. Did you say that there were two or three officers -- two or
6 three supervisors to 50 officers?

7 A. No. It's per tour. So usually we have five sergeants and
8 one lieutenant assigned to 46 officers. But one squad is not
9 working. So some squads have double supervisors. So depending
10 on what day it is, then you will have probably two or three
11 supervisors working with 25, you know, or a little less
12 officers.

13 Q. Or it could be more, right?

14 A. Normally not, no. Usually less.

15 MR. MOORE: Just one second, Judge. I am just getting
16 the map.

17 Q. You remember this map, Ms. Grossman showed you this on
18 direct?

19 A. Yes.

20 Q. Defendants' Exhibit T14, correct?

21 A. Correct.

22 Q. The area in the yellow is the impact zone, right?

23 A. Approximately. It's an approximation.

24 Q. OK. Well, that's what you drew when you outlined this on
25 the sector map, correct?

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D598FLO3 Holmes - cross

1 A. Pretty accurate, yes.

2 Q. Ms. Grossman asked you about three robbery patterns. Do
3 you remember her asking you about that?

4 A. Three robbery patterns?

5 Q. Yes. I think you mentioned a robbery pattern in sector J?

6 A. That was shootings.

7 Q. I'm sorry. OK.

8 So there were three sectors you mentioned, A, F and J,
9 is that right?

10 A. Actually, Boy, Frank -- yes.

11 Q. Boy, Frank, and?

12 A. John.

13 Q. Two of the areas that you were concentrating with respect
14 to the shootings were outside this impact zone?

15 A. Correct.

16 Q. You also mentioned that -- we had some testimony about 120
17 Chauncey. There is Jackie Robinson Houses there?

18 A. Correct.

19 Q. How many blocks does that involve?

20 A. Jackie Robinson has four addresses -- it's just a square,
21 one big square building, several units.

22 Q. That's also outside the impact zone, correct?

23 A. Correct. Last year it was in the impact zone. It's
24 outside this year.

25 Q. You said that when you -- withdraw that.

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D598FLO3

Holmes - cross

1 You were the commanding officer of the patrol
2 service -- Police Service Area 2, correct?

3 A. Correct.

4 Q. And that covered the area of Brownsville Houses?

5 A. Brownsville Houses, yes.

6 Q. Do you recall receiving criticism, not you personally, but
7 the precinct being criticized, during your tenure as the
8 commanding officer of PSA 2, with respect to the number of
9 stops and frisks that were being conducted in or near that PSA?

10 A. I remember being interviewed regarding the stops that were
11 conducted in that area.

12 Q. You were being interviewed because the community members
13 were complaining about the number of stops, correct?

14 A. Not to me personally.

15 Q. But there was a complaint made, you are aware of that,
16 right?

17 A. Was it community or was it based on a study that was
18 conducted? I don't recall. I thought it was a study that was
19 conducted that said there was a disproportionate amount of
20 stops that were conducted in that area.

21 THE COURT: Who were you being interviewed by?

22 THE WITNESS: The New York Times.

23 Q. And that New York Times study indicated that in a four year
24 period, in an eight block area around the Brownsville Houses,
25 there were 50,000 stops, correct?

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Holmes - cross

1 A. I don't recall the exact number, but I know it was a large
2 amount.

3 Q. Did you ever personally look into that?

4 Yes or no, officer, did you ever personally look into
5 that?

6 A. I didn't personally look into that study, no.

7 Q. Did you ever direct anybody in your command to take a look
8 at that because of the concerns that were raised?

9 A. I covered the housing portion of the precinct.

10 Q. If you could try to answer my question, I would appreciate
11 it.

12 A. I will answer your question. My stops at that time were
13 down 46 percent, and that's what I stated to the New York
14 Times.

15 THE COURT: That wasn't his question.

16 His question was, did you ask anybody to look into it?

17 THE WITNESS: No.

18 Q. When you heard those numbers and were interviewed by the
19 New York Times, were you concerned that maybe there was a
20 problem in the area that you were policing, were you concerned
21 about that?

22 A. No, I wasn't.

23 Q. Did anybody in the borough -- Patrol Borough Brooklyn
24 North, correct?

25 A. Yes. Correct.

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D598FLO3

Holmes - cross

- 1 Q. By the way, who was the chief of Patrol Borough Brooklyn
2 North at that time?
3 A. Chief Gerald Nelson.
4 Q. And his deputy was Chief Marino, correct?
5 A. I believe so.
6 Q. Did either of them talk to you about any concerns they had
7 when that New York Times story came out about 50,000 stops in a
8 four year period?
9 A. No.
10 Q. Now, you became the commanding officer of the 81st Precinct
11 you said in July of 2010, correct?
12 A. Correct.
13 Q. You actually grew up in the confines of the 81st Precinct,
14 right?
15 A. I was born there, yes.
16 Q. You didn't grow up there, you were just born there?
17 A. My grandmother lived there. Her house is still there. I
18 spent a lot of time.
19 THE COURT: Did you grow up there?
20 THE WITNESS: No. For four years, that was it.
21 Q. You're very familiar with the precinct?
22 A. Yes, sir.
23 Q. As a commanding officer, you report to the borough
24 commander, correct?
25 A. Correct.

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D598FLO3 Holmes - cross

1 Q. Who is the current borough commander?

2 A. Chief Gerald Nelson.

3 Q. He is still there?

4 A. Yes.

5 Q. And you supervise all the sergeants, lieutenants and
6 captains who report to you in the 81st Precinct, right?

7 A. Correct.

8 Q. You're aware, are you not, that within the precinct there
9 are self-inspections to look at stop and frisk activity,
10 correct?

11 A. Yes.

12 Q. In fact, when you were the ICO in your past, did you have
13 to conduct similar self-inspections of stop and frisk activity?

14 A. I had self-inspections. I don't recall if that was one of
15 them.

16 Q. Other than the 802 and the 802-A self-inspections, you're
17 familiar with both?

18 A. Yes.

19 Q. There is nothing else that the ICO does in your precinct
20 now with regard to monitoring stop, question and frisk activity
21 other than those two self-inspections?

22 A. He inspects for activity log entries, but those are the
23 existing self-inspections.

24 Q. Those are the only two self-inspections that are currently
25 taking place with respect to stop, question and frisk activity,

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D598FLO3

Holmes - cross

1 correct?

2 A. Correct.

3 Q. You're familiar, I am sure, with respect to NYPD policy
4 that requires officers to document their stop, question and
5 frisk activity in two places, correct?

6 A. Correct.

7 Q. One is the UF-250 form, right?

8 A. Correct.

9 Q. And that's mostly a check-off form, right?

10 A. Yes.

11 Q. The other place is in their memo book, correct?

12 A. Correct.

13 Q. At least until recently, it's your understanding that the
14 practice had been, when an officer checks off one of the boxes
15 on the 250, like furtive movement, he is not asked to describe
16 or he doesn't have to describe what that furtive movement is in
17 the 250, right? That's been the practice up until recently,
18 correct?

19 A. I'm trying to recall the old form. I know they have to
20 make mention of it now.

21 Q. The form hasn't changed?

22 A. No. Just something was added about the reason for force
23 being used or something like that.

24 Q. You're aware that until recently officers were not as a
25 matter of practice putting in the details of their stops in

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D598FLO3 Holmes - cross

1 their memo books, correct?

2 A. Correct.

3 Q. Would you agree with me when you have a policy -- withdraw
4 that.

5 Even though that's your understanding of the practice,
6 that's not what the policy has been for many years in the
7 police department, right? The policy has been that officers
8 were required to put the details of their stops in memo books,
9 correct?

10 A. I remember that being a guide.

11 Q. You don't remember that as being a policy?

12 A. I remember it being in the patrol guide, which is a guide.

13 Q. The officers are trained on it as well, correct?

14 A. Correct.

15 Q. You have seen various memos over the years that set forth
16 the requirement that officers put details of their memo
17 books -- details of their stops into the memo books, correct?

18 A. Correct.

19 Q. Would you agree with me, if there is a practice that is
20 consistently followed over the years that's different than the
21 written policy, that that practice is really the operational
22 policy that's being followed by officers?

23 MS. GROSSMAN: Objection.

24 THE COURT: Rephrase it.

25 Q. Would you agree, Inspector Holmes, that where you have a
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Holmes - cross

1 situation where a certain type of practice is followed, like
2 officers not putting the details of their stops in the memo
3 book, that's contrary to what they are instructed to do or the
4 guidelines or what the policy is, that that practice is
5 actually the operational policy for those officers in the
6 police department?

7 A. It's not all officers that don't put the details in their
8 memo book. Some don't put it in. They recall better than
9 others, whether it's off the pedigree, maybe there is
10 additional paperwork. That's why the guide is there, to help
11 you recall.

12 THE COURT: You understand his question was so long it
13 was hard to follow. He was trying to say sometimes there is a
14 policy, but sometimes it's different on the ground, so to
15 speak. That's what he was asking when he used that word
16 operational. He was really saying, there might be a written
17 policy, but are things different on the ground? Do the
18 officers in the end really not write as much detail as the
19 written policy would lead us to think they should?

20 THE WITNESS: That was the case in the 81 for sure.
21 PSA 2 we were good, but 81 that was the case.

22 Q. That was the case in the 81 when you got there?

23 A. When I got there, yes.

24 Q. Did you have any experience in any of the other precincts
25 in terms of whether that was the experience in those other

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D598FLO3 Holmes - cross

1 precincts in the Patrol Borough Brooklyn North?

2 A. No. I only commanded in those two precincts.

3 Q. You weren't aware of whether the other precincts were doing
4 the same thing that the 81st Precinct was before you got there?

5 A. No.

6 MS. GROSSMAN: This is about the 802 audits?

7 THE COURT: No.

8 Q. We were speaking about the requirement that officers put
9 the details of their stops in their memo books. That's what
10 you understood I was referring to?

11 A. I understand.

12 Q. The audit that Ms. Grossman just referred to is what the
13 police department at some point on a regular basis does to
14 determine whether officers are in fact doing that, correct?

15 A. Documenting stops, yes.

16 Q. And you were aware, were you not, that in the 81st
17 Precinct, prior to you getting there, there were allegations
18 that officers were being given quotas with respect to their
19 enforcement activity, right?

20 A. I was aware of that.

21 Q. That involved Deputy Inspector Mauriello, correct?

22 A. He was the commander at that time.

23 THE COURT: The allegations were about him, is that
24 right? I didn't say he did it or not.

25 THE WITNESS: Yes.

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D598FLO3

Holmes - cross

- 1 Q. Were you aware that an investigation was done of those
2 allegations?
- 3 A. I was aware of an ongoing investigation.
- 4 Q. Is it still ongoing?
- 5 A. I haven't heard anything finalized as a result of it.
- 6 Q. Do you know whatever came of that investigation?
- 7 A. No.
- 8 Q. Were you ever contacted in the course of that
9 investigation?
- 10 A. No.
- 11 Q. Do you know of any officers under your command, once you
12 got to the 81st Precinct, who were contacted with regard to
13 that investigation?
- 14 A. There were officers that were contacted regarding that
15 investigation.
- 16 Q. Who was that?
- 17 A. I remember my school sergeant, I believe Sergeant Huffman
18 was investigated.
- 19 Q. Was there a Lieutenant Delafuente who was at the 81st
20 Precinct when you got there?
- 21 A. No.
- 22 Q. How about a Sergeant Stukes?
- 23 A. No.
- 24 Q. But you don't know what the result of that investigation
25 was, right?

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D598FLO3

Holmes - cross

1 A. No, I don't.

2 Q. You're aware, are you not, that -- withdraw that.

3 With respect to this issue of quotas, were you aware
4 that there was a finding made at some point by an arbitrator
5 that the commanding officer at the 75th Precinct had imposed
6 quotas on his officers? Were you aware of that?

7 A. No.

8 Q. You never heard of that?

9 A. No.

10 Q. The first time you're hearing it is as you sit here today?

11 A. It doesn't sound familiar to me.

12 Q. It's your testimony that you don't impose quotas on your
13 officers, right?

14 A. No.

15 Q. But you do agree with me, do you not, that you set
16 performance goals for your officers, right?

17 A. I believe the performance goals are set. The application
18 when we became police officers said various things we would
19 have to do. Those things are part of their annual evaluation
20 that they are rated on, whether they process an arrest, write a
21 summons, their interaction with the community is also rated.

22 Q. With respect to the enforcement activity categories of
23 arrests, summonses and stops, performance goals are set for
24 officers in those areas, correct?

25 A. Right. But that doesn't include numbers.

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D598FLO3 Holmes - cross

1 Q. That's my question. Are you saying that it never includes
2 numbers?

3 A. No, that doesn't include numbers.

4 Q. If supervisors were telling their officers that they had to
5 get five summonses and five 250s on that tour, that would not
6 be permitted, correct?

7 A. Absolutely not.

8 Q. If they were telling officers that they needed 20 summonses
9 and one arrest this month, that would not be permitted, as you
10 understand department regulations, correct?

11 MS. GROSSMAN: Can you read that question back? Was
12 it officers or sergeants?

13 MR. MOORE: I will rephrase it.

14 Q. If supervisors were telling officers under their command
15 that they needed to issue 20 summonses and make one arrest in a
16 certain period of time, that would be contrary to what you
17 believe to be NYPD regulations, right?

18 A. Correct.

19 Q. You're aware, are you not, Inspector, sometime in 2010,
20 there was a law passed by the New York State Legislature
21 regarding quotas and law enforcement activity?

22 A. Yes.

23 Q. And what do you understand that law to have done?

24 A. That you can't impose quotas and people can't be penalized
25 as a result of it.

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D598FLO3

Holmes - cross

1 Q. You can't impose quotas on officers with respect to their
2 enforcement activity, correct?

3 A. Correct.

4 Q. Do you ever recall receiving a memorandum from Chief Hall
5 concerning that change in the law?

6 A. I believe I did, yes. I remember being aware of it,
7 whether it was through Chief Nelson or Chief Hall, but I was
8 made aware of it.

9 (Continued on next page)

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D599FLO4

Holmes - cross

1 MR. MOORE: 290 is already in evidence, Judge. I just
2 want to show the witness the first page of a memorandum dated
3 October 22, 2010 from Chief Hall -- from the chief of patrol,
4 who was Chief Hall at the time, to all commanding officers of
5 all patrol boroughs regarding the quota bill.

6 Q. Do you recall ever seeing that?

7 A. Yes.

8 Q. And there was an attachment to that, correct? Do you
9 remember seeing an attachment to that which --

10 A. Oh, yes. It explains --

11 Q. Do you remember that?

12 A. It went a little deeper.

13 Q. And one of the things it says in the last paragraph of this
14 attachment is -- I will try to -- the second to the last
15 sentence it says, "It is extremely important to avoid
16 discussing specific numerical objectives at roll calls, in
17 training sessions or in documents that are given to
18 subordinates."

19 Do you see that?

20 A. Yes, I do.

21 Q. And you would agree with that, right?

22 A. I mean to tell you the truth I don't ever recall that. I
23 just don't do it period.

24 I don't remember these specifics. I just know you
25 don't do it. So but -- it's here so obviously I read it at

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D599FLO4

Holmes - cross

1 some point.

2 Q. He, being the chief of patrol, that would be something you
3 would -- that's not a guideline. That's a directive, right?

4 MS. GROSSMAN: Your Honor, I'm just saying chief --

5 THE WITNESS: That's a law.

6 MS. GROSSMAN: I just --

7 THE WITNESS: Am I right?

8 MR. MOORE: There is a law. There was a quota bill
9 passed.

10 THE COURT: Yes, Ms. Grossman.

11 MS. GROSSMAN: This piece of evidence, 290 it is a
12 transmittal memo with just an attachment. I just wanted that
13 to be clear.

14 MR. MOORE: It's a transmittal memo with an attachment
15 from the chief of patrol James Hall, correct.

16 THE WITNESS: Mm-hmm.

17 THE COURT: That's fine.

18 THE WITNESS: Okay. Yes.

19 Q. And that's not something you could disregard as simply a
20 guideline, right?

21 A. That's not a guideline. That's a law. That was something
22 that --

23 Q. So you wouldn't disregard it, right?

24 A. No.

25 There's things I disregard with Chief Hall. There

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D599FLO4 Holmes - cross

1 are. You got to get the job done.

2 THE COURT: It was an inside joke.

3 THE WITNESS: It's a joke. It's a joke.

4 THE COURT: You want to know what she said?

5 MR. MOORE: I'm curious.

6 THE COURT: There are certain things about Hall that
7 she disregards but not this.

8 MR. MOORE: Fair enough.

9 THE COURT: We don't need to go there any further, as
10 they say.

11 Q. Have you ever been concerned in your years in the police
12 department that when supervisors set performance goals they may
13 be sending the wrong message to officers?

14 A. If it entailed anything with numbers, you're giving the
15 wrong message.

16 I mean even in my command conditions or my Quest for
17 Excellence I try not to put -- address this with 250s or
18 summonses because I don't want to send the wrong message to
19 officers. There's other ways of fighting crime and
20 accomplishing, you know.

21 THE COURT: So in answer to his question you think
22 that performance goals with numbers attached --

23 THE WITNESS: Yes.

24 THE COURT: -- could send the wrong message?

25 THE WITNESS: Could send the wrong message.

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D599FLO4

Holmes - cross

1 Q. And that's one of the things -- that's one of the issues
2 that Chief Hall was concerned about -- or do you understand
3 that that was one of the issues Chief Hall was concerned about
4 when he sent around this memorandum in October 2010?

5 A. I took it as though he wanted us to be well informed of
6 that legislation.

7 Q. Well, let's look at this memorandum again. The first
8 paragraph of the attachment which is headlined quotas, it says
9 department policy.

10 There's a line that says, "In an effort to address
11 crime and public safety conditions in precincts, supervisors
12 have made statements that could be interpreted as the setting
13 of quotas for enforcement activity."

14 Do you see that?

15 A. Yes, I do.

16 Q. Were you aware of any supervisors who did that in your
17 experience?

18 A. What I was aware of, what was quoted in the paper about
19 certain tapes regarding the 81 precinct.

20 Q. You don't think Chief Hall here was referring to what was
21 in the paper, do you?

22 A. I don't know.

23 Q. Did you ever discuss this with Chief Hall?

24 A. Never.

25 Q. So my question is are you aware of any other supervisors,

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D599FLO4

Holmes - cross

1 commanding officers who, based upon your knowledge, have made
2 statements that could be interpreted as the setting of quotas
3 from your personal knowledge? Not what you read in the paper
4 or.

5 MS. GROSSMAN: Objection. Can you just read the
6 question back or --

7 THE COURT: All it says: Do you have personal
8 knowledge of anyone who appeared to set quotas?

9 MR. MOORE: Right.

10 THE COURT: Of any supervisor who appeared to set
11 quotas?

12 THE WITNESS: Not under my command.

13 Q. Not necessarily under your command.

14 Are you aware of any officers, any supervisors in the
15 NYPD that have -- who have done that?

16 MS. GROSSMAN: Officers or supervisors?

17 THE WITNESS: Supervisors.

18 MR. MOORE: I said supervisors.

19 THE WITNESS: No.

20 Q. But that was certainly the allegation that had been made
21 against Deputy Inspector Mauriello, correct?

22 A. Yes.

23 Q. And are you aware that was the allegation made against
24 Chief Marino when he was head of the 75 precinct?

25 A. No, no.

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D599FLO4 Holmes - cross

- 1 Q. He never discussed that with you?
2 A. No.
3 Q. Now, when you became the head of the 81 precinct you
4 realized -- I think you said in your testimony that you needed
5 to rebuild stronger relationships with the community, correct?
6 A. Yes.
7 Q. And so that suggests that there was a problem between the
8 community and the police in the 81 precinct, right?
9 A. Yes.
10 Q. And part of that -- some of those problems were expressed
11 to you by politicians in the 81 precinct, right?
12 A. I'm trying --
13 Q. You know who Al Vann is?
14 A. Yes, yes, yes.
15 Q. He represents some constituents in the 81 precinct?
16 A. Yes, he does.
17 Q. What's his position, do you know?
18 A. He's a councilman.
19 Q. And he was somebody who was very critical of the leadership
20 in the 81 precinct when Mauriello was there, correct?
21 A. Correct.
22 Q. And one of his criticisms was particularly with respect to
23 stop and frisk, right?
24 A. That was a community complaint, I remember, that was made
25 to him.

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D599FLO4

Holmes - cross

1 Q. Well that was his complaint that he made to the police
2 department that in the 81 precinct there was a problem with
3 stop and frisk, correct?

4 A. Correct.

5 But that was based on what he gathered from his
6 constituents, to my knowledge.

7 Q. So that's not something that he learned in -- that would
8 have come to you from the newspaper. That's a local politician
9 conveying to you what his constituents are telling him,
10 correct?

11 A. Correct.

12 Q. And one of the things he was concerned about, as well, was
13 that these stops and frisk were evidence, because they were
14 targeted mostly at people of color, that there was racial
15 profiling going on? That's one of the other things he
16 expressed, right?

17 A. I don't remember him personally expressing anything to me
18 about racial profiling.

19 I remember having a conversation with him -- I don't
20 remember it verbatim. I remember his concerns about what was
21 alleged by his constituents. But that's what I remember.

22 Q. And shortly after you became the commanding officer of the
23 81 precinct, you attended a forum that he organized where these
24 concerns were expressed, right?

25 A. I remember, yes.

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D599FLO4

Holmes - cross

1 Q. And, in fact, you've attended a number of forums with Al
2 Vann where he's expressed concerns about stop and frisk, right?

3 A. Not a number of forums know. Al Vann has attended a couple
4 of my community council meetings. And since I've been assigned
5 to the 81 precinct, his thing has always been just building
6 relationships, you know, with the police department, working
7 with the police department. This is a message he's conveyed
8 over and over again to his -- to the constituents, the audience
9 of the community council meeting.

10 Q. This is a message that he's conveyed over and over on
11 behalf of his constituents to the leadership of the police
12 department, correct?

13 A. That may be correct.

14 But I attended one meeting that I can recall where
15 that was the topic of discussion. And it wasn't as much from
16 Al Vann as it was from members of the community voicing their
17 concerns.

18 Q. So it wasn't just the politicians conveying their
19 constituents' concerns. It was members of the community who
20 were expressing their concern about stop and frisk, correct, at
21 these community forums?

22 MS. GROSSMAN: Are we talking about one meeting?

23 THE WITNESS: At one meeting I attended at Bishop
24 Conrad's church when I first was assigned to the 81 precinct
25 there were individuals that came to that meeting and I sat

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D599FLO4 Holmes - cross

1 there in observance and heard their concerns about stop,
2 question and frisk.

3 Q. And are you saying in the three years you've been in the 81
4 precinct, at all the meetings you've attended there's only been
5 one meeting where the issue of stop or frisk has been
6 discussed?

7 A. No. I didn't say that.

8 I said in the beginning when I was questioned --

9 Q. Right.

10 A. That stop, question and frisk has been posed at my
11 community council meetings. But that appeared to be by someone
12 of -- media or local paper, things of that nature.

13 Q. So, is it fair to say that the issue of stop and frisk has
14 been an issue that members of your community that you police
15 have expressed from time to time at meetings? Is that fair to
16 say?

17 A. No.

18 What's fair to say is when I was initially assigned
19 there, then I had some questions posed related to stop,
20 question and frisk.

21 Q. I understand. But after that initial meeting.

22 What I thought you were saying was that from time to
23 time at subsequent meetings people raised the issue of stop and
24 frisk. Are you saying that never happened?

25 A. What I'm saying is this. When I was first assigned to the

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D599FLO4 Holmes - cross

1 81 precinct there were meetings. I was assigned there in the
2 summer. So there were no council meetings until September. My
3 first meeting that I attended there was some questions posed
4 about the stop, question and frisk.

5 Thereafter that pretty much subsided. It didn't go on
6 forever. I mean it's been a very long time since anyone stood
7 up in one of my meetings in reference to a stop, question and
8 frisk.

9 Q. Do you know a woman named Letitia James, who is also a
10 member of the city council?

11 A. Yes, I do.

12 Q. Do you know her well?

13 A. I know her. I've interacted with her.

14 Q. She represents individuals who live -- reside within the 81
15 precinct, or does she?

16 A. I don't think so. No. No. Letitia is more like a
17 Brownsville, 73 I think.

18 Q. You've been to meetings where Letitia James has raised
19 issues about stop and frisk, correct?

20 A. I've been at the -- the one I remember vividly is Medgar
21 Evers.

22 Q. She was at that meeting and she expressed some concerns
23 that you heard about stop and frisk, correct?

24 A. Yes, she did.

25 Q. And she's a very vocal critic of the police department with

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D599FLO4 Holmes - cross

1 respect to stop and frisk, correct?

2 A. Yes, she is.

3 Q. During the time that you've been in the 81 precinct goes
4 from July of 2010 to the present, correct?

5 A. Correct.

6 Q. Has anybody in the borough command or higher met with you
7 to discuss the issue of stop, question and frisk?

8 A. No. Related to --

9 Q. Related to the question of stop, question and frisk.

10 A. We go over procedures all the time.

11 We've spoke about stop, question and frisk regarding
12 activity log documentation. Naturally you want them to have
13 the proper training on what constitutes reasonable suspicion,
14 things of that nature, yeah.

15 Q. Has anybody in the police department at your level or above
16 since you've been at the 81 precinct expressed a concern to you
17 that there is a number of stops, questions and frisks that are
18 being done without reasonable suspicion? Anybody ever express
19 that concern to you?

20 A. No.

21 Q. Have you ever discussed with anybody in the borough or
22 higher this question about, or this fact that 90 percent of the
23 people who are stopped, questioned and frisked, for that
24 90 percent there is no further enforcement activity taken
25 against them? Has anybody -- have you ever had expressions of

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1 concern about that that you've heard?

2 A. No.

3 Q. Have you ever expressed that concern to your supervisors?

4 A. No.

5 Q. You spoke about, on direct, that you're a black mother and
6 you have a black son, correct?

7 A. Correct.

8 Q. How old is he?

9 A. 22.

10 Q. Pardon?

11 A. 22.

12 Q. Did he grow up any time in the 81 precinct?

13 A. No.

14 Q. Have other black mothers come up to you during the time
15 you've been in the 81 precinct and said I'm concerned that my
16 son is being stopped for no reason on the street by police
17 officers?

18 A. No.

19 THE COURT: Have you seen statements like that in the
20 media?

21 THE WITNESS: Just regarding the, you know, the -- I
22 don't remember seeing -- I can't say that. I can't say that I
23 have. I mean, you know, you see concerns on television if
24 that's what you're referencing towards.

25 THE COURT: Or the paper?

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1 THE WITNESS: Yeah. I don't remember the -- I don't
2 read the paper too much, but I don't remember.

3 Q. Just a couple more questions, Inspector Holmes, and we can
4 get you off.

5 I'm going to show you what's previously been
6 introduced into evidence I believe as Plaintiffs' Exhibit 63,
7 which is a patrol service bureau memorandum related to activity
8 log entries dated February 29, 2008.

9 Have you ever seen this document before?

10 A. I don't recall this. Probably because I wasn't a
11 commanding officer at that time.

12 Q. Have you ever seen this document before, which has an
13 attachment to it?

14 A. I have seen that -- looks very similar to what's in the
15 patrol guide I think.

16 Q. You say this looks similar to something you've seen before?

17 A. Yeah. It looks very similar to an example of an activity
18 log entry in the patrol guide from what I recall.

19 Q. This is part of -- this is a direction to officers within
20 the patrol service bureau with respect to how they're supposed
21 to fill out their memo book entries, correct?

22 A. Yes. It's meant to be a guide.

23 Q. I understand that's your testimony, that it's meant to be a
24 guide. Let me ask you a couple questions about it.

25 Do you see here on the left it says the reference to

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1 stop and frisk there. Do you see that?

2 A. Yes, I do.

3 Q. And it says, "When members of the service -- when a member
4 of service has cause to temporarily detain and/or frisk an
5 individual it is imperative that a detailed entry be made as
6 indicated."

7 Do you see that? Did I read that correctly?

8 A. Yes, you did.

9 Q. That's not a guide, is it?

10 A. I don't know.

11 Q. That's a direction?

12 A. At the time top it states, "This is merely a guide."

13 Q. At the top it says, "Activity logs serve to accurately
14 record important information for uniformed members of the
15 service."

16 Then it says, "Activity log entries must
17 chronologically record all assignments, information pertaining
18 to assignments; i.e., action taken, narratives and serial
19 numbers of forms prepared/summons prepared or served. It
20 serves as a tool to recollect incidents that occurred during
21 your tour."

22 Do you see that?

23 A. Correct.

24 Q. And then it sets forth an example?

25 A. It also says, "This illustration is an example of how the
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1 activity log should look, be maintained. It is merely a guide
2 by which members of the service may retain pertinent
3 information for future reference."

4 Q. So what that's saying is the sample memo book entry is
5 merely a guide, correct?

6 A. Correct.

7 Q. But the requirement to enter the details in the memo book
8 is not voluntary? That's mandatory on officers, correct?

9 A. That's not what I gather from here.

10 Q. That's not your understanding? You're an inspector?

11 A. I'm an inspector.

12 THE COURT: Don't argue with the witness.

13 MR. MOORE: I understand.

14 THE COURT: Good. Let her answer.

15 THE WITNESS: Okay. You can go.

16 THE COURT: No. No.

17 MR. MOORE: Go ahead. I apologize.

18 THE WITNESS: I am an inspector and I've always known
19 what the patrol guide, pretty much I'm familiarized with it.
20 I've studied it four times. But the thing is I've always
21 interpreted this to be a guide. Whatever best helps you with
22 your recollection in a case, that's what an officer usually
23 documents.

24 Now we require a lot more of them. And it's stressed
25 to them to make the entries. A lot of my officers made their

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1 entries on the stops but would leave out the details. They
2 thought it was redundant. They thought because they did it on
3 a 250 it wasn't necessary. And that's where, you know, it was
4 a problem misconception. But it's since been corrected.

5 Q. A problem in training or?

6 A. I think a problem in training.

7 Q. Or a problem in supervision?

8 A. No. Not supervision. I think a problem in training
9 because their supervisors are reading this as a guide also.
10 They're not going to question what an officer uses to best
11 recollect an incident.

12 Q. And that misunderstanding wasn't corrected until a few
13 months ago, correct?

14 A. Well I think it was always stressed. It wasn't a couple
15 months ago. I think a memo came out a couple months ago.

16 This has always been a policy from the time I got to
17 the 81 precinct and I saw they had a rating of 1.0 in memo book
18 activity logs and documentation of details that we stressed
19 this through our whole training through the supervisors.

20 The memo, I tell you one thing, it relieves a lot of
21 manpower as far as supervisors chasing behind them, the ICO
22 chasing behind them, monitoring the 250, sampling them.

23 Now they have to hand this activity log entry in with
24 their 250s.

25 Q. And then what happens to it?

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Holmes - cross

1 A. It gets filed.

2 Q. But does anybody ever look at it?

3 A. Absolutely. I look at it myself.

4 Q. You look at all the 250s?

5 A. No. I sample. I take ten from impact, ten from anticrime,
6 ten from a particular squad. If there's ten. There may not be
7 ten in that particular squad that's written.

8 Q. And you say, I think you said on direct that on occasion
9 you issued -- there's been a command discipline issued against
10 an officer for not having an adequate memo book entry, right?

11 A. On several occasions, yes.

12 Q. You can't issue a command discipline against an officer for
13 something that's not mandatory, can you?

14 A. Well this --

15 Q. You answer that question yes or no.

16 A. Of course you can.

17 But what happened was if the stop is not documented
18 there, then I could issue a command -- command discipline.
19 These were occasions when stops or complete responses to jobs
20 were omitted in their activity log.

21 I didn't say activity log entries related to 250s. I
22 said they have been issued CD, command disciplines, regarding
23 activity log entries.

24 Q. Take a look at -- also at patrol guide division 212-11,
25 which is Plaintiffs' Exhibit 98 in evidence. And you see

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Holmes - cross

1 there -- this is -- are you familiar with this patrol guide
2 provision with respect to stop and frisk, right?

3 A. Yes.

4 Q. And you see in the -- one of the duties set out for
5 uniformed members of the service with respect to their
6 stop-and-frisk activity is to enter details in the activity
7 log.

8 Do you see that?

9 A. Yes.

10 Q. So there's nothing voluntary about that? That's what
11 they're instructed to do, right?

12 A. In this guide they are.

13 Q. But you don't think this is policy? You're using the word
14 guide?

15 A. Because it is a guide. I was always taught this was a
16 guide. I was always taught this is a guide.

17 Naturally there are a lot of rules and regs in here
18 that we abide by. But it says, "Enter details in activity
19 log."

20 What constitutes details? Details is the time of the
21 stop, the day he was stopped, the pedigree. If that helps an
22 officer recall the incident at hand, where is he deficient at?

23 Q. Well details are the information -- a detailed entry with
24 respect to the circumstances of the stop. That's what the
25 details are. Not just pedigree. Not just the name.

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Holmes - cross

1 Correct?

2 A. It depends. I can remember the first summons I ever
3 written, and I don't have the memo book in front of me. I can
4 tell you what the woman stated to me about her husband was
5 going to kill her for getting another summons. I was a cop
6 years ago. So it's whatever makes you recall.

7 Q. I don't want to belabor this point but you keep saying it's
8 a guide, it's a guide, it's a guide.

9 Are you saying to me that -- to this Court that up
10 until recently officers -- it wasn't a mandatory obligation for
11 officers to enter the details of their 250 activity into their
12 memo books? Is that what you're saying?

13 A. What I'm saying is that this stated, "Enter activity log --
14 enter the stop into your activity log." That's what it stated,
15 what I read -- can I see that again?

16 Q. This one here?

17 A. "Enter details in activity log."

18 Details are what? Pedigree, the time of stop, the
19 day, a description, if that's helpful to you.

20 What constitutes details? With different people, it
21 would be different opinions.

22 Q. Fair enough.

23 You went through the police academy, right?

24 A. Yes, I did.

25 Q. Years ago, right?

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Holmes - cross

1 And from time to time you receive instruction on stop,
2 question and frisk, correct?

3 A. Yes.

4 Q. Showing you what's already in evidence as Plaintiffs'
5 Exhibit 84. Have you ever seen this document, command level
6 instructor's guide for stop, question and frisk?

7 A. Well this is an '08 version.

8 THE COURT: I think all he asked you was have you ever
9 seen it.

10 THE WITNESS: No. I can't say I have.

11 THE COURT: Okay. If you can't say you have, that's
12 fine.

13 Q. You don't dispute that this is a police department document
14 with respect to stop, question and frisk, correct?

15 A. Instructor's guide, command level instructor's guide.

16 Q. And on the last page of this document which is Bates
17 stamped number 5419 it discusses stop and frisk, right?

18 MS. GROSSMAN: Do you have an extra copy of that
19 exhibit?

20 MR. MOORE: I actually do.

21 THE WITNESS: I'm sorry. Where are you directing me
22 to?

23 Q. The last page it's the discussion about stop and frisk,
24 correct?

25 A. Just allow me to go over it.

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1 Q. On page 5419. Look on the screen right there.

2 A. I got it right here in front of me.

3 Q. Okay.

4 There's a note there that says, "The activity log is
5 an officer's primary means of documenting daily activity."

6 You agree with that, right?

7 A. Yes.

8 Q. "It is used to record details of radio runs, car stops, and
9 enforcement action."

10 You agree with that, right?

11 A. Yes.

12 Q. "The activity log must also be used for every stop
13 situation."

14 Do you see that?

15 A. Yes, I do.

16 Q. And that's nothing voluntary about that. It's a
17 declarative statement that "the activity log must also be used
18 for every stop situation," correct?

19 A. They are using it for stops.

20 THE COURT: All he's saying, it's a requirement?

21 THE WITNESS: Yes, it is.

22 THE COURT: You must. You must use it.

23 THE WITNESS: Yes.

24 Q. And then it says, "Pertinent details must be recorded in
25 the activity log. This includes, but is not limited to any

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Holmes - cross

1 narrative information that is not on the form."

2 Do you see that?

3 A. Yes, I do.

4 Q. And so that's how you instruct officers now to fill out
5 their memo books, correct?

6 A. (No response).

7 Q. Is that correct?

8 A. Yes, it is.

9 Q. And at least going back to 2008 that's how officers were
10 instructed in the police academy, correct?

11 A. Apparently, yes.

12 Q. But in the 81 precinct, since you've been there, when you
13 first got there with respect to the QAD audits of whether
14 officers in the 81 precinct were putting the details of their
15 stops in their memo books, they failed that audit in 2010,
16 correct?

17 A. They failed because they weren't putting stops in -- memo
18 books that were inspected didn't have the stop, period.

19 Q. Correct. Right. That's even worse, right?

20 A. That's extreme, yes.

21 Q. I'm sorry?

22 A. Yes.

23 Q. And so that's 2010. They got a 1. And then the next two
24 years that number rose to a 2, correct?

25 A. Correct.

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1 Q. That's still failing, right?

2 A. That's still failing, yes.

3 Q. And did anybody in the borough discuss the fact that you,
4 in the two years that you've been there in 2011 and 2012, the
5 precinct's still failing that piece of the audit?

6 A. Absolutely. There's actually a report that's written when
7 you fail a certain part. And what it states is what you're
8 going to do to improve upon that.

9 And I think we've improved upon it. We have an 803
10 inspection that we got a 3.5 on the last one in 2012 as far as
11 activity logs was related.

12 Q. Well with respect to the audits for memo books, the number
13 didn't improve from 2011 to 2012, right? It's still a 2?

14 A. For that rating period. But in 2012 --

15 Q. That's what I'm asking you.

16 A. Yes.

17 Q. And I'm sure that you were concerned about it and you've
18 made the best efforts you can to raise that up, right?

19 A. Yes.

20 Q. But it hasn't worked, right?

21 A. No. It has bought -- we got a 3.5 in 2012. I believe it
22 was in August. On activity log entries.

23 Q. Well, no. That's not before the -- the only entry in 2012,
24 the only audit in 2012 for activity log entries was a 2.0?

25 A. That's --

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D599FLO4 Holmes - cross

1 Q. Is that correct?

2 A. That's a different audit, I believe. I think it was 803
3 when we were rated.

4 Q. I'm talking --

5 A. Okay. You're referring to that. It was a 2.0. But that's
6 improved.

7 Q. But that didn't improve from the year 2011 to 2012
8 notwithstanding your best efforts to get it up, correct?

9 A. It wasn't my best efforts.

10 THE COURT: He says he knows you tried, but it still
11 came out 2 on that particular audit?

12 THE WITNESS: Yes.

13 THE COURT: Okay.

14 MR. MOORE: One second, Judge.

15 (Pause)

16 MR. MOORE: I have nothing further.

17 THE COURT: Thank you.

18 Ms. Grossman.

19 REDIRECT EXAMINATION

20 BY MS. GROSSMAN:

21 Q. Inspector, Mr. Moore asked you some questions about an
22 interview you had with the New York Times?

23 A. Yes.

24 Q. Can you explain the discussion you had with the New York
25 Times.

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Holmes - redirect

1 THE COURT: What do you mean explain the discussion?

2 MS. GROSSMAN: I want her to explain -- you attempted
3 to explain on cross-examination what Mr. Moore -- what you
4 discussed with the New York Times reporter, right?

5 THE WITNESS: Yes.

6 THE COURT: What's your question?

7 MS. GROSSMAN: So I would like her to have an
8 opportunity to explain what she discussed with the New York
9 Times reporter.

10 THE COURT: Explain the topics you discussed. Do you
11 remember the topics you discussed?

12 THE WITNESS: It was related to stop, question and
13 frisk. I was a CO in PSA 2. PSA 2 covers housing developments
14 in the confines of the 73 precinct. I think the overall study
15 was done on the 73 precinct as a whole, to which incorporates
16 my numbers also. And we spoke.

17 And I explained to him, he questioned me about stops.
18 And I explained to him that my stops for that year was down
19 46 percent. So, you know, he went on further to speak about
20 the children and community being stopped. And I told him,
21 listen, like it or not some of our children like to carry guns.
22 And that's what I said to him. I've locked up, unfortunately,
23 13, 14, 15-year-old children for shootings. And that was
24 really the basis of the --

25 Q. And the 50,000 stops that Mr. Moore mentioned, was that in

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D599FLO4 Holmes - redirect

1 PSA 2 that you were the commanding officer of?

2 A. No. It was the 73 precinct as a whole.

3 Q. And the PSA is a part of --

4 A. Yes. The developments within the 73 precinct. Yes.

5 Q. So the stops in the PSA 2 would be a subset of that 50,000?

6 A. Yes. It would be incorporated in that.

7 THE COURT: Actually, do you know that number?

8 Because what Mr. Moore asked you was whether you know that
9 there were 50,000 stops in an eight-block area of over a
10 four-year period and you said you didn't know that.

11 THE WITNESS: I didn't know the -- no. I didn't know
12 that, you know.

13 THE COURT: So you --

14 THE WITNESS: What I think what I said to him was I
15 didn't conduct the study.

16 THE COURT: But you also said you didn't know those
17 numbers.

18 THE WITNESS: No. I didn't recall those numbers. The
19 exact numbers, no.

20 THE COURT: So you don't know what that alleged 50,000
21 covers?

22 THE WITNESS: No.

23 THE COURT: It could cover eight blocks. It could
24 cover eight miles. You don't know.

25 THE WITNESS: No. I just remember them mentioning a

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1 number, you know.

2 MS. GROSSMAN: No further questions.

3 THE COURT: Anything further, Mr. Moore?

4 RE-CROSS EXAMINATION

5 BY MR. MOORE:

6 Q. You say some children like to carry guns. There's the
7 overwhelming majority of children in the 81 precinct who don't
8 carry guns?

9 A. Yes, but I was referring to when I was --

10 THE COURT: One at a time.

11 Go ahead.

12 A. I was referring to when I was a commanding officer of
13 PSA 2.

14 THE COURT: All his question -- go ahead.

15 THE WITNESS: I'm sorry. I mean that's where I was
16 assigned when that interview was conducted.

17 THE COURT: All Mr. Moore was saying, do you agree
18 that the majority of 13, 14, 15 year olds do not carry guns?

19 THE WITNESS: Absolutely.

20 MR. MOORE: Nothing further, Judge.

21 THE COURT: Anything further?

22 MS. GROSSMAN: No.

23 THE COURT: All set.

24 THE WITNESS: Thank you.

25 (Witness excused)

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D599FLO4 Holmes - recross

1 MS. GROSSMAN: Your Honor, we just have to get our
2 next witness.

3 THE COURT: Okay.

4 WILLIAM MORRIS,
5 called as a witness by the Defendants,
6 having been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MS. GROSSMAN:

9 Q. Good afternoon.

10 A. Good afternoon.

11 Q. When did you start with the police department?

12 A. In 1981.

13 Q. What's your current position?

14 A. I'm currently assigned commanding officer of the patrol
15 borough Manhattan North.

16 Q. What's your educational background?

17 A. I graduated from Queens College and I went to Fordham
18 University School of Law.

19 Q. And when did you graduate from Fordham University School of
20 Law?

21 A. 1986.

22 Q. What are your duties and responsibilities as a borough
23 commander?

24 A. I oversee the delivery of police services in Manhattan
25 North which is defined as everything north of 59th Street on

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D599FLO4 Morris - direct

1 the East River on the east side, on the Hudson River on the
2 west side, up to the tip of Manhattan.

3 Q. Prior to becoming borough commander, did you serve as a
4 commanding officer in any precincts?

5 A. Yes, I did.

6 Q. Where did you serve?

7 A. I was the commanding officer of the 45 precinct in the
8 Bronx, the 105 precinct in Queens, and the 113 precinct in
9 Queens.

10 Q. And when did you last serve as a precinct commanding
11 officer?

12 A. I finished in 2001.

13 Q. Now did there come a time that you served as an
14 administrator in patrol borough Queens South?

15 A. Yes. In 2001 I was transferred to patrol borough Queens
16 South which is the borough command for that area.

17 Q. And what were your responsibilities?

18 A. I was originally assigned as the administrator where I
19 oversaw largely the administrative operations of the borough.
20 I was subsequently designated the adjutant in the borough.

21 One of the jobs I also had there was to oversee the
22 weekly crime meetings that we had at the borough level.

23 Q. And were you also assigned to patrol borough Queens South
24 in the criminal justice bureau?

25 A. No. After I was assigned to Queens South, I was

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1 subsequently transferred to the criminal justice bureau. I
2 think that happened in 2004.

3 Q. And what was your position then?

4 A. I was assigned there as the executive officer which would
5 be the second in command.

6 Q. And what was your responsibility as the XO?

7 A. I was to support the executive officer in the mission of
8 the bureau.

9 Q. And what was the mission of that particular bureau?

10 A. The criminal justice bureau is the police department's
11 primary liaison to the other components of the judicial system
12 throughout the city.

13 And in addition to that liaison role we also operated
14 the prearrest function throughout the city.

15 Q. Did you subsequently become the commanding officer of
16 criminal justice?

17 A. Yes, I did.

18 Q. When was that?

19 A. It was again in 2004.

20 Q. And what were your duties in that role?

21 A. I then became the commanding officer. So I was the person
22 in charge of that bureau. Same functions for the bureau.

23 Q. Where were you assigned next?

24 A. After the criminal justice bureau I was assigned to the
25 office of the police commissioner.

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1 Q. And in what capacity?

2 A. I was designated to develop the security plan when it was
3 thought that the federal terror trials were going to be held
4 here in Manhattan.

5 Q. And where were you assigned next?

6 A. After that I was assigned back as the commanding officer of
7 the criminal justice bureau.

8 Q. Did you -- did there come a time when you were assigned to
9 the detective bureau?

10 A. I was assigned to the detective bureau as a lieutenant.
11 That was prior to my promotion to captain.

12 Q. Now when you were in the detective bureau did you receive
13 training on how to conduct investigations?

14 A. Yes, I did.

15 Q. How long did you serve in the detective bureau and at what
16 rank?

17 A. I was always a lieutenant when I was in the detective
18 bureau. I believe the years were 1989 to 1992.

19 Q. Did you ever -- have you ever served in the internal
20 affairs bureau?

21 A. Yes, I did. I served for about two years in the internal
22 affairs bureau.

23 Q. What rank did you hold there?

24 A. I was a captain.

25 Q. And what were your responsibilities?

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1 A. I was assigned to two groups during my tenure in internal
2 affairs. The first was group 54 and the second was group 10.

3 Q. And what were the types of investigations that you were
4 responsible for?

5 MR. MOORE: Judge, this seems well outside the scope
6 of this case. It's really predates the --

7 MS. GROSSMAN: This question --

8 MR. MOORE: Can I just finish.

9 Even Daniels. Also, though they listed some things
10 about his background, they didn't mention any of this in their
11 declaration.

12 THE COURT: I don't think I need to know the types of
13 investigations he was responsible for a long, long time ago.
14 When did you finish there?

15 THE WITNESS: In the internal affairs bureau? It was
16 as a captain. So about 1995.

17 THE COURT: Really not part of our case.

18 Q. What are the -- patrol borough Manhattan North, what are
19 the geographic boundaries of the precinct in patrol borough
20 Manhattan North?

21 A. Well Manhattan North is everything in Manhattan North of
22 59th Street, river to river. From the East River on the east
23 side to the Hudson River on the west side, to the tip of
24 Manhattan.

25 Q. Now what precincts make up patrol borough Manhattan North?

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- 1 A. There are twelve precincts that make up Manhattan North.
2 They would be the 19, the 20, Central Park, the 23, the 24, the
3 25, the 26, the 28, the 30, the 32, 33, and 34.
4 Q. And approximately how many officers are assigned to patrol
5 borough Manhattan North?
6 A. In the precincts there are about 1650 or so that's in the
7 rank of police officer.
8 Q. Now are there also borough specialty units?
9 A. Yes. There are -- in addition to the persons in the
10 precinct, there are also specialty units within Manhattan
11 North.
12 Q. And is there a borough anticrime unit?
13 A. Yes, there is.
14 Q. And that is within the borough -- patrol borough Manhattan
15 North?
16 A. Yes, ma'am.
17 Q. And who oversees that specialty unit, the anticrime unit,
18 in the borough?
19 A. Well there's a captain who is designated. He's the
20 commanding officer of the specialized units.
21 Q. And is there also a borough task force?
22 A. Yes, there is.
23 Q. And there's a commanding officer of that task force?
24 A. Yes, ma'am.
25 Q. And the same for, is there a borough impact, IRT, impact

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1 response?

2 A. There is a captain assigned to the IRT unit.

3 Also, each one of the impact units is supervised by
4 the precinct itself.

5 Q. So we've heard a lot of testimony through the last several
6 weeks about operation impact and impact overtime. We've also
7 heard about impact response team.

8 Can you explain what the difference is between impact
9 response teams and operation impact?

10 A. In patrol borough Manhattan North we have four impact
11 zones, the 23, the 28, the 32, and the 34. And those are fixed
12 geographic zones within those precincts that have a contingent
13 of officers assigned to it.

14 Generally speaking, those officers in the impact zones
15 work 8:00 at night to 4:00 in the morning with the exception of
16 the impact zone in the 28 where the officers are closer to say
17 1:00 until 9:00 in the evening tour.

18 The impact response team is a unit -- it's currently
19 comprised of 49 officers. And they basically are assigned
20 throughout the borough, depending on emerging crime trends.

21 So, even though they turn out of the 25 precinct, they
22 will go to whatever precinct is having a particular problem at
23 that time.

24 Q. Now do you play any role in the placement of an area in an
25 impact zone?

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D599FLO4

Morris - direct

1 A. Yes, I do.

2 Q. And what role do you play?

3 A. Well it's actually twofold, the role that we play.

4 Approximately every six months we do an analysis of
5 crime trends going on in the borough. And we will make
6 recommendations to the office of the chief of patrol about
7 where we think impact zones should be established. And then
8 those recommendations are reviewed by the office of the chief
9 of patrol.

10 Now once those zones have been fixed, put in place,
11 then we'll continue -- we, the borough, we continue to look at
12 those zones and we'll see whether or not they are appropriate
13 to continue going forward.

14 We'll also look at the hours that the personnel in
15 those zones are assigned to and see if they -- if those hours
16 of assignment match the hours that crime is occurring.

17 So it's a twofold analysis.

18 Q. Now are there occasions where impact zones are --
19 geographic areas are removed from the impact zone?

20 A. The zones have been changed in response to emerging crime
21 trends, yes.

22 Q. Generally, what's -- I'm sorry.

23 On the impact response teams, what is the general
24 supervisor-to-officer ratio?

25 A. It's about one-to-eight.

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1 Q. Now are you responsible for impact overtime in patrol
2 borough Manhattan North?

3 A. Yes. Yes, I am.

4 Q. And what is it that you do to evaluate whether to -- well
5 what is it that you do with respect to justifying or allowing
6 for impact overtime?

7 A. We at the borough will take a look at the crime trends,
8 particularly for the preceding week. And we'll see where the
9 trends have been. And then we'll take a quick look, do a quick
10 analysis of the crime, see what's going on there. And if we
11 see a particular problem in a precinct, we'll task that
12 precinct to give us a proposal for how they would utilize
13 impact overtime. We'll then take that proposal, review it, and
14 we'll forward it to the office of the chief of patrol for
15 consideration for the assignment of impact overtime.

16 We will also sometimes get inquiries from the office
17 of chief of patrol about could we use impact overtime in a
18 particular precinct where their analysis shows there's a crime
19 problem going on. And we'll take a look at that and forward an
20 analysis back regarding it.

21 Q. Now, how do you look at activity at the various precincts
22 in order to assess whether impact overtime should be provided
23 to a particular precinct?

24 A. We don't look at activity. We look at what the crime is
25 that's occurring when we're seeking the request for the impact

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1 overtime.

2 Q. And what is the goal of impact overtime?

3 A. No index crime.

4 Q. And what happens when the impact overtime is given to a
5 precinct but you continue to see spikes?

6 MR. MOORE: Judge, there's been a lot of questions
7 about impact overtime, none of which was mentioned in his
8 declaration.

9 I think we've had something about it. I don't think
10 we need to go into great detail about it now, which is why I
11 didn't object in the first place.

12 THE COURT: How much more do you expect to cover?

13 MS. GROSSMAN: Not much.

14 THE COURT: I'm not sure there's any purpose in
15 covering anything more at all about impact overtime.

16 Q. Do you have borough CompStat meetings?

17 A. Yes, I do.

18 Q. What do you address at borough CompStat meetings?

19 A. We look at crime trends in the precincts that work for me.

20 Q. What's the purpose of -- how do you use the borough
21 CompStat meetings to communicate with the precinct commanders?

22 A. Generally speaking, a borough CompStat meeting is held
23 every Wednesday in patrol borough Manhattan North. We will
24 pick two or three precincts to make a presentation before a
25 panel of myself, maybe my XO and some other borough inspectors

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1 regarding that.

2 In addition to that, there will be representatives
3 there from every other precinct in Manhattan North and the
4 specialized units.

5 Q. How do you evaluate the success of a particular command at
6 these borough CompStat meetings?

7 A. We look at crime trends, whether crime is going up or is
8 crime going down.

9 Q. Now what are the borough responsibilities regarding Quest,
10 Quest for Excellence?

11 A. We'll look at Quest in two ways at the borough level.
12 We're tasked under the Quest procedure to have a personnel
13 review board for persons who achieve certain levels in terms of
14 their evaluations.

15 And the other time that Quest will come up at the
16 borough is when we're doing our borough CompStat meetings and a
17 particular trend or pattern is identified, we will ask the
18 precinct CO, you know, is this particular condition on your
19 Quest report?

20 MR. MOORE: Judge, also not covered in his
21 declaration.

22 MS. GROSSMAN: I believe --

23 MR. CHARNEY: Quest for Excellence.

24 MS. GROSSMAN: I believe it is.

25 MR. MOORE: I stand corrected if it's --

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1 MS. GROSSMAN: The plaintiff's counsel has given me
2 exhibits for Quest last night and so to the extent that the
3 plaintiffs are going to ask questions about Quest for
4 Excellence, I think that it's clearly within the scope of --
5 THE COURT: Who gave who exhibits last night?
6 MS. GROSSMAN: Plaintiffs provided me with exhibits
7 that they wanted to ask this witness about that had to do with
8 Quest included Operations Order 52 and many of the documents
9 that are now in evidence.
10 THE COURT: Do you intend to go into Quest for
11 Excellence anyway?
12 MR. MOORE: No. I mean --
13 MS. GROSSMAN: It was an exhibit that was provided to
14 me as --
15 MR. MOORE: As with all exhibits, the declaration was
16 the plaintiff may refer to these exhibits. In an excess of
17 caution, we list as many exhibits as we may go into. The fact
18 of the matter is this was not covered in his declaration, so.
19 THE COURT: I think that must be clear by now. But if
20 you gave some kind of notice that you intended to go into the
21 subject of Quest for Excellence, then I can see why
22 Ms. Grossman wants to ask a few questions about it. But it
23 wasn't part of his declaration. Let's go through just one or
24 two more questions about that and move on. Because it's
25 repetitive. It's cumulative.

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1 MS. GROSSMAN: Well this is actually just a unique
2 piece in terms of the borough. We haven't heard any testimony
3 about what the borough is supposed to do with Quest for
4 Excellence. So I just wanted to generally discuss it and move
5 on. I'm not going to spend too much time on it.

6 Q. Are the -- are there borough -- is there a borough
7 personnel review board that is supposed to be established in
8 connection with Quest?

9 A. Yes. The Quest model calls for that. It's not operational
10 at this point in Manhattan North.

11 THE COURT: Why is it not operational?

12 THE WITNESS: We're in the process right now, your
13 Honor, of requesting from each one of the COs a report about
14 what they've done for each one of the persons who has -- who
15 has met the category for review for the personnel review board.

16 Once we get those reports from the precincts we'll
17 review them and the personnel board will convene to review
18 the -- you know, the findings from the precinct COs.

19 Q. So now turning back to your borough CompStat -- your
20 borough meetings.

21 There has been a lot of testimony and concern that's
22 been raised about activity and numbers for numbers' sake.

23 Is that how -- how would you respond to that and how
24 do you use activity at your borough meetings?

25 MR. MOORE: Object to the form of that question.

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1 THE COURT: I agree. Sustained.

2 Q. Are you at all concerned about the impression that
3 officers -- supervisors are expecting numbers just for numbers'
4 sake when they go out and take enforcement action?

5 MR. MOORE: Object to the form.

6 THE COURT: It's still long and convoluted. But I
7 understand the question. Do you?

8 THE WITNESS: No, your Honor.

9 THE COURT: She just said do you have concern that it
10 appears that some supervisors are asking for numbers?

11 THE WITNESS: I don't think they're doing that in
12 Manhattan North.

13 THE COURT: To the extent they may have ever, does
14 that concern you? If they ever did -- if any supervisor did
15 say: I expect 20 and 1, or I expect 5 and 5. If you ever did
16 hear such a thing would you be concerned about?

17 THE WITNESS: Yes, your Honor, I would.

18 THE COURT: Why would you be concerned?

19 THE WITNESS: Because that's not what it's all about.

20 MR. MOORE: Could I just have the preceding question
21 and answer read back.

22 THE COURT: Yes. Surely. I think the last two
23 questions.

24 (Record read)

25 THE COURT: Did you hear it now?

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1 MR. MOORE: That's fine, Judge. I thought I heard
2 something.

3 THE COURT: Okay.

4 Q. And so at your borough meetings, how is it that you're able
5 to assess whether that is happening or not happening, that
6 officers might be going out and taking enforcement action just
7 to meet numbers?

8 A. Well what we'll do is we'll begin with an analysis of the
9 crime conditions. We'll task the precinct CO who is making the
10 presentation to analyze what are his or her particular crime
11 conditions that are going on.

12 And where the crime is going up, the next part will be
13 the strategy. What are you doing about it, really? And then
14 they'll relate what's the strategy and what they're doing. And
15 then we'll talk about what are the results.

16 And when we get to the results, we'll look at the
17 activity and see does that match the crime condition.

18 Q. And as you -- are you receiving reports of crime weekly?

19 A. Yes.

20 Q. And as borough commander are there steps that you take to
21 make sure that the precinct is addressing the crime?

22 A. Yes.

23 Q. And what steps do you take?

24 A. We receive reports of crime daily. And we will look at
25 where we see spikes in crime, where we see crime -- you know,

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1 going up, we will call the precinct and say, Listen, do you see
2 this spike? What's going on? What are you doing about it,
3 really? What's the plan?

4 Q. Now does the borough have any responsibility with respect
5 to QAD audits?

6 A. Yes, we do.

7 Q. What are the responsibilities of the borough with respect
8 to QAD audits?

9 A. There's a whole procedure regarding how we handle those QAD
10 audits.

11 Q. Generally what is the borough responsible for?

12 MR. MOORE: Judge.

13 MS. GROSSMAN: It's very simple. It's just at the
14 borough level.

15 MR. MOORE: All these questions, there's nothing in
16 his declaration about this. I mean the purpose of this
17 declaration was to give --

18 MS. GROSSMAN: The QAD audit --

19 MR. MOORE: Can I finish?

20 THE COURT: Please, finish.

21 MR. MOORE: The purpose of the declaration was to give
22 us some idea of where this testimony was going, given the fact
23 that we weren't able to do his deposition. And there's nothing
24 in here about, related in the questions that Ms. -- the
25 question --

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1 THE COURT: Are you saying how are QAD audits handled?
2 That seems to be the very simple question. How do you handle
3 QAD audits?

4 MR. MOORE: About his understanding of QAD audits on
5 the borough level.

6 THE COURT: Right. How does he handle them on the
7 borough level.

8 MR. MOORE: It puts us at a severe disadvantage in
9 terms of trying to figure out what to ask him but if he --
10 that's why I objected.

11 THE COURT: I wish your declarations had given notice
12 of the topics you were intending to cover. It really does seem
13 to be a problem with the declaration and then the direct
14 examinations.

15 MS. GROSSMAN: Your Honor, the reasons --

16 THE COURT: I'll allow it anyway, very briefly, and
17 very succinctly. Just tell us how you handle QAD audits at the
18 borough level.

19 THE WITNESS: We direct the precinct commander to
20 prepare a response to the deficiencies that have been uncovered
21 by the QAD audit. That report is forwarded to the borough
22 where we review it. And then we comment on that. We make sure
23 that we're satisfied with the response from the precinct
24 commander. And then we forward that to the office of the chief
25 of patrol.

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1 Q. What role does the borough play in overseeing precinct
2 level OCD investigations?

3 A. It's largely an administrative role. We get the
4 communications from the office of the chief of patrol. We
5 forward them to the precincts. We monitor them for timely
6 response. When we get the response back, we make sure that the
7 response is forwarded as required.

8 Q. And does the borough oversee the recent racial profiling
9 order that requires the commanding officer to ensure compliance
10 with the audits and the self-inspections.

11 Let me rephrase that question.

12 Is there -- has there been a change in terms of the
13 rank of the officer at the command who has been required to do
14 the 802 audits?

15 A. You're referring to the stop, question and frisk audit?

16 Q. Yes. The stop, question and frisk audits.

17 A. Yes. Yes there has been a change in direction.

18 Q. And what role does the borough play in making sure that
19 that change has been carried out?

20 A. The borough investigations unit compiles a report that
21 lists all of those self-inspections that have been done. It
22 enumerates the fact that the precinct XO actually did the
23 report, what his or her remarks were about it. And then they
24 forward that report down to the office of the chief of patrol.

25 Q. Now, did there come a time that you received a March 5,

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Morris - direct

1 2013 memo from chief of patrol regarding documentation of stops
2 in an officer's activity log?

3 A. Yes, ma'am.

4 Q. And when did you receive this?

5 A. Shortly after March 5.

6 Q. And did you communicate the contents of the March 5, 2013
7 memo to the commands of patrol borough Manhattan North?

8 A. Yes, I did.

9 Q. How did you communicate the contents?

10 A. I issued a memo to all of my precinct commanders under my
11 signature referring to the chief of patrol's memo.

12 Q. Showing you what's been marked as Defendants' Exhibit U14.

13 (Continued on next page)

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D598FLO5 Morris - direct

1 Q. What is this document?

2 A. This is the memo that I just referenced. It's addressed
3 from me to all of the commanding officers in Patrol Borough
4 Manhattan North.

5 Q. What is included in this memo?

6 A. It's a statement from me referencing the chief of patrol's
7 memo. So attached to it is the actual chief of patrol's memo
8 that he sent to us.

9 MS. GROSSMAN: I move to admit Defendants' Exhibit
10 U14.

11 MR. MOORE: I don't have a real serious objection,
12 although it's admitting an exhibit that, of course, has been
13 the subject -- there is an attachment to his memo, which is the
14 March 5 memo, which we have had a lot of discussion about,
15 about waiting until Chief Hall testifies.

16 THE COURT: But he is going to testify.

17 MR. MOORE: He is going to testify. Just so the
18 record is clear about that.

19 THE COURT: You are still planning to call him?

20 MS. GROSSMAN: Yes.

21 THE COURT: So with that guarantee, you don't really
22 object to U14?

23 MR. MOORE: Right.

24 THE COURT: U14 is received.

25 (Defendants' Exhibit U14 received in evidence)

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Morris - direct

1 Q. Generally, can you please explain what this memo requires
2 officers to do?

3 A. Basically, it requires them to make a very clear, detailed
4 entry in their activity logs regarding a stop, question and
5 frisk situation, particularly, pointing out the circumstances
6 for the stop.

7 Q. What about submitting the documentation, are there any
8 requirements that have been imposed?

9 A. The other thing of note here is that it required a copy,
10 that the officers make a copy of that memo book entry, and
11 attach it to the copy of the 250 in the precinct so that the
12 two are stapled together, attached together.

13 Q. Do you have an understanding that some of the precincts in
14 Patrol Borough Manhattan North are submitting the activity logs
15 with the corresponding 250?

16 MR. MOORE: Object to the form, Judge.

17 MS. GROSSMAN: I will rephrase it.

18 THE COURT: If you want to rephrase, that's fine.

19 Q. What has the patrol borough done to monitor whether there
20 is compliance with this memo from Chief Hall?

21 MR. MOORE: I would object to this because in Chief
22 Morris's declaration, he set forth certain activities that were
23 done to monitor compliance with Chief Hall's memorandum. As
24 you know, we asked for production of -- that involved looking
25 at a certain amount of UF-250s from four different precincts as

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1 I understand it. And we asked for the production of those
2 UF-250s. There were only 40 of them. And the city was unable
3 to provide them to us and indicated that -- well, I will
4 represent to you that what they said was that the 40 were
5 looked at but they weren't preserved. So we are at a
6 disadvantage in terms of being able to ask him about that or
7 question him about that.

8 MS. GROSSMAN: We don't have to get into the substance
9 of the 40, just to say that individuals under Chief Morris's
10 command went out to the precincts, inspected to see that the
11 memo books and the corresponding 250s were filed and that they
12 inspected it, and that there was a report back to Chief Morris
13 that --

14 MR. MOORE: She is testifying now, Judge.

15 THE COURT: She is, but I am going to ask him if he
16 agrees.

17 Go ahead.

18 MS. GROSSMAN: And that he determined after the survey
19 that the commands were indeed following the chief of patrol's
20 memo.

21 THE COURT: Is what the attorney just said what you
22 did?

23 Chief, is what she just said essentially what you did?

24 THE WITNESS: I think it needs some clarification.

25 THE COURT: Clarify if you can.

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Morris - direct

1 THE WITNESS: The study done by Captain Natale
2 demonstrated that all 40 had an entry in the memo book
3 regarding it. And my recollection is that 16 of the 40 had
4 either no entry or an inadequate entry regarding the reason for
5 the stop.

6 THE COURT: Thank you for the clarification.

7 MS. GROSSMAN: That's all that we would be developing
8 on this.

9 THE COURT: I understand. But the plaintiffs' point
10 is still correct. The 40 that were reviewed cannot be produced
11 and therefore the plaintiff doesn't have the opportunity to
12 check them and draw its own conclusions or to ask questions
13 about them. But noting that problem, I will still allow his
14 testimony.

15 BY MS. GROSSMAN:

16 Q. Now, in response to Chief Hall's memo of March 5, did the
17 borough take any further actions to make sure that the contents
18 of the memo were followed?

19 A. Yes, they did.

20 Q. What else did you do, what did the borough do?

21 A. The borough training officer communicated to all of the
22 precinct COs requiring that training be done on this memo.

23 MR. MOORE: Judge, this is not rocket science. That's
24 a very important fact now being testified to by Chief Morris
25 that is nowhere in the declaration. We had no opportunity to

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1 prepare to respond to that. I just don't understand how we can
2 keep running into this problem and the city keeps doing it over
3 and over again.

4 THE COURT: I am sympathetic to your criticism of the
5 city. But in the real world that we are in, what is hard for
6 you to grasp when all he said was that we decided we better
7 train on this memo? We better train people as to how to comply
8 with the memo, which is not a big concept either, as you said.
9 So even though it's true it wasn't in the declaration, it's
10 true you didn't have notice, it doesn't take much notice to ask
11 a question back if you wish to.

12 All he is saying is there was a memo in March. They
13 took it serious. They are training on it. This is 2013.
14 Obviously, you caught their attention.

15 Q. Chief, how many officers in Patrol Borough Manhattan North
16 have received a performance evaluation of 2.5 or lower?

17 A. It's about ten.

18 Q. How do you interact with members of the community?

19 A. My professional relationship with the community has evolved
20 over the last three years.

21 Q. How so?

22 A. When I first got assigned to Manhattan North, I had a
23 series of individual meetings with various community leaders,
24 various members of the clergy, various elected political
25 officials who represented Manhattan North. I have also had

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1 meetings with community council presidents. I have attended
2 community councils. In Manhattan North, we police many large
3 events. We police many smaller events in Manhattan North too,
4 something right down to a little league opening and things like
5 that. And then over time, I have also developed relationships
6 with community leaders that are ongoing relationships, and they
7 are able to talk to me whenever they have an issue.

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

10 A. I have received complaints related to stop, question and
11 frisk.

12 Q. What kind of complaints have you received?

13 A. Examples would be young kids are stopped for no reason, the
14 cops were rude when they were stopping people.

15 Q. Has the source of some of these complaints been from local
16 politicians?

17 A. I had a local politician complain to me, or make a
18 statement to me that she wasn't happy that her precinct had the
19 leading number of 250s.

20 THE COURT: What precinct is that, by the way?

21 THE WITNESS: The 23rd Precinct.

22 THE COURT: Where is that?

23 THE WITNESS: East Harlem.

24 Q. Do you have community affairs officers in the borough?

25 A. Yes. Currently now there is one sergeant, one detective,

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1 and three police officers assigned to the Manhattan North
2 Community Affairs Unit.

3 Q. What are they expected to do, what are their
4 responsibilities?

5 A. Well, they are each designated as liaisons to precincts
6 within the borough. They also attend local community meetings.
7 They participate in many of the large events that I talked
8 about before that we police, and they kind of act as my eyes
9 and ears, a conduit of information to the community.

10 In addition to the community affairs persons in the
11 borough, each precinct, each one of the 12 precincts, has on
12 average two community affairs officers there who are also able
13 to get information; they also participate with us in the large
14 events that go on in Manhattan North.

15 Q. Do your community affairs officers report back to you about
16 complaints that they hear about at these meetings?

17 A. Yes, ma'am.

18 Q. Have you heard any complaints from your community affairs
19 officers about stop, question and frisk?

20 MR. MOORE: It would be hearsay if he did.

21 THE COURT: I would take a yes or no.

22 Surely the topic has come up, hasn't it?

23 THE WITNESS: Yes, I am aware of it.

24 THE COURT: Sure.

25 Q. Has anyone actually reported back to you -- have any of
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1 your community affairs officers reported back to you that there
2 were complaints about racial profiling at the meetings that
3 these officers attended?

4 A. We have no complaints of racial profiling.

5 Q. Do you also have a school sergeant out of the borough?

6 A. I just want to clarify. There is a school unit in the
7 borough. It's staffed by a lieutenant and a sergeant. In
8 addition to that, each one of the 12 precincts has a school
9 sergeant designated.

10 Q. What is their responsibility with respect to the community
11 and the schools?

12 A. Well, throughout Manhattan North, we have a large number of
13 schools. So they are the liaison in terms of making sure that
14 schools are safe. They interact with the NYPD school safety
15 division. And they are out there in terms of getting
16 information and providing information to the public.

17 Q. If they hear any complaints from the community, are they
18 required to report that back to you?

19 A. Yes, ma'am.

20 Q. Now, what are the responsibilities of the borough with
21 respect to performance monitoring?

22 A. I get notified usually when a person is placed on
23 performance monitoring when he or she is transferred into the
24 borough, things like that.

25 Q. Now, is there a borough adjutant in the Patrol Borough

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1 Manhattan North?

2 A. In the organizational structure of Manhattan North, there
3 is assigned borough adjutant.

4 Q. What responsibilities does that borough adjutant have?

5 A. He deals mostly with the personnel side of the operation,
6 anything that's connected with personnel.

7 Q. Would that include CCRB monitoring and performance
8 evaluations?

9 A. Yes, it would.

10 Q. Would it also include investigations?

11 A. That's part of his job, yes.

12 Q. Now, once the borough receives notice that an officer is
13 going to be assessed by the CCRB profile and assessment
14 committee, what does the borough do?

15 A. Well, we would notify the precinct commanding officer to
16 conduct an assessment of this officer and to provide a report
17 regarding that assessment to the borough.

18 Q. What is expected to be included in this report from the
19 precinct commander?

20 A. An analysis of the complaints, the CCRBs that have been
21 filed against the officer, an assessment of the officer. We
22 would expect the precinct commanding officer to have personally
23 interviewed the officer and to provide us with a recommendation
24 about what he or she thinks.

25 Q. Then is the CO required to send a recommendation to the

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1 borough?

2 A. Yes, ma'am.

3 Q. What is the borough adjutant required to do after he
4 receives the CO recommendation?

5 A. He will review that recommendation, and he will also have
6 another personal interview with the officer who is being
7 assessed. And then what he will do is he will make a
8 recommendation to me about what do we think should be done in
9 this particular situation.

10 Q. What does the borough adjutant review when he speaks to
11 you?

12 MS. GROSSMAN: Let me rephrase that.

13 Q. The meeting with the borough adjutant and the subject
14 officer, what is the purpose of that interview?

15 A. It's for the borough adjutant just to get an assessment of
16 the officer. What does he think? Does the officer take this
17 situation seriously? Is he or she concerned about it? There
18 is nothing like a face-to-face interview.

19 Q. Then you confer with the borough adjutant before the
20 borough's recommendation is forwarded through channels?

21 A. The borough adjutant will prepare a recommendation for my
22 signature. He will confer with me regarding it. He will give
23 me a briefing about what his interview was like with the
24 officer. We will talk about the facts and circumstances, and
25 he will see if I concur with the recommendation that he has

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1 prepared for my signature.

2 Q. Where is the recommendation sent?

3 A. It's sent to the commanding officer of the Department
4 Advocate's Office.

5 Q. Now, this meeting that occurs between the borough adjutant
6 and the subject officer, does that happen before or after the
7 assessment committee meeting chaired by the first deputy
8 commissioner?

9 A. It happens before.

10 Q. How does the borough learn about the results of the
11 committee assessment of the subject officer?

12 A. The case that I know of, my superior called me regarding
13 it.

14 Q. Then how is the commanding officer notified of the results?

15 A. We the borough would notify the precinct commanding
16 officer.

17 Q. Now, do officers who are the subject of a CCRB profile and
18 assessment committee also remain on performance monitoring?

19 A. It depends.

20 Q. What would it depend on?

21 A. It would depend on whether or not they meet those criteria
22 for the performance monitoring. I think there are three levels
23 of it.

24 Q. Now, if the committee decides to change an officer's
25 assignment and the officer remains on performance monitoring,

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1 what does the borough do to monitor that officer?

2 A. We maintain a list of persons who are on performance
3 monitoring. The precinct is required to prepare reports direct
4 to headquarters regarding that officer, but it's something that
5 we would be aware of. For instance, if that officer were to be
6 considered for a particular assignment, we would want to know
7 whether or not he or she was on performance monitoring.

8 Q. Do you have a sense of how many officers in Patrol Borough
9 Manhattan North are currently on performance monitoring?

10 A. I think it's about 65.

11 Q. Now, if officers assigned to a borough unit are placed in
12 performance monitoring, for example, the specialty units that
13 we talked about earlier, who would monitor those officers?

14 A. The commanding officer of that particular unit.

15 Q. Are there any officers in any of the borough units now on
16 performance monitoring?

17 A. Yes.

18 Q. How many?

19 A. There is one in the Manhattan North Task Force.

20 Q. Now, is the borough notified of civilian complaints
21 lodged -- I'm sorry.

22 Is the borough notified when civilian -- by the
23 Civilian Complaint Review Board when -- let me rephrase.

24 Are you notified when civilian complaints are brought
25 against police officers in Patrol Borough Manhattan North, and

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1 by that I mean not OCD complaints, but complaints that have
2 been filed with the Civilian Complaint Review Board?

3 A. We get a monthly numerical printout that shows the
4 complaints that have been filed against members assigned to
5 Manhattan North.

6 Q. And complaints that were filed with the Civilian Complaint
7 Review Board?

8 A. Yes, ma'am.

9 Q. What kind of information is reported to you?

10 A. It's a statistical numerical report broken down by precinct
11 about how many complaints have been filed.

12 Q. Are you able to see upward trends and downward trends in
13 that statistical report?

14 A. Yes, we can.

15 Q. If you see spikes in civilian complaint files with the
16 Civilian Complaint Review Board, what do you do with that
17 information?

18 A. We would bring it to the attention of the precinct CO.

19 Q. Do you also raise that at precinct management meetings?
20 Would you raise that with the commanding officers, bring it to
21 the commanding officers' attention?

22 A. Yes. We would bring it to the attention of precincts.

23 Q. Have you made any observations in the last year to now
24 whether there have been upward trends or downward trends?

25 A. The trend is downward in Manhattan North.

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Morris - direct

1 Q. Now, is there a borough investigations unit?

2 A. Yes, there is.

3 Q. That's under the borough command structure?

4 A. Yes, it is.

5 Q. Can you describe what the borough investigations unit does?

6 A. They investigate complaints referred to them, and they will
7 also do some self-initiated investigations, and they will also
8 do some patrol monitoring within Patrol Borough Manhattan
9 North.

10 Q. How do you receive these complaints?

11 A. The current system is the complaints that are referred to
12 the investigations unit come through the office of the chief of
13 patrol.

14 Q. What is your understanding in terms of Internal Affairs and
15 their role in logging in complaints?

16 MR. MOORE: For what?

17 Q. Civilian complaints. Sorry.

18 MR. MOORE: Within the borough or just generally?

19 Because it's not a part of the borough. Internal Affairs is
20 not part of the borough.

21 Q. Do you have an understanding of what kind of complaints
22 come into Internal Affairs?

23 MS. GROSSMAN: Let me rephrase the question.

24 Q. How does the borough investigations unit conduct an
25 investigation?

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1 A. Borough investigations unit will get cases or complaints
2 referred to them. They will take those complaints. They will
3 log them in. They will do an assessment of that case and then
4 they will begin the investigation.

5 Q. How many people are in the borough investigations unit?

6 A. There is one captain, who is the commanding officer. There
7 are now three lieutenants. I think there are eight sergeants
8 now.

9 Q. Is the investigator assigned -- is the investigator
10 supervised by anyone in the borough?

11 A. I don't understand.

12 Q. Is there a team leader?

13 A. Yes. The way it's set up in investigations is the two
14 lieutenants function as the team leaders.

15 Q. Generally, what kind of documents are gathered for a
16 borough investigation?

17 A. Well, the investigator is usually the sergeants. They will
18 gather any department form that's associated with the
19 investigation, anything they would need, copies of roll calls,
20 copies of memo books, any sort of Sprint printouts, 911 logs,
21 any record that is kept relative to the incident.

22 Q. Who is interviewed in connection with these investigations?

23 A. All parties would be interviewed. Any civilians involved
24 would be interviewed, any members of the service would be
25 interviewed, everybody would be interviewed.

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Morris - direct

1 Q. Where do the interviews generally take place?

2 A. Well, it depends. As to civilian witnesses, any civilians
3 associated with it, they will be interviewed wherever they are
4 most comfortable. Members of the service are generally
5 interviewed in a department facility.

6 Q. Are there occasions when interviews will take place by
7 phone?

8 A. If that's the way the complainant, the civilian person
9 wants to be interviewed, that's fine. But, generally speaking,
10 the investigators like to interview the person in person.

11 Q. Are those interviews taped?

12 A. If the civilian person says that it's OK with them, they
13 will tape it.

14 Q. If they are not taped, are the interviews summarized?

15 A. Yes. All interviews are summarized.

16 Q. If the complaining witness is uncooperative or refuses to
17 respond to calls from the investigator, does the borough
18 continue the investigation?

19 A. Yes, they do.

20 Q. Is that lack of cooperation noted in the investigation?

21 A. Yes. There would be something.

22 Q. Approximately how many investigations were conducted by
23 Patrol Borough Manhattan North in the year 2012?

24 A. In 2012, they had about 260 what we call M cases,
25 allegations of misconduct. Then they had about 160 what we

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1 call OG cases.

2 THE COURT: What is OG?

3 THE WITNESS: That's other violations, not necessarily
4 misconduct. It could be -- they are the more minor violations.

5 THE COURT: A sloppy uniform or something, late to
6 work?

7 THE WITNESS: For instance, I can think of some
8 examples, misuse of a parking placard. One that was told to me
9 was somebody brought a child to work, something like that.

10 Q. In terms of the number of complaints that are investigated
11 by the borough, are you able to say percentage wise what amount
12 of the complaints are about members of service versus
13 civilians?

14 MR. MOORE: We did get some notice with respect to
15 what Chief Morris testified about having one captain, three
16 lieutenants, and eight sergeants receive cases from Internal
17 Affairs, but the declaration didn't go into any of this detail
18 in terms of what percentage of cases went this way or that way.

19 MS. GROSSMAN: It's to generally give the Court a
20 sense of the types of investigations that are handled.

21 THE COURT: I think he did that already. I will
22 sustain the objection to the current question.

23 Q. Are there occasions when the borough investigations has
24 investigated complaints that involve stop?

25 THE COURT: Stops under this?

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1 MS. GROSSMAN: Yes.

2 Q. Are there occasions when the borough investigations has
3 investigated complaints that involve a stop or there might be
4 an arrest where the arrest is triggered by a stop?

5 MR. MOORE: Object to the form.

6 THE COURT: Overruled.

7 Yes or no?

8 A. Yes.

9 Q. Have you received any complaints of racial profiling that
10 you have investigated through the borough investigations unit?

11 A. No.

12 Q. Now, who gets notified of the results of the borough
13 investigations?

14 A. The Internal Affairs Bureau and the office of the chief of
15 patrol.

16 Q. When would you notify Internal Affairs and when would you
17 notify chief of patrol?

18 A. Well, the office of the chief of patrol is always notified,
19 and there is an indirect more immediate notification to
20 Internal Affairs Bureau that goes on at the same time.

21 Q. Now, the files that are prepared by the investigators,
22 where are they maintained?

23 A. They are maintained at the investigations unit.

24 Q. Do you send the entire file through channels or do you just
25 maintain it at the command?

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1 A. It's maintained at the command.

2 Q. Now, do you have any responsibilities in the borough with
3 respect to command disciplines?

4 A. Yes.

5 Q. Will you on occasion adjudicate command disciplines?

6 A. On occasion.

7 Q. Now, the investigators in the borough investigations unit,
8 do they receive training by IAB?

9 A. There is a course available to them, yes.

10 Q. They are trained by IAB on how to conduct investigations?

11 A. That's what the course does.

12 Q. Now, does the borough investigations unit attend steering
13 committee meetings with Internal Affairs?

14 A. Yes, they do.

15 Q. How often does that happen?

16 A. They are supposed to be scheduled every six months.
17 Sometimes there is a little bit of a delay.

18 Q. What is your understanding of what occurs at the steering
19 committee?

20 MS. GROSSMAN: Let me rephrase that.

21 Q. What is your understanding of what occurs at the steering
22 committee?

23 A. Ranking members of the Internal Affairs Bureau review all
24 of the closed cases that the investigations unit has closed
25 since their last meeting. They will also then take a look at

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1 some of the open cases and provide direction.

2 Q. My apologies. I think my question asked about steering
3 committee, but it's a steering meeting. That's what I meant.

4 MS. GROSSMAN: May I have one minute?

5 Q. Now, you're aware that some of the commands have been
6 failing the activity log audits, right, the 802 stop, question
7 and frisk activity log audits?

8 I'm sorry. Let me ask the questions again.

9 You're aware that there have been precincts in Patrol
10 Borough Manhattan North that have failed in the activity log
11 portion of the 802 stop, question and frisk audit, right?

12 A. Well, QAD has pointed out deficiencies.

13 Q. What have you done as the borough --

14 THE COURT: That wasn't an answer, I don't think, to
15 the question. The question was, are you aware that some of
16 them got a failing grade?

17 If I recall, a failing grade is less than 3?

18 MS. GROSSMAN: Yes.

19 THE COURT: That some of the commands got a failing
20 grade on the category of activity log? Do you know that?

21 THE WITNESS: I can't recall what their grade was.

22 THE COURT: You don't know that any were below 3?

23 I am afraid that there were a lot below 3.

24 Anyway, you don't remember that, that any of them got
25 below 3 for that category?

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Morris - direct

1 THE WITNESS: I have seen a report that showed there
2 were categories below 3, gradings in that category below 3.

3 THE COURT: In that category of activity log?

4 THE WITNESS: Yes.

5 THE COURT: So you know that?

6 THE WITNESS: I have seen that.

7 Q. What has the borough done to try to respond to the
8 deficiencies that have been noted by QAD?

9 A. We have had a two-part response to this issue. The first,
10 I think I spoke about it before involving some of the training
11 work that we did regarding that March 5 memo.

12 On the other side, as to the audits done by the
13 quality assurance division, I have taken the policy now that
14 where those deficiencies are uncovered by the QAD
15 investigators, that when the precinct commanders prepare their
16 responses to it, and I review them, I task the precinct COs to
17 handle those failures as disciplinary situations. I don't
18 accept training as the response for those now.

19 THE COURT: Since when have you taken that position?

20 THE WITNESS: Your Honor, I am approximating, end of
21 last year, beginning of this year.

22 THE COURT: Thank you.

23 MS. GROSSMAN: I have no further questions.

24 THE COURT: Thank you.

25 (Continued on next page)

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D598FLO5 Morris - direct

1 CROSS-EXAMINATION

2 BY MR. MOORE:

3 Q. Good afternoon, Chief Morris. How are you doing?

4 A. How are you, sir?

5 Q. You talked about the office of chief of patrol
6 investigations that are referred to the borough investigating
7 unit?

8 A. Yes, sir.

9 Q. That's different than the office of chief of department
10 obviously, correct?

11 A. Yes, sir.

12 Q. Do you know if the office of the chief of patrol keeps an
13 index of all the complaints that they generate and they refer
14 to the borough?

15 A. I don't know the answer to that.

16 Q. Do you know if they accumulate complaints from the office
17 of chief of patrol in a category that would identify them as
18 related to stop and frisk?

19 A. I don't know the answer to that.

20 Q. Do you know if they have a category that would relate to
21 the issue of racial profiling or any kind of profiling?

22 A. No, I do not, sir.

23 Q. You also said, I think just a minute ago, that you
24 adjudicate command disciplines for the borough on occasion,
25 right?

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Morris - cross

1 A. Yes, sir.

2 Q. You're familiar with the whole command discipline
3 adjudication process in the borough, right?

4 A. Yes, sir.

5 Q. You have been the borough commander since what date?

6 A. July of 2010.

7 Q. So that's all going on almost three years now. Maybe we
8 will still be on trial when we get to your three year
9 anniversary.

10 THE COURT: Don't say that.

11 Q. It's almost three years now?

12 A. Yes, sir.

13 Q. Can you estimate for me how many command disciplines the
14 borough investigations unit has had to adjudicate in that
15 almost three-year period? Do you have a rough idea?

16 A. No, I do not.

17 Q. What about on a monthly basis, do you have any idea what
18 the numbers are?

19 A. No, I do not.

20 Q. So you have no idea what the workload of that unit is,
21 right?

22 A. Of which?

23 Q. Borough investigations unit?

24 A. No. I know what the workload is.

25 Q. Can you tell me the number of the complaints that they

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D598FLO5 Morris - cross

1 handle on a daily, weekly, monthly, yearly basis?

2 A. I think I said before that in 2012, they handled about 260
3 misconduct cases and about 160 OG cases.

4 Q. 160?

5 A. Yes.

6 Q. OG is other?

7 A. Other guidelines. Those are the less serious cases.

8 Q. Do you think that's about the same number that the borough
9 investigations unit were involved in in 2011 and 2010? Do you
10 have any reason to believe that it has gone way up or way down
11 since those two years?

12 A. I have a belief that there might have been something
13 affecting those numbers, yes.

14 THE COURT: I don't know what you mean.

15 A. I think the number has been driven up by the concern
16 regarding traffic cases in the wake of the summons situation
17 that got some media attention.

18 Q. In any event, in the entire time that you have been the
19 borough commander of Patrol Borough Brooklyn North, you have
20 never issued a command discipline for anything related to stop,
21 question and frisk, right?

22 A. No, sir.

23 Q. Nor have you ever issued a command discipline related to
24 any kind of racial profiling or any kind of profiling?

25 A. No, I have not.

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Morris - cross

1 Q. Now, you have seen the numbers, have you not, Chief Morris,
2 with respect to the numbers of stops and frisks that have been
3 at least documented by the NYPD over the last few years, you
4 have seen those numbers?

5 A. Which numbers are you referring to?

6 THE COURT: Total numbers in the citywide stop and
7 frisk.

8 THE WITNESS:

9 A. I have read about it, sure.

10 Q. Are you aware of the figure then, of all the stop and
11 frisks that have been engaged in over the last few years, that
12 90 percent lead to no further enforcement action? Have you
13 heard that number?

14 A. Yes, I have.

15 Q. We are talking about 90 percent -- withdraw that.

16 Does that concern you that 90 percent of the stops
17 engaged in by police officers in the City of New York over this
18 period of time have led to no further enforcement action in 90
19 percent of the cases? Does that concern you as a senior member
20 of the New York City Police Department?

21 A. Could I just ask one question? What period of time are we
22 talking about, roughly?

23 Q. We are talking about, the subject matter of this case is
24 4.5 million stops from 2006 to 2012.

25 THE COURT: I actually thought it was 2004 to 2012.

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Morris - cross

1 And they have been going up during those years.

2 His question was, does it concern you that 90 percent
3 of those 4.5 million stops did not involve any enforcement
4 action?

5 THE WITNESS: No, it does not.

6 Q. Now, you understand that officers are required to document
7 their stop and frisk activity, correct?

8 A. Yes, sir.

9 Q. They are required to do that in two places, two different
10 documents?

11 A. Yes, sir.

12 Q. One is the UF-250, which is primarily a check-off form?

13 A. Correct.

14 Q. And the other one is in their memo books, correct?

15 A. Yes, sir.

16 Q. This requirement of documenting their activity in two
17 different places is a long-standing policy of the New York City
18 Police Department, correct?

19 A. Yes, sir.

20 Q. As you understand the policy, the purpose of documenting
21 the entry in the memo book is to make a more detailed entry
22 that goes beyond the actual check-off forms in the 250,
23 correct?

24 A. Yes, sir.

25 Q. It's your understanding, at least up until recently, that

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Morris - cross

1 officers have been failing to document their stop and frisk
2 activity into memo books, correct?

3 A. The entries in those books have not been complete. That's
4 my understanding.

5 THE COURT: Sometimes there is no entry, is that true?

6 THE WITNESS: That's been shown by some of the QAD
7 audits.

8 THE COURT: Both no entries on occasion and incomplete
9 entries on other occasions?

10 THE WITNESS: Yes, your Honor.

11 THE COURT: Those are both deficiencies?

12 THE WITNESS: Yes, your Honor.

13 Q. What is the purpose, as you understand it, of documenting
14 the details of the stop in a memo book?

15 A. The memo book is part of the officer's record of what he or
16 she has done. That's a very important component of a police
17 officer's job.

18 Q. What is the purpose of documenting that entry into the memo
19 book? I understand it's an important part of their job to do
20 it, but what is the purpose, as you understand it, for
21 documenting the stop activity in their memo book?

22 A. It accounts for what the officer did. It's a record of it.

23 Q. Is there any other purpose you can think of as you sit here
24 today for why officers should do that?

25 A. It accounts for the job they have done.

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Morris - cross

1 THE COURT: You said that. He is saying, is there any
2 other reason you can think of?

3 Some folks have testified it's a tool for refreshing
4 recollection if the officer needs to testify. Is that another
5 reason?

6 THE WITNESS: Yes.

7 THE COURT: Any others come to mind?

8 THE WITNESS: No.

9 Q. What about for supervisors to go back and review officers'
10 stop and frisk activity? A detailed entry in the memo book,
11 would that assist officers in doing a look back and reviewing
12 that officer's stop and frisk activity?

13 A. Yes, sir.

14 Q. So that's another important purpose of documenting stop
15 activity in the memo book?

16 A. Yes, sir.

17 Q. Now, it's your testimony, is it not, I believe you
18 testified to this on direct, that you rely on precinct
19 supervisors to ensure that officers are complying with the law
20 with respect to their memo book entries, correct -- withdraw
21 that -- with respect to their stop and frisk activity?

22 A. Yes, sir.

23 Q. What do you do to ensure that your supervisors are actually
24 doing that?

25 A. I think that's what I talked about before, that two-part

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Morris - cross

1 process of this 250 situation. The one is the training moving
2 forward, and the second is my position regarding discipline
3 where the audits have proven the deficiencies.

4 Q. That's a recent development though with respect to how you
5 see that part of your job, correct?

6 THE COURT: You said that already. You said you
7 started doing that late 2012, early '13?

8 THE WITNESS: Yes, your Honor.

9 Q. Is it your understanding that you expect the commanding
10 officers of each precinct to simply review sample UF-250s to
11 see if they are complying with the law with respect to stop and
12 frisk and that's enough? Simply the review of samples of the
13 250 is enough to ensure that that officer is complying with the
14 law?

15 A. At a meeting, I recall telling my commanding officers that
16 I expected them to physically review the actual 250 to make
17 sure that it was being done properly.

18 THE COURT: That's just the 250. They needn't look at
19 that together with the memo book entry?

20 THE WITNESS: I only told them about the 250s.

21 Q. When was that meeting?

22 A. I'm not sure. Sometime last year, by the best of my
23 recollection.

24 Q. So the practice up until recently was, at least in your
25 borough that you're the commander of, was that it was enough

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Morris - cross

1 for the officers to review the 250s, and they didn't have to
2 review the memo books?

3 THE COURT: Didn't I just say that word for word I
4 think? I did.

5 MR. MOORE: I apologize.

6 A. That's not what I meant. When I gave that direction about
7 reviewing the 250s, it was moving forward for the CompStat
8 form. I expected the COs to look at the 250s, the commanding
9 officers to look at the 250s, and make sure that they were good
10 250s.

11 THE COURT: How is that different from what he asked?

12 THE WITNESS: I thought there was something about when
13 he said officers. I was speaking only to captains and above,
14 precinct commanding officers.

15 Q. I'm sorry. You're right. I was talking about what you
16 expect precinct supervisors to do, correct?

17 THE COURT: First-line supervisor, probably a sergeant
18 looking at the officer's book.

19 A. When I give direction to the precinct commanding officer, I
20 expect them to interpret that and give it to the front-line
21 supervisors. That's why I think the answer was unclear before.

22 THE COURT: Thank you.

23 Q. Do you have Exhibit U14 before you?

24 A. Yes, sir, I do.

25 Q. Now, U14 is you're communicating with your precinct

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Morris - cross

- 1 commanders with respect to this March 5, 2013 memorandum from
2 Chief Hall, correct?
3 A. Yes, sir.
4 Q. In your communication -- withdraw that.
5 First of all, you enclosed a copy of Chief Hall's
6 memorandum, correct?
7 A. Yes, sir.
8 Q. Let's be clear, this is not an operations order, Chief
9 Hall's memorandum?
10 A. No, sir, it's not.
11 Q. It's not an interim order, correct?
12 A. No.
13 Q. It's not a revision of the patrol guide?
14 A. No, sir.
15 Q. There is a whole process that the department goes through
16 with respect to issuing operations orders, correct?
17 A. Yes, sir.
18 Q. And it has to be approved at the highest level of
19 department, correct?
20 A. That's my understanding.
21 Q. So this is simply a memo from the chief of patrol to his
22 commanding officers of the patrol boroughs, correct?
23 A. It's a memorandum from the chief of patrol to the
24 commanding officers of patrol boroughs.
25 Q. This is not a memorandum to all the different commands

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D598FLO5 Morris - cross

1 within the NYPD?

2 A. No, sir, it's not.

3 Q. It doesn't include housing or OCCB or detective boroughs?

4 A. No, sir.

5 Q. So as far as you know, they are still following the old
6 procedure with respect to documenting of how they handle stop
7 and frisk?

8 A. I don't know the answer to that.

9 THE COURT: When it says commanding officers, all
10 patrol boroughs, how many patrol boroughs?

11 THE WITNESS: There are eight patrol boroughs. We
12 have five geographic boroughs and then three of them are
13 divided. Manhattan is one of the ones divided north and south.

14 THE COURT: This really just went to the eight people?

15 THE WITNESS: Yes, your Honor.

16 THE COURT: Were you one of them?

17 THE WITNESS: Yes.

18 THE COURT: You are a commanding officer?

19 THE WITNESS: That's why I did it like this. Chief
20 Hall writes it to me. Then I write it to the precinct
21 commanding officers who work for me.

22 Q. There is nothing that indicates that this memorandum came
23 from the deputy commissioner for training or anybody in the
24 police academy, right?

25 A. I don't see any of that.

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Morris - cross

1 Q. There is no training schedule set out in Hall's memorandum
2 or in your memorandum with respect to training officers or
3 supervisors with respect to this new procedure, right?

4 A. There is nothing set out in this memo.

5 THE COURT: Or your memo, the cover memo doesn't
6 discuss training either?

7 THE WITNESS: No. This memo doesn't.

8 THE COURT: Neither does the March 18 memo?

9 THE WITNESS: No, your Honor.

10 Q. In fact, there is no mention in here of any training on how
11 to comply with this new policy, right?

12 A. No, there is not.

13 Q. There is no mention of any training with respect to how
14 supervisors should monitor whether officers are complying with
15 this new policy set out by Chief Hall, correct?

16 A. Not in this memo.

17 Q. Now, the new policy that's set forth in this March 5, 2013
18 memo requires officers to complete their 250s and then to
19 attach a copy of their memo book to the 250, correct?

20 A. Yes, sir.

21 Q. The actual 250 is a smaller form, is that correct?

22 THE COURT: You mean physically, physical dimensions?

23 Q. Like 4 inch by maybe 8 inch.

24 A. That's approximately accurate, yes, sir.

25 Q. So officers are now required to Xerox presumably --

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Morris - cross

1 THE COURT: We say photocopy.

2 MR. MOORE: On the precinct photocopier, correct.

3 THE COURT: You're supposed to photocopy the memo book
4 and attach it to UF-250?

5 THE WITNESS: Yes, your Honor.

6 Q. So they are attaching an 8-1/2 by 11 piece of paper to a 4
7 inch by 8 inch piece of paper, right?

8 A. Yes, sir.

9 Q. The new policy requires them to elaborate, it says, on the
10 additional circumstances in their memo books, correct?

11 THE COURT: Paragraph 2.

12 A. In paragraph 2.

13 THE COURT: It says, "In addition, circumstances or
14 factors of suspicion must be elaborated on in the additional
15 circumstances factors section of the stop, question and frisk
16 report and activity log."

17 THE WITNESS: Yes. That's what it says in paragraph
18 2.

19 Q. If you look at the sample of the memo book or activity log
20 entry that accompanies this document, you see the language
21 again, "The circumstances of the suspicion must be elaborated
22 on, as shown in this example." Do you see that?

23 A. Yes, sir, I do.

24 Q. That language is different than the language that officers
25 have been trained on previously, right, with respect to filling

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Morris - cross

1 in the details of their stop activity in memo books, right?

2 A. I'm not sure about the previous language.

3 MR. MOORE: One second, your Honor.

4 Q. Taking a look at Plaintiffs' Exhibit 63, which is in
5 evidence, this is the same sample memo book.

6 THE COURT: Can you give him a date? In other words,
7 is that attached to a memo?

8 MR. MOORE: It's attached to a patrol service borough
9 memo dated February 29, 2008.

10 THE COURT: There is another sample entry in a memo
11 book explaining how it should be done.

12 Q. Are you following me, Chief?

13 A. Yes, sir, I am.

14 Q. I am glad somebody is.

15 THE COURT: I am too.

16 Q. This description of what should go into the memo book is a
17 bit more directed, right? It doesn't just say elaborate. It
18 says, It is imperative that a detailed entry be made as
19 indicated, correct?

20 A. Yes, sir, that's what it says.

21 Q. So will you agree with me that the statement --

22 MS. GROSSMAN: Can you just show the entire document
23 to the witness?

24 Q. Do you need to see the entire document?

25 MS. GROSSMAN: I think we need to see the front page

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Morris - cross

1 and the back page.

2 THE COURT: Just hand him the physical copy.

3 Just take a look at that to make sure you have seen
4 the whole thing. OK?

5 THE WITNESS: Yes, your Honor.

6 THE COURT: He has seen the whole page.

7 Go ahead, Mr. Moore.

8 Q. You agree with me that the statement in Chief Hall's memo
9 is not as strongly worded as that contained in Exhibit 63,
10 right?

11 A. It's different language.

12 Q. It's not as strongly worded, would you agree with that?

13 He says just elaborate. He is not saying it is
14 imperative that a detailed entry be made, right?

15 A. I will just read it from here.

16 Q. This is the one in Exhibit 63. And this is the one in
17 Chief Hall's memo. You see he says must be elaborated on?

18 A. Must be elaborated.

19 And the first one is?

20 Q. It is imperative that a detailed entry be made.

21 A. That's what they say. Chief Hall's memo says must.

22 THE COURT: You don't think one is stronger than the
23 other?

24 THE WITNESS: No, your Honor.

25 Q. Do you have any idea why the language of that description

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Morris - cross

1 of the memo book was changed? Do you have any idea?

2 A. No, sir, I don't.

3 THE COURT: That calls for speculation. He doesn't
4 know.

5 MR. MOORE: I wouldn't want him to speculate.

6 THE COURT: That's what it would be.

7 You didn't write the words in either one?

8 THE WITNESS: No, your Honor.

9 Q. Did you ever discuss Chief Hall's memo with Chief Hall?

10 A. Let me think for one second.

11 I can't recall whether I actually discussed it with
12 him or discussed the substance of what would be the memo. I
13 believe it was discussed at a meeting.

14 Q. Do you recall him discussing anything about why the
15 language changed there?

16 A. No. There was no discussion about that.

17 Q. OK. Fine.

18 Now, in Chief Hall's memo -- actually, I think it's in
19 your cover memo.

20 Paragraph 4 of Chief Hall's cover memo, he says,
21 "Commanding officers will ensure that members of their
22 respective commands are apprised and comply accordingly." Do
23 you see that?

24 A. Yes, sir, I do.

25 Q. There is no direction provided in there on how that was to

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Morris - cross

1 take place, right?

2 A. No, sir.

3 Q. There is nothing that says, announce these changes in a
4 series of successive roll calls, correct?

5 A. No, that's not indicated here.

6 Q. That happens quite often in the police department, right?

7 THE COURT: What happens quite often?

8 Q. That a change is announced at successive roll calls so that
9 the officers can be made aware of the change? Are you aware of
10 that ever happening?

11 A. As to changes as to anything that could happen, there could
12 be direction about, and this will be talked about at ten
13 successive roll calls, yes.

14 Q. But there is no direction that that be done with this
15 change, right?

16 A. No, not on this memo.

17 THE COURT: But when it says, Commanding officers will
18 ensure that members are apprised, commanding officers are
19 pretty senior people, maybe they will do it that way, right?

20 THE WITNESS: Yes, your Honor.

21 Q. You didn't direct that your commanders of your precincts
22 that you oversee make announcements at a series of roll calls
23 about this change, right?

24 A. I would have to check the wording of the e-mail that we
25 sent out about whether it required roll calls. I'm not sure.

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Morris - cross

1 MR. MOORE: I guess on that note, since we haven't
2 seen that e-mail.

3 THE COURT: It's 4:30. We always stop at 4:30.
4 Unfortunately, we didn't finish your testimony however so we
5 need a few more minutes. So we will resume at 10:00 tomorrow.
6 We will see you then.

7 (Adjourned to May 10, 2013, at 10:00 a.m.)
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DEFENDANT EXHIBITS

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