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1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 DAVID FLOYD, et al.,

4 Plaintiffs,

5 v.

08 CV 1034(SAS)

6 CITY OF NEW YORK, et al.,

7 Defendants.

8 -----x

New York, N.Y.
May 15, 2013
10:10 a.m.

10 Before:

11 HON. SHIRA A. SCHEINDLIN,

12 District Judge

13 APPEARANCES

14 BELDOCK LEVINE & HOFFMAN, LLP
15 Attorneys for Plaintiffs
15 BY: JONATHAN MOORE
16 JENN ROLNICK BORCHETTA

17 COVINGTON & BURLING, LLP
18 Attorneys for Plaintiffs
18 BY: KASEY MARTINI
19 GRETCHEN HOFF VARNER
19 ERIC HELLERMAN
20 BRUCE COREY

21 CENTER FOR CONSTITUTIONAL RIGHTS
21 Attorneys for Plaintiffs
22 BY: DARIUS CHARNEY
22 SUNITA PATEL
23 BAHER AZMY

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APPEARANCES (Cont'd)

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

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1 (Trial resumed)

2 MR. COREY: If I could just address one issue very,
3 very briefly.

4 If you recall last Thursday, you asked the parties to
5 stipulate to the seizure rates of weapons and contraband for
6 all stops, not just stops for which there was a search.

7 MS. COOKE: Actually, you didn't ask the parties to
8 stipulate. The defendants had submitted, in response to the
9 Court's request, the precise numbers and you invited the
10 defendants to do the math to say what those percentages were
11 out of the total. So it wasn't a request to stipulate.

12 MR. COREY: You asked us to share the figure. We did
13 and they agreed to the figure. So we offer what has been
14 marked as Plaintiffs' 578 into evidence.

15 THE COURT: And what is 578?

16 MR. COREY: This is a very simple chart that shows the
17 seizure rates for all stops, not just searches.

18 MR. MOORE: You want to see it on the elmo?

19 THE COURT: Sure. These are all stops, whether or not
20 there was a frisk, whether or not there was a search.

21 MR. MOORE: Correct.

22 THE COURT: Total universal stops, for 2004, second
23 quarter, through 2012?

24 MR. COREY: Yes, your Honor.

25 THE COURT: OK. 2004 through second quarter 2012.

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1 OK. Thank you.

2 What is the exhibit number?

3 MR. MOORE: 578.

4 THE COURT: 578 is received.

5 (Plaintiffs' Exhibit 578 received in evidence)

6 MR. MARUTOLLO: Just a minor housekeeping note.

7 Yesterday, Defendants' Exhibit P15, we just ask that that be
8 received into evidence. Those are the OCD documents. There
9 was no dispute.

10 MR. MOORE: No objection.

11 THE COURT: P15 is received.

12 (Defendants' Exhibit P15 received in evidence)

13 THE COURT: There was one exhibit where I said I would
14 only take the top two charts, but not the bottom left-hand
15 chart. Do you remember that?

16 MS. GROSSMAN: We will prepare a redacted version and
17 make sure we admit that.

18 THE COURT: It's M15.

19 MS. GROSSMAN: Yes.

20 MR. MARUTOLLO: Just one other minor point. The Ligon
21 designations, we spoke to your law clerk, and we will be
22 providing the hard copy binder just to ease the Court for
23 printing out things or looking online.

24 THE COURT: For all Ligon designations?

25 MR. MARUTOLLO: For the designations and the exhibits.

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1 THE COURT: For all Ligon designations and exhibits?

2 MR. MARUTOLLO: Right.

3 MR. MOORE: For the record, P15 is introduced for
4 notice only and not for the truth of the matter contained
5 therein.

6 THE COURT: We covered that yesterday.

7 MS. PUBLICKER: When it comes to Ian Provost, he is an
8 individual who is submitting testimony by deposition
9 designation, and your Honor had ordered last week to submit
10 certain documents under seal. So I just wanted to advise the
11 Court we will be filing Exhibit T9, Z13 and A14 under seal
12 later today.

13 THE COURT: Anybody else?

14 Mr. Charney.

15 MICHAEL FARRELL, resumed.

16 CROSS-EXAMINATION (Cont'd)

17 BY MR. CHARNEY:

18 Q. Good morning, Commissioner.

19 A. Good morning.

20 Q. Yesterday we were talking about the RAND report, among
21 other things, and one of the things we were talking about was
22 the RAND recommendation to the police department to identify
23 and flag officers with out-of-the-ordinary stop patterns. Do
24 you remember that?

25 A. Yes, I do.

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1 Q. Do you recall that we looked at the results of the internal
2 benchmarking analysis that the police department had done on
3 the 2007 UF-250 data? Do you remember that?

4 A. That's correct.

5 Q. According to the NYPD's analysis, there were 23 officers
6 who had appeared to have over-stopped pedestrians of color as
7 compared to their peers and that was at the 50 percent or
8 greater probability level, right?

9 A. Yes. That's right.

10 Q. I think you testified that the police department never took
11 a closer look at those 23 officers, is that right?

12 A. That's correct.

13 Q. Now, I want to show you again, going back to that same
14 exhibit, this is Exhibit K6, the final RAND report.

15 Looking at that same recommendation, the NYPD should
16 identify, flag and investigate officers with out of the
17 ordinary stop patterns, you see that here it says, "We
18 recommend that the NYPD review these flagged officers and
19 incorporate into their early warning system a component that
20 flags officers with extreme deviations from their colleagues."
21 Do you see that?

22 A. Yes.

23 Q. Now, after 2007, has at any point since then the NYPD run
24 the RAND internal benchmarking software on the UF-250 data for
25 any other years?

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1 A. No, I don't believe so.

2 Q. So is it fair to say that the NYPD has not incorporated
3 into its early warning system a component that flags officers
4 with extreme deviations from their colleagues?

5 A. That's correct.

6 Q. Now, you also recall that when RAND did its internal
7 benchmarking analysis on the 2006 data, it found there were 15
8 officers who had appeared to have over-stopped pedestrians of
9 color, right?

10 A. Yes. That's right.

11 Q. I am showing you, this is page 28780 of Exhibit K6, and
12 they found that six of those 15 were from the Queens South
13 borough, is that right?

14 A. That's what it says, yes.

15 Q. Now, I want to show you what is already in evidence as
16 Defendants' Exhibit B14, which is the NYPD 2012 reasonable
17 suspicion stops report.

18 I want to show you the 100th Precinct here. This is
19 page 28953. Is it correct that the 100th Precinct is in Queens
20 South?

21 A. Yes, it is.

22 Q. Do you notice here, if we look at the percentages in terms
23 of -- look at for blacks first, they are about 25 percent of
24 the population of the precinct?

25 THE COURT: Which precinct?

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1 MR. CHARNEY: 100th Precinct in Queens South.

2 THE COURT: Thank you.

3 Q. They are about 25 percent?

4 A. Right.

5 Q. They are 55.3 percent of all known crime suspects, right?

6 A. That's correct.

7 Q. And they are 64.7 percent of the stops?

8 A. That's right.

9 Q. Then if we look at whites, they are 57.1 percent of the
10 population, right?

11 A. That's right.

12 Q. They are 25.8 percent of the known crime suspects, right?

13 A. Correct.

14 Q. And they are only 16.5 percent of the people stopped,
15 right?

16 A. That's right.

17 Q. Now, given the findings of the RAND report about officers
18 in Queens South and these numbers for the 100th Precinct in
19 Queens South, did that give the police department any concern
20 that maybe they should be looking at the stop and frisk
21 activity in Queens South a little more closely?

22 A. No. As I described yesterday, with regard to this report,
23 what you didn't point out was the known violent crime suspects,
24 and as I described, the value of this report is to look at the
25 distribution of the persons stopped in the context of both the

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1 all known crime suspects and the violent crime suspects, and in
2 the cases you pointed out, the persons stopped again fall in
3 between those, which is the pattern that we see citywide.

4 Q. OK. But you notice here in the 100th Precinct it looks
5 like the top crime suspected was burglary, right?

6 A. Yes.

7 Q. And that's not a violent crime under the classification
8 that the police department uses, right?

9 A. Not under our classification. I think in the penal law
10 it's a violent felony offense.

11 Q. But you're still saying that you need to look at the
12 violent crime suspects to do the comparison in terms of the
13 percentages?

14 A. Right. The line on the top you noted, the burglary, that's
15 the top reason for a stop. So the question would be then, what
16 is the second reason? And that may be robbery or weapons or
17 something along that line.

18 Q. Now, you also recall that in the RAND report, the section
19 on the stop outcomes, right, use of force, frisking, searching,
20 do you recall that in that analysis RAND had identified
21 Brooklyn South as having some disparities in for example use of
22 force? Do you remember that?

23 A. On one of the two tables, that's correct.

24 Q. But again, your testimony is the police department, other
25 than looking at the tables, you didn't actually do any

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1 examination of the way stop and frisk was being conducted in
2 Brooklyn South, right?

3 MS. GROSSMAN: We have gone over this yesterday
4 numerous times. I think the testimony is pretty clear.

5 MR. CHARNEY: I just want to verify.

6 THE COURT: You don't need to verify. If he said it
7 once or twice, there is no need to verify because it's in the
8 transcript.

9 Q. The 72nd Precinct is in Brooklyn South, right?

10 A. Yes, that's right.

11 Q. I am showing you what has been marked and admitted as
12 Defendants' L15 yesterday. This is a demonstrative that you
13 created, right?

14 A. That's correct.

15 Q. And this has statistics on the known crime suspects and the
16 people stopped for various precincts, correct?

17 A. Yes, that's correct.

18 Q. Looking here at the 72nd Precinct, which is Brooklyn South,
19 you see it says that -- this is for Hispanics -- Hispanics were
20 61 percent of the known crime suspects, right?

21 A. Right. For all crime.

22 Q. But they were 77 percent of the persons stopped, right?

23 A. Yes. That's correct.

24 Q. Did that disparity and what RAND found about disparities in
25 use of force in Brooklyn South, did that give the NYPD any

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1 concern that maybe they should look closer at what kind of
2 practices around stop and frisk were going on in the 72nd
3 precinct?

4 A. No. This wouldn't prompt that. The RAND analysis was, of
5 course, based on 2006 stop data. This is referencing 2012
6 activity.

7 Q. This is again for 2012, but this is comparing violent
8 crime -- known violent crime suspects and persons stopped,
9 right?

10 A. Yes.

11 Q. Again you see for the 72nd Precinct, you see a 12 percent
12 difference right?

13 A. Yes. It's smaller than the other, but that is 12.

14 Q. Now, separate and apart from what RAND found, do these
15 numbers, both for the violent crime suspects and just all known
16 crime suspects, and the disparities that you see between the
17 suspect description percentage and the suspect stop percentage,
18 did that give the police department any concern that there
19 might be something going on in the 72nd Precinct that needs to
20 be looked at?

21 A. You need to look also at the results for, in particular,
22 for black suspects in the same precincts. I think you had made
23 the point, when we looked at those two bar graphs with the
24 black and Hispanic, what we see in a number of commands is,
25 where there may be the appearance of over-stopping for

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1 Hispanics, there is a nearly commensurate under-stopping for
2 blacks under suspect description, which may or may not have to
3 do with the ability of victims and witnesses to accurately
4 provide descriptions.

5 Q. Let me ask you this. You don't think that the
6 over-stopping of Hispanics alone is a concern that the police
7 department should look at?

8 Even if the blacks were being under-stopped, you don't
9 think the fact that Hispanics are being over-stopped, that that
10 in and of itself is something that the police department should
11 take a closer look at?

12 A. I think that where there are discrepancies of a significant
13 order of magnitude, that that would be something to take a
14 further look at.

15 Q. You don't think that a 16 percent discrepancy is something
16 that needs to be looked at further?

17 A. I think that is something that we could examine more
18 closely to see whether or not the relationship between the
19 distribution of crimes for which there are suspect descriptions
20 matches the types of crimes for which there are stops. Because
21 there could be -- if there are significant differences, in
22 other words, if the suspect descriptions in that command are
23 heavily weighted toward a property crime and if the stops are
24 more heavily weighted toward a violent crime, that might be
25 able to account for some of that difference.

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1 Q. A couple of questions. One is, I take it the police
2 department has not done that kind of analysis for the 72nd
3 Precinct, right?

4 A. We have just produced this report recently, so not as yet.

5 Q. Then the other question I have is, the disparity for the
6 72nd Precinct was for all crimes, right, the 16 percent, and
7 for violent crimes it's still 12 percent, right?

8 A. Right.

9 Q. Incidentally, looking at the 110th Precinct, that is Queens
10 North, is that right?

11 A. Yes.

12 Q. We have a 19 percent disparity for Hispanics for violent
13 crime, right?

14 A. Yes.

15 Q. And then for all crime we have a 23 percent disparity,
16 right?

17 A. Yes.

18 Q. Does that raise any concerns for you that maybe the 110th
19 Precinct needs to be looked at more closely?

20 A. Yeah. These all that you have circled here are ones for
21 which additional data analysis may provide an explanation for
22 why those disparities at that level of magnitude, given the
23 fact that in virtually certainly all of the others on this
24 chart are nearly identical. So in a way the exception proves
25 the rule, but those exceptions could be looked at further.

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1 Q. At this point, is there any plan that you know of in the
2 police department to do that, to look at this further?

3 MS. GROSSMAN: Objection.

4 MR. CHARNEY: I am just asking if he knows that there
5 is a plan to do that.

6 THE COURT: I will allow that.

7 A. When I am concluded with this matter, I will have an
8 opportunity to pursue this further.

9 Q. Is it your intention to do so?

10 A. Yes, it is.

11 MS. GROSSMAN: Objection.

12 THE COURT: He already answered. I will let it stand.

13 Q. When you say looking into it further, you mean do further
14 data analysis?

15 A. That's right.

16 Q. What about actually looking at, for example, the training
17 and supervision practices in the 72nd Precinct, you think it's
18 important to do that too?

19 MS. GROSSMAN: Objection. This is beyond the scope of
20 the direct.

21 THE COURT: She was speaking.

22 MS. GROSSMAN: That's my objection. It's beyond the
23 direct examination.

24 MR. CHARNEY: On that point, the parties specifically
25 stipulated with respect to this witness that we would not be

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1 limited by the direct because we were going to call him in our
2 affirmative case.

3 THE COURT: I understand that. If that's the
4 objection, I will allow it. Go ahead.

5 Do you remember the question?

6 THE WITNESS: I would like him to repeat it.

7 MS. GROSSMAN: This is all speculative, what the plans
8 are going forward. We are talking about evidence in the past.

9 THE COURT: After all, there is going to be testimony
10 about remedies so we might as well hear what the answer is.

11 BY MR. CHARNEY:

12 Q. Let me reask the question. Beyond just running the numbers
13 again and looking at the data, do you think it's important that
14 the police department actually take a look at the training and
15 supervision and monitoring practices of officers in the 72nd
16 Precinct to see if maybe that's what is causing these racial
17 disparities?

18 A. No. Because you would want to see whether or not, through
19 the data analysis, whether there is an obvious explanation for
20 the differences, before assuming that the differences
21 attributed to insufficient or inadequate training or
22 supervision. You would need to know what the nature of the
23 difference is.

24 Q. You had RAND do a data analysis, right?

25 A. That's correct.

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1 Q. And they found some disparities in post-stop outcomes in
2 Brooklyn South, right?

3 A. As I described, they found differences in post-stop
4 outcomes of an order of magnitude of 6.5 percent on one of the
5 tables and 1.7 percent on the companion table.

6 Q. So the answer is yes, they did find?

7 A. The answer is yes.

8 Q. They also recommended that the police department look into
9 that particular borough further, right?

10 MS. GROSSMAN: This is about 2006 data. We are now in
11 2012.

12 MR. CHARNEY: I am just asking a question.

13 MS. GROSSMAN: 2013.

14 A. The recommendation was to look into the boroughs that had
15 the larger differences in stop outcomes.

16 Q. So that would include Brooklyn South and their stop
17 outcomes, right?

18 A. For the force used item.

19 Q. So you have that. And then you have your own analysis of
20 the stop data and the crime data for 2012, right?

21 A. Yes, that's right.

22 Q. Those show some pretty big disparities in the 72nd
23 Precinct, right?

24 A. Which is only one precinct out of a dozen in the borough.

25 Q. But the answer is yes?

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1 A. The answer is yes for the 72nd Precinct.

2 Q. But your testimony is you still need to do further data
3 analysis before the police department can actually look into
4 things like the supervision and training practices in that
5 precinct?

6 THE COURT: I don't think he said can. I think he
7 said would.

8 Q. Is it your view that the police department, before looking
9 into supervision and training and monitoring, before you do
10 that, you think the first thing that you should do is do more
11 data analysis?

12 A. Yes, that's correct.

13 Q. Now, you testified on direct about the 1999 attorney
14 general's report. Do you remember that?

15 A. Yes, that's right.

16 Q. You said it wasn't a fair representation of the NYPD's stop
17 practices?

18 A. That's correct.

19 Q. The reason you said it wasn't, right, because they didn't
20 use suspect description as the benchmark, is that why?

21 A. Yes, that's right.

22 Q. Are there any other reasons?

23 A. That was the principal reason.

24 Q. Now, you are aware they used arrestee data as a benchmark?

25 A. I am aware of that.

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1 Q. And they used it for more than just violent crimes, right?

2 A. I believe so.

3 Q. They used it for property crimes where it was available,
4 right?

5 A. I believe they got as much of the arrest data as they could
6 for that year.

7 Q. Now, the reason you think arrestee data is not a good
8 benchmark is because it could actually hide racial bias,
9 because if officers are making racially biased arrests, then
10 you wouldn't necessarily see a disparity between the arrest
11 statistics and the stop statistics, right?

12 A. That was the point made in the RAND report, and I think
13 that it would certainly leave that open to suggestion that one
14 could question the reliability on that score.

15 Q. Doesn't that mean that using an arrestee benchmark would
16 tend to under-report racial bias if it in fact existed, right?

17 A. Not necessarily. I am just saying that one could raise
18 that question and you can avoid the question at all by relying,
19 instead of on data that's the result of police decision-making,
20 rely on the independent reports from victims and witnesses who
21 clearly have no stake in misrepresenting it.

22 Q. I understand that. But I guess my question is, is the fact
23 that the attorney general did find racial disparities,
24 significant ones, even using the arrest data, isn't the
25 criticism really that maybe they under-reported those

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1 disparities?

2 A. No, not at all.

3 Q. So your testimony is they over-reported them?

4 A. My testimony is that they relied on, as I understand the
5 model, while it did include arrest data, it also relied heavily
6 on population data.

7 Q. But didn't you testify yesterday that you do have to
8 measure both the population that's engaging in the suspicious
9 behavior as well as the population that's available to be
10 stopped, in other words, present in the area?

11 A. No, I didn't say that one had to do that. I said that both
12 of those -- that data on both of those elements, data on
13 visible to the police and available to be stopped of the
14 offending population, subset of the offending population, and a
15 further refinement of that subset of the offending population
16 visible to the police, who are also engaging in reasonably
17 suspicious behavior, would be ideal. I made note of the fact
18 that, particularly in the area of pedestrian stops, information
19 on both of those things are almost never available.

20 Q. Wouldn't you then say that the crime suspect benchmark has
21 the exact same problem because it doesn't tell you who is
22 available to be stopped?

23 A. No. It doesn't have that problem because it's a benchmark
24 essentially for the ideal. This is sort of an after-the-fact
25 analysis of whether or not the distribution of stopped

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1 subjects, by whatever dimension you're looking at, whether it's
2 race, age, gender, whether that conforms to the offending
3 population that's described by witnesses and victims. It's a
4 very simple and clear comparison.

5 Q. How does the crime suspect data tell you who is present and
6 available on the street to be stopped?

7 A. It doesn't.

8 Q. So my question is, doesn't that have the same shortcoming
9 that using just arrest data would have, in other words, you
10 don't know who is present and there to be stopped, right?

11 A. I will repeat, having the information about who is
12 available to be stopped is an improvement on the suspect
13 description data. I think one of the peer reviewers to the
14 RAND report, who raised a concern about the suspect description
15 benchmark, the concern wasn't that somehow the suspect
16 description in and of itself wasn't useful, but that it would
17 be better if it also included those visible to the police and
18 available to be stopped.

19 Q. I understand that. So going back to my question about the
20 AG's report, the AG's report did have a measure of who would be
21 available to be stopped, right, because they did look in part
22 at population, right?

23 A. That does not tell me who is available to be stopped. That
24 tells me who the census bureau believes resided in a particular
25 precinct -- in a particular census tract at a particular point

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1 in time. And we know that that is far from complete.

2 Q. But you also testified yesterday that you have got to use
3 the best available data, right?

4 A. And the best available data is the suspect benchmark.

5 Q. You're saying that the suspect description benchmark is a
6 better measure of who is present in a particular area, in terms
7 of a census tract or a neighborhood, than the census data is?

8 A. No. As I said, there is no reliable measure of who is
9 visible to the police and available to be stopped at a
10 particular place at a particular point in time. Unlike the
11 example that I gave yesterday with regard to traffic
12 enforcement, which is where a lot of the research on racial
13 bias is used, where there is at least some, although imperfect,
14 ability to measure what motorists, how many motorists,
15 potentially of what race, if that's what you are considering,
16 are passing through a particular stretch of highway at a
17 particular time, and then you're able to measure more directly
18 who gets stopped and whether or not there appear to be
19 disparities in the police decision to be stopped, you don't
20 have that information about who is available for the population
21 at large. It simply doesn't exist.

22 Q. So your testimony is there is no reliable way to measure
23 who is present and available to be stopped, but there is a
24 reliable way to measure who is going to be the people who are
25 most likely to engage in the suspicious behavior, that's your

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1 testimony?

2 A. No. You're now going to the second refinement, which is,
3 as I said, visible to the police and available to be stopped
4 and who are engaging in reasonably suspicious behavior. There
5 is no reliable way to measure that as well. You would have to
6 have cameras literally on every corner and monitoring everybody
7 at all times to get a sense of who is actually engaging in
8 reasonably suspicious behavior. Going back to the description
9 of suspects by victims and witnesses is the most direct and
10 accurate comparator.

11 Q. So it's OK to use the descriptions given by witnesses and
12 victims as the best proxy, right?

13 A. That's my belief, yes.

14 Q. But it's not OK to use data on who actually lives in a
15 particular community as the best proxy for who would be present
16 and available to be stopped?

17 A. That's correct.

18 Q. Now, you're aware that most stops and frisks are conducted
19 in the late afternoon, evening, late night and early morning
20 hours, you're aware of that?

21 A. I don't recall. I haven't seen distribution of time
22 recently.

23 Q. If we were to assume that that was true, hypothetically,
24 even though -- well, hypothetically, would then using the
25 measure of who actually lives in a particular area be a good

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1 way to look at who would be present?

2 A. No.

3 Q. You would agree with me that with respect to crime
4 complaints for weapons and drugs that most of those are
5 actually police created rather than reports from victims,
6 right?

7 A. Probably for the most part they are.

8 Q. So wouldn't it be fair to say that with respect to weapons
9 crime reports, that if you looked at weapons arrestees, that
10 would be a very good measure of the crime complaints for weapon
11 suspects right?

12 A. Absent reports -- absent a substantial number of reports
13 from witnesses say.

14 Q. Do you have any reason to believe that there are a
15 substantial number of crime complaints for criminal possession
16 of a weapon that are called in by civilians?

17 A. I think the number is probably relatively small relative to
18 the totality of arrests.

19 Q. Would you agree that looking at weapons arrests you will
20 get a very accurate picture of who the weapon suspects are,
21 right?

22 A. That would give you some. You would also have information
23 from shooting victims, which would give you some indication of
24 who has used weapons. It may not be a complete representation
25 of who is carrying weapons.

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D5F8FLO1 Farrell - cross

1 Q. Similarly, with respect to -- strike that.

2 You're aware that RAND in its study in 2007 found that
3 looking at weapons arrests, and comparing the racial breakdown
4 of weapons arrestees with the racial breakdowns of stops, that
5 RAND found that blacks were stopped at a rate 8 percent higher
6 for weapons possession than their representation within the
7 weapons arrestee population. Are you aware of that?

8 A. I would have to reread that passage to refresh my
9 recollection.

10 Q. I can show you. This is Exhibit K6, and we are looking at
11 the bottom of page 28804. It says here, "The fourth set of
12 bars from the top of figure 3.1 -- which is on the next page --
13 compares stops for suspected criminal possession of a weapon,
14 the most common reason for UF-250s, to arrests in which the top
15 charge was weapon possession. Officers stopped black suspects
16 for suspected weapon possession at a rate greater, 8 percent
17 greater than their weapon arrest rate. White suspects on the
18 other hand have a stop rate that is 11 percent lower than their
19 weapon arrest rate."

20 Do you recall that?

21 A. I do now, yes.

22 Q. My question is, does that finding give you any concern that
23 maybe with respect to weapons stops at least there might be
24 some racial bias in the way the police department is doing
25 that?

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D5F8FLO1

Farrell - cross

1 A. No.

2 Q. Now, you do agree that crime suspect is the best benchmark
3 to use, right?

4 A. Yes, I do.

5 Q. And you're aware that when RAND used the violent crime
6 suspect benchmark in their study, they found that for
7 Hispanics, Hispanics were being stopped at a rate that was 5 to
8 10 percent greater than their representation amongst the
9 violent crime suspects?

10 This is again the RAND report, Bates number 28779.
11 Looking up here, it says, "Benchmarks based on crime suspect
12 descriptions may provide a good measure of the rates of
13 participation in certain types of crimes by race, but being a
14 valid benchmark requires that suspects, regardless of race, are
15 equally exposed to police officers.

16 "We found that black pedestrians were stopped at a
17 rate that is 20 to 30 percent lower than their representation
18 in crime suspect descriptions. Hispanic pedestrians were
19 stopped disproportionately more by 5 to 10 percent than their
20 representation among crime suspect descriptions would predict."

21 Do you see that?

22 A. I do.

23 Q. Did that give the police department any concern that maybe
24 there could be racial bias at play in the stops of Hispanic
25 pedestrians?

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D5F8FLO1 Farrell - cross

1 A. Where at the same time there was an under-stopping of black
2 pedestrians relative to that, no.

3 Q. Now, RAND analyzed the stop data and the crime suspect data
4 at the precinct level, right?

5 A. I assume they received the data at the precinct level.

6 Q. The UF-250 data, you can actually pinpoint specific
7 location of stops, right?

8 A. Right.

9 Q. The crime data you can also do that, right?

10 A. Not in all cases.

11 Q. But in a lot of cases, right?

12 A. I would have to find out whether for the data in 2006 what
13 the proportion of complaints were coded to a location other
14 than the precinct.

15 Q. You're aware in this case that Dr. Fagan ran his analysis
16 initially at the precinct level, right?

17 A. I think I recall that was the case.

18 Q. You're aware that defendants' experts, Dr. Smith and
19 Purtell, severely criticized him for doing that, are you aware
20 of that?

21 A. I believe I read that in their report.

22 Q. You're aware that the reason they criticized him was
23 because they believe that the police department analyzes crime
24 and makes deployment and enforcement decisions using units of
25 analysis that are much smaller than the precinct, right?

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D5F8FLO1 Farrell - cross

1 A. Yes, that's true.

2 Q. So you would agree that the police department is looking at
3 crime and taking action in geographic areas that are very
4 small, sometimes just a matter blocks, right?

5 A. Yes.

6 Q. So would you agree that using precinct as a unit of
7 analysis is not going to tell you -- strike that.

8 So you would agree with their criticism of Professor
9 Fagan using precincts, right?

10 A. It depends on what the purpose it's being put to. There
11 are some uses for which precinct level data is perfectly
12 appropriate. For other, if you're looking at a much more
13 fine-grained analysis, as you described for deployment
14 decisions, we create impact zones and the like, you want to be
15 able to get down to several block areas.

16 Q. Professor Fagan analyzed racial disparities in stop
17 patterns, right?

18 A. Yes.

19 Q. Do you think it's appropriate to use precincts to analyze
20 racial disparities in stop patterns?

21 A. Well, the reports that we were discussing earlier that the
22 department produced is at the precinct level.

23 Q. But yet you think Professor Fagan should have looked at
24 smaller?

25 A. I am not rendering a particular opinion about what he

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D5F8FLO1 Farrell - cross

1 should or shouldn't have done.

2 Q. I will move on.

3 Now, one of the other recommendations that RAND made
4 was with respect to telling people who were stopped the reasons
5 they had been stopped, right?

6 A. Yes, that's correct.

7 Q. This is page 28782 of Exhibit K6.

8 A. Yes.

9 Q. You see here it says, "To mitigate the discomfort of such
10 interactions and to bolster community trust, officers should
11 explain the reason for the stop, discuss specifically the
12 suspect's manner that generated the suspicion, and offer the
13 contact information of a supervisor or appropriate complaint
14 authority so that the person stopped can convey any positive or
15 negative comments about the interaction." Do you see that?

16 A. I do.

17 Q. Now, you testified yesterday and exhibits were shown that
18 addressed this recommendation, right?

19 A. Yes, that's correct.

20 Q. So the police department has amended the patrol guide
21 section on stop and frisk to include an instruction that
22 officers, absent exigent circumstances, should talk to the
23 people they stop and explain why they stopped them, right?

24 A. Yes, that's correct.

25 Q. And we also heard testimony and saw an exhibit of a card

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1 that officers, again, absent exigent circumstances, can hand
2 out to the people they have stopped explaining what a stop and
3 frisk is and so forth, right?

4 A. Yes, that's correct.

5 Q. But the patrol guide section doesn't say anything about the
6 officer giving the civilian their supervisor's number or the
7 contact information for the CCRB, right?

8 A. The patrol guide? No. The card provides some additional
9 information for the person with regard to the 311 number for
10 further information.

11 Q. Your testimony is that it does say that -- it has contact
12 information, so if somebody wanted to file a CCRB complaint,
13 that information would be on the card?

14 A. The inclusion of the city's 311 number was provided in the
15 knowledge that CCRB overwhelmingly gets its complaints by
16 telephone, and that since the initiation of the 311 program in
17 2002 or 3, that that has become an increasingly larger share of
18 complaints. So 311 being the way people contact CCRB.

19 Q. But the card doesn't say, if you have any questions or
20 concerns about the stop, here is the way to get in touch with
21 CCRB, it doesn't say that?

22 A. It doesn't say it in those words, no.

23 Q. This is Exhibit A8, which was shown yesterday.

24 This is the card that officers are instructed to give
25 out to civilians they stop absent exigent circumstances, is

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1 that right?

2 A. Yes, that's correct.

3 Q. So we have, I guess the front here is what is a stop and
4 frisk?

5 A. Right.

6 Q. And it explains the penal law section dealing with stop and
7 frisk.

8 Then it says, for more information, and it gives the
9 NYPD Web site, right?

10 A. Right. It's the six languages were included, the Web site,
11 and then at the bottom the 311 number.

12 Q. At the bottom it says, "New York City's customer service
13 center, call 311"?

14 A. Right.

15 Q. This doesn't say anything about, if you have a complaint or
16 a concern about this encounter, call 311, right?

17 A. No, it doesn't say it that way.

18 Q. In fact, it's just right under the portion about getting a
19 reward for information leading to an arrest for an illegal
20 handgun, right?

21 A. Right.

22 Q. But it's your testimony that this presentation of the
23 contact information gives civilians enough guidance about what
24 they can do if they have a complaint about the stop?

25 A. Well, as we had seen, at least until 2007, when the stop

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1 related complaints declined dramatically, they had been
2 increasing. There is no reason to believe that people were
3 unaware of the ability to contact CCRB. But this 311 number is
4 in fact the principal way in which people do get to CCRB.

5 Q. Has there been any discussion of maybe amending the
6 language of this to make it more explicit that if you want to
7 file a complaint, or if you have a concern about this stop,
8 call 311?

9 MS. GROSSMAN: Objection as to any discussion.

10 THE COURT: I will allow a yes or no. Not the content
11 of it.

12 A. There have not been discussions recently about changing the
13 language on this form.

14 Q. Sticking with the RAND report for a second, I want to show
15 you a passage on page 10 of the report and see if you agree
16 with this. This is Bates number 28797.

17 I am looking at the top paragraph here. I want to
18 start here. It says, "Given the volume of stops, this
19 represents a large number of people who had an intrusive
20 interaction with the police in which the police either
21 determined that the suspect was innocent or did not have enough
22 evidence to make an arrest. There is no objective benchmark
23 with which to compare these numbers as those stops not
24 resulting in an arrest may have a valuable public safety
25 function such as preventing a crime or following up on a tip.

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1 This is a matter of policing strategy that should be open to
2 negotiation involving community representatives, elected
3 officials, and NYPD management." Do you see that?

4 A. I do.

5 Q. Now, are you aware that the plaintiffs in this case have
6 asked that part of the remedy include a process which would
7 allow for the affected communities to have input into how to
8 reform the stop and frisk practices of the NYPD?

9 MS. GROSSMAN: Objection. This is beyond the scope of
10 this witness's testimony and we have remedy witnesses.

11 THE COURT: Let's say he answers yes, then what?
12 Let's say he is aware of what you're asking, what are you going
13 to do with that?

14 MR. CHARNEY: I have a couple of follow-up questions.

15 Q. One is, you testified yesterday that in your role as the
16 deputy commissioner of strategic initiatives, your job is to
17 provide policy advice to the police commissioner?

18 A. That's right.

19 Q. First of all, do you agree with this statement that this
20 matter of policing strategy, stop, question and frisk, should
21 be open to negotiation involving community representatives,
22 elected officials, and the NYPD management?

23 MS. GROSSMAN: The context of this, in terms of what
24 is appropriate in a legal remedies stage as compared to --

25 THE COURT: I don't think he is really asking legal.

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D5F8FLO1 Farrell - cross

1 He is saying, in your capacity, given his title and his
2 position, what is his view on it?

3 I will take it for what it is worth. He is a
4 high-ranking commissioner in the police department.

5 Q. As a policy matter, do you agree with that?

6 A. I believe that the statement, it basically states the
7 obvious, that policing strategy is obviously open to
8 discussion. There is vigorous discussion. The department
9 engages in those discussions, both with community groups, with
10 elected officials, City Council hearings, in numerous fora, and
11 so that's an ongoing aspect of policing in probably this and
12 any city.

13 (Continued on next page)

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D5F9FLO2

Farrell - cross

1 Q. In terms of reforming such practices, if that was needed --

2 MS. GROSSMAN: Reforming what practices?

3 MR. CHARNEY: Stop-and-frisk practices.

4 Q. If that was something that was on the table, do you believe
5 as a policy matter, would you agree with creating a formal
6 process where this kind of discussion could be conducted around
7 possible reforms to the stop-and-frisk practices?

8 A. There are many forums that currently, in fact, engage on
9 this topic. It doesn't seem to me that there's a shortage of
10 forums for discussion around this issue. This has been
11 something that's been vigorously discussed over recent years.

12 I don't see necessarily that yet an additional formal
13 structure needs to be established in order to elicit opinions
14 about it and various views about whether or not certain changes
15 should or shouldn't be made. It seems to me that there's a
16 very vigorous and free-flowing debate. And that achieves
17 essentially what RAND is suggesting in that paragraph.

18 MS. GROSSMAN: Your Honor, I would just object to any
19 further questions on this.

20 THE COURT: Maybe there aren't going to be any further
21 questions. He's consulting.

22 MS. GROSSMAN: I understand.

23 THE COURT: Why don't I wait to see if there's a
24 question before I handle the objection. The witness just gave
25 a thorough, thoughtful answer. So let's see what comes next.

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D5F9FLO2

Farrell - cross

1 (Pause)

2 MR. CHARNEY: I have a question which is related to
3 this but doesn't go to this creating a forum.4 Q. You did testify that there are already many I guess fora
5 where these issues are discussed?

6 A. Yes.

7 Q. And would you agree that at many of these fora members of
8 the community, elected officials who represent affected
9 communities, have raised serious concerns about stop, question
10 and frisk?11 A. There have been opinions on all sides of issues expressed
12 in various fora.

13 THE COURT: That would include critics?

14 THE WITNESS: Absolutely.

15 THE COURT: Critics of the policy?

16 THE WITNESS: Certainly.

17 Q. And those critics include people who live in affected
18 communities, right?

19 A. Depends what you mean by affected communities.

20 Q. In other words, live in parts of the city where stop and
21 frisk is conducted more often than in other places.22 A. In areas that are also disproportionately affected by
23 crime, I would add. And yes, there have been those
24 discussions.

25 Q. And there have also been criticisms raised by city council

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D5F9FLO2 Farrell - cross

1 members who represent those particular communities, right?

2 A. Some members of the city council. That's right.

3 Q. And this has been going on for several years, correct?

4 These complaints?

5 A. The debate has been going on for some years.

6 THE COURT: Including the criticisms?

7 THE WITNESS: Including the criticisms in the debate.

8 THE COURT: Right. Okay.

9 Q. And this debate has included concerns or allegations of
10 racial profiling, right?

11 A. Those concerns have been raised from time to time, yes.

12 MR. CHARNEY: All right. I want to turn to the QAD
13 audits that we talked about briefly yesterday.

14 If we can pull up Plaintiffs' Exhibit 114 that was
15 admitted into evidence a while ago and shown to you yesterday.

16 This is the Daniels settlement.

17 If we could turn to page six.

18 Q. So, you remember yesterday Ms. Grossman asked you about
19 this particular provision of the Daniels settlement?

20 A. Yes.

21 Q. And so it's correct that under the Daniels settlement one
22 of the terms required that QAD conduct audits that at a minimum
23 address two issues, right?

24 A. Yes.

25 Q. Is that correct?

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D5F9FLO2

Farrell - cross

1 And one of those issues is whether and to what extent
2 UF 250 forms and activity logs have been completed in
3 accordance with NYPD regulations, correct?

4 A. Yes.

5 Q. And the second issue that the QAD audits are supposed to
6 address is whether and to what extent the audited
7 stop-and-frisk activity is based on reasonable suspicion as
8 reflected on the 250, right?

9 A. Yes. That's right.

10 Q. And the two audits that QAD conducts to address these
11 issues are the -- what are known as the 802 and the 802-A,
12 correct?

13 A. That's right.

14 Q. Now those two audits are solely paperwork audits, right?

15 In other words, other than reviewing officer
16 paperwork, there is no other element of those audits, right?

17 A. That's the case with virtually all of the audits. It's a
18 review of documents and records.

19 Q. So you would agree with me that these two audits only look
20 at documents and records, right?

21 A. Yes. That's right.

22 Q. There is no interviewing of the officers who made the
23 stops, right?

24 A. No, there's not.

25 Q. There is no interview or conversation with any of the

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D5F9FLO2 Farrell - cross

1 stopped civilians, right?

2 A. No.

3 Q. Now, you were in the police department in April of 1999,
4 right?

5 A. On my way out, but yes.

6 Q. And the police commissioner at the time was Howard Safir,
7 right?

8 A. That's correct.

9 Q. And you recall that April '99 was only a couple months
10 after the Amadou Diallo shooting?

11 A. Yes. That's right.

12 Q. You recall that in April of 1999 Commissioner Safir
13 testified in the city council about the stop and frisk issue
14 and the Diallo issue?

15 A. I don't specifically recall the testimony or the hearing
16 but it -- if it was part of a routine budget hearing that would
17 be the time.

18 Q. He actually testified in a public safety committee
19 specifically on the issue of stop and frisk.

20 Do you remember that?

21 A. I don't specifically remember it in 1999.

22 Q. I'm going to show you what has been marked as Plaintiffs'
23 Exhibit 46, if I can find it.

24 MR. CHARNEY: I apologize, your Honor. I was just
25 looking at this. Now I've misplaced it. I apologize.

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D5F9FLO2 Farrell - cross

1 Here it is. Okay.

2 Q. I'm going to hand you a copy -- this is a certified copy,
3 certified by the city council, of a portion of Commissioner
4 Safir's testimony to the committee on public safety on
5 April 19, 1999.

6 The subject matter covered in this testimony is stop
7 and frisk and more specifically auditing of UF 250 forms.

8 I would move for the admission of this exhibit.

9 MS. GROSSMAN: I would object, your Honor. This is
10 testimony. It's hearsay.

11 THE COURT: It's not hearsay.

12 As long as it's a statement by the police department,
13 an adverse party, it's offered against an adverse party. So I
14 don't have a hearsay objection.

15 MS. GROSSMAN: I also don't see the relevance of 1999.

16 THE COURT: That's the better objection.

17 MR. CHARNEY: A couple.

18 The first is the auditing issues are central to this
19 case. We have to prove deliberate indifference. This goes to
20 how long the police department has been aware, the issue how
21 long they've been aware of whether an audit -- how effective an
22 audit can be, whether using a paperwork audit is effective or
23 not. So we think it's directly relevant to the deliberate
24 indifference issue.

25 MS. GROSSMAN: Your Honor, this is back in 1999 when
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D5F9FLO2 Farrell - cross

1 the world --

2 THE COURT: We know the date.

3 MS. GROSSMAN: The world was very different then in
4 terms of the way data was maintained.

5 THE COURT: I understand all of that.

6 He's simply saying it goes to notice of how long the
7 police department may have been aware of an issue.

8 There is plenty of testimony of what they've done to
9 correct or improve that problem over all the years, but this
10 shows, I guess, a start date to their notice of a problem.
11 That's about all it's relevant for.

12 MS. GROSSMAN: I don't think that this is on notice of
13 a problem.

14 THE COURT: I don't know what it says.

15 Again, I don't look at it until I rule, but I do the
16 best I can to rule without having seen it.

17 So my description I'm getting is that it's a statement
18 in 1999 of the then police commissioner, which of course is the
19 city, the police department, on an issue of relevance to this
20 case.

21 Clearly, things have changed in the 14 years,
22 including a lot of proof of that. But this I guess sets the
23 start date for a notice issue. And you have plenty of
24 opportunity to show what's happened since. But it is the start
25 date. So I'm inclined to allow the statement.

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D5F9FLO2

Farrell - cross

1 MS. GROSSMAN: My question is notice of what right
2 now.

3 MR. CHARNEY: Well, can I explain?

4 THE COURT: You can only ask counsel, not me. I
5 haven't seen the statement.

6 MR. CHARNEY: First of all, this testimony was
7 directly in response to allegations about the constitutionality
8 of the stop-and-frisk practices. This is right after Diallo.
9 This is in 1999.

10 I can show the entire four-hundred-page transcript
11 which is all about --

12 THE COURT: I was afraid you were going to do --

13 MR. CHARNEY: -- the stop and frisk.

14 THE COURT: As I said, I was afraid you were going to
15 do that. I saw a transcript there.

16 MR. CHARNEY: I'm focusing on one particular issue
17 that he testified about.

18 Because I think it's very relevant to what
19 Commissioner Farrell is testifying about with respect to QAD.

20 THE COURT: I understand.

21 MS. GROSSMAN: The question about notice of what, that
22 I'm asking plaintiffs' counsel to articulate, is notice of the
23 adequacy of a QAD audit based on paper?

24 MR. CHARNEY: Notice of using paperwork audits to
25 assess reasonable suspicion, which is what the commissioner has

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D5F9FLO2 Farrell - cross

1 testified is done by QAD.

2 MS. GROSSMAN: Again, the relevance that plaintiffs'
3 counsel was aware of this audit and agreed to it in the Daniels
4 agreement.

5 MR. CHARNEY: That's fine.

6 MS. GROSSMAN: So I don't know what the relevance is
7 of a 1999 transcript when the plaintiffs' counsel entered into
8 the Daniels settlement agreement, acknowledging seeing the
9 audit protocol, and then agreeing to it and signing a
10 stipulation. And we've been following that audit protocol for
11 years.

12 MR. CHARNEY: We also heard testimony yesterday that
13 the audit protocols were finalized before the Daniels
14 settlement was finalized. So these are decisions that the
15 police department made on its own and then later on sought the
16 agreement of plaintiffs' counsel.

17 So again I go back to this is a very well --

18 THE COURT: I'm going to allow it. It doesn't go to
19 admissibility. It's really going to weight. You're welcome to
20 argue why it should not be given any weight, but it's
21 admissible.

22 Q. So turning to -- this is page 48 of that transcript.

23 MR. CHARNEY: I'm sorry. We move for the admission of
24 Plaintiffs' Exhibit 46, just the portion that -- unless defense
25 counsel wants the whole transcript in, which we're fine

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1 admitting but.

2 MS. GROSSMAN: We don't need the whole transcript but,
3 your Honor, I just reserve the right to review if there's
4 anything I need to counterdesignate or offer in response.

5 THE COURT: Yes. Under the doctrine of completeness
6 you have that right. But otherwise you can't offer a statement
7 of your own client. It's not an adverse party. But under the
8 doctrine completeness you could do it.

9 MS. GROSSMAN: Yes.

10 THE COURT: But you can't pick and choose a different
11 part entirely because that wouldn't be under the doctrine of
12 completeness. And for you to offer the statement would be
13 hearsay. It can only be offered against an adverse party. But
14 as I said, as part of the doctrine of completeness, that's
15 different.

16 (Plaintiffs' Exhibit 46 received in evidence)

17 BY MR. CHARNEY:

18 Q. So looking at page 48 of this transcript of this hearing,
19 do you see here Commissioner Safir says, "With respect to
20 auditing or otherwise reviewing UF 250s, we are in the process
21 of computerizing the UF 250s on file, which will assist in
22 studying patterns and identifying clear violations of
23 department guidelines, but there is no foolproof way to conduct
24 a paper audit to determine whether reasonable suspicion was
25 present in a street encounter, since the forms are

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D5F9FLO2 Farrell - cross
1 self-generated by the officer taking action."

2 Do you see that?

3 THE WITNESS: I do.

4 MR. CHARNEY: I just read this paragraph.

5 THE COURT: Let me just reread it.

6 BY MR. CHARNEY:

7 Q. Now would you agree with that statement, Commissioner.

8 A. I would agree with it insofar as there is no foolproof way
9 to conduct any audit, particularly audits, as most are, which
10 are reliant on documents. So for any audit protocol there are
11 going to be some inherent limitations.

12 So with regard to his characterization of foolproof, I
13 would agree. And note that at this time in 1999 there
14 certainly -- there were no audits of 250s and there were --
15 there was just the idea about, and beginning efforts to create
16 a database. So there was no data and no audits at that time.

17 Q. I understand.

18 But you would agree with the statement that there is
19 no foolproof way to conduct a paper audit to determine if there
20 was reasonable suspicion because the 250s are self-generated,
21 right?

22 A. I'm not sure I -- that that particular clause is
23 controlling there. There would be no -- I mean any of the
24 forms produced by the police department are going to be
25 produced by the officers. Who else would be completing them?

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D5F9FLO2

Farrell - cross

1 So I don't know quite what Commissioner Safir meant in
2 the end of that sentence.

3 Q. Well yesterday you testified about why the -- with respect
4 to the stop and frisk audit and the 802, why QAD does not, for
5 example, contact the civilian who was stopped, right?

6 A. Right.

7 Q. And you said that that just wouldn't be feasible, right?

8 A. Well it wouldn't be feasible and it would be unlikely to be
9 productive.

10 Q. Now you're aware that -- I think you also mentioned
11 yesterday that you are somewhat familiar with some of the
12 racial profiling stuff that's been done with the New Jersey
13 State Police, right?

14 A. Yes.

15 Q. Are you aware that as part of their reform after they were
16 sued for racial profiling that they now have an audit that
17 involves contacting people stopped by New Jersey state troopers
18 to ask them about their experiences being stopped?

19 A. No. I'm not aware of that.

20 Q. Are you aware that the Department of Justice in one of its
21 guidelines on racial profiling data collection systems
22 recommends the same kind of customer satisfaction audit as a
23 best practice?

24 A. It would depend on what the purpose of the contact is. If
25 the contact is, as suggested here, to determine reasonable

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D5F9FLO2 Farrell - cross

1 suspicion, it would be my position that the contact, that the
2 callback would not be productive.

3 If the purpose of the callback is simply to get a
4 sense of people's satisfaction with the way officers conducted
5 themselves and that sort of thing, we already do some citizen
6 satisfaction surveys of that sort.

7 MS. GROSSMAN: Your Honor, I would just object in
8 terms of the reference to the New Jersey state trooper case
9 because we don't know the exact contours of the purpose of the
10 contact. We don't know if the audit is for purposes of
11 assessing whether the officer adequately described the race of
12 a person. That could be one of the reasons for the callback.
13 And so the purpose for the call is important.

14 THE COURT: I don't know what you're objecting to
15 because the last thing I have on the transcript was an answer,
16 a long answer. There is no question.

17 MS. GROSSMAN: It's the objection to this -- these
18 questions regarding --

19 THE COURT: To continuing questions?

20 MS. GROSSMAN: Yes.

21 Q. Let me ask you about we'll just focus on New York for a
22 second. You said it wouldn't be productive to talk to the
23 civilian about whether or not the stop was based on reasonable
24 suspicion. Is that your testimony?

25 A. That's correct.

D5F9FLO2 Farrell - cross

1 Q. You would agree with me that reasonable suspicion in each
2 and every stop is a very fact specific inquiry, right?

3 A. Sure.

4 Q. In other words, you have to know what it is the officer
5 saw, correct, when they made the stop? Right?

6 A. (No response)

7 Q. You have to answer verbally.

8 A. Could you explain a little more what you're getting --

9 Q. In other words, to know if reasonable suspicion existed in
10 a particular stop you have to know what it is the officer
11 observed, right?

12 A. You can get that in a variety of ways.

13 Q. I understand but my -- it's a yes-or-no question.

14 A. One would need to know --

15 THE COURT: No. That's not the question.

16 The question is to assess whether a stop was properly
17 based on reasonable suspicion, ideally you'd wanted to know
18 what the officer saw. You'd want to see the same thing he saw.

19 THE WITNESS: And what information the officer may
20 have had in advance, what the officer observed. Ideally, you
21 would want to know that.

22 Q. And you don't think that talking to the civilian about what
23 they were doing or not doing at the time of the stop will give
24 you any information about what the officer observed when they
25 made the stop?

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Farrell - cross

1 A. Finding out what the subject was doing at the time of the
2 stop would necessarily mean inquiring about their engagement in
3 criminal activity.

4 MR. CHARNEY: I move to strike that.

5 THE COURT: I just want him to think about that.

6 Criminal activity? I mean maybe there is no criminal activity.

7 THE WITNESS: There may or may not be but in order to
8 determine that I think one would have to ask questions that
9 would try to determine whether or not that was the case.

10 THE COURT: True. For some of those people stopped
11 they may not want to talk about doing bad things.

12 THE WITNESS: Exactly.

13 THE COURT: But for others of those people stopped,
14 who it may turn out were doing nothing wrong, they would just
15 tell you what they were doing.

16 THE WITNESS: Right.

17 THE COURT: It wouldn't be incriminating at all
18 because they would say I was just walking along and --

19 THE WITNESS: That's right.

20 And yesterday I think I tried to distinguish those two
21 possibilities; that in one possibility if the person was
22 engaged in criminal activity, they would be unlikely to be
23 willing to incriminate themselves in a phonecall from the
24 police department.

25 And in the second instance if they were not involved

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Farrell - cross

1 in criminal activity, they would, for the most part, be unaware
2 of why the officer stopped them and wouldn't be able to shed
3 much light on the potential of reasonable suspicion.

4 THE COURT: Well, but -- this is just an example.
5 But, for example, if the person said I was just walking slowly
6 down the street on the sidewalk. Let's say that's the
7 statement. In the meantime the officer says so and so was
8 running rapidly away. Then you would have two different
9 descriptions of the activity. Very simple example, of course.

10 THE WITNESS: Yes.

11 THE COURT: It has little to do with the real world.
12 But there's an example where the statements would be in
13 conflict, right?

14 THE WITNESS: Right. If in another case if the -- the
15 purpose of the stop was that the person fit the description of
16 a known suspect --

17 THE COURT: I understand that.

18 THE WITNESS: -- they wouldn't know that.

19 THE COURT: Sure. I agree with you.

20 I'm asking you to agree with me.

21 THE WITNESS: I do.

22 THE COURT: My example is two conflicting statements,
23 which unless we were there or it was on videotape, we wouldn't
24 know which was the real story.

25 THE WITNESS: That's right.

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Farrell - cross

1 THE COURT: Okay.

2 Q. And going back to Commissioner Safir's statement about the,
3 you know, you don't -- you can't know of the accuracy of the
4 forms because they are self-generated, you can't know for sure.

5 So wouldn't one way to maybe -- one kind of check of
6 whether or not the officers -- the facts reported on the 250
7 are accurate is to actually speak to another person who was on
8 the scene and involved in the stop?

9 A. That's, to my mind, getting closer to an investigation than
10 an audit. That's -- the kind of work that the Civilian
11 Complaint Review Board does when a person comes forward and
12 says, you know, I believe I was stopped for no reason, then
13 investigators will interview both the stop subject and the
14 officer and try to assess the totality of the circumstances.

15 Audits of the kind that we engage in are inherently
16 limited to somewhat less than the ideal knowledge of the
17 totality of the circumstances.

18 Q. Now, you've said that -- I think your testimony was that
19 QAD audits are -- correct me if I'm wrong, they're all
20 paperwork audits; is that right?

21 A. I said they are documents. It's a review of documents.

22 THE COURT: That's the same as what he said.

23 Paperwork. Document. No difference, right?

24 THE WITNESS: Right.

25 Q. What about the audit that QAD does of crime complaints and

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1 crime classification? Do you know the audit I'm talking about?

2 A. I do.

3 Q. Doesn't that involve actually calling up a sample --

4 MS. GROSSMAN: Objection.

5 Q. -- of criminal complainants to ask them questions about the
6 facts of the complaint, the surrounding circumstances of their
7 report?

8 A. Yes.

9 Q. Is that something that you do?

10 THE COURT: What's the objection.

11 MS. GROSSMAN: The objection is it's a completely
12 different kind of audit.

13 THE COURT: I understand. That's an argument you can
14 make at the proper time.

15 He's just asking if he realizes how that particular
16 audit is conducted.

17 I'll allow that.

18 Anyway you said yes.

19 THE WITNESS: Yes. I'm aware of that, yes.

20 Q. And it's right that in those audits QAD personnel are
21 actually calling up and speaking to civilians who have made
22 crime complaints, right?

23 A. They're speaking to people who have already contacted the
24 police to offer information and the callback is to further
25 clarify the information that they've already provided.

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D5F9FLO2 Farrell - cross

1 Q. I understand.

2 But that's an audit, right, that QAD does?

3 A. That's correct.

4 Q. It's not an investigation, right? Like an IAB or a CCRB
5 investigation, right?

6 A. Right.

7 Q. Now the worksheet 800 and the worksheet 802 are also the
8 two audits that QAD does to assess compliance with the police
9 department's racial profiling policy, right?

10 A. Yes. That's correct.

11 Q. And we looked yesterday at I think this is Exhibit 73,
12 Plaintiffs' Exhibit 73.

13 MS. GROSSMAN: I just want to make sure we're clear
14 that Mr. Charney said 802 and 802-A.

15 THE COURT: He did say that. Now he said 73.

16 MR. CHARNEY: I'm looking at Exhibit 73.

17 THE COURT: I understand.

18 MR. CHARNEY: Actually before I go into this, I know
19 there was some confusion yesterday about whether this exhibit
20 had been previously admitted. It was shown to the witness
21 yesterday. It was also shown to Chief Cronin. I went back and
22 looked at the transcript for Chief Cronin's examination and I
23 think what happened is your Honor said you would allow it but
24 your Honor didn't do the formal?

25 THE COURT: Words.

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Farrell - cross

1 MR. CHARNEY: Received in evidence.

2 THE COURT: Okay. If I said I would allow it and I
3 accept your representation that I said it, then I accept it in
4 evidence. 73 is received.

5 (Plaintiffs' Exhibit 73 received in evidence)

6 Q. So this -- do you recall looking at this yesterday,
7 Commissioner? This draft of the audit protocols?

8 MS. GROSSMAN: Can you look down to the bottom.

9 MR. CHARNEY: Yes. Go down to the bottom.

10 MS. GROSSMAN: Can you look at the second page.

11 Q. Do you remember looking at this?

12 A. Actually I think it's a different document, if you check
13 the date.

14 Q. Well maybe this might be the confusion. We looked at two
15 versions. We looked at one from December?

16 A. That's correct.

17 Q. We looked at one from November. This is the one from
18 November.

19 A. Okay.

20 Q. So I'm asking you.

21 A. Yeah, I think it was the one from December that we looked
22 at yesterday.

23 Q. Let me ask you a preliminary question.

24 This is not the final version of the audit protocol
25 that was actually implemented by the police department, right?

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D5F9FLO2

Farrell - cross

1 A. Yes.

2 Q. This version?

3 A. That's correct.

4 Q. And going back to the first page, going to the top, this is
5 a memo from the CO of the QAD to you dated November 6, 2002,
6 right?

7 A. Yes.

8 Q. And the CO of QAD at that time was Peter Cassidy, right?

9 A. Yes. That's right.

10 Q. And so this states in the first paragraph that in order to
11 evaluate compliance with operation order number 11S02, a
12 two-part procedure is proposed.13 And is it correct that operations order 11S02 is the
14 police department's policy regarding racial profiling that had
15 been implemented in March of 2002?

16 A. I believe that's right.

17 THE COURT: March of 2002?

18 MR. CHARNEY: Two.

19 It has been recently updated, right, last year?

20 THE WITNESS: Yes. That's right.

21 Q. But from '02 to 2012 this was the racial profiling policy
22 that was in effect, right?

23 A. That's correct.

24 Q. And it says there was a two-part procedure and the first
25 part of it says is an examination by QAD of information

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D5F9FLO2 Farrell - cross
1 reported by commands on stop, question and frisk report
2 worksheets.

3 Now is that first part the 802?

4 A. Yes, it is.

5 Q. And then it says the second part involves the monitoring by
6 command integrity control officers of other police initiated
7 enforcement and the quality assurance division evaluating the
8 documentation of that monitoring.

9 Now is that the 802-A?

10 A. Yes.

11 Q. So then looking at paragraph two, paragraph two describes
12 the protocols for the 802, right?

13 A. Yes.

14 Q. I actually want to look at the 802-A.

15 So if we go to the second page. Then under number
16 three it says police initiated enforcement, right?

17 A. Yes.

18 Q. Now we have the discussion of the 802-A, correct?

19 A. Yes.

20 Q. And there's two paragraphs there. There's an (a) and a
21 (b).

22 And it says the sentence before the two -- the (a) and
23 the (b), it says, "The command integrity control officers
24 and/or assistant integrity control officers will be required to
25 do the following," and it says two things, right?

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D5F9FLO2

Farrell - cross

1 A. Yes.

2 Q. And the first thing that the ICO or the assistant ICO will
3 do is to review the last five arrest reports for the month; and
4 that they will look for certain deficiencies, including but not
5 limited to whether a stop-and-frisk report had been prepared in
6 conjunction with that arrest, right?

7 A. Yes.

8 Q. And when we're talk about five arrests, these have to be
9 self-initiated, right?

10 A. That's correct.

11 Q. In other words, they can't be in response to a call of
12 shots fired or that a robbery has happened?

13 A. Right.

14 Q. Now there is also in this version of the protocols there's
15 a second component here. It says, "The ICO and the assistant
16 ICO will respond to and observe officers' actions at five radio
17 runs where police initiated enforcement is likely. And they
18 will monitor these runs to ensure that any actions taken are
19 based on the standards required by the Fourth Amendment of the
20 U.S. Constitution or other applicable law. Particular
21 attention will be paid to those incidents requiring the
22 preparation of a stop, question and frisk report."

23 Now, that component was not in the final version of
24 the protocols, right?

25 A. That's correct.

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Farrell - cross

1 Q. And that component, as described there, would actually
2 involve observation of officer behavior on the street, right?

3 A. That's what's suggested by that.

4 Q. Do you know why this component wasn't included?

5 A. Yes. We deem that proposal to be impractical. I believe I
6 testified to this yesterday with regard to the reasons.

7 Q. Well, are you aware that ICOs as part of their regular
8 duties do actually go out and observe officers in the field?

9 A. Yes.

10 Q. But your testimony is this kind of observation would be
11 impractical?

12 A. Yes, because it's in response to a particular radio run
13 which, as I said yesterday, would mean they would have to try
14 to discern from hearing the initial information about the radio
15 run which one may be likely to result in a stop. They would
16 then have to be able to travel to the location of the radio
17 run, which assuming they're working out of the station house
18 could be several miles. They would have to get there before
19 the officers or at the same time the officers get there in
20 order to see and observe a stop, which typically are concluded
21 within a matter of a couple of minutes. So it seemed
22 impractical.

23 Q. To your knowledge was there any discussion of maybe -- in
24 the development of these protocols, of if not using what's in
25 paragraph (b), creating some other procedure where ICOs could

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Farrell - cross

1 actually observe officers' stop behavior in the field as part
2 of the self-inspection?

3 A. No. I don't believe so.

4 MR. CHARNEY: A couple questions going back to the
5 RAND stuff and then I think I'll be done.

6 (Pause)

7 No further questions at this time, your Honor.

8 THE COURT: Well we're so close to the recess maybe
9 we'll do that before you start.

10 MS. GROSSMAN: Thank you, your Honor.

11 THE COURT: We'll pick up at 20 of twelve.

12 (Recess)

13 THE COURT: Please be seated.

14 REDIRECT EXAMINATION

15 BY MS. GROSSMAN:

16 Q. Good morning.

17 A. Good morning.

18 Q. So, Commissioner, you were asked some questions about the
19 internal benchmarking summary by Mr. Charney.

20 Do you remember that?

21 A. Yes, I do.

22 Q. So, referring to Defendants' Exhibit N6. You were asked
23 some questions about the 80 percent confidence level and the
24 50 percent confidence level, right?

25 A. Yes.

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Farrell - redirect

1 Q. Can you explain what the significance to you of the
2 officers who fall between 50 and 80 percent confidence level
3 is?

4 A. Well the use of research findings at a confidence level is
5 an important determination. And for the most part findings at
6 a 90 -- with 90 or 95 percent confidence level is more common.
7 So, confidence at the 80 percent level is, in my view, somewhat
8 relaxed.

9 The findings at a 50 percent confidence level is akin
10 to a coin toss.

11 And so the ones that fall between 50 and 80 are only
12 somewhat better than a coin toss. And in my view, insufficient
13 to be as reliable as those at a much higher confidence level.

14 Q. So looking at this exhibit, you see that we have here there
15 are about one, two, three, four, five officers on this first
16 page here that are above a .71 confidence level, and all the
17 others are below that, correct?

18 A. Yes.

19 Q. And then looking on the next page we see that -- we see the
20 same confidence level, different numbers but you have the same
21 view with respect to the confidence level with this second page
22 as well?

23 A. Yes. You need to establish a cut point, if you will. And
24 the 80 percent was what we had accepted even though, frankly,
25 would be more comfortable with the 90 or 95 that's more

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Farrell - redirect

1 commonly used.

2 MS. GROSSMAN: I have no further questions, your
3 Honor.

4 MR. CHARNEY: Just a couple on that exact topic, a
5 couple of recross.

6 RE-CROSS EXAMINATION

7 BY MR. CHARNEY:

8 Q. Now, so on that issue about the 50 percent and the
9 80 percent confidence level, RAND recommended that the police
10 department use the 50 percent confidence level, right?

11 A. They offered that as a suggestion, yes.

12 Q. And they said because the cost of possibly overlooking a
13 problem officer if you used the 80 percent confidence level
14 would be very high, right?

15 A. They used language to that effect.

16 Q. And, again, you've testified that you hired RAND to give
17 you an independent perspective, right?

18 A. And they did.

19 Q. And you just disagreed with that perspective or about the
20 50 percent confidence level?

21 A. Yeah. I mean to your point yesterday, we made certain
22 comments and suggestions with regard to a draft. They accepted
23 some, didn't accept others. And the final report is what it
24 is. And there are some areas that we had a difference of
25 opinion on.

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D5f9flo2 Farrell - recross

1 Q. So you don't think that if an officer -- if we can look at
2 N6 again. I'm going to put this up.

3 This is N6, the page what we're looking at, the
4 black -- stops of black folks. This particular officer, it
5 looks like the percentage of black people they stopped was
6 30 percent higher than the percentage of black people which
7 similarly situated officers stopped, right?

8 A. Yes.

9 Q. And that was at a .58 confidence level, right?

10 A. Right.

11 Q. So you don't think that this disparity merited a closer
12 look at this officer given that the confidence level was above
13 50 percent, right?

14 A. Yes. But as I've described, with 50 percent being a coin
15 toss. We're not comfortable with that.

16 I would also point out that it appears that that same
17 officer you're pointing to, 1965, is on the following table as
18 under-stopping Hispanics.

19 Q. So your testimony is unless an officer over-stops both
20 blacks and Hispanics they're not a concern to you?

21 A. The purpose of this analysis is that -- is to determine
22 whether a particular officer has a pattern that differs from
23 their peers. If an officer is over-stopping in this
24 instance --

25 Q. Blacks?

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D5f9flo2

Farrell - recross

1 A. -- presumably by a level that doesn't have a high
2 confidence level, blacks and under-stopping Hispanics, assuming
3 they're in the same area, it would raise questions about
4 whether or not there were reasons certainly other than even any
5 presumption of racial bias.

6 THE COURT: Why is that? Couldn't one be biased
7 against blacks but not biased against Hispanics? That's
8 theoretically possible?

9 THE WITNESS: It's theoretically possible.

10 THE COURT: You think it's only theoretical?

11 THE WITNESS: It may exist in some cases.

12 THE COURT: Sure. Okay.

13 MR. CHARNEY: No further questions.

14 THE COURT: Okay. I think you're done.

15 THE WITNESS: Thank you.

16 THE COURT: No more, right, Ms. Grossman?

17 MS. GROSSMAN: That's correct, your Honor.

18 THE COURT: You're done. Thank you.

19 THE WITNESS: Thank you, your Honor.

20 (Witness excused)

21 MS. GROSSMAN: We call Chief James Hall.

22 JAMES P. HALL.

23 called as a witness by the Defendant,
24 having been duly sworn, testified as follows:

25 (Continued on next page)

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D5f9flo2 Farrell - recross

1 DIRECT EXAMINATION

2 BY MS. GROSSMAN:

3 Q. We're close good afternoon, but it's still good morning,
4 Chief.

5 A. Good morning.

6 Q. So what's your current position?

7 A. I'm the chief of patrol.

8 Q. How long have you been the chief of patrol?

9 A. Since March of 2010.

10 Q. And whom did you succeed in that position?

11 A. Chief Robert Giannelli.

12 MS. GROSSMAN: Your Honor, I would just note that the
13 deposition of Chief Giannelli is in evidence by deposition
14 designation.

15 THE COURT: Okay.

16 Q. Did you go to college, Chief?

17 A. I did.

18 Q. Where did you go?

19 A. State University of New York.

20 Q. And did you receive a degree from there?

21 A. I did. A bachelor's in criminal justice.

22 THE COURT: Which one? Which SUNY?

23 THE WITNESS: Farmingdale and then Empire.

24 THE COURT: Farmingdale and then Empire?

25 THE WITNESS: Correct.

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D5f9flo2 Hall - direct

1 Q. When did you join the NYPD?

2 A. January 1981.

3 Q. Before you were chief of patrol, were you commanding
4 officer of any precinct commands?

5 A. I was. The 115 precinct in Jackson heights Queens and the
6 71 precinct in Crown Heights Brooklyn.

7 Q. So immediately before you became chief of patrol, what was
8 your position and for how long were you there?

9 A. I was the chief of the transit bureau and I was there from
10 November 2005 until February 2010.

11 Q. And how many transit districts did you oversee?

12 A. There were twelve.

13 Q. And which boroughs did they -- were they represented in?

14 A. They were in each of the boroughs with the exception of
15 Staten Island.

16 Q. And how many subway stations did those -- did the transit
17 district cover?

18 A. Citywide it's 468.

19 Q. And how many officers were assigned to transit?

20 A. During my time there it probably fluctuated between 2700 to
21 2500.

22 Q. Do transit officers receive the same training as patrol
23 officers?

24 A. They do.

25 Q. And do transit officers also keep memo books?

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D5f9flo2

Hall - direct

1 A. They do.

2 Q. Did QAD audit transit like they audit the patrol services
3 bureau regarding UF 250s and memo books?

4 A. They did.

5 Q. And do transit districts do the same self-inspections
6 regarding UF 250s and memo books as the patrol commands
7 including the 802, 802-A and 803?

8 A. They do.

9 Q. Generally, what are your responsibilities as chief of
10 patrol?

11 A. As the chief of patrol the eight patrol borough commands
12 that the city is divided up into, those borough commanders
13 report to me. The 76 police precincts report to me through
14 those borough commands. And I act as the incident commander at
15 the scene of large scale events or incidents throughout the
16 city.

17 Q. How many uniformed officers are under your command?

18 A. Just a shade under 19,000.

19 Q. And how many -- what about civilians?

20 A. About another 2200 civilians.

21 And then there's about another 4500 auxiliary police
22 officers that also report to me.

23 Q. Who reports to you directly?

24 A. The borough commanders are the next line underneath me.

25 Q. That's eight patrol borough commanders, right?

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D5f9flo2 Hall - direct

1 A. That's correct.

2 Q. Whom do you report to directly?

3 A. The chief of department.

4 Q. And the police commissioner?

5 A. I do.

6 Q. Can you explain how the roles of chief of patrol and chief
7 of department interact?

8 A. Well, my office obviously I report to the chief of
9 department. We work very closely with his office based on
10 putting together planning for large scale events or responding
11 to incidents. And then developing and deploying -- developing
12 strategies and deploying police officers throughout the city.

13 Q. Some of that includes crime reduction strategies?

14 A. It certainly does.

15 Q. And you coordinate with the chief of department?

16 A. I do.

17 Q. In your role as chief of patrol have you ever been directed
18 in sum and substance to target the enforcement activities of
19 the patrol services bureau at young black and Hispanic males?

20 MR. MOORE: Object to the form, judge. Leading.

21 THE COURT: We went through this once before when
22 questions are simply designed to elicit a string of denials.
23 So I'm going to allow it.

24 THE WITNESS: No.

25 Q. Have you ever directed the patrol services bureau in sum

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D5f9flo2 Hall - direct

1 and substance to target their enforcement activities at young
2 black and Hispanic males?

3 A. Never.

4 Q. Now as chief of patrol do you interact directly with
5 commanding officers?

6 A. I do.

7 Q. How so?

8 A. It can be face-to-face interactions. If I go out on
9 patrol, I stop by their commands to say hello. It can be at
10 CompStat meetings. It can be telephone conversations, you
11 know, throughout the week.

12 Q. And as chief of patrol do you serve on any monitoring
13 committees?

14 A. I do.

15 Q. Which ones?

16 A. Career advancement review board. The CCRB profile and
17 assessment. Overtime committee. Department vehicle accident
18 committee. Honor committee.

19 Q. What about the firearms discharge review board?

20 A. I'm a member of that also.

21 Q. What do you monitor and why?

22 A. Depending on what the committee is.

23 CCRB profile and assessment. That's taking a look at
24 members of the department that have civilian complaints,
25 excessive civilian complaints.

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D5f9flo2 Hall - direct

1 The overtime committee to make sure that overtime is
2 being used efficiently and that it's equally distributed.

3 And, for example, the other day it was the honor
4 committee. That's a committee where we're reviewing the
5 highest awards that are given out by the police department.

6 Q. So referring to the overtime monitoring committee, why are
7 you monitoring overtime?

8 A. Well we want to make sure that it's equally distributed
9 throughout the commands, that there are no overtime abuses,
10 that it's being used in the most efficient way it can be used
11 in the right areas.

12 Q. Now, we've been hearing testimony about the violence
13 reduction overtime.

14 How do you know officers are not subject to quotas
15 during the violence reduction overtime?

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

17 THE COURT: Because of leading again or what?

18 MR. MOORE: Very leading.

19 MS. GROSSMAN: It's a how.

20 THE COURT: I'd have to hear the question again but
21 any other objection or just that?

22 MR. MOORE: Just that, Judge.

23 (Pause)

24 THE COURT: I'll allow it.

25 THE WITNESS: One, we don't have quotas.

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1 Two, I have the commands that receive that overtime
2 report back to me what the activity is that was performed on
3 the overtime. I take a look at that. There is no indication
4 of any quota at all.

5 Q. And if you see low activity, how do you know that that
6 informs whether there is quotas or not?

7 A. Some -- a lot of this activity as it pertains to violent
8 reduction, the activity is very low. If there was a quota I
9 would think we would be asking, you know, for something
10 different.

11 So when I look at that activity, I'm really -- I want
12 to make sure that those posts that I'm directing in these areas
13 be out there and be visible. That's the priority.

14 Q. So on this violence reduction overtime program, is there a
15 focus on omnipresence?

16 A. There is. Very much so.

17 Q. How come?

18 A. Because in my experience we are putting this overtime in
19 places that have historic violence, mainly shootings; very
20 surgical in the approach where we can put officers on
21 particular streets. And if we can keep those officers out
22 there a good portion of the day and they diligently patrol that
23 post, it will reduce shootings.

24 Q. Define against omnipresence. What does that mean?

25 A. Well these are uniform assignments for the most part. So

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1 the officers are in uniform. And then they're given a specific
2 post. And we really don't want them straying from that post.
3 And they are to remain visible out there. We try to cover them
4 as much as 18 to 20 hours a day in some commands.

5 Q. Moving on to the CCRB profile and assessment committee,
6 what is that committee?

7 A. That's a committee that's composed of the first deputy
8 commissioner, the chief of department, myself, chief of
9 detectives, the chief of the organized crime control bureau,
10 the chief of transit, chief of housing, and the chief of
11 internal affairs. In addition, there are members of the legal
12 bureau that are part of the committee. And that committee
13 reviews officers that have excessive CCRB histories.

14 Q. Within a certain period of time?

15 A. That's correct.

16 Q. Does everyone --

17 MR. MOORE: Judge let me just note that we've had a
18 lot of testimony about this process, this committee and this
19 whole CCRB performance assessment. So hopefully we won't, you
20 know, just be duplicative of what we've already heard.

21 Q. Does everyone on the committee have an equal say?

22 THE COURT: I hope you're taking that objection to
23 heart. We're not going to have cumulative testimony.

24 MS. GROSSMAN: No. I'm just moving on to what goes on
25 in the committee.

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1 THE COURT: I'm saying that's not cumulative? We
2 haven't had that already?

3 MS. GROSSMAN: Right. He's the first witness talking
4 about what's going on in the committee.

5 MR. MOORE: It's a long record. I know we've talked
6 about this performance assessment committee a lot.

7 MS. GROSSMAN: We haven't talked about what's going on
8 on the committee.

9 THE COURT: Okay. I'll allow it.

10 But I would ask you to be sure not to put in
11 cumulative testimony.

12 MR. MOORE: I can't find the portion of the
13 transcript.

14 THE COURT: I'm sorry?

15 MR. MOORE: I wouldn't be able to find the portion of
16 the transcript that --

17 THE COURT: But you would know what witness was likely
18 to have been the witness or no?

19 MR. MOORE: I don't at this point have any
20 recollection of who that witness was.

21 MS. BORCHETTA: Your Honor, I will just interject.
22 Deputy Commissioner Schwartz did testify about the procedures
23 of the CCRB profile assessment committee.

24 THE COURT: Okay, well.

25 MR. MOORE: Thank you.

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1 Q. Chief does everyone on the committee have an equal say?

2 A. On the committee, each bureau chief is called upon to
3 discuss the members under their bureau, their CCRB histories
4 with the first deputy commissioner; and ultimately the first
5 deputy commissioner, if there's going to be some type of change
6 of assignment, he has the final say. But we all get to
7 contribute to what we think is going on with that particular
8 officer.

9 Q. How often does the committee meet?

10 A. It meets quarterly.

11 Q. And when will an officer be reviewed --

12 MS. GROSSMAN: Your Honor, I'm not going into too much
13 on when an officer is reviewed. It's just the set-up to talk
14 about what happens at the committee.

15 Q. So when will an officer be reviewed for possible remedial
16 action based on the CCRBs?

17 A. It can be three civilian complaints in a year. It can be
18 six civilian complaints in five years. And I would note that
19 those complaints don't have to be substantiated complaints.

20 MR. MOORE: Judge, we've heard a lot of testimony
21 about this, about what triggers the monitoring and so I just --
22 I just think this is really the long end -- the end of a long
23 process. I don't think it's appropriate to just repeat all
24 this testimony over and over again.

25 MS. BORCHETTA: Again, your Honor, deputy --

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1 THE COURT: I remember this answer specifically
2 about -- I do absolutely remember hearing about three and about
3 six.

4 MS. GROSSMAN: So, Chief, you understand all -- let me
5 just show you Defendants' Exhibit Z3.

6 Q. You understand what the requirements are of the -- what
7 triggers an officer's assessment under the CCRB profile and
8 assessment committee, correct?

9 A. I do.

10 Q. You're familiar with the contents of this Defendants'
11 Exhibit Z3, correct?

12 A. I am.

13 Q. So you're familiar with all the criteria that would bring
14 an officer to the committee, correct?

15 A. That's correct.

16 Q. Now, why, in your perspective as chief of patrol, why is it
17 important to have this committee?

18 A. Because as the chief of patrol this allows us to -- to me
19 it's an early intervention process where we can detect officers
20 that potentially have problems dealing with the public, so it's
21 important.

22 Q. And what's the goal of this committee?

23 A. Excuse me?

24 Q. What is the goal of this committee?

25 A. Is to, you know, reduce the number of CCRB complaints that

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1 an officer is getting and to try to get that officer, you know,
2 if he has a problem with complaints, to eliminate the problem.
3 Q. Now you're aware -- so how is it that -- what kind of
4 information -- what kind of packets come to you before you have
5 an evaluation?

6 MR. MOORE: Judge, all this has been gone over.

7 MS. GROSSMAN: No.

8 THE COURT: In a seven or eight thousand page
9 transcript I won't be able to find page and line. Neither can
10 you. I can only rely on Ms. Grossman to not knowingly offer
11 cumulative testimony.

12 MR. MOORE: That's what Julie Schwartz testified to.

13 THE COURT: I know who it is.

14 THE WITNESS: We get a package that contains the
15 officer's CCRB history, the actual complaints against the
16 officer, the narrative that was made by the individual making
17 the complaint. We get a copy of his CPI, central personnel
18 index. We get a copy of the officer's supervisor's CCRB
19 history and the supervisor's CPI.

20 Q. Do you get assignment history as well?

21 A. You get to know when you look at the package, you'll get a
22 history of where that officer has worked during his career.

23 Q. And so do you also receive a summary of the reason the
24 officer is being reviewed?

25 A. You do.

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1 Q. Do you get a list of the officer's enforcement history?

2 A. You get his arrest history. You get his department awards.
3 You get his sick history. Pretty much, you know, a complete
4 profile on the officer since he's been a member of the
5 department.

6 Q. Do you get his last three years of evaluation scores?

7 A. That's included in there.

8 Q. Do you get whether -- do you know whether an officer is
9 currently on monitoring?

10 A. Within the package if the officer is in any type of
11 monitoring program, that's going to be indicated.

12 Q. Does the packet also contain a recommendation from the
13 commanding officer about whether the officer should be
14 reassigned?

15 A. Within the package, the precinct commander that supervises
16 this officer, he makes a recommendation and then the borough
17 command has to also make a recommendation concerning the
18 officer and his present assignment.

19 Q. And before the committee meets, do the members have an
20 opportunity to review the packets and speak to the CO or the
21 borough commander?

22 A. We do.

23 Q. And do you use that as an opportunity to get more
24 information about an officer?

25 A. I do. If I have questions about a particular case, I will

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1 call the commanding officer to get his view on the officer. I
2 may have some questions for the precinct commander pertaining
3 to the officer's assignment. But it's a practice that I try to
4 do.

5 Q. And you mentioned before that one of the items contained in
6 the packet is the officer's CPI index, correct?

7 A. That's correct.

8 Q. So --

9 MR. MOORE: Asked and answered, Judge.

10 Q. So, referring to -- I'm showing you --

11 THE COURT: You mean already asked and answered with
12 this witness?

13 MR. MOORE: Yes.

14 MS. GROSSMAN: I'm just setting up to show a copy of
15 the exhibit.

16 Q. So showing you what's been marked as Defendants' Exhibit
17 C15.

18 MR. MOORE: Judge, I would just note that this is one
19 of the exhibits we need to talk about. I'm not going to
20 object. I don't think they're really relevant to this process
21 or don't really have much relevance to the issue before this
22 Court in terms of what's in these documents. If she wants to
23 use them, fine. I would just note that it wasn't produced to
24 us until like two days ago.

25 Q. So, Chief, is this document familiar to you?

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1 A. It is. This is a copy of a CPI.

2 Q. And what kind of -- so it's -- so what kind of information,
3 let's go through this.

4 What kind of information is contained here?

5 Looking at background check. What does that
6 represent?

7 A. Well when you look at this particular CPI, the officer is
8 named as a defendant in a civil action. That's listed on this
9 CPI.

10 There is also an entry that this particular officer is
11 in level 1 force monitoring.

12 There's then another entry showing that he is the
13 defendant in a second civil action.

14 Q. Keep going.

15 A. There is also an entry that there's an investigation
16 concerning missing property from a prisoner that involves this
17 officer.

18 And then lastly on this CPI there's an investigation
19 concerning this officer missing a traffic appearance court
20 case, it looks like.

21 MS. GROSSMAN: Your Honor can I just move to admit
22 this document into evidence.

23 THE COURT: Sure. C15 is received.

24 (Defendant's Exhibit C15 received in evidence)

25 Q. See the force disciplinary monitoring, the monitoring

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1 summary?

2 A. That's correct. That's on there. And then you have his
3 evaluations.

4 Q. And so before we move on you see it says force disciplinary
5 monitoring and it says level 1 force on the left?

6 A. That's correct.

7 Q. It tells you the start date, the end date?

8 A. 2010 and it will end or ended sometime in 2012. And the
9 basis for him being in that monitoring is that he got 3 or more
10 CCRBs in a year.

11 Q. So if there are other reasons, maybe two more, or five
12 more?

13 A. That would be there.

14 Q. Okay. And moving on to the next category.

15 A. This is the officer's annual evaluations, including his
16 10-month probationary, his 16-month probationary, his 22-month
17 probationary. And then it turns into his annuals.

18 Q. Is there another page?

19 A. Yes. This is really just the next page. You get to see
20 his educational background at the top. His duty status.
21 What's his status in terms, is he out sick? Is he chronically
22 sick?

23 Then, as I said, the educational background.

24 And then any particular skills that the subject
25 officer may have.

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1 Q. And moving on to the next page.

2 A. The next page is a listing of the officer's department
3 awards.

4 Q. And then moving on, there's arrest activity?

5 A. You have his arrest activity since he's been a member of
6 the department.

7 Q. And what about -- and then the personnel history?

8 THE COURT: Wait. I did not --

9 THE WITNESS: In the middle, your Honor.

10 THE COURT: Yes.

11 THE WITNESS: And then at the bottom that would be a
12 listing of his assignments since he's been a member of the
13 department.

14 Q. And I think --

15 A. And then lastly sick record.

16 Q. Does every officer have a CPI?

17 A. They do.

18 Q. And every CPI contains an officer's disciplinary history,
19 correct?

20 A. It does.

21 Q. Now if an OCD investigation results in a discipline of a B
22 command discipline or higher, will that show up on an officer's
23 CPI?

24 A. It will.

25 Q. Does training show up on a CPI?

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1 A. Training -- an officer that receives training as the result
2 of a disciplinary case as part of a penalty there is going to
3 be a notation made on the CPI for that.

4 Q. And a penalty for CCRB or IAB investigation?

5 A. That's correct. Would be on there.

6 Q. Now is officer training in general tracked by the commands?

7 A. It is.

8 Training that each officer received is going to be
9 placed in their personnel folder. And then also the deputy
10 commissioner of training tracks training courses that the
11 officer attends.

12 Q. Now do commands have access to Civilian Complaint Review
13 Board complaints regardless of the disposition?

14 A. They do.

15 Q. Is a printout from the CCRB database for the subject
16 officer who we're showing you this CPI for, is that contained
17 in a packet that the committee reviews?

18 A. It is. That's in the case folder when you look at it.

19 Q. Showing you what's been marked as Defendants' Exhibit D for
20 identification. D15, I'm sorry.

21 THE COURT: Is D15 in evidence?

22 MS. GROSSMAN: Not yet, your Honor. I move to admit.
23 But I think we discussed this yesterday and I think you were
24 comfortable -- or I think we established that we could use this
25 today.

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1 THE COURT: I don't know. Any objection?

2 MR. MOORE: I object just because I don't think it's
3 relevant to this inquiry but other than that I don't have an
4 objection.

5 THE COURT: I don't know the relevance either. Maybe
6 you could proffer the relevance.

7 MS. GROSSMAN: Before I get there.

8 Q. When you review -- when you get -- receive a packet from
9 the -- for the profile and assessment committee that we're
10 talking about, is the CCRB history provided as -- is that
11 provided to you?

12 A. It is.

13 Q. And the CCRB history, does it contain narratives of the
14 CCRBs that relate to that particular subject officer?

15 A. It does. You get a narrative for each case.

16 Q. So showing you what's been marked as Defendants' Exhibit
17 D15, is this an example of the information regarding the CCRBs
18 that were provided to you as part of this packet you receive
19 for this CCRB profile and assessment committee?

20 A. This is.

21 MS. GROSSMAN: So, your Honor, this is new. This is
22 not information that we've offered before. And it's relevant
23 to the evaluation of an officer on the CCRB profile and
24 assessment committee, what the information is that the
25 assessment committee reviews and evaluates concerning an

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1 officer. It goes to the monitoring of an officer for stop,
2 question and frisk. And it goes to the systems in place and
3 the checks and balances that are in place in the police
4 department.

5 THE COURT: Okay. I'll admit it. D15.
6 (Defendant's Exhibit D15 received in evidence)
7 (Continued on next page)

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D5F8FLO3 Hall - direct

- 1 Q. So this is a sample, looking at the first page, CCRB
2 history narrative. So this whole document is provided to the
3 committee, correct?
4 A. Yes, it is.
5 Q. Moving on to the second page.
6 So can we just walk through what this document means?
7 You see at the top it says officer history?
8 A. Yes.
9 Q. There is some pedigree information at the top?
10 A. That's correct.
11 Q. Tenure, appointment date, command.
12 Then moving on to CCRB number. It indicates report
13 date, incident date, allegation, disposition, disposition,
14 penalty and command. You see the top table there?
15 A. I do.
16 Q. So how many different CCRB complaints are represented on
17 this first page?
18 A. Looking at this officer?
19 Q. Yes.
20 A. 12.
21 Q. So then you see on the report date, it indicates the dates
22 that the CCRBs were filed?
23 A. Correct.
24 Q. Then you have the actual incident date listed to the right?
25 A. You do.

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D5F8FLO3 Hall - direct

1 Q. Then the specific allegation for each of the CCRBs?

2 A. Yes.

3 Q. Then disposition --

4 MR. MOORE: I don't see where you get 12 out of that.
5 Maybe he can explain why it is 12. I thought it was nine.

6 Q. Is it nine? I think it is nine.

7 THE COURT: It says right at the bottom, total charges
8 equals 23, total cases equals nine.

9 You see it?

10 THE WITNESS: I see it.

11 THE COURT: Charges 23, cases nine.

12 MS. GROSSMAN: It was my fault. I didn't go to the
13 second page.

14 THE COURT: There it is.

15 Q. So then you see the disposition for each of the CCRBs in
16 that middle column there?

17 A. Yes.

18 Q. Now, the complaints about this officer, they include
19 allegations of abuse during stops, frisks, searches,
20 discourtesy, offensive language and force, right?

21 A. They do.

22 Q. What are the pages that follow the summary?

23 A. This page --

24 Q. Moving on to 29416?

25 A. That's correct.

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D5F8FLO3

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1 This would be an example of the narrative that is
2 involved in this particular complaint. At the top of the page,
3 you get when it occurred, the time it occurred, the precinct
4 where it occurred, the actual location of the complaint. Then
5 in the middle of the page, you get the names of the subject
6 officers, when they are identified, their race, and then the
7 allegation. And then at the bottom of the page is the actual
8 narrative made by the complainant.

9 Q. I note that this officer is being evaluated even though the
10 CCRB complaints were not substantiated, right?

11 A. That's correct.

12 Q. So then you see the initial narrative?

13 A. I do.

14 Q. Do you know generally who writes up the CCRB narratives of
15 the initial complaints?

16 A. It's usually an intake person at the CCRB when the
17 complaint is called in.

18 Q. So as a committee member, what use do you make of the CCRB
19 history?

20 A. Well, there's a couple of things that I look at when I am
21 looking at the officer's history. Obviously, the number of
22 complaints. Two, the type of complaint and how is he getting
23 it. Is the officer getting the complaint during enforcement
24 encounters, or is the officer getting complaints just doing
25 routine police work, answering a motor vehicle accident? He is

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1 involved in a radio run assignment that's pretty routine and it
2 evolves into a civilian complaint. So I am looking at how is
3 he accumulating, he or she, getting these complaints.

4 Q. Are you trying to also identify patterns and recurring
5 issues?

6 A. Absolutely. You can look at the narratives. Does an
7 officer always seem to get a civilian complaint when he is
8 issuing a summons? Patterns like that you can sometimes detect
9 from reading each complaint individually.

10 Q. Do the packets contain any information about the officer's
11 immediate supervisor?

12 A. It does. When we look at an officer getting complaints,
13 it's always good business to look at the officer's supervisor,
14 immediate supervisor, to see if the supervisor is getting
15 complaints. If so, to me there is an issue that we have to
16 examine closer because it could be that the officer is feeding
17 off of the sergeant or vice versa. So we want to know what the
18 supervisor's history is.

19 Q. Now, what is tac com?

20 A. Tac com is tactical -- it's short for tactical
21 communication. That's a course that's run by the police
22 academy, and it's sometimes utilized by the committee. When we
23 see an officer getting too many complaints, we will make a
24 recommendation that he attends that course.

25 Q. Now, why are the officers' last three performance

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1 evaluations important for you on the committee?

2 A. I think it gives you a little bit of intelligence about the
3 officer. Is the officer -- we can look at an officer that's
4 evaluated pretty well, it appears that he is doing his job
5 pretty well, but he is still accumulating complaints. The
6 converse of that, obviously, would be an officer that maybe is
7 not being evaluated that highly and he or she is still
8 continuing to get complaints. It gives us a little bit of
9 background into the officer which might shed some light on the
10 complaints.

11 Q. Going back to the commanding officer and borough commander
12 recommendations, do you ever see recommendations from them
13 regarding additional training?

14 A. You do.

15 Q. Legal training as well?

16 A. Legal bureau training is something they can recommend, and
17 tactical communication training is another training that they
18 can recommend. So they will do that.

19 Q. Now, moving on to the tac com training. Is this course
20 specifically designed for members of the service with high
21 numbers of CCRBs identified by personnel?

22 A. It is. It's a course, I believe it's a three-day course,
23 and it really is designed to get officers to communicate
24 better, not only in their daily day-to-day interactions, but in
25 interactions that are maybe more stressful or enforcement

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1 related.

2 Q. How often is it given?

3 A. It's given throughout the year. So we have the ability to
4 get an officer into it pretty easily.

5 Q. It's given monthly?

6 A. Correct.

7 Q. Would the committee ever recommend tighter supervision as a
8 result of the committee review of the officer?

9 A. Yes. We often do that. We can look at an officer's CCRB
10 complaints, and, for example, we direct that that officer
11 strictly drive the supervisor. And then the commanding officer
12 will sit down with the supervisor and tell the supervisor, I
13 want you to closely monitor this officer, you know, look at him
14 each day out on patrol as he drives you, and try to instill in
15 him these complaints are avoidable.

16 Q. Might the tighter supervision also include supervision by
17 borough supervisors?

18 A. It could also. The committee often will recommend that the
19 subject officer have a face-to-face with the borough adjutant,
20 which is normally a full inspector, or it could be -- we have
21 recommended that the officer have a face-to-face with the
22 borough commander or his executive officer.

23 Q. Now, does the committee ever decide against the CO and
24 borough commander's recommendations to keep an officer in his
25 present assignment?

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1 A. Yes, it happens. We are looking at the CO's
2 recommendation. As I stated earlier, I will often speak to the
3 CO about it, especially if I think that the officer may need a
4 change of assignment. We are going to look closely at what the
5 borough commander thinks, but ultimately the committee will, if
6 we are not in line with what they think, we are going to act
7 independently of them and change the officer's assignment.
8 Q. Are you aware of occasions when a recommendation from the
9 committee was to change an officer's assignment?
10 A. Absolutely.
11 Q. What are examples of why you would recommend the changing
12 of an officer's assignment?
13 A. We look at the officer's assignment, what he is currently
14 doing. We look at the number of complaints that he is
15 receiving. You're looking along the way, has the officer had
16 tac com training, and maybe he is still getting complaints?
17 Has the officer been spoken to by the precinct commander? And
18 if we generally get a feel that the officer still is getting
19 complaints, and I will use the example of an anticrime officer
20 who is working in plain clothes, we look at him and the
21 complaints in our mind just have been too frequent, we are
22 going to recommend that that officer be taken out of anticrime,
23 taken out of plain clothes, put back into uniform, where there
24 is clearly more structure, there is more accountability. The
25 officer is in uniform, it is a little bit easier to track and

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1 keep an eye on, and hopefully that is going to be a clear
2 message sent to the officer.

3 Q. So on those occasions when that recommendation has been
4 made, have those recommendations been made because they arise
5 from allegations of stops?

6 A. It could be stops, absolutely. It could be summonses. But
7 clearly stops could be an issue that would make us want to put
8 the officer back in his uniform.

9 Q. Will these reassignments impact negatively on the officer's
10 career path?

11 A. It very well could. Officers that accumulate a high number
12 of CCRBs, and then CCRBs that are substantiated, it can prevent
13 an officer from getting a good assignment, an assignment that
14 he desires, maybe prevent him from getting into an
15 investigative track to be a detective. So they can clearly
16 impact negatively on your career.

17 Q. That would also include the unsubstantiated CCRBs that are
18 evaluated by the committee?

19 A. They could.

20 Q. You mentioned that being on the -- you mentioned that it
21 could affect -- it could affect an officer's ability to receive
22 a promotion, correct?

23 A. Yes.

24 Q. This is for any type of promotion?

25 A. Yes. It could be a discretionary promotion. It could be a

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1 civil service type promotion to sergeant or lieutenant.

2 Q. What is the career advancement review board?

3 A. The career advancement review board is a committee that is
4 made up of the deputy commissioner of personnel and then two
5 bureau chiefs have to sit on that committee. So there's three
6 members every time the committee meets. I sit on this
7 committee quite often. Then there will be another three star
8 chief, and then the deputy commissioner of personnel.

9 Q. Are those individuals who are eligible for promotion
10 brought up in the committee because there may be some B command
11 disciplines or charges and specs that result in a penalty of
12 ten or more days?

13 A. Yes. What happens is an officer that's eligible for
14 promotion to either sergeant, lieutenant, or even captain, if
15 they have got a schedule B command discipline in their
16 disciplinary history, or they have been the recipient of
17 charges and specifications where they receive ten or more days,
18 or they have a CCRB history that the department is just not
19 comfortable with, that can bring you before the board.

20 Q. Now, could an officer with three B command disciplines for
21 omitted activity log entries come before the CARB board?

22 A. He will or she will.

23 Q. What about CCRBs?

24 A. CCRBs can clearly bring you before the board.

25 Q. The CCRBs don't have to be substantiated to be considered?

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Hall - direct

1 A. They do not.

2 Q. How often does the board meet?

3 A. CARB, usually once a month.

4 Q. So what happens at this board meeting?

5 A. At the meeting, the officer, or the subject officer, has to
6 come, sit before the board, and go over his disciplinary
7 history since he has been in the department, the specific
8 incidents that brought him before the board, explain to us how
9 the incidents occurred, what he has done to change or prevent
10 these types of incidents from happening, and then he is
11 subjected to some very pointed questions by the board.

12 Q. We are talking about CCRB incidents or disciplinary
13 incidents?

14 A. That's correct.

15 Q. Do you have concerns about an officer with a disciplinary
16 history supervising other officers?

17 A. I do. When I am sitting on the board, this is an officer,
18 he has taken a test or she has taken a test, they want to be
19 supervisors, I think we have to have a lot of concern that if
20 as a police officer they have had problems with disciplinary
21 issues, and now we are going to put them in charge of a group
22 of officers, it's something that this is a serious board, and
23 when we look closely at their history, is it a maturity issue,
24 is it just failure to follow department policies, but certainly
25 if we are going to put them as supervisors, we want to make

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1 sure we are making the right decision.

2 Q. What are the options for the board when that officer comes
3 up for promotion?

4 A. Well, the board can interview the subject officer and at
5 the conclusion recommend that the officer receive the
6 promotion. The board can defer and direct that that subject
7 officer not receive the promotion and come back to be
8 reinterviewed in six months, or come back and be reinterviewed
9 in one year. And, finally, they can make a recommendation that
10 the subject officer not be promoted at all.

11 Q. Can you give us an idea of the dispositions in 2012 for the
12 CARB review?

13 A. In 2012, the CARB board I think did about 48 cases where
14 people appeared before the board. I think 23 of those people
15 were deferred or not promoted at the time they were supposed to
16 be promoted. So they were deferred six months or a year.

17 MR. MOORE: I think this is going beyond what is
18 necessary for this case. He is now talking about statistics of
19 this board. We have never seen them.

20 THE COURT: I am sort of surprised because of the
21 limited timeline. I don't know what that last testimony has to
22 do with this case.

23 MS. GROSSMAN: It's about the checks and balances.

24 THE COURT: You have made that general point. To get
25 into the nitty-gritty of these specifics, it's not going to

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1 help me decide this case.

2 MS. GROSSMAN: I understand. I will be more direct.

3 Q. Does the board also consider the IAB background?

4 A. They do.

5 Q. Now, moving on to, I am not going to go into too much
6 detail on performance monitoring because we have covered that
7 at length in the trial. Moving on to Exhibit Z3.

8 MR. MOORE: If we have covered it at length, why do we
9 need to cover it again?

10 MS. GROSSMAN: I have just a few questions to ask
11 about the process.

12 Q. The officers on performance monitoring, they are identified
13 by the employee management division for you?

14 A. They are.

15 Q. The employee management division identifies the officers
16 who fall into the performance monitoring criteria -- let me
17 rephrase that.

18 The employee management division identifies the
19 officers who are up for performance monitoring, correct?

20 A. That's correct.

21 Q. And the employee management division distributes that
22 information throughout the department, correct?

23 A. That's correct.

24 Q. Do you have an understanding that an officer who is
25 eligible for performance monitoring, based on discipline or

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1 negative behavior, is automatically identified when an officer
2 accrues 20 points on his or her CPI?

3 A. They are automatically.

4 Q. Is it your understanding that the CPI is reviewed daily to
5 identify those officers who accrue 20 points on his or her CPI?

6 A. They are.

7 Q. Do you have an understanding that EMD reviews the CCRB
8 database monthly to determine whether an officer should be
9 placed on performance monitoring?

10 MR. MOORE: I didn't understand what the initials
11 were.

12 THE COURT: Employee management division.

13 Q. Do you have an understanding that EMD reviews the CCRB
14 database monthly to determine whether an officer should be
15 placed on performance monitoring?

16 A. They do do that, yes.

17 Q. When you were the CO of a precinct or as chief of transit,
18 were you contacted by the EMD performance analysis section
19 about officers who they identified as being eligible for
20 performance monitoring?

21 A. We would be notified. They would tell you who the officer
22 is, they would tell you the level of monitoring, and you were
23 made aware of it.

24 Q. If you disagreed with what the performance analysis section
25 had to say, who rules in terms of the decision to place an

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1 officer on monitoring?

2 A. You can present your argument. They have the final say
3 though. So if they determine that the officer is going to be
4 placed in it, they are placed in it.

5 Q. Now, can a low performance evaluation be the result of low
6 enforcement activity?

7 A. It could be one of the factors.

8 MR. MOORE: Can I just have that question and answer
9 read back, please?

10 THE COURT: Yes.

11 (Record read)

12 Q. Are performance evaluations meant to assess a lot of areas
13 of performance, not just activity?

14 A. Absolutely.

15 Q. What other areas are they meant to assess?

16 A. They want ethics, integrity, judgment, decision-making,
17 memorization, decision-making. Those are some of the key
18 parameters on the evaluation.

19 MR. MOORE: We are talking about the annual
20 performance evaluation?

21 THE COURT: Are you?

22 MS. GROSSMAN: Yes.

23 Q. Now, when an officer qualifies for performance monitoring,
24 does that mean that the officer can be both on performance
25 monitoring and be the subject to the CCRB profile and

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1 assessment committee simultaneously?

2 A. You can be.

3 Q. Now, if a commander rates an officer at a 2.5 or lower and
4 that officer received a low rating in drive and initiative, and
5 has low numbers of activity in an assignment that involves
6 activity, could they then be placed on performance monitoring?

7 MR. MOORE: I am going to object to the form of that
8 question. It's also so hypothetical.

9 THE COURT: You need to stay away from the leading.
10 If you want to ask him, ask him to talk instead of you.

11 Q. So in addition to the performance monitoring, you mentioned
12 there is a force monitoring program, correct?

13 A. That's correct.

14 Q. Does that run parallel to the performance monitoring?

15 A. It does.

16 Q. What about disciplinary monitoring?

17 A. Discipline also. So you have really, when you look at the
18 department's monitoring, performance monitoring, we are really
19 looking at three things: Discipline, force, and performance.

20 Q. Approximately how many officers are on monitoring right
21 now?

22 A. Within my bureau that number fluctuates. Right now,
23 probably 490 to 500, somewhere in that area.

24 Q. That's in patrol --

25 A. Patrol services bureau.

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1 Q. Are dispositions of IAB investigations generally noted on
2 the CPI?

3 A. They are.

4 Q. What about unsubstantiated corruption allegations, are
5 those noted on the CPI?

6 A. Yes, they are.

7 Q. Unsubstantiated?

8 A. Unsubstantiated now are.

9 Q. Are all reported uses of force maintained on the CCRB
10 database and on the CPI if there is substantiation?

11 MR. MOORE: I understand you're giving her leeway, but
12 every question it is her testifying and getting a yes or no.

13 THE COURT: Objection sustained. Please ask him a
14 question that he gets to answer.

15 Q. Where are the reported uses of force maintained in
16 department databases?

17 A. That would be our record of that on the CCRB database, and
18 if the use of force was ultimately substantiated, there would
19 also be a notation on the officer's CPI.

20 Q. Are the outcomes of the department investigations of
21 reported uses of force also on the CPI database?

22 A. They are, substantiated.

23 Q. What about the resisting arrest charges filed by an
24 officer?

25 A. If you look at an officer's CPI under the enforcement line

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1 that we looked at where his arrests are listed, on the right
2 side you will see an indication how many times a resisting
3 arrest charge has been utilized by that officer.

4 Q. What about all injuries to citizens resulting from actions
5 by the officer, where is that found?

6 A. That will be on the CPI usually indicative of some type of
7 civil lawsuit.

8 Q. What about all citizen complaints filed with the CCRB,
9 where would that be found?

10 A. That's on the CCRB database which the department has access
11 to.

12 Q. Would it also be in the CPI database if there is a
13 substantiated CCRB?

14 A. It would be in the CPI.

15 Q. What about the outcomes of CCRB investigations of citizen
16 complaints, where are they found in department databases?

17 A. It's in the CCRB database, and if that complaint that was
18 made, the CCRB complaint is substantiated, that will be on the
19 CPI.

20 Q. What about all department initiated investigations against
21 an officer, where would that information be found in department
22 databases?

23 A. That's going to be most likely on the CPI and also the IAB
24 database.

25 Q. Now, what about investigations performed by the NYPD's

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1 investigations unit, where would that be found?

2 A. That's going to be on the officer's central personnel
3 index.

4 Q. Where would the outcomes of department initiated
5 investigations against the officer be found?

6 A. That would be on the CPI, and if IAB is the one conducting
7 or initiated the investigation, it will be on their database.

8 Q. Does that hold true except for unfounded or exonerated
9 corruption allegations?

10 A. That's correct.

11 Q. What about all civil suits against the NYPD in which the
12 officer is involved?

13 A. If he is named as a defendant, you're going to see an entry
14 on the CPI, if the officer is named as a subject or defendant
15 in the case.

16 MR. MOORE: I think we have already had testimony
17 about this.

18 THE COURT: We did. It is on the example that was
19 given. Page 1 of Exhibit C15 shows that he is named as a
20 defendant in two cases. Why are we doing this? I thought you
21 wanted to finish the trial so everybody had two days off to
22 prepare for summations.

23 MS. GROSSMAN: Bear with me, your Honor. It's not
24 going to be much longer on this.

25 Q. Is the disposition noted?

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1 A. On the CPI on a substantiated case.

2 Q. On the civil suit?

3 A. No.

4 Q. Now, are all stops of citizens --

5 THE COURT: You said it's not noted?

6 When it's over, it's not noted what happened with the
7 civil suit?

8 THE WITNESS: It is not.

9 THE COURT: One way or the other, case dismissed or
10 defendant found liable?

11 THE WITNESS: Just that he is a subject and a
12 defendant.

13 THE COURT: Even if he is found liable, it is not
14 noted, or if it's dismissed in his favor, it's not noted.

15 Q. Is the index number contained on the CPI?

16 A. That is on the CPI entries. So you can probably through
17 that index number get the actual end result of the case.

18 Q. Are all stops of citizens by the officer, including but not
19 limited to stops and frisks, also noted on the CPI index?

20 A. No.

21 Q. The CPI database?

22 A. No. They would be listed in the department's UF-250
23 database.

24 Q. What about all criminal proceedings filed against the
25 officer, where would that be maintained in department

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1 databases?

2 A. That's going to be on the CPI.

3 Q. Is that so, if there is an investigation by NYPD or by any
4 other law enforcement --

5 THE COURT: The proper question is, why is that?
6 That's what an open question is. Why is that?

7 A. Because if the officer is the subject of any criminal
8 investigation, whether it be done by the NYPD, or it could be
9 done by some other law enforcement agency, that is going to be
10 indicated on the officer's CPI.

11 Q. Where are judicial proceedings where a restraining order or
12 protective order is issued, where would that be found in
13 department databases?

14 A. Orders of protection, restraining orders, anything of that
15 nature that involves an officer, that's going to be on the CPI
16 also.

17 Q. What about all incidents involving loss, alleged theft or
18 damage to NYPD or City of New York property involving the
19 officer, where is that information maintained?

20 A. That's a CPI entry of the officer also.

21 THE COURT: I am going to have to break just a touch
22 early today. I will try to get back at 2 instead of 2:05. I
23 hope I can. I will try.

24 (Luncheon recess)

25

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Hall - direct
AFTERNOON SESSION
2:00 p.m.

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JAMES HALL, resumed.

BY MS. GROSSMAN:

Q. Good afternoon, Chief.

A. Good afternoon.

Q. Can IAB open investigations on incidents based on media reports?

A. They can do that.

Q. Are you aware that they do do that?

A. They do.

Q. What do you do as chief of patrol to monitor CCRB complaints?

A. Each month I get a monthly report that lists how each borough is doing with their CCRB complaints and it's a comparative from last year to this year, year to date, and then as you go across the report, it highlights whether the allegations -- what is the highest number in terms of force, abuse of authority, discourtesy, or offensive language. Then as you go into the report, it then lists each precinct by borough, and it will give you the same thing, how the precinct is doing for the month compared to same month last year, and then the year to date tally.

Q. Showing what has been marked as Defendants' Exhibit E15.

MR. MOORE: I am going to the introduction of this
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1 document. Please don't show it to the judge yet. Unlike the
2 other two that have come in to illustrate, I think, the process
3 that is followed by these various committees, this document is
4 a statistical report that was prepared some time in March of
5 2013.

6 THE COURT: And never shown to you?

7 MR. MOORE: We were just made aware of it two, three
8 days ago.

9 THE COURT: It was prepared in March?

10 MR. MOORE: I believe it was prepared in March. It is
11 a March 2013 report. We have no ability to cross-examine this
12 witness on any of these data.

13 THE COURT: Or to check the underlying data.

14 MS. GROSSMAN: I am not offering it for the underlying
15 data. It's just to show the fact that the chief of patrol
16 monitors.

17 THE COURT: Then ask him that. I am not taking the
18 exhibit.

19 Q. Does this report that you're discussing, does it also
20 identify the percentage change --

21 THE COURT: Say it again.

22 Does this report that you're discussing, does it also
23 identify the percentage change of what?

24 MS. GROSSMAN: CCRB trends over time.

25 THE COURT: OK. Does it identify the change in what,
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1 in dispositions, in numbers of filings?

2 MS. GROSSMAN: In CCRB complaints.

3 THE COURT: In the number of CCRB complaints?

4 MS. GROSSMAN: Yes.

5 THE COURT: Does it show the rise and fall in the
6 number of complaints?

7 THE WITNESS: It does. It shows the percentage
8 increase or the percentage decrease for that month, and then
9 also for the year.

10 MR. MOORE: He is testifying to the form, which we
11 believe should not be before the Court.

12 THE COURT: All he is saying is it shows the percent
13 of increase or decrease, which we have had from CCRB by the
14 way. I thought we saw if it was up or down. We already had
15 that testimony.

16 MS. GROSSMAN: I am just saying from the chief of
17 patrol, in terms of monitoring, he is aware of it.

18 THE COURT: He is aware of the trend up or down.

19 Q. And this report includes trends up and down broken down by
20 precincts?

21 A. That's correct.

22 Q. Broken down by boroughs?

23 A. And by boroughs.

24 Q. It includes the task forces and other specialty units that
25 are overseen by the borough?

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1 A. That's correct.

2 Q. And you get this every month?

3 A. That's a monthly report.

4 Q. And it includes year to date from 2012 to 2013 complaints?

5 A. It does.

6 Q. What do you do with this information?

7 A. Well, I like to review it, and obviously you can see the
8 commands that are experiencing increases, but I also like to
9 look at what is the category that they are experiencing the
10 increase in. So is it force, is it abuse of authority, is it
11 discourtesy? So once you have that information, you can start
12 to maybe ask some questions. You can call the precinct
13 commander directly and say, hey, are you looking at these? You
14 can call the borough if the borough is up on a whole.

15 It also, when you're going to CCRB profile assessment,
16 this is a good report to just have with you. But, you know,
17 it's something that at least allows me to see how patrol is
18 doing on a whole.

19 Q. Do you actually call the COs when you see a trend that
20 concerns you?

21 A. Yeah. I will speak to them. At times it's been brought up
22 at CompStat, your CCRBs. So it's something that -- it's a
23 quick reference to really tell us how we are doing.

24 Q. Moving on to CompStat, what role do you play in CompStat?

25 A. As the chief of patrol, I am one of the bureau chiefs that

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1 is asking questions of the precinct commanders, being that they
2 all report to me, from issues surrounding deployment, 311
3 complaints, quality of life issues, it can be personnel issues,
4 performance of individual units within the precinct. It runs a
5 large spectrum, and we try to hit on the ones that we think are
6 most relevant to what is going on in the precinct.

7 Q. Do you or your staff review UF-250s of the commands prior
8 to CompStat?

9 MR. MOORE: Can we not get so many leading questions
10 here?

11 MS. GROSSMAN: I don't know what is leading about
12 that. I am trying to get to the point rather than have to talk
13 about everything that he reviews. I can spend 20 minutes
14 talking about everything that he looks at.

15 THE COURT: I don't have any problem with the
16 question. Do you or your staff review UF-250s of the commands
17 prior to CompStat? I have no problem with that question.

18 A. We do.

19 Q. What are you looking for?

20 A. Well, when we are looking at 250s, certainly you're going
21 to look at the precinct that's experiencing the crime problem,
22 and then we are going to look at the 250s to see, one, do they
23 or are they being prepared at locations that are experiencing
24 the crime problems? So we actually have the ability to map the
25 250 as it relates to crime in that particular precinct.

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1 We are going to look at them for, once again, does the
2 250, in terms of when it was prepared, does it match the times
3 when crime is happening within the command? If we look at a
4 command and burglary is the issue, are we going to see 250s
5 that are prepared for burglary? And then also for
6 completeness, you know, things of that nature, are they
7 prepared properly?

8 Q. About how many does your staff pull for each CompStat
9 meeting?

10 A. When you're looking at CompStat normally, normally three
11 precincts are going to present at a CompStat meeting. So for
12 each of those three precincts, we will take from each platoon
13 in the precinct -- a platoon is the late tour, the officer that
14 worked the day tour, and then the officers that worked the 4 to
15 12 tour -- we will take 30 from each of those platoons. So
16 that's 90. And then we take a sampling from the specialty
17 units that work within that command, which are units like the
18 anticrime team, the SNEU team, or the conditions team.

19 Q. Do you pull hard copies or do you rely on the database?

20 A. We ask for the hard copies. We have access, obviously, to
21 the database, but we will take a look at the hard copies too
22 just to see what they look like.

23 Q. Have you done this since you have been chief of patrol?

24 A. Yes, the whole time.

25 Q. Why do you look at the hard copies?

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1 A. I like to look at the hard copy because when you look at
2 it, it gives you like, to me, a closer look in terms of how the
3 250 is being prepared, are they filling out each of the
4 captions? And then you might also capture something that the
5 officer wrote on the 250 that you might not necessarily see on
6 the database.

7 Q. Does any of your staff ever bring to your attention
8 concerns about the 250s?

9 A. From time to time they will bring something to my
10 attention. It could be as simple as some of the captions maybe
11 weren't prepared, maybe it was illegible, maybe something was
12 written on the 250. As I say, that's kind of why I think
13 looking at the hard copy is a good policy.

14 Q. Do you or your staff review the 250s for reasonable
15 suspicion?

16 A. From what we can glean from the actual 250, when I am
17 looking at them, and I try to look at some of them, to the best
18 of our ability, what you can take off the report, yes.

19 Q. What do you mean by that?

20 A. Well, by looking at it and seeing that the captions, what
21 captions are filled in, what was the reason for the stop, there
22 are check-off boxes as you know, and then you can go through
23 the report and see from the report that basically it fits the
24 criteria of reasonable suspicion.

25 Q. What do you do when you have questions about the 250s?

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1 A. I will direct them to the precinct commander that's
2 presenting.

3 Q. Have there been concerns that you have raised that have
4 resulted in improvement?

5 A. I think when --

6 THE COURT: Before you answer that, I am not sure what
7 you mean with the question.

8 Q. Have there been concerns that you have raised with COs,
9 that you brought to their attention, that have actually yielded
10 an improvement in your opinion?

11 THE COURT: Objection sustained. I don't know how he
12 would measure that. I don't know what the word improvement
13 means. I don't know how his personal knowledge would come into
14 play. I can't allow that question as phrased.

15 Q. Have you identified any particular issues based on the
16 handwritten notes on the 250s?

17 A. I know we were looking at, I believe it was Patrol Borough
18 Manhattan North, we were looking at 250s, and in one of the
19 Manhattan North precincts we noted on three or four of the 250s
20 prepared by the same officer that -- I believe it was under the
21 caption concerning frisk, reason for frisk, and the officer had
22 actually written in in pen searching for narcotics. So,
23 obviously, that's not the reason for a frisk with a 250. It
24 was pointed out to the precinct commander to have him go back
25 and sit down with the officer and make sure that the officer

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1 was aware of what the proper procedure was as it pertained to
2 the 250.

3 Q. So if you or your staff sees issues in these weekly reviews
4 of the 250s, do you wait until CompStat to bring it to the CO's
5 attention?

6 A. I think that's one forum where it's going to be done, but
7 in the day-to-day operation of my command, my office, if they
8 come to our attention, that doesn't necessarily mean that I
9 have to address it at CompStat. I can, you know, address it
10 directly, just get on the phone and speak to the CO and say,
11 hey, look at the following 250s, this is what we saw, this is
12 what I saw, I want you to take a closer look at it. It's not
13 always related to the CompStat process.

14 Q. Now, in preparation for CompStat, do you look at the number
15 of radio runs by each platoon?

16 A. I do.

17 Q. How come?

18 A. There's a couple of reasons, I think, first of all. When
19 you look at radio runs, normally it's going to tell you if that
20 particular platoon has too many backlogs, in other words, the
21 cars are holding radio runs because we are backed up and we
22 haven't been able to get to them. So it's very indicative to
23 me, if I see backlogs, I have to wonder, one, is there enough
24 staffing on that platoon? Do we need to add resources to that
25 particular platoon to handle the volume of radio runs that they

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1 are having?

2 Two, I like to know it because, by knowing the number
3 of radio runs, I also have a way to kind of look at how many
4 police cars we turn out on that tour. So if I know there is
5 this many cars, and I know there is this many radio runs, I can
6 kind of get an idea of how many radio runs each car is
7 handling, and that's just, I think, good intelligence for a
8 manager to be able to know what the cars are doing and what is
9 the volume of work that they are handling.

10 Q. Now, as chief of patrol, do you have regular meetings with
11 the borough commanders?

12 A. Monthly. When I say monthly, those are set. There is a
13 lot of interaction during the week, maybe can you come down,
14 and then a ton of phone work during the week.

15 Q. Has the issue of stop, question and frisk ever come up in
16 your meetings with borough commanders?

17 A. It's been a topic on numerous occasions since I have been
18 the chief of patrol.

19 Q. How has it come up?

20 A. One, obviously, the 250s are a crime-fighting tool, and
21 it's a tool that needs to be used properly, and as borough
22 commanders you should have adequate checks and balances in
23 place, and you should be looking at them with your staff. Two,
24 that there is a focus on when the 250 is used, right time,
25 right location, you know, right individual.

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D5F8FLO3

Hall - direct

1 Q. Do you have any direct contact with the precinct
2 commanders?

3 A. Yes. Precinct commanders, like I said, if I get to go out
4 on patrol, I usually, if I am going to be in Flatbush, I am
5 going to try to stop by the 70th Precinct or the 67 Precinct.
6 I am going to see them at CompStat meetings, and then often
7 after a CompStat meeting I like to bring up the entire borough.
8 So if it was Brooklyn North that came to the CompStat meeting,
9 afterwards we bring all the commanders up to my office. It's a
10 good opportunity for them if they have got anything on their
11 mind that they want to bring to my attention and vice versa.

12 And then, every day I get a package, a very thick
13 package of work that happened for the preceding 24 hours,
14 incidents, events that happened throughout the city. As I read
15 that package, if I have issues or questions with these
16 incidents or events, how they were handled, what our response
17 was, then I am working the phones to the precinct commander to
18 get answers to my questions.

19 Q. When you say you're looking at that the stops are happening
20 in the right place and the right time, can you elaborate on
21 what it is that you're interested in learning when you have
22 your meetings with the borough commanders?

23 A. Well, obviously, when we are looking at crime, the
24 department has the ability right now to really look at it from
25 a realtime perspective, OK, so we know where it's happening,

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D5F8FLO3 Hall - direct

1 when it's happening. And I think that we are looking for the
2 precinct commanders with borough oversight to tailor their
3 enforcement efforts, which include the 250, to be surgical, to
4 be in the area where the crime is happening, and for the right
5 reason. As I stated earlier, if it's a burglary condition and
6 you have got two buildings on a block that have been the
7 subject of multiple burglaries, those are buildings where we
8 should be. Those are where we should be deploying the officers
9 and making sure that we show a real presence there, and if the
10 need for a 250 arises, that's a good place for the 250 to be
11 done.

12 Q. So how do you expect the borough commanders to communicate
13 to the officers the people who should be stopped?

14 A. The borough commanders are talking with their precinct
15 commanders and I find, and it's been my experience, the
16 precinct commanders are extremely in tune with the crime
17 picture in their command. They are there every day. They know
18 it very well. So we have a variety of ways that we get that
19 message to the officers. There's roll call briefings. There's
20 patterns that are established and then put out by the
21 supervisors to the officers, giving them specifics of the
22 where, the when of when the crime is happening. There's the
23 quest for excellence program where we actually outline what is
24 going on in the command with great detail. So what we are
25 really doing here is keeping the officers very much informed on

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D5F8FLO3

Hall - direct

1 what the crime conditions are within their command.

2 Q. So how as chief of patrol do you ensure that officers are
3 not going out there and stopping people who are just generally
4 described as black and Hispanic males, 14 to 20, and that
5 officers are not going out there and stopping people for no
6 reason?

7 THE COURT: You're getting too long and compound.

8 Q. How do you ensure as chief of patrol that officers do not
9 go out --

10 THE COURT: I will try.

11 How can you be sure that officers are making their
12 stops solely based on reasonable suspicion?

13 THE WITNESS: Well, your Honor, there is quite a few
14 layers within the police department. First of all, from the
15 minute you come in the police department you're trained, and I
16 think I have heard it as far back as 32 years ago, you don't
17 break the law to enforce the law. So our officers are keenly
18 made aware of that from the beginning of their careers.

19 Then, obviously, there's levels of supervision, from
20 sergeants on patrol, platoon commanders on patrol, integrity
21 control officers that are tasked with going out and strictly
22 monitoring what is going on in the field. We have duty
23 captains that are charged with responding to incidents, not
24 always large-scale incidents, just routine patrol monitoring,
25 observations that they are required to make.

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D5F8FLO3

Hall - direct

1 And then, obviously, anyone that's engaging in illegal
2 stops that aren't based on reasonable suspicion, they can be
3 subject to some incredibly severe discipline.

4 Q. How would you generally describe your management style?

5 A. As chief of patrol?

6 Q. Yes.

7 A. I am pretty hands-on I believe. A lot of contact with the
8 precinct commanders. In my bureau, they are the men and women
9 that are on the ground working with the police officers. They
10 command these precincts. There are 76 of them. I know every
11 one of them by name. I have a lot of contact with them. I
12 review a lot of the work that's done. I offer suggestions.
13 Sometimes my suggestions turn into directives if I don't think
14 they are, you know, going down the right road in terms of
15 getting results. I look at them as coaches, the precinct
16 commander, you can call them the head coach. The sergeants and
17 the lieutenants are assistant coaches, and the police officers
18 are the players. And we expect a legitimate effort from our
19 officers, and I expect the commanders to command. That's what
20 they are paid to do.

21 Q. Now, do you know what is the average years a patrol officer
22 has been with the NYPD?

23 MR. MOORE: I don't know what the relevance of that
24 is.

25 THE COURT: I don't either.

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D5F8FLO3 Hall - direct

1 MS. GROSSMAN: It's relevant to the level of
2 experience.

3 Q. Do you know?

4 A. A police officer on patrol within my borough, including the
5 impact officers that all report to me, it's about seven years.

6 Q. What about for sergeants?

7 A. I know as sergeant, in terms of his time and rank, it's
8 about four years. And probably generally --

9 THE COURT: Four years as sergeant, but they were
10 there with the NYPD longer, right?

11 THE WITNESS: They are longer than that. I think it's
12 somewhere in the area of eight to ten overall.

13 Q. Now, in your years with the police department, have you
14 found that there are varying degrees of motivation among police
15 officers?

16 THE COURT: What does that mean, varying degrees of
17 motivation?

18 MS. GROSSMAN: Some officers work harder.

19 THE COURT: That's easier. Do some officers work
20 harder than others?

21 A. They do. I think when you look at an agency like the
22 police department with somewhere in the area of 35,000 members,
23 like a large-scale business or organization, we have officers
24 that are incredibly talented and hard-working, and we have some
25 that need a push quite frankly.

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D5F8FLO3

Hall - direct

1 Q. What role do sergeants play in motivating officers, in your
2 view, what role should they play in motivating officers?

3 A. To me, the sergeant rank is an important rank. They are
4 the first-line supervisor. They are the supervisor that's
5 working the closest with the police officers. So sergeants
6 that set a good tone, they establish a line early on, if they
7 are new sergeants, that line of, hey, I'm the supervisor, I'm
8 going to work with you out here.

9 I speak to every sergeant that's newly promoted. I go
10 and speak with them personally. I let them know what my
11 expectations are, and I tell them, quite frankly, as sergeants,
12 you're no longer a police officer, you're not one of the boys
13 anymore, make that transition, be decisive out there, and give
14 quality supervision.

15 Q. From your perspective, do you think it is effective in a
16 law enforcement context if supervisors ask officers to do their
17 jobs or take enforcement activity so that they or their
18 commands look good in the eyes of the higher-ups?

19 MR. MOORE: I object.

20 THE COURT: It's too long. It's too much leading.

21 Q. Do you think that that's good management for sergeants to
22 seek enforcement action from their officers just to make
23 themselves look good in the eyes of the higher-ups?

24 MR. MOORE: Same objection.

25 THE COURT: I will allow it.

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Hall - direct

1 A. I don't like it. I don't like it. In fact, I don't like
2 it at all. I am not so sure any sergeants out there are that
3 concerned about making Chief Hall that happy. Their jobs as
4 sergeants are to give directions to the officers and make sure
5 that us, as a police department, that we are handling
6 conditions that are going on within the area that they work.
7 And that's what a sergeant's job is. And then to follow up to
8 make sure the job is actually being done.

9 (Continued on next page)

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D5f9flo4 Hall -direct

1 Q. What role do you expect lieutenants to play in supervision?

2 A. Well, the lieutenant -- I think when you look at a precinct
3 right now in the city, the lieutenant is kind of a big player
4 in this because as the command is structured you're going to
5 have the commanding officer and an executive officer, who is a
6 captain, the executive officer. But then there's usually about
7 six or seven lieutenants. But three of those lieutenants, they
8 command the platoon. So as I had stated earlier you have a
9 lieutenant that's commanding the late tour, a lieutenant that's
10 commanding the day tour, and a lieutenant that's commanding the
11 four-to-twelve.

12 I like to tell them, the lieutenants, that's your
13 little world. Be in charge of it. You run it. You make sure
14 that the sergeants that you have on that platoon, usually have
15 a platoon commander lieutenant, he's got three sergeants
16 underneath him, and usually a total between 24 and 36 police
17 officers on each platoon. It's his shop. Make sure that it's
18 run the right way. Make sure that you're addressing
19 conditions.

20 And those platoon commanders now are working hopefully
21 very closely with the precinct commander in making sure that
22 all of the information as it pertains to patterns, crime
23 conditions, quality of life complaints, that that information
24 is making it down to the officer in the street.

25 In addition, in the precinct, after you get away from

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D5f9flo4

Hall -direct

1 the three platoon commanders, there's a lieutenant that acts as
2 the integrity control officer. And then there's also an
3 administrative lieutenant in the command.

4 MR. MOORE: Judge, we've had a lot of testimony about
5 all this structure. I don't know that it -- this is really
6 cumulative of what we've heard.

7 Q. I'm showing you what's been marked --

8 MR. MOORE: Can we get some direction that we don't go
9 over the same stuff?

10 THE COURT: You've had that direction already.

11 MS. GROSSMAN: This is a new exhibit, Defendants'
12 Exhibit G15. It's the duties and responsibilities of a
13 lieutenant platoon commander.

14 We move to admit, your Honor.

15 THE COURT: We haven't had this before?

16 MS. GROSSMAN: No.

17 THE COURT: What's the exhibit number?

18 MS. GROSSMAN: G15.

19 THE COURT: Anybody object to G15, the duties of the
20 lieutenant?

21 MR. MOORE: Just to note that we only got this a
22 couple of days ago, Judge.

23 THE COURT: No harm, no foul, is that it?

24 Let me just say: G15 is received.

25 (Defendants' Exhibit G15 received in evidence)

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D5f9flo4

Hall -direct

1 MR. MOORE: Let me just say for the record, Judge. We
2 are severely disadvantaged by the nature of this testimony
3 because as I said -- I made a lot about what -- trying to find
4 out what Chief Hall was going to testify to. We understood he
5 was going to update what Chief Giannelli said. Instead, we're
6 getting a whole civic lesson on how the police department runs.

7 THE COURT: Well, then it shouldn't bother you much,
8 don't worry about cross-examining him on it. If it's a civic
9 lesson, we should all be glad to be receiving a civic lesson.
10 But it has little to do about what we have to decide here. So,
11 don't worry. Let's go through the rest of our lesson.

12 So those are lieutenants. What else?

13 What else? What else?

14 MS. GROSSMAN: I know.

15 THE COURT: Okay.

16 Q. Now does Quest for Excellence impose a new requirement to
17 have lieutenants assess the sergeants?

18 MR. MOORE: Judge, we had identified a 30(b)(6) who
19 testified to Quest for Excellence.

20 MS. GROSSMAN: This is about this witness and his own
21 steps to --

22 THE COURT: But that wasn't your question. Nothing
23 about his own steps.

24 MS. GROSSMAN: It's a set-up your Honor.

25 THE COURT: I don't need a set-up.

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D5f9flo4

Hall -direct

1 Your question was: Does it impose a new requirement
2 to have lieutenants assess sergeants?
3 If we've had that before, we've had it before.
4 MS. GROSSMAN: I don't believe we've had that.
5 THE COURT: Okay. Fine.
6 Do lieutenants assess sergeants? They're obviously up
7 the chain of command.
8 THE WITNESS: Under the Quest for Excellence program,
9 your Honor, they have to assess them four times a year.
10 THE COURT: And before that lieutenants didn't assess
11 everybody who ranked beneath them?
12 THE WITNESS: What they did, your Honor, is they
13 evaluated them once annually.
14 THE COURT: So the difference is four times versus
15 one?
16 THE WITNESS: Once you assess, those four are called
17 assessments. Then there's the annual evaluation.
18 THE COURT: So they always evaluated them annually.
19 Now they do it quarterly.
20 THE WITNESS: Correct.
21 MR. MOORE: And we had testimony about that already.
22 Q. So, referring to 29439 the paragraph note.
23 A. Right.
24 Q. Do you see -- it says, "The platoon briefing should include
25 information compiled by..." I'm sorry. Under note. It says

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D5f9flo4 Hall -direct

1 that, "The platoon briefing should include information compiled
2 by the training sergeant; i.e., police commissioner's messages,
3 bulletins, and addresses by commanding officers, executive
4 officers, integrity control officers."

5 Then it goes on to say, "The platoon briefing will
6 include incident critiques by lieutenant platoon commanders and
7 patrol supervisors, and regular updates regarding crime
8 patterns, crime trends, wanted persons and discussions of
9 precinct conditions and tactics for addressing these
10 conditions."

11 Chief what is meant by "incident critiques" by
12 lieutenant commanders? What is the platoon commander expected
13 to do when he does an incident critique?

14 A. An incident critique is basically -- when the lieutenant is
15 out on the field on patrol, he comes across an incident or a
16 scene as a supervisor, he should be looking at how that
17 incident was managed or handled by the officers underneath him.

18 You know, it can be as simple as a traffic stop where
19 he watches the officers and one of them doesn't get out of the
20 car.

21 It could be more complicated. It could be a car
22 pursuit that involves us that he's got to then take the
23 incident, evaluate it.

24 And then the best way to critique it, I find, is you
25 do it at roll call because you have everyone there. And now

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D5f9flo4 Hall -direct

1 you can -- and the critique does not always have to be
2 negative. It can be something that was done and it was done
3 exceptionally well. But that's what we're talking about,
4 incident critique.

5 He can also incident critique by talking to the
6 individual officers that were involved, if he chooses to,
7 privately. But I think generally so that the whole platoon
8 knows you do it at a roll call setting and that's the most
9 effective way.

10 Q. So showing you what's been marked as Defendants' Exhibit
11 All.

12 Is that document familiar to you?

13 MR. MOORE: You might want to give one to Mr. Dunn.

14 THE WITNESS: It is.

15 MR. MOORE: Hold on, Judge. Because it involves the
16 trespass affidavit program.

17 THE COURT: And he's here. Sure.

18 MS. GROSSMAN: I don't think --

19 THE COURT: He can have my copy. Here, give it to
20 him.

21 Are you asking him if he recognizes this document?

22 MS. GROSSMAN: Yes.

23 Q. Is this document familiar to you?

24 A. This is a memo that was prepared by my office concerning
25 the trespass affidavit program.

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D5f9flo4

Hall -direct

1 THE COURT: What's the date on it?
2 THE WITNESS: August 20, your Honor, 2012.
3 THE COURT: Who is it addressed to?
4 THE WITNESS: It's from myself to the commanding
5 officers of all the patrol boroughs.
6 MR. MOORE: Judge, I know Chief Hall testified in the
7 Ligon trial. I assume he testified about this document. I
8 mean I don't know for a fact.
9 THE COURT: Do you remember testifying about this at
10 the trial in the fall?
11 THE WITNESS: You know, I testified at Ligon, your
12 Honor, but I don't believe I testified about this memo.
13 THE COURT: Okay.
14 THE WITNESS: I don't think I did.
15 MR. DUNN: Chief McCarthy testified about that.
16 MR. MOORE: So there is testimony about it on the
17 record.
18 MS. GROSSMAN: I'm not spending much time, your Honor.
19 It's one of a couple of questions.
20 MR. MOORE: Every time I hear that it goes another 20
21 minutes, but anyway.
22 MS. GROSSMAN: Can we move to admit, please.
23 THE COURT: All right. All is received.
24 (Defendants' Exhibit All received in evidence)
25 Q. So, referring to paragraph 3 of A11?

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D5f9flo4

Hall -direct

1 A. Correct.

2 Q. So, it says "Platoon commanders will critique (P.G. 202-13)
3 all situations where either an interior or exterior street
4 encounter occurred and required a stop, question and frisk
5 report worksheet to be prepared (UF-250). In addition, platoon
6 commanders must ensure that any encounters based on reasonable
7 suspicion are carried out in accordance with P.G. 212-11 and
8 I/O22S12."

9 A. Right.

10 Q. So is the critique that's required in paragraph 3 the
11 critique that's referenced in Defendants' Exhibit G15 which
12 identifies the duties and responsibilities of lieutenant
13 platoon commanders?

14 A. It is. That's what I'm making reference to from that
15 patrol guide procedure.

16 Q. What was the message you were trying to convey in the
17 August 20, 2012 memo?

18 A. In this memo we're talking about stop and frisk as it
19 pertains to the trespass affidavit program. And what I'm
20 really doing here is I'm asking the lieutenants that when
21 they're out in the field that they should be alert to those
22 type of stops, whether they occur on the interior of the
23 building or the exterior of the building.

24 I like the lieutenants to show up at events, obviously
25 unannounced, where you get to really look at what's going on

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D5f9flo4

Hall -direct

1 closely without, you know, people expecting you to be there.
2 And then after you've made your observations, critique what it
3 is that you saw the officers do in terms of this stop and have
4 a discussion with them, or once again, have it with the entire
5 platoon.

6 Q. So now in the first sentence of paragraph three it says
7 platoon commanders will critique all situations.

8 What did you mean by "all situations"?

9 A. Probably not the greatest use of the word "all." I don't
10 know if it really would be possible for the platoon commander
11 to do all situations. There's going to be times where he's not
12 available to do it. So it's probably, you know, not the best
13 use of the word in the memo.

14 But, having said that, I want them to get to as many
15 of these type of situations as they can so they can take a look
16 at how we're handling them.

17 Q. Now, have you incorporated the -- instituted any steps to
18 determine if platoon commanders are doing their jobs into the
19 CompStat process?

20 A. Yeah, there's a couple of things that we do.

21 One, I've really made the borough commanders -- the
22 borough commanders have to hold platoon commanders meetings.
23 So if you're the borough commander in Manhattan North, you're
24 going to hold platoon commander meetings. And let's say you're
25 going to do the second platoon. And then you hold that

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D5f9flo4 Hall -direct

1 meeting. And what was discussed at that meeting, I like just a
2 brief report of what the topics were. And that's sent to me.

3 Secondly, when we have CompStat downtown at
4 headquarters each week, I now select some platoon commanders to
5 come down with their precinct commander. They are part of the
6 precinct management team. And they're going to be available to
7 be questioned about relevant issues that I think are important
8 to the command.

9 Q. Now, what about integrity control officers? What do you
10 expect from your integrity control officers?

11 A. Integrity control officer in a precinct is supposed to work
12 closely with the precinct commander. He's supposed to make
13 sure that all the issues concerning -- you know, integrity,
14 ethics, department policies, that he's reinforcing them, that
15 he's out there looking at how the officers and the sergeants
16 are doing their jobs, seeing that we conform to our rules and
17 our regulations; really, in many ways the eyes and ears to the
18 precinct commander.

19 Q. Have you taken any steps to ensure that the ICOs are doing
20 their jobs?

21 A. Well, one of the things I did, like anything, you know, I
22 want to measure, you know, officers, you look at what they do
23 and we measure radio runs and we measure a bunch of things.

24 Well there are specific things that I think an ICO
25 should be doing. So I created a monthly report that they have

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D5f9flo4 Hall -direct

1 to complete. That monthly report then is collected by the
2 borough investigations units.

3 The borough investigations units, they then compile
4 the information for all the precincts in that particular
5 borough. And then they let it -- give it to the borough
6 commander. And then they deliver a copy to me.

7 It really gives me a little bit of a, you know, inside
8 look on what effort they're putting forth out there to make
9 sure that we're, you know, operating the way we should be.
10 Q. Showing you what's been marked as Defendants' Exhibit F15.

11 What is this document?

12 A. This is a copy of the report. And as you look at it, this
13 would be the report for patrol borough Manhattan South. And on
14 the left side you see the precincts, you know, from the top to
15 first, right down to Midtown North.

16 And then as you go across there's captions that based
17 on, you know, my experience, these are things that I'd like to
18 see the ICO looking at, amongst -- there's others, but these
19 are the ones that I kind of want them to look at.

20 Q. So what are you looking at?

21 A. Well if you look, one of the important things to me is, two
22 things. If you look towards the left side of the report. And
23 it's in small lettering; but one, are they working on the late
24 tour? Do they go out midnight to eight and take a look at
25 what's going on in the command? I think that's an important

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D5f9flo4 Hall -direct

1 issue. I don't want to see that they're not working those
2 hours. We have to take a look on that tour.

3 And then right next to that is their patrol hours. So
4 their ICOs, I really don't want to see that they spend most of
5 their day pushing paper. There's an administrative component
6 to their job. I understand that. But I want to make sure that
7 they're out there doing patrol monitoring. You're not going to
8 see things from an office. It's best to be out there.

9 Then if you look at the middle of the report you'll
10 see discipline. Did that integrity control officer, did he
11 issue any discipline? Did he give out command disciplines?

12 As you move across, there are locations that I think
13 need to be looked at. We have places that we don't want the
14 police officers to frequent. They can be off limits locations.
15 They are actually defined as off limits and we shouldn't be
16 there unless it's an absolute police necessity.

17 I have, back to the left, self-initiated
18 investigations. If the ICO comes across some type of
19 misconduct he may open a self-initiated investigation.

20 I've asked them to debrief prisoners. I think when
21 you debrief prisoners you can find out stuff, information
22 intelligence about police officers that potentially could
23 prevent corruption or tip you to some type of corruption. So I
24 think talking to prisoners is always good business.

25 I want them in court. Many of our officers have court

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D5f9flo4 Hall -direct

1 appearances. I want them to make sure that the officer is
2 there, number one; that he's on time, number two; that his
3 appearance is proper for court. So I want to see visits to
4 court to make sure that, you know, our officers are there and
5 presenting a professional image.
6 Seat belts. I want them looking to make sure that the
7 officers are wearing their belts.
8 And any discipline that he does give, I like a
9 description of what it was in the far right column. Those are
10 some of the things.

11 MS. GROSSMAN: Your Honor, I move to admit Defendants'
12 Exhibit 515.

13 THE COURT: F15?

14 MS. GROSSMAN: I'm sorry. F15.

15 THE COURT: F15 is received.

16 (Defendants' Exhibit F15 received in evidence)

17 Q. So this is a copy of the form that we've been discussing?

18 A. I might have added another column on the right for domestic
19 violence to take a look at that program.

20 Q. Do you expect integrity control officers to spot check
21 supervisor memo books?

22 A. It's one of their jobs.

23 Not only to spot check the police officer's memo book
24 which I think is, you know, everyone, all right, check the
25 officer's memo book, that's the obvious. But they should

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D5f9flo4 Hall -direct

1 really be checking the sergeants' memo books, to make sure that
2 the sergeants are checking the police officers' books.

3 Q. Does the police department have patrol guide procedures
4 regarding the various violations that an officer -- that would
5 subject an officer to a command discipline?

6 A. Yeah. If you were to look at the patrol guide, there's a
7 listing of violations. They would be first schedule A command
8 disciplines. Those are the ones that are less serious. That's
9 a longer list.

10 And then you have a list of schedule B. That's a
11 shorter list, with B being the more serious violations.

12 Q. Showing you what's been marked as Defendants' Exhibit Z11.

13 Is that document familiar to you?

14 A. Yes, it is.

15 Q. What is it?

16 A. Patrol guide procedure where it actually lists the
17 violations that are subject to command discipline.

18 MR. MOORE: Once again, Judge, pursuant to a 30(b)(6)
19 notice the city designated a witness to talk about discipline.
20 That witness testified. We've had no -- this document was not
21 used either in direct or cross of that witness.

22 This is just a repeated pattern. I've got to say
23 I'm -- I really don't know what to do with this witness now.
24 He is testifying in a way that is more complete than Chief
25 Esposito who was their policy and practice person. So it puts

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1 us as a severe disadvantage.

2 THE COURT: Who was the 30(b)(6) witness who did cover
3 command discipline?

4 MS. BORCHETTA: Commissioner Schwartz, your Honor.

5 MS. GROSSMAN: We're just offering this into evidence
6 right now.

7 MS. BORCHETTA: Your Honor, she also testified about
8 command discipline.

9 THE COURT: What Ms. Grossman just said, she just
10 wants the document. She doesn't want to ask any questions,
11 right?

12 You just want to get the document in.

13 MS. GROSSMAN: I want to get the document in. I can
14 just ask a couple of questions about the command.

15 THE COURT: Maybe not a couple of questions. We've
16 covered command discipline. If you want the document, I will
17 give you the document.

18 Do you want it?

19 MS. GROSSMAN: Yes, your Honor.

20 THE COURT: Z11?

21 MS. GROSSMAN: Yes.

22 THE COURT: Z11 is received.

23 MR. MOORE: Over our objection.

24 (Defendants' Exhibit Z11 received in evidence)

25 MS. GROSSMAN: Your Honor, then let me also move to

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1 admit Exhibits Y11 and A12 all related to the command
2 disciplines and penalties that the officer is subjected to.
3 THE COURT: Have you seen those?
4 MR. MOORE: I don't think so.
5 MS. GROSSMAN: Yes, they have.
6 MR. MOORE: I haven't seen them. If you can give me a
7 copy of them I'll look at them now.
8 THE COURT: She's going to give you a copy.
9 MS. GROSSMAN: I did notify the plaintiffs' counsel.
10 MR. MOORE: Y11 and what -- can you give me a copy?
11 MS. GROSSMAN: Yes. I'm getting that.
12 MR. MOORE: I have Y11. And I have A12. All right.
13 I got it.
14 THE COURT: Any objection to either?
15 MR. MOORE: Once again, they both go to command
16 discipline.
17 THE COURT: Right. The documents weren't offered
18 before she'd like the documents in evidence. Any objection to
19 them?
20 I mean, again, I have no idea if it would make any
21 difference in deciding this case whatsoever, but I'd like to
22 hear if you have any objection. These are the police
23 department's documents on command discipline.
24 MR. MOORE: To the extent that they are police
25 department documents on command discipline, I have no
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1 objection.

2 THE COURT: Okay. Y11 is received.

3 It's one document you offered, right?

4 MS. GROSSMAN: Three documents.

5 THE COURT: I'm sorry.

6 MS. GROSSMAN: A12, Z11.

7 THE COURT: Y11 and A12?

8 I already admitted Z11.

9 MS. GROSSMAN: Yes.

10 THE COURT: So now we're up to Y11 and A12.

11 MS. GROSSMAN: Correct.

12 THE COURT: Both are from 2000. One says command
13 discipline. One says authorized penalties under command
14 discipline. I'll take the documents but they speak for
15 themselves.

16 (Defendants' Exhibits Y11 and A12 received in
17 evidence)

18 MR. MOORE: Just goes to show you can't trust the City
19 of New York.

20 MS. GROSSMAN: Excuse me, Mr. Moore.

21 THE COURT: He talks to himself. You have to ignore
22 that.

23 MS. GROSSMAN: When I hear him say you can't trust the
24 city, I don't think it's appropriate.

25 THE COURT: Now you said it. I didn't --

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1 MR. MOORE: You cannot trust the City of New York.

2 THE COURT: I didn't hear it because he speaks to
3 himself. I ignore it when he speaks to himself. I figure the
4 only audience is himself. So I didn't hear it. I honestly had
5 no idea he said it until you repeated it.

6 But nevertheless that's that. Maybe you should speak
7 to yourself more quietly in the future.

8 MR. MOORE: My wife says the same thing.

9 THE COURT: Do it more quietly.

10 MR. MOORE: Judge, I will say that I -- you heard what
11 I said and I mean it.

12 THE COURT: I now heard what you said because
13 Ms. Grossman said it, but okay.

14 MS. GROSSMAN: Well, your Honor, I don't think it's
15 appropriate.

16 MR. MOORE: Let me finish. You raised it.

17 MS. GROSSMAN: You should -- your Honor --

18 THE COURT: Could you two not address each other.

19 What is it you want to say, Mr. Moore?

20 MR. MOORE: I am very upset that they've used this
21 last witness on the last day of trial to go through areas, many
22 of which were designated by the 30(b)(6) witnesses, and a
23 witness that we have not had the opportunity to depose.

24 THE COURT: Chief Hall?

25 MR. MOORE: No. We haven't. Because he was

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1 identified at the last minute.

2 THE COURT: Right.

3 MR. MOORE: And so when I say I can't trust the City
4 of New York, that's what I mean.

5 THE COURT: Okay.

6 MR. MOORE: That applies to all of you.

7 MS. GROSSMAN: I won't even dignify that with a
8 comment.

9 THE COURT: Of course, I didn't hear the last part
10 when he spoke to himself again.

11 MR. CHARNEY: He spoke to defense counsel.

12 MS. PUBLICKER: He spoke to us, your Honor.

13 THE COURT: Whatever, I didn't hear it.

14 Okay. Now can we continue.

15 MS. GROSSMAN: I will not dignify that with a comment.

16 THE COURT: I don't know what it is you're not
17 dignifying because I didn't hear it.

18 You mean the last speech?

19 MS. GROSSMAN: Yes, the last --

20 THE COURT: Well, the last speech deserves some
21 comment. What he's saying is he was not aware this witness was
22 going to cover topics that were covered by other witnesses
23 already in this trial. He says he didn't have notice. He says
24 he only recently learned of the documents you intend to put in.
25 And it's just not the testimony that was expected.

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1 It was expected to supplement Chief Giannelli. That's
2 what I was told too. Otherwise, I would have granted them a
3 deposition if it was going to be a whole new topic. What I was
4 told: One guy retired. One guy took over. He's simply
5 supplementing the fellow who was deposed. Giannelli was
6 deposed. And these topics were not the topics because he was a
7 30(b)(6).

8 MR. CHARNEY: He was a 30(b)(6) and a lot of these
9 topics were never covered.

10 MS. GROSSMAN: Chief Giannelli was not -- I think he
11 was the chief of patrol as a fact witness; not as a 30(b)(6).

12 MR. CHARNEY: He was designated as the 30(b)(6)
13 witness for impact overtime. If they look at the notice and
14 their response to the notice they will see that.

15 MS. GROSSMAN: There were many other questions outside
16 of impact overtime that were asked of Chief Giannelli. And so
17 I just don't think that's a fair representation of what the
18 discovery was all about.

19 And in terms of these documents, your Honor, we've
20 been on trial for ten weeks. And there are a lot of documents
21 that the plaintiffs have, at the last minute, have sought to
22 introduce at different times. We've had no problem with it
23 when we didn't have an objection. And right now this is --
24 what I'm trying to do is to facilitate putting certain pieces
25 of evidence in to put at least other testimony in context from

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1 chief -- from Commissioner Schwartz. We've had a lot of
2 testimony about command disciplines.

3 THE COURT: We have. That's the point. We have. I'm
4 not sure --

5 MS. GROSSMAN: So I just wanted to put the document
6 into evidence so that you understand the level of discipline
7 that's involved when an officer --

8 THE COURT: I do think I understood the level of
9 discipline all along. There was a chart about it. There was
10 Commissioner Schwartz. I've heard this before.

11 MS. GROSSMAN: Yes.

12 THE COURT: The record will be longer than it was.
13 That's all.

14 I am receiving Y11 and A12 for the weight they may
15 have in this trial.

16 MS. GROSSMAN: If I can move on, I can hopefully
17 facilitate --

18 MR. MOORE: Let me just say one last thing, Judge. We
19 don't object to them if they just want to put in documents, but
20 that's not our objection.

21 Our objection is he's testifying to all these steps
22 he's taken --

23 THE COURT: I did -- go ahead.

24 MR. MOORE: -- in all these different areas that we
25 were not made aware that he was going to testify to. And to be

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1 fair, what we understood he was going to be testifying to was
2 to update Chief Giannelli and then to talk about this March 5,
3 2013 --

4 THE COURT: That's what I thought his whole testimony
5 was going to be.

6 MR. MOORE: So that's my concern.

7 BY MS. GROSSMAN:

8 Q. Now are you familiar with the QAD audits?

9 A. I am.

10 Q. Does your office receive them?

11 A. They do. We get them.

12 THE COURT: We've had a lot of testimony at this trial
13 about QAD audits. What question do you want to ask that isn't
14 already in the record?

15 MS. GROSSMAN: The fact that are you aware that
16 officers -- that commands have been failing these activity log
17 audits.

18 THE WITNESS: I am.

19 Q. Let me rephrase that.

20 Are you aware that commands have received a failing
21 rating on the 802 audit in terms of the activity log?

22 A. I'm aware of that.

23 Q. And what as chief of patrol have you done to address that
24 concern?

25 A. There's been a couple of things that I've tried. First of

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1 all, it's been the subject of numerous borough commander
2 meetings and discussions with precinct commanders after
3 CompStat telling them that we have to get better with memo book
4 entries and in particular how they relate to our -- a required
5 entry when a 250 is prepared.

6 I also put out a memo directing that when an officer
7 is involved in a stop, question and frisk scenario, that he
8 take his memo book entry and he make a photocopy of that entry
9 and attach it to the hard copy of the 250. And then, you know,
10 submit it for review.

11 I believe in that memo too we directed that we wanted
12 to see more detail in the actual memo book entry for the 250
13 stop.

14 Q. And that was in March?

15 A. That memo I believe was dated sometime in March.

16 Q. Now before that did you take any steps to -- regarding the
17 802 self-inspections?

18 MR. MOORE: Judge, at what time?

19 MS. GROSSMAN: Let him testify.

20 MR. MOORE: Any time? While he was chief of patrol?

21 MS. GROSSMAN: Yes, as chief of patrol.

22 MR. MOORE: While he was chief of transit?

23 THE COURT: No.

24 This is when you were chief of patrol, right? Of
25 course? Right?

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1 THE WITNESS: Yes.

2 Could you repeat the question, please.

3 Q. Were there any other steps in terms of the 802
4 self-inspections, did you institute any procedures regarding
5 the 802 self-inspections?

6 A. Well, I had -- once the memo -- once that memo was
7 prepared, I did ask the borough commanders to go and take a
8 look, although the memo hasn't been out that long, I asked them
9 to take a look to see if, in their mind, we were getting better
10 compliance with the actual memo book entry being made when an
11 officer prepared a 250.

12 MR. MOORE: Judge, I thought the question was before
13 he issued the March 5 memo. That's what I thought the question
14 was.

15 Q. Did you take any steps in January 2013 on the 802
16 self-inspections?

17 MR. MOORE: Then I'd ask that that last question --
18 that last answer be stricken.

19 MS. GROSSMAN: That's fine.

20 THE COURT: All right. Strike the last question and
21 answer because there's seems to be some confusion as to the
22 time period. So starting again in January.

23 THE WITNESS: In January of this year, at a borough
24 commanders' meeting where once again the topic came up
25 concerning our not doing well in the 802 inspection, one of the

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1 borough commanders, chief Pizutti from Queens North had told me
2 that she had put out a memo -- in fact, I took my memo.
3 MR. MOORE: Judge, object to this.
4 THE COURT: Sustained as to what she said.
5 THE WITNESS: That she had put a memo out. And I
6 asked for a copy of the memo from her. I received the memo.
7 And I thought it was a good idea what she was attempting to do
8 in her borough. And then I took that memo and modeled my memo
9 to put it out citywide.
10 THE COURT: Okay. And that resulted in the March
11 memo?
12 THE WITNESS: That's correct, your Honor.
13 Q. Showing you what's been marked as J13.
14 THE COURT: This is the March 5, 2013 memo?
15 THE WITNESS: This is it, your Honor.
16 THE COURT: That you put out to all commanding
17 officers?
18 THE WITNESS: Correct.
19 THE COURT: Okay. Have we had this in evidence
20 already?
21 MR. MOORE: It was attached to Assistant Chief Morris'
22 Exhibit U14, a copy of Chief Hall's memo was attached to that.
23 It hasn't been introduced separately.
24 THE COURT: So J13 is received.
25 (Defendants' Exhibit J13 received in evidence)
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1 THE COURT: This is a cover memo of March 5, 2013 and
2 then it also attaches a sample activity log entry, right?

3 THE WITNESS: That's correct.

4 THE COURT: And a sample UF 250?

5 THE WITNESS: Yes.

6 THE COURT: Those are the only two attachments, right?

7 THE WITNESS: That's correct, your Honor.

8 Q. So why does your memo require the explanation of furtive
9 movements if the furtive movement box is checked off on the
10 UF 250?

11 A. I'm trying here to, you know, correct a couple of things.

12 One, as you stated, we have not done well when QAD has
13 come in and inspected the memo books. However, there has been,
14 you know, a small improvement, you know, over the last couple
15 of years as it pertains to patrol. But what I was trying to do
16 here was comply with the patrol guide procedure which says when
17 we prepare a 250 there should be a memo book entry with
18 sufficient detail. And what we see when we do see the memo --
19 when we do see the memo book entry, at times, the detail is
20 lacking.

21 So, basically I was just saying, Hey, let's get more
22 specific concerning furtive movement and the factors that led
23 up to the stop.

24 Q. And does your memo apply to MOS in command and borough
25 anticrime units?

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1 A. It does. This is a memo that applies to all the members in
2 patrol services.

3 Q. Including impact officers?

4 A. It would.

5 Q. But it does not -- what about housing and transit?

6 A. It does not.

7 Q. How come?

8 A. This was a memo that, you know, I took upon myself to
9 make -- it was, you know, in my mind, I was the bureau that,
10 you know, was having the difficulty with the memo book entries.
11 So I handled it as I saw fit.

12 Q. Now when you were CO of transit, how did transit perform on
13 the 802 audits; in particular, the activity log portion of the
14 audit?

15 A. I was there almost five years. We did pretty well.

16 Q. Generally what were your --

17 A. We were always passing. And three is a pass. We were
18 always well above the three.

19 Q. Now since you've instituted this order have you done
20 anything to see if the commands are complying?

21 A. Yes.

22 As I stated before, I had asked the borough
23 commanders, being that the memo was only out since the
24 beginning of March, I asked them to just go out, you know, and
25 take a look through whatever method they wanted to use, their

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1 borough investigations units, their staff people, to see if we
2 were getting our members to comply with the memo.

3 Q. What were the results?

4 A. We're getting better in terms of getting the memo book
5 entry.

6 MR. MOORE: Judge, let me just object. If he's going
7 to talk about information he got other than from Chief Morris,
8 which is the only information we have been provided with about
9 any kind of subsequent review after that March 5, 2013 memo
10 went out, if he's going to talk about anything other than that,
11 we've had no notice of it.

12 The only thing we've seen is what, I think you recall,
13 what Chief Morris testified to, so.

14 THE COURT: I don't think he can describe any other
15 results in terms of following up to see if there's been
16 improvement between March and May.

17 MS. GROSSMAN: Well then Mr. Moore will not be asking
18 the chief any questions about that -- any follow-up questions?

19 THE COURT: Between March and May?

20 MS. GROSSMAN: If Mr. Moore is not going to be
21 cross-examining the witness on what his observation have been
22 and what happened?

23 THE COURT: Since March?

24 MS. GROSSMAN: Yes.

25 THE COURT: That's right. March to May is off limits
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1 for both sides.

2 Right, Mr. Moore?

3 MR. MOORE: I'm not exactly sure what I'm going to do
4 on cross-examination.

5 THE COURT: I know.

6 If she can't go into what he observed between March
7 and May, then neither can you. Either March and May can be
8 testified to or not.

9 MR. MOORE: Hold on a second.

10 THE COURT: Okay.

11 (Pause)

12 MR. MOORE: Judge I have no problem with him
13 testifying to what he's done. But if he testifies to what
14 somebody told him has been done.

15 THE COURT: Well that would be hearsay anyway, what
16 somebody told him.

17 MR. MOORE: Right.

18 THE COURT: So if you observe -- did you observe
19 anything between March and May with respect to filling out
20 these activity log entries?

21 THE WITNESS: No, your Honor. It would be reports
22 back from the field by the borough commanders.

23 THE COURT: What they said would be hearsay.

24 Q. So you received feedback from the commands?

25 A. The borough commanders, I did.

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1 Q. And do you expect to spot check again?

2 A. I will. It's dated March 5. I think it's going to take
3 some time to, you know, get roots. So there will be checks
4 down the line to see if we're doing better.

5 And, in addition, obviously we're going to be
6 subjected to QAD examinations again on this issue. And I hope
7 to see improvement.

8 Q. Now the plaintiffs in this lawsuit recommend that a
9 narrative portion be added to the UF 250. Do you think that
10 would be redundant in light of your March 2013 order?

11 MR. MOORE: Object to the form.

12 THE COURT: In light of the what?

13 MS. GROSSMAN: This March 13, 2013 -- this March 2013
14 order.

15 THE COURT: You said order. That's what confused me.

16 MS. GROSSMAN: I didn't mean that. I meant his memo.

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

18 THE COURT: I'll allow it.

19 Is there something redundant about adding a narrative
20 to the UF 250, in your opinion?

21 THE WITNESS: I think, your Honor, it would be based
22 on this memo. I'm asking the officers, we're directing that,
23 you know, they make an entry that has the pertinent facts
24 leading up to the stop and issues such as furtive movement be
25 outlined or highlighted. So I do think it would be repetitive.

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1 THE COURT: But you ask that that be done where?

2 THE WITNESS: In this memo.

3 THE COURT: I'm sorry. On which document?

4 THE WITNESS: Well, I'm asking --

5 THE COURT: I'm sorry. On the activity log or the

6 UF 250?

7 THE WITNESS: No. In the activity log.

8 THE COURT: That's what I'm getting at.

9 So it wouldn't be redundant within the four corners of
10 the 250 to add the narrative, would it?

11 THE WITNESS: Well you're going to then, your Honor,
12 you're putting the narrative on the 250 and then you would be
13 transposing that narrative into your memo book.

14 THE COURT: Right. I guess the question is which
15 would be more accessible for review? In other words it's easy
16 to review a stack of 250s?

17 THE WITNESS: Right, than to collect the officers'
18 memo books.

19 THE COURT: Right. That's all I'm trying to say. In
20 terms of transparency and ease of accessibility, the 250 is the
21 first place to look?

22 THE WITNESS: I would agree.

23 THE COURT: Okay.

24 MR. MOORE: Judge I have to say I didn't hear a lot of
25 your question. Did you think it could be read back and the

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1 answer.

2 THE COURT: Certainly. But I don't know where it
3 starts.4 So start with, I can tell the court reporter, start
5 with where I said, "That's what I'm getting at. So it wouldn't
6 be redundant."

7 (Record read)

8 Q. OMAP is responsible for preparing or designing forms,
9 right?

10 A. They do that.

11 Q. And in terms of the issues that might be presented in terms
12 of adding a narrative, it would be OMAP's responsibility to
13 assess the viability of adding a narrative to the forms, right?

14 A. It would --

15 MR. MOORE: I know he wasn't going to give -- we
16 weren't provided with information he was going to talk about
17 OMAP.18 THE COURT: He's not. She's just saying it wouldn't
19 be up to him to design a form.

20 That's OMAP's job, right?

21 THE WITNESS: That's correct, your Honor.

22 Q. Now are all commanding officers -- is there a community
23 affairs, this community affairs bureau, right?24 A. There's a community affairs bureau for the department and
25 then each precinct has community affairs officers assigned to

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1 it.

2 Q. And does the community affairs bureau attend CompStat
3 meetings?

4 A. They do. They are there every week.

5 MR. MOORE: Judge, again --

6 THE COURT: I don't know if she thinks she's going to
7 go into what community affairs does.

8 MS. GROSSMAN: No. I'm just asking --

9 THE COURT: Let's see.

10 MS. GROSSMAN: Community affairs attends CompStat.

11 THE COURT: And we just got that answer.

12 Is there anything more you want to ask about community
13 affairs?14 Q. When there are issues raised from community affairs, is
15 that raised at CompStat?

16 A. Absolutely.

17 They can be from -- you know, information that they
18 have from the community that they may be unhappy with
19 something.20 It could be crime prevention related because crime
21 prevention falls under community affairs.22 School issues. School safety reports to community
23 affairs.

24 So they're active participants in the process.

25 Q. Now is impact overtime the same thing as violence reduction

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1 overtime?

2 A. It is. I call it violence reduction overtime. That's what
3 it's called.

4 Q. Now in 2012 what is the average number per month of stops
5 by a patrol officer assigned to a platoon?

6 MR. MOORE: Objection.

7 THE COURT: I'm sorry. To any? What is this? The
8 average number of stops of any one officer assigned to any
9 platoon anywhere in the city?

10 MS. GROSSMAN: No.

11 What is the average number per month of stops by a
12 patrol officer assigned to a platoon?

13 THE COURT: Assigned to what?

14 MS. GROSSMAN: A platoon.

15 THE COURT: Any platoon?

16 MS. GROSSMAN: Yes.

17 THE COURT: Anywhere in the city?

18 MS. GROSSMAN: Yes.

19 THE COURT: I was going to say. Before you answer,
20 where is this statistic found?

21 THE WITNESS: By looking, your Honor, at the 76
22 precincts and then just looking at the three platoons and the
23 officers assigned to those platoons.

24 THE COURT: Where would we find the average figure of
25 stops per month for an officer assigned to patrol in any

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1 platoon anywhere in the city?

2 Where is this average found?

3 THE WITNESS: You're looking at the 250 database. And
4 then by looking at the number of officers assigned in each
5 platoon, you can get an idea a close idea of what they're
6 doing.

7 THE COURT: Objection sustained.

8 MS. GROSSMAN: Your Honor, the plaintiffs have had the
9 UF 250 database for years.

10 THE COURT: Good. You have never produced this
11 calculation. I'm not even sure he can do it. He said -- I
12 appreciate the candor -- he said he could get an idea. I don't
13 know that he has the number. The actual number, you know, 4.2,
14 3.7, 7.1.

15 He said he can get an idea. I'm not taking it. We
16 don't know where that math was done. We don't know who did it.
17 It's never been turned over.

18 Objection sustained.

19 Q. Do you have a sense of the general numbers based on -- in
20 terms of the stops per officer based on CompStat review?

21 MR. MOORE: Judge -- same objection, Judge.

22 THE COURT: Well, I don't know. Maybe they discussed
23 it at CompStat meetings and there's a general number thrown
24 around at CompStat meetings.

25 Is that what you're asking, whether at CompStat

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1 meetings from what years?

2 How many years have you been going to CompStat
3 meetings?

4 THE WITNESS: Too many.

5 I've been going consistently, your Honor, every week
6 I've been going since 2005.

7 THE COURT: Oh, my God. Eight years worth of
8 discussions. In eight years worth of discussions, I suppose
9 there were times when somebody must have mentioned some average
10 figures of stops per month per patrol officer.

11 THE WITNESS: That's true, your Honor.

12 MR. MOORE: Then it would be hearsay.

13 THE COURT: That's all I'm going to take, that it came
14 up. I'm not going to take this number. I have no idea what it
15 was in '05, '07, '09, '11. The subject came up. That's good
16 to know.

17 Q. What about -- has it come up in 2012?

18 A. It did.

19 Q. And it came up in 2011?

20 A. It did. I looked at it.

21 Q. And based on what you looked at, do you know the average
22 number of stops per officer --

23 MR. MOORE: Objection.

24 Q. -- on patrol?

25 THE COURT: Sustained. Sustained. If you know it,
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D5f9flo4

Hall -direct

1 then tell me the source of your knowledge, what document, where
2 is that document so that everybody can look at it. If you
3 don't have it, I'm not going to take it. You've been to 50
4 meetings a year for all these years. With great respect, I
5 don't know if you can pinpoint what figure you heard, what
6 year, where and when. If somebody comes up with a document we
7 can revisit this. I'm not taking it.

8 MS. GROSSMAN: So, your Honor, if we're able to
9 provide a document you will accept that?

10 THE COURT: We'll see what you can find. Then we'll
11 worry about it.

12 Q. When officers graduate from the academy, they're assigned
13 to impact, correct?

14 A. That's correct.

15 THE COURT: I didn't get that. They're assigned what?

16 MS. GROSSMAN: Impact. The impact.

17 THE COURT: What does that mean, that's their first
18 assignment?

19 THE WITNESS: That's correct. As soon as you get out
20 of the academy, your Honor, you're going to go to an impact
21 zone for at least six months.

22 THE COURT: Okay.

23 Q. And generally -- so for six months.

24 Can you explain -- are the officers on impact assigned
25 with more experienced officers?

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D5f9flo4

Hall -direct

1 MR. MOORE: Judge, we've had testimony about this.

2 THE COURT: Yes, we did. I remember exactly. The
3 reason the newbies go there, because they're going to learn a
4 lot from being with experienced people, right?

5 THE WITNESS: Yeah.

6 THE COURT: We heard that. Somebody sat where you sat
7 and told me that.

8 MS. GROSSMAN: So I think we're coming to a conclusion
9 but the last thing I would like to do --

10 THE COURT: That would be good.

11 MS. GROSSMAN: -- is admit the field training unit
12 guides, Defendants' Exhibit L1. It represents the 2005 -- it
13 represents a series of field training unit guides over the
14 years. And we have seen I think -- at least one of them is
15 admitted, through one of the other witnesses, but we wanted to
16 just offer that into evidence.

17 MR. MOORE: I think they were also admitted in Ligon.

18 THE COURT: They are in Ligon.

19 MS. GROSSMAN: Not all of them.

20 THE COURT: If you want all of them, and you've got
21 the numbers, I'll take them all.

22 MR. MOORE: I have no problem with their being
23 admitted into evidence but with respect to questions about it.

24 THE WITNESS: She didn't say she was going to go
25 there. She said I'm almost done. I believed her.

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Hall -direct

1 Tell me the numbers and I'll receive them.

2 MS. GROSSMAN: Defendants' Exhibit L1.

3 THE COURT: They're all L1?

4 I see. It's one big group.

5 MS. GROSSMAN: Collective.

6 THE COURT: How many field training manuals are in L1?

7 MS. GROSSMAN: Six. So it would be 2005, 2006, 2007,
8 2008, 2009, and 2012.

9 THE COURT: Okay. Five, six, seven, eight, nine and
10 twelve received as L1.

11 (Defendants' Exhibit L1 received in evidence)

12 MS. GROSSMAN: Thank you. That's it. No further
13 questions.

14 MR. MOORE: Can I have a minute to consult?

15 THE COURT: Yes.

16 (Pause)

17 MR. MOORE: Judge, as you know we were not -- we did
18 not have the opportunity to depose Chief Hall and he's covered
19 a lot of ground here today. And so -- and I know you had
20 mentioned this earlier, that depending on how extensive his
21 testimony was we'd be given an opportunity to review it.

22 And so what I would ask the Court to do at this point
23 is that we would suspend his testimony and start with our
24 expert, Mr. Walker. And then unfortunately I have a court --

25 THE COURT: That's important. You have that

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1 settlement conference team.

2 MR. MOORE: Yeah, but I'm not going to -- if I
3 can't -- I mean I would try to get back as soon as possible,
4 but no later than the afternoon to pick up with Chief Hall
5 again. And it may be a little disjointed with the experts, but
6 I don't really feel, in good conscience, I can really do a
7 cross-examination at this point given that we haven't had an
8 opportunity to do a deposition and there's been all this new
9 material. I mean if you ordered me to I'll do it.

10 THE COURT: No. No. No. I remember that we
11 discussed the timing yesterday. I offered Friday and they said
12 no, you couldn't do Friday. So you have to be able to wrap it
13 up tomorrow. So if you weren't here by 2:00 after the break,
14 it might be difficult to wrap up.

15 And I gather that head shaking to do with Friday must
16 have been about your schedule.

17 THE WITNESS: It is, your Honor.

18 THE COURT: That's what I figured. He wasn't
19 available.

20 MR. MOORE: I think with a little time to look at the
21 transcript I would do a more efficient cross anyway.

22 THE COURT: That may be. Can you be sure you'll be
23 here by 2:00? What if the settlement conference ends up all
24 day?

25 MR. MOORE: Then I'll have to leave it. I'll come and

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D5f9flo4 Hall -direct

1 do this because this is my first priority.

2 THE COURT: As long as you promise to be here by 2:00.

3 MR. MOORE: I may be earlier.

4 MS. GROSSMAN: Your Honor, there were certain topics
5 that were prepared that I think we know was expected to be
6 covered. So can't we start.

7 THE COURT: I don't see starting and stopping if he
8 says he will try to organize his thoughts and make it more
9 efficient I don't see the harm in starting with -- it would be
10 the plaintiffs' expert first, right?

11 MR. CHARNEY: Yes. We're ready to put --

12 THE COURT: It would be the plaintiffs' expert first.

13 MR. MOORE: Right. Even if I started today, I'd have
14 to interrupt in the morning anyway.

15 THE COURT: Exactly.

16 Did you hear what he said? He said even if he started
17 today, Ms. Grossman -- he said even if he started today, he
18 wouldn't finish in an hour. So Chief Hall will be back
19 tomorrow anyway. We'd never finish today. He's not going to
20 be done in an hour. You will want to have redirect. So it's
21 going to be broken up anyway.

22 He'd like to organize his thoughts. There were a lot
23 of unanticipated areas that he went into. It would be best to
24 be organized.

25 So as long as you promise, Mr. Moore, to be here no

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D5f9flo4 Hall -direct

1 later than 2:00 so we're sure to finish Chief Hall because he
2 can't be here on Friday and we can't push off Monday.

3 MS. GROSSMAN: Your Honor the problem is that I think
4 because of the schedule we expected, the pace, we didn't expect
5 to get to the experts today, given --

6 THE COURT: That's okay. You'll never cross-examine
7 today. So I'm sure --

8 MS. GROSSMAN: No, but the problem is that the
9 attorney who is going to be dealing with the cross-examination
10 of plaintiffs' expert is not here.

11 THE COURT: Who is that?

12 MS. COOKE: Mr. Kunz, but he stepped out.

13 MR. CHARNEY: He was sitting right here.

14 THE COURT: He has been here all day. Where is he?

15 MS. COOKE: We looked around. He doesn't appear to
16 be --

17 THE COURT: Who's got the device?

18 MS. GROSSMAN: Yes. We'll look.

19 THE COURT: So that's what we're going to do.

20 Chief Hall, you're excused. But should I say 2:00,
21 Mr. Moore? Or should I ask him to be back at 12:00? What
22 should I tell the witness?

23 MR. MOORE: Maybe he should try to be back at 12:00.

24 MS. GROSSMAN: Your Honor, if he could just -- if we
25 could have Chief Hall come here within fifteen minutes. I'm

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D5f9flo4 Hall -direct

1 just worried that -- because he's at 1PP, so to sit here for
2 two hours --

3 THE COURT: I don't want him to sit. He's got
4 important things to do.

5 MR. MOORE: That's fine. He's right across the
6 street.

7 THE COURT: As long as you can be here in ten or
8 fifteen minutes if somebody notifies you?

9 THE WITNESS: Yes, your Honor.

10 THE COURT: Okay. Thank you.

11 (Witness excused)

12 THE COURT: Who is doing the direct of this witness?

13 MS. PATEL: I am, your Honor. I just need a moment.

14 Plaintiffs call Professor Sam Walker.

15 SAMUEL WALKER,

16 called as a witness by the Defendants,
17 having been duly sworn, testified as follows:

18 THE COURT: All right, Ms. Patel.

19 MS. PATEL: One moment, your Honor.

20 DIRECT EXAMINATION

21 BY MS. PATEL:

22 Q. Good afternoon, Professor Walker.

23 Professor Walker, have you been retained by the
24 plaintiffs in this case to testify as an expert?

25 A. Yes.

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D5f9flo4

Walker - direct

1 Q. And without telling me your opinions, what are the topics
2 about which you are going to opine -- you were asked to opine?

3 A. The need for a comprehensive accountability system to
4 prevent unconstitutional policing with regard to stops and
5 frisks, the need for a court-appointed monitor, and the need
6 for community input into the remedies.

7 THE COURT: Okay. I can tell already from that first
8 answer that I'm having a little difficulty hearing you. I
9 don't know quite how to solve that. I could ask you to speak
10 up a little bit and try closer to the mic. Thank you.

11 Q. And your opinions are related to the remedies that are
12 necessary in this case, correct?

13 A. Yes.

14 Q. And that's assuming that -- was there an assumption around
15 your -- the testimony regarding remedies?

16 A. Yes.

17 Q. What was that?

18 A. The assumption is that the Court would find
19 unconstitutional policing with regard to stops and frisks in
20 this case.

21 Q. So we'll discuss your opinions in detail in a few minutes
22 but let's turn to your background and qualifications first,
23 okay.

24 (Continued on next page)

25

D5F8FLO5

Walker - direct

1 MS. PATEL: Showing the witness Plaintiffs' Exhibit
2 418A.

3 Q. Do you recognize this document?

4 A. Yes. That's my vita.

5 Q. This is the document that was attached to your report, is
6 that correct?

7 A. Yes.

8 MS. PATEL: Move for the admission of the CV.

9 MR. KUNZ: No objection.

10 THE COURT: Did you say 418?

11 MS. PATEL: 418A.

12 THE COURT: 418A is received.

13 (Plaintiffs' Exhibit 418A received in evidence)

14 THE COURT: Do you have a copy for me or no? If you
15 don't, don't worry about it.

16 MS. PATEL: I don't need it, your Honor.

17 MR. KUNZ: Your Honor, just as I was getting all my
18 papers in order, I think I missed the three topics that he said
19 he was asked to opine on. It was a comprehensive approach, a
20 narrative, and then the third one.

21 THE COURT: I can have it read back.

22 (Record read)

23 BY MS. PATEL:

24 Q. Professor Walker, can you walk us through your educational
25 background?

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D5F8FLO5 Walker - direct

- 1 A. A bachelor's degree in American history, University of
2 Michigan; a master's degree in American history, University of
3 Nebraska at Omaha; a Ph.D. in American history, Ohio State
4 University.
5 Q. What year did you receive your Ph.D.?
6 A. 1973.
7 Q. Are you currently employed?
8 A. No. I am retired, professor emeritus, University of
9 Nebraska at Omaha.
10 Q. And you retired as -- what was your title again?
11 A. A tenured full professor.
12 Q. What classes did you teach in the field of criminology?
13 A. I taught a freshman level introduction to criminal justice,
14 I taught a sophomore level police and society course, I taught
15 a graduate level administration of justice, and a graduate
16 level police and society course.
17 Q. What are your current areas of research and writing?
18 A. Policing, police accountability, race, ethnicity and
19 criminal justice, and civil liberties.
20 Q. When you say civil liberties and police accountability,
21 does that include police community relations?
22 A. Yes, it does.
23 Q. When you refer to police accountability in your research
24 and publications, what do you mean by that term?
25 A. Police accountability covers any and all measures designed

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D5F8FLO5 Walker - direct

1 to ensure that officers will be held accountable to compliance
2 with the Constitution, relevant state statutes, relevant
3 municipal ordinances, and department policies.

4 Q. With regard to your research related to police
5 accountability, what specific areas of policing does that
6 cover?

7 A. Can you repeat the question?

8 Q. What specific areas of policing does your research related
9 to police accountability cover?

10 A. Well, it covers departmental procedures, again, related to
11 officer conduct on the street, supervision and disciplinary
12 procedures, citizen complaint procedures, and also consent
13 decrees and judicial remedies for police misconduct.

14 Q. Does it also cover training in the police department?

15 A. Yes.

16 Q. And auditing?

17 A. Yes.

18 Q. Have you authored any peer reviewed publications specific
19 to police accountability?

20 A. Yes.

21 Q. How many?

22 A. Well, I have 14 books total of which maybe half of them
23 relate to policing one way or another. I have many articles
24 and reports.

25 Q. Are they listed on your CV?

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D5F8FLO5

Walker - direct

1 A. Yes.

2 Q. Can you please tell us a few of them?

3 A. My most recent book on policing is "The New World of Police
4 Accountability." It was published in 2005. Several weeks ago
5 I finished the second edition, which will be published later
6 this year.

7 I have general textbook, "The Police in America."

8 In 2001, I published a book, "Police Accountability:
9 The Role of Citizen Oversight."10 Q. Have you also published articles in academic journals
11 related to police accountability?

12 A. Yes.

13 Q. I am going to hand the witness the CV and maybe you can
14 just point a few of them out.

15 A. Do you want me to read the titles?

16 THE COURT: Obviously, not every one of these.

17 MS. PATEL: Just a few that are relevant.

18 THE COURT: Pick any few that you want to pick.

19 A. "Institutionalizing Police Accountability Reforms," St.
20 Louis University Public Law Review 2012.

21 THE WITNESS: Academic journals only?

22 THE COURT: That will be fine.

23 A. "Not Just Police Use of Deadly Force: The Larger
24 Contributions of Jim Fyfe to American Criminal Justice," a
25 chapter in a book Holding Police Accountable.

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1 "An Alternative Remedy for Police Misconduct: A Model
2 State Pattern or Practice Statute," George Mason Civil Rights
3 Law Journal, 2009.

4 "The Impact of Traffic Stops on Calling the Police,"
5 co-authored, Criminal Justice Policy Review.

6 "The Neglect of Police Unions: Exploring one of the
7 Most Important Areas of Policing," Police Practice and
8 Research.

9 Q. Professor Walker, do you have any publications that are not
10 published in academic journals, but that are relevant to police
11 accountability?

12 A. Yes. I have a number of reports, some of which are peer
13 reviewed but it's a different peer group than the academic
14 community.

15 Q. When you say a different peer group, what does that mean?

16 A. The Justice Department reports are in fact peer reviewed.
17 You send in a manuscript; they send it out for review. The
18 reviewers are typically law enforcement professional
19 practitioners.

20 Q. Can you state or point out a few of the relevant
21 publications related to police accountability?

22 A. You see two. "Strategies for Intervention with Officers
23 Through Early Intervention Systems: A Guide for Front-line
24 Supervisors," 2006.

25 "Supervision and Intervention within Early

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D5F8FLO5 Walker - direct

1 Intervention Systems: A Guide for Law Enforcement Chief
2 Executives," 2005.

3 Q. In the course of your research, did you review the role and
4 impact of court appointed monitors?

5 A. Yes.

6 Q. How many police departments did you study, in the course of
7 your research, on the role and impact of court appointed
8 monitors?

9 A. Well, I looked at least about 20. I studied in detail a
10 smaller number, about seven or eight of those.

11 Q. When you say in detail, what did you do?

12 A. Well, the research involves looking at all of the relevant
13 publications, which would include investigative findings
14 letters, consent decrees, memoranda of understanding, and then
15 the reports of the court appointed monitors. And in addition
16 to the printed matter, it would involve interviews with all the
17 relevant stakeholders who would talk. That includes law
18 enforcement officials, that includes in some cases the court
19 appointed monitors themselves, or the heads of monitoring
20 teams, and community stakeholders.

21 THE COURT: You said there were at least 20 of these
22 that you looked at. Does that mean 20 different police
23 departments had court appointed monitors put in place?

24 THE WITNESS: Yes, at least. That would be since
25 1997.

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D5F8FLO5 Walker - direct

1 THE COURT: Right.

2 Q. The results of this research has been published in your
3 books and articles?

4 A. Yes.

5 Q. Do you have any other publications related to
6 discrimination in policing?

7 A. Yes. I co-authored the book "The Color of Justice: Race,
8 Ethnicity and Crime in America." It's now in its fifth
9 edition.

10 Q. Are you a member of any professional associations?

11 A. Yes. The National Association for Citizen Oversight of Law
12 Enforcement.

13 Q. That's known as NACOLE?

14 A. NACOLE.

15 Q. What kind of work does NACOLE do? What kind of association
16 is it?

17 A. It's a typical professional association. The membership
18 consists largely of staff members and board members of citizen
19 oversight agencies, plus other interested parties, academics
20 such as myself, many community activists are members and attend
21 the meetings, some elected officials, I don't know whether they
22 are members, but they attend meetings.

23 Q. And law enforcement officials, do they participate in
24 NACOLE as well?

25 A. Yes.

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D5F8FLO5

Walker - direct

1 Q. What is the relationship between your work as a consultant
2 and a researcher?

3 A. Well, research involves the collection of original
4 material, the information flows to me. Consulting, in brief,
5 is that the information flows from me to whatever interested
6 party I am working with.

7 Q. I forgot to ask you this question. What are the topics in
8 which you have served as a consultant?

9 A. I have served as a consultant regarding police early
10 intervention systems, regarding citizen complaint procedures,
11 regarding general issues on police supervision and discipline.

12 Q. Describe for whom you have acted as a consultant.

13 A. For whom I have acted as a consultant?

14 Q. Yes.

15 A. That would include law enforcement agencies, that would
16 include citizen oversight agencies, that would include mayoral
17 task forces, and community groups interested in police
18 accountability.

19 Q. Let's go through your consulting work with the police
20 departments first.

21 In the course of your research and work as a
22 consultant, have you worked with large and small police
23 departments?

24 A. Yes.

25 Q. Can you name the large police departments you have

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D5F8FLO5 Walker - direct

1 consulted with or have been the subject of your research?

2 A. I was a consultant to the Chicago police department, I did
3 research on and have been the consultant to the Los Angeles
4 Sheriff's Department, the Los Angeles Police Department, the
5 Phoenix police department, Miami-Dade as research.

6 Q. As a consultant to police departments, what types of tasks
7 do you perform for them?

8 A. Well, we typically engage in discussions, in part, with the
9 chief executive, but primarily with middle managers who have
10 the more hands-on responsibilities regarding police
11 accountability, supervision, discipline, early intervention
12 systems. The discussion of some of the issues such as setting
13 thresholds in early intervention systems, what to do about the
14 chronic problem officer. How do you supervise? How do you
15 tell whether you have an officer with serious performance
16 problems? What do you look for? How do you respond to those
17 problems?

18 Q. In the course of your research and consulting, have you
19 developed professional relationships with police officials
20 around the country?

21 A. Yes.

22 Q. Where are some of those professional relationships?

23 A. I probably have the best relationships with the Phoenix
24 police department and the Los Angeles sheriff's police
25 department.

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D5F8FLO5 Walker - direct

1 Q. In the course of your work, your professional work, have
2 you spoken to street police officers?

3 A. Yes, many times.

4 Q. Just name a few of those departments where you have done
5 that.

6 A. Los Angeles sheriff's department, certainly the Omaha
7 police department, Miami-Dade police department, Charlotte,
8 North Carolina. The smallest department would be West Jordan,
9 a suburb of the Salt Lake City, Utah.

10 Q. About how many police officers would you say you have
11 interviewed or discussed police practices with in the course of
12 your research and consulting?

13 A. It's hard to say, but I will give a ballpark estimate of --
14 MR. KUNZ: Objection. If it's hard to say and he is
15 guessing --

16 THE COURT: I didn't think it was a guess, but I will
17 look at the sentence again.

18 About how many police officers would you say you have
19 interviewed or discussed police practices with? I would take
20 an estimate rather than an exact figure.

21 What is the estimate?

22 THE WITNESS: About 160.

23 THE COURT: I will take that.

24 Q. In the course of your consulting, research and writing,
25 have you been involved with improving supervisory controls for

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D5F8FLO5

Walker - direct

1 police officers?

2 A. Yes.

3 Q. In what ways?

4 A. Well, in both the research and the consulting, and
5 particularly related to early intervention systems, some of the
6 questions that I just testified to a minute ago: How do you
7 identify the problem officers? What do you look for? What
8 kind of performance indicators should you examine? What kind
9 of indicators should you include in an early intervention
10 system? What other information? Strategies for going beyond
11 the sheer numbers in the performance indicator system. What
12 kind of conduct, what kind of behavior, what kind of symptoms
13 do you look for?

14 Q. In the course of that research and consulting, have you
15 been involved in improving the way that a first-level
16 supervisor, like a sergeant, would supervise a police officer
17 on the street?

18 A. Well, in the course of my consulting work, I certainly
19 offer my advice, which is based on my research and other
20 consulting experiences, yes.

21 Q. In the course of your consulting and research and writing,
22 have you been involved with the performance evaluations of
23 officers?

24 A. Well, I have been involved in discussions of the procedures
25 for evaluating and assessing officer performance, yes.

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D5F8FLO5 Walker - direct

1 Q. Do police department officials implement the suggestions or
2 reforms that you suggest?

3 A. I offer my ideas, and this is in the context of a broad
4 discussion within the particular agency about the issues under
5 discussion. I could not claim that I recommended one thing and
6 that was adopted by a particular agency, but it's an ongoing
7 conversation.

8 Q. But the reforms and systems that you suggest are
9 implemented, right?

10 MR. KUNZ: Objection. He just answered that question.

11 THE COURT: Sustained.

12 Q. Have you assisted police departments with the
13 implementation of accountability systems and reforms?

14 A. Yes.

15 Q. Which police departments?

16 A. Well, that would include -- and I should qualify here, in
17 many respects we are talking about reforming, changing,
18 improving existing systems to make them more effective. The
19 Phoenix police department, Los Angeles sheriff's department,
20 Los Angeles police department, Chicago, Boston, Charlotte,
21 North Carolina, Miami-Dade.

22 Q. What is the range of assistance that you have provided in
23 the implementation of accountability systems and reforms in
24 those departments?

25 A. The range of assistance? It's mainly my advice based on my

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D5F8FLO5 Walker - direct

1 research and my expertise.

2 Q. How do police department officials, what are the ways in
3 which they request your assistance?

4 A. They call me on the phone. Again, I am contacted at the
5 initiative of departments about issues that they want, where
6 they want my expertise. I should say that some of my
7 consulting experiences are the result of my prior research
8 experience. So in terms of my research on early intervention
9 systems, I develop personal relationships with middle managers
10 and that evolves into in some cases a close collegial
11 relationship.

12 Q. Do you maintain a Web site related to police
13 accountability?

14 A. Yes, I do.

15 Q. How is that Web site used as a resource?

16 A. Well, I place my own work on that Web site, and I post on
17 it reports, news stories, other publications that I think are
18 relevant to this subject that people interested in the subject
19 would find useful.

20 Q. Have you been hired as a consultant by the Department of
21 Justice Special Litigation Unit?

22 A. Yes, on two occasions.

23 Q. You have consulted in a number of cases, right?

24 A. A number of what kind of cases?

25 Q. In police cases by the Department of Justice.

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D5F8FLO5

Walker - direct

1 MR. KUNZ: Objection. I think he just said it was
2 two.

3 THE COURT: He did say that.

4 You said twice for the Department of Justice?

5 THE WITNESS: Yes.

6 May I amend my statement?

7 THE COURT: Sure.

8 A. There were two other involvements which were indirect as a
9 result in a situation where the agency was under a consent
10 decree.

11 Q. Which agencies were those?

12 A. The latter two?

13 Q. Just in general, what are the agencies where you have been
14 involved as a consultant with the Department of Justice?

15 A. I was hired as a consultant by the special litigation
16 section of the civil rights division for their investigation of
17 the Washington, D.C. police and the New Jersey state patrol.

18 Q. What were the two other departments where you were also
19 involved?

20 A. With respect to the Virgin Islands, I was technically
21 invited by the Virgin Islands police department, but --

22 MR. KUNZ: I am going to object to this. I don't
23 believe the Virgin Islands work was mentioned anywhere in his
24 report.

25 MS. PATEL: This is his professional experience.

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D5F8FLO5

Walker - direct

1 THE COURT: I don't think it's an opinion. What has
2 to be in a report and what the testimony has to be limited to
3 is the opinions expressed in the report. In terms of his
4 background and experience, I don't have any problem.

5 MR. KUNZ: The plaintiffs, I believe a document they
6 produced to me had to do with the consent decree in the Virgin
7 Islands. As long as we are not going to go into that.

8 MS. PATEL: I am not sure which document Mr. Kunz is
9 discussing.

10 A. The fourth, I was retained briefly as a consultant by the
11 monitoring team for the Oakland police department, although
12 that was the result of a private suit, not a U.S. Justice
13 Department suit.

14 Q. In the course of your professional experience, have you
15 helped to develop remedies in federal pattern and practice
16 policing cases?

17 A. Yes.

18 Q. Can you describe your experience in assisting in developing
19 remedies?

20 A. Well, the two occasions when I was directly hired as a
21 consultant by the civil rights division, with both the
22 Washington, D.C. police and the New Jersey state police, they
23 involved specifically the citizen complaint procedures that the
24 Justice Department was developing.

25 Q. In the course of that work, you were also familiar with

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1 supervisory structures, right?

2 A. Yes. I was familiar generally with the correction of the
3 remedies and what eventually led to the consent decrees.

4 Washington, D.C. was actually a memorandum of
5 understanding, not a consent decree.

6 Q. Have you assisted in drafting consent decree provisions in
7 your work with the Department of Justice consent decrees?

8 A. Yes. The provisions related to citizen complaint
9 procedures with Washington, D.C. and New Jersey state police.

10 Q. With regard to your work with the New Jersey state police
11 department, can you explain the subject matter of that case?

12 A. Well, my involvement with the New Jersey state police
13 case --

14 MR. KUNZ: Can we just get that question read back?
15 (Record read)

16 MS. GROSSMAN: I thought he just testified that his
17 work with the Washington, D.C. was an MOU, not a consent
18 decree.

19 THE COURT: He may have corrected that.

20 Is that what you said?

21 THE WITNESS: Yes.

22 Q. What is the difference between a consent decree and a
23 memorandum of understanding?

24 A. There is a legal difference, but the content of those
25 agreements, the settlements, are virtually identical.

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1 Q. When I am referring to consent decree here, do you have an
2 understanding that I am referring to generally your work with
3 remedial processes with the Department of Justice?

4 A. Yes.

5 Q. Can you briefly explain the subject matter of the New
6 Jersey state police department case?

7 A. My involvement was two-fold. The initial involvement, as I
8 have testified about, was assisting the civil rights division
9 in drafting the provisions related to citizen complaint
10 procedures.

11 Q. What was that case about?

12 A. The New Jersey state police case involved allegations of
13 racial profiling related to traffic stops by New Jersey state
14 troopers.

15 Q. Other than your work with the Department of Justice, did
16 you engage in any other consulting work involving the New
17 Jersey state police department?

18 A. Yes. The initial Justice Department investigation resulted
19 in a consent decree, and as that was nearing its termination,
20 the state of New Jersey began to consider what to do in the
21 post consent decree period and whether there were some
22 additional actions they needed to take. And so I was -- the
23 governor created a task force on that subject. I was retained
24 as an expert by that task force. I visited Trenton. I met
25 with command officers with the New Jersey state police. I

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1 wrote a report with some recommendations, and then I testified
2 publicly before the task force.

3 Q. Were recommendations that you made in that report
4 implemented?

5 A. They were incorporated into the report. The actual status
6 of the implementation of that report is a matter of some
7 dispute as to whether they were fully implemented or not.

8 Q. Are you involved with any police chief groups?

9 A. Yes. With both of the two major police chiefs association.

10 Q. Can you tell us what those are?

11 A. First is the largest, the International Association of
12 Chiefs of Police. The second is the Police Executive Research
13 Forum.

14 Q. You have previously testified about your involvement
15 related to citizen oversight. When you say the term citizen
16 oversight, what do you mean?

17 A. The term citizen oversight is the generic term, and within
18 that there are two basic models of citizen oversight. One
19 would be civilian complaint review boards similar to the CCRB
20 in New York City. The others are what are termed police
21 auditors. They are permanent monitors of the law enforcement
22 agency, but they are independent local agencies of government.

23 Q. Have you consulted with cities regarding the use of citizen
24 oversight?

25 A. Yes.

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1 Q. Where have you done that?

2 A. In Austin, Texas, Reno, Nevada, and Portland, Oregon, I
3 participated in mayoral task forces where the city was
4 considering what kind of oversight to adopt.

5 Q. Does the research and consulting that you have done
6 involving citizen oversight include internal citizen complaint
7 procedures within police departments?

8 MS. GROSSMAN: The last answer to the question I
9 didn't quite understand. The Austin, Texas, Reno, Nevada,
10 Portland, Oregon, was that part of a mayoral task force?

11 THE WITNESS: Yes.

12 Q. Have you consulted regarding citizen oversight with other
13 cities not in the mayoral task force context?

14 A. Yes.

15 Q. Does your research and consulting include internal citizen
16 complaint procedures within police departments?

17 A. Yes.

18 Q. That includes like internal affairs for example?

19 A. Yes.

20 Q. How has your research and consulting involved internal
21 citizen complaint procedures within police departments?

22 A. Well, on the subject of citizen oversight agencies, you're
23 necessarily discussing the status of internal affairs
24 procedures and their strength and shortcomings.

25 Q. In the course of that research and consulting, what have

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1 you done, what do you do with regard to the internal complaint
2 procedures?

3 A. With regard to the internal complaint procedures, I have
4 done less consulting with police departments per se on internal
5 police complaint procedures. Although as part of my work on
6 early intervention systems, because citizen complaints are an
7 important part of that, it necessarily gets into questions of
8 how open and accessible is the citizen complaint process, how
9 are complaints received and classified, the investigative
10 procedures, and so on.

11 Q. In the course of that work, do you meet with police
12 officials to discuss implementation of those systems?

13 A. Yes.

14 Q. That includes the development -- would that include the
15 development of -- does that include the development of internal
16 complaint --

17 MR. KUNZ: I object to the leading questions going on.
18 I think they are improper in this context.

19 (Pause)

20 THE COURT: When we paused, there was an objection
21 from counsel that the questions were leading. I actually
22 looked at the last group of questions and I don't think so.
23 The very last one seems to say, would that include the
24 development of internal complaints?

25 Could you rephrase that? The record isn't clear.

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1 Q. Does your consulting with police departments regarding
2 citizen complaint procedures, does that include the
3 investigation in disciplinary procedures?

4 THE COURT: I will allow that.

5 A. Yes.

6 Q. Have you ever worked directly with community organizations
7 regarding police oversight or civil rights concerns with police
8 departments?

9 A. Yes.

10 Q. Where have you done that?

11 A. Milwaukee, Washington, D.C., Pittsburgh.

12 Q. Does it include Puerto Rico?

13 A. Yes, Puerto Rico.

14 THE COURT: Let's go back to some of the ones you
15 mentioned. What kind of community organizations?

16 THE WITNESS: For example, last October, I was in
17 Milwaukee, I spoke to a meeting of 20 community groups that
18 were interested in their very serious police problems.

19 THE COURT: You were a speaker?

20 THE WITNESS: Speaker.

21 THE COURT: You weren't retained by them to do any
22 project. You were interacting with them as a speaker.

23 Was that true of the other cities you mentioned?

24 THE WITNESS: Pretty much, they are all consulting
25 activities where they recognize me as an expert and they invite

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1 me to come speak, and they want to hear what I have to say.
2 And I say, you can do this, you can do that.

3 THE COURT: And you get paid for that as a consultant?

4 THE WITNESS: Usually not with community groups.

5 BY MS. PATEL:

6 Q. Just to clarify, some of those are speaking events, right?

7 A. They are speaking events, but I always allow plenty of time
8 for interaction because it's really a consulting kind of
9 exchange where the most productive part of the meetings is
10 where they have questions.

11 THE COURT: The reason I am confused is consulting I
12 usually think of as being retained as a consultant. You're
13 paid by someone to be their consultant on a project. A
14 speaking engagement is a speaking engagement. One speaks,
15 there is a question and answer period, and that's it. I
16 wouldn't have defined these as consulting contracts or
17 consulting arrangements.

18 THE WITNESS: Washington, D.C. was certainly a
19 consultant arrangement.

20 THE COURT: Can you tell me about that one?

21 THE WITNESS: Washington, D.C. had a civilian
22 complaint review board. It was a disaster. It was not
23 complying with its own procedures and city council abolished
24 it. And then there was a movement to create a new one. The
25 ACLU and the NAACP had a joint task force to develop one and

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1 they wanted my expertise.

2 THE COURT: And they retained you to give it?

3 THE WITNESS: I didn't get paid for it, but I gave
4 them my expertise.

5 THE COURT: It wasn't a speaking engagement, you
6 actually worked with them as a consultant?

7 THE WITNESS: In closed meetings, yes.

8 MS. PATEL: Just to clarify, the question was whether
9 he assisted community groups.

10 THE COURT: Yes.

11 THE WITNESS: Actually, retention, the Milwaukee event
12 was a closed meeting, invitation only. It was not a public
13 meeting in the sense of a public speech. They had some
14 significant questions on their mind and they wanted my input on
15 it.

16 THE COURT: And they again were what group? You said
17 it was mixed group?

18 THE WITNESS: It was a coalition of about 20 different
19 groups.

20 BY MS. PATEL:

21 Q. What types of groups are represented, generally, in the
22 range of groups that you assist in the areas of the police
23 department?

24 A. Racial and ethnic membership groups, civil liberty groups,
25 faith based groups.

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1 Q. Just going back to the list, does it include Puerto Rico?

2 A. That I would consider a consultantship because it was
3 private meetings where we had --

4 THE COURT: It was a group before whom?

5 THE WITNESS: I was brought there by the ACLU in
6 Puerto Rico and the meetings involved representatives from
7 other community groups.

8 Q. Have you also assisted community groups in New Orleans with
9 civil rights or policing concerns?

10 A. Yes.

11 Q. Professor Walker, have you been qualified as an expert by a
12 court?

13 A. Yes.

14 Q. Approximately how many times, that you recall?

15 A. In terms of actually appearing in court, I would say four
16 times.

17 Q. What types of cases were those?

18 A. The most important one was in the city of Chicago. I was
19 an expert witness for the city of Chicago defending their
20 affirmative action plan for the Chicago police department.

21 THE COURT: Who sued them, do you know?

22 THE WITNESS: The police unions were the plaintiffs.
23 It was essentially white officers objecting to affirmative
24 action.

25 THE COURT: OK.

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1 Q. The other cases that you have served as an expert, what
2 types of cases have those been?

3 A. Of the ones where I was certified?

4 THE COURT: The other three cases where you were found
5 to be an expert, qualified to be an expert.

6 THE WITNESS: Two were use of force cases.

7 THE COURT: Individual plaintiffs?

8 THE WITNESS: Yes.

9 THE COURT: Each time you represented the plaintiff or
10 the defendant in those two?

11 THE WITNESS: The defendant.

12 THE COURT: The police department?

13 THE WITNESS: The plaintiff.

14 THE COURT: Both of those.

15 The fourth time?

16 THE WITNESS: It was a complicated case. A police
17 officer had had a citizen complaint filed against him. He sued
18 the complainant alleging that the complaint damaged his career.

19 THE COURT: Which side did you testify for?

20 THE WITNESS: I represented the citizen complainant.

21 Q. In what year did you last serve as an expert witness in a
22 lawsuit?

23 A. 2006.

24 THE COURT: Which of those four was that?

25 THE WITNESS: It was the use of force cases.

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1 THE COURT: One of the two use of force?

2 THE WITNESS: Yes.

3 Q. Has a court ever determined that you were not qualified as
4 an expert witness?

5 A. Not to my knowledge.

6 Q. And you last served as an expert over six years ago, right?

7 A. Yes.

8 Q. Why then did you agree to be an expert in this case?

9 A. I sort of stopped doing expert witnessing because I wanted
10 to focus on my research, writing and consulting. I was invited
11 by the plaintiffs to -- asked by the plaintiffs to serve as an
12 expert witness in this case, and I chose to do so because this
13 is an extremely important case. Whatever the outcome, the
14 decision in this case will have enormous national
15 ramifications. And it involved issues of race and that has
16 been a theme in my work from the beginning.

17 Q. Professor Walker, are you working on this case pro bono?

18 A. Yes.

19 MS. PATEL: At this time, we tender Professor Sam
20 Walker as an expert witness in police accountability, police
21 reforms, and the remedies necessary and appropriate in this
22 case.

23 MR. KUNZ: I have some serious reservations about his
24 qualifications, but I could reserve my voir dire on that topic
25 for my cross-examination.

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1 THE COURT: OK. Then I should do it conditionally
2 pending the voir dire.

3 MS. PATEL: Your Honor, I would seek to admit the
4 report of Professor Walker.

5 MR. KUNZ: I absolutely object.

6 THE COURT: We have done both. We have taken reports
7 and not taken reports with the other experts?

8 MS. COOKE: Only on the statistical reports of
9 Professor Fagan, Smith and Purtell. We did not take Reiter.

10 THE COURT: I have already forgotten Reiter.

11 MR. KUNZ: The liability.

12 THE COURT: I struck a lot of it anyway. I didn't
13 take his report, right?

14 MS. COOKE: No.

15 THE COURT: Did they proffer it and there was an
16 objection and I said I am not taking it?

17 MS. PUBLICKER: Yes.

18 THE COURT: It sounds like for consistency I shouldn't
19 take this report, but it would be the same for the other expert
20 report. I won't take Stewart's. They can testify to the
21 opinions in those reports, but I either take both or neither.
22 You understand that.

23 MR. KUNZ: Yes.

24 MS. PATEL: What I would like to do is provide
25 Professor Walker a copy.

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1 THE COURT: That's fair. I think one of the other
2 professors said, well, I have to read from the report to say it
3 correctly. Which was that?

4 MS. PUBLICKER: That was Mr. Reiter.

5 THE COURT: I worked hard to express this in a certain
6 way. I want to read it.

7 MS. PATEL: Just so it's clear for the record, that
8 was marked as 418.

9 THE COURT: That's good. 418 for identification. OK.
10 BY MS. PATEL:

11 Q. Professor Walker, you testified that you're rendering
12 opinions in three areas, is that right?

13 A. Yes.

14 Q. Can you briefly state your opinion related to the
15 comprehensive approach you believe the NYPD should adopt?

16 A. It is my opinion --

17 THE COURT: Should adopt with regard to what?

18 MS. PATEL: With regard to the management of police
19 officers.

20 THE COURT: With regard to the management of police
21 officers?

22 MS. PATEL: Whether the NYPD should adopt a
23 comprehensive approach towards the remedy in this case.

24 A. What was the question?

25 Q. Can you briefly state your opinion regarding the

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1 comprehensive approach in the remedy of this case?

2 MR. KUNZ: I am a little bit concerned about the
3 answer that's going to come out here. As your Honor knows,
4 there has been motion practice in regard to the scope of this
5 expert testimony. And it's defendants' position, and it has
6 been throughout, that because the liability phase and the
7 remedies phase involve overlapping issues, that the witnesses
8 should be allowed to analyze the evidence in this case as
9 support for the remedies that they are --

10 THE COURT: And I have ruled against that. I said I
11 won't have an expert give essentially what the lawyers give in
12 summation. I don't want them summarizing the evidence. I have
13 written opinion after opinion in a whole host of cases from
14 patents to drug manufacturing to copyright, and I don't allow
15 that. So I don't want the person to summarize the testimony
16 given here at trial. That's my job.

17 MR. KUNZ: If that is the ruling, and if that's going
18 to be ordered for both experts, then I would object to this
19 line of questioning for this witness to the extent that the
20 question is going solicit from him his opinion on the state of
21 the facts in this case.

22 THE COURT: No, it's not his opinion on the state of
23 the facts. Remember, the presumption of both remedies experts
24 is that liability has been found. They have to take that as a
25 given. Now the question is, I think she asked, do you have an

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1 opinion as to what a comprehensive remedy would be for the
2 assumed wrongs in this case? He is going to say yes, and he is
3 going to say what that comprehensive remedy is I guess.

4 MR. KUNZ: Based on what he wrote in the report?

5 THE COURT: Which I am not receiving. So you will
6 have to listen carefully to the question and answer and we will
7 have to do it one by one.

8 MR. KUNZ: Yes, your Honor.

9 THE COURT: He may have to cite certain facts, so to
10 speak, on which he bases his opinion, but the first thing is
11 the opinion.

12 I think she was asking, do you have an opinion as to
13 what a comprehensive remedy should look like, assuming for the
14 moment that liability is found for the claims in this
15 complaint?

16 THE WITNESS: Yes, I do.

17 THE COURT: What is your opinion as to what a
18 comprehensive remedy would look like?

19 THE WITNESS: Assuming liability is found, the New
20 York City Police Department must develop a comprehensive
21 approach to accountability.

22 THE COURT: What would be that comprehensive approach
23 in your opinion?

24 THE WITNESS: To ensure compliance with constitutional
25 standards regarding stops and frisks.

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1 THE COURT: What would that look like?

2 THE WITNESS: It's comprehensive in the sense that it
3 covers all policies and procedures related to the supervision
4 and discipline of police officers.

5 Do you want me to list all of them?

6 THE COURT: Sure.

7 THE WITNESS: It would include a written policy on
8 racial profiling and on stops and frisks. It would include a
9 requirement that officers complete incident reports on stops
10 and frisks that is complete enough to capture the information
11 about whether there was reasonable cause. It would include
12 close supervision by sergeants of those incident reports. That
13 would include close supervision up the chain of command,
14 including audits of the department as a whole, including the
15 development of an early intervention system to provide adequate
16 monitoring of officers and the department, and include training
17 of all officers on their respective duties, and a citizen
18 complaint procedure adequate to capture that information.

19 Q. Professor Walker, please briefly state your opinion as to
20 the need for a court appointed monitor in this case?

21 A. It is my opinion that, should liability be found and should
22 remedies be ordered, the appointment of an independent court
23 appointed monitor is both necessary and proper.

24 THE COURT: What would be the duty of such a monitor?

25 THE WITNESS: Very extensive. Do you want me to go

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1 into that?

2 THE COURT: I do.

3 THE WITNESS: The role of the monitor, as has been the
4 case in the monitors, court appointed monitors over the last 20
5 years, involves, first, simply monitoring the implementation of
6 whatever remedies are ordered. That also includes providing
7 technical assistance to the department to facilitate
8 implementation of the remedies. It involves reporting to the
9 court on the state of implementation. And those reports have
10 all been, all the ones that I am familiar with, have also been
11 public documents so they are reports to the public about the
12 state of implementation.

13 Q. Can you briefly state your opinion --

14 THE COURT: Are those all the duties of the monitor?

15 THE WITNESS: Yes.

16 THE COURT: I thought you spoke primarily about
17 implementation. Did you speak about oversight?

18 THE WITNESS: The monitoring phase would include a
19 number of duties.

20 THE COURT: Have you gone into all of them?

21 THE WITNESS: I can do it now or later.

22 THE COURT: Now.

23 THE WITNESS: Monitoring the implementation.

24 THE COURT: That I think is the one you have covered.

25 Then I said is there anything else?

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1 THE WITNESS: It would involve such tasks as meetings
2 with top commanders, mid-level managers. It would involve
3 essentially audits of one sort or another. For example, visits
4 to precinct stations to see that officers are in fact
5 completing incident reports as required, to see that sergeants
6 are reviewing those reports as required. It would include
7 looking at the auditing system to see that it in fact is
8 designed properly and is being used and the information is
9 being used properly. It would involve monitoring the training
10 procedures to review curricular, to talk to trainers, to sit in
11 on training classes, to monitor the actual content of the
12 training.

13 BY MS. PATEL:

14 Q. I am just going to back up for a moment. Did you rely on
15 any documents or materials to form these opinions?

16 A. Yes.

17 Q. Are these set forth in your report?

18 A. Yes.

19 MS. PATEL: I would move to admit Plaintiffs' Exhibit
20 418B, which is just the list of documents and materials
21 considered.

22 MR. KUNZ: We have no objection.

23 THE COURT: 418B is received.

24 (Plaintiffs' Exhibit 418B received in evidence)

25 THE COURT: You said implementation was complicated

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1 and you explained it a little further. Other than
2 implementation, are there other duties the monitor would have
3 in your opinion?

4 THE WITNESS: Again, as I indicated, as part of the
5 implementation process, it involves providing technical
6 assistance to the department, in terms of providing
7 information, making contacts with resources of perhaps other
8 experts who could be useful, other departments that have
9 experience in this area. So that's to facilitate the
10 successful implementation.

11 THE COURT: Other than implementation, is there
12 another category or topic that the monitor addresses?

13 THE WITNESS: The public reporting.

14 THE COURT: Tell me about public reporting, what does
15 that mean?

16 THE WITNESS: The court appointed monitors as a matter
17 of practice have filed quarterly or semiannual reports. That
18 is a report to the court on the status and implementation. It
19 is progressing or it is not progressing, or if there are
20 problems, what exactly are the nature of the problems.

21 THE COURT: OK.

22 THE WITNESS: And those reports are in every case I am
23 familiar with public reports. So it informs the public about
24 the status of the implementation.

25 THE COURT: OK. Other than the implementation and the
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1 public reporting, is there any other task that the monitor has?

2 THE WITNESS: No.

3 THE COURT: OK.

4 Next question please, Ms. Patel.

5 BY MS. PATEL:

6 Q. Since you wrote your report, have you reviewed any
7 additional materials?

8 A. Yes.

9 Q. What have those been?

10 A. There have been court testimony that I have reviewed, the
11 opinions and decisions of this Court that have occurred. I
12 believe there -- additional New York City Police Department
13 documents.

14 Q. Have the materials that you reviewed since you wrote your
15 report altered your opinions in any way?

16 A. No. They have reinforced my opinions.

17 Q. In forming your opinions in this case, did you rely on
18 anything besides the materials listed in Exhibit A?

19 A. Yes. My 39 years of experience in the area of policing and
20 police accountability.

21 Q. Are your opinions based on a reasonable degree of certainty
22 in the field of police accountability?

23 A. Yes.

24 Q. I want to discuss your opinion related to the comprehensive
25 approach that the NYPD should adopt. And I will refer you to

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1 paragraph 17 through 22 of your report if you need to refer to
2 it.

3 When you use the term comprehensive approach, what is
4 the particular meaning that you give to that term?

5 A. It covers all relevant policies and procedures and
6 practices related to in this case ensuring constitutional
7 policing with regard to stops and frisks.

8 Q. Why is a comprehensive approach to police accountability
9 important for police departments to adopt?

10 A. A comprehensive approach is absolutely essential, because
11 if any one of the components is absent or weak and ineffective,
12 the entire accountability system begins to collapse. So, for
13 example, a department can have the best possible policy on
14 stops and frisks and racial profiling, but if you don't have a
15 good incident report for stops and frisks that captures the
16 kind of information that will allow supervisors to make
17 judgments about whether there was a solid basis, constitutional
18 basis for stops and frisks, the written policies are going to
19 be relatively meaningless; they are going to be nice pieces of
20 paper, but it will not translate into operation.

21 MS. GROSSMAN: I think there is a lot of overlap with
22 Reiter on this issue, and I think your Honor ruled that there
23 shouldn't be duplicative testimony.

24 THE COURT: I certainly ruled there shouldn't be
25 duplicative testimony, but as you well know, there has been a

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1 lot of it offered. But I don't remember what is left of
2 Reiter. You remember, a lot was stricken. There was very
3 little that was left. I am not entirely sure. This person is
4 qualified I think to give his opinions, subject to what Mr.
5 Kunz brings out, but I don't know that it's overlapping or
6 cumulative.

7 MS. PUBLICKER: I believe one of the specific areas
8 your Honor left in was whether the implementation of the NYPD
9 with regard to the 250s then being actually filled out complied
10 with the policy.

11 THE COURT: This is completely different. This is his
12 proposed remedy of a comprehensive plan. One of the prongs of
13 that comprehensive plan is to create a form that captures all
14 the information necessary to assess whether the stop is
15 constitutional.

16 Did I phrase that correctly?

17 THE WITNESS: Yes.

18 MS. PUBLICKER: I understood him to be stating that
19 there is a different operational policy.

20 THE COURT: He wasn't commenting on what goes on. He
21 is only commenting on what he would implement if he were
22 imposing a remedy. He says, it has to be a comprehensive plan,
23 and one leg of that plan or one prong of that plan is to create
24 a form that captures sufficient information to assess whether
25 stops are constitutionally permitted.

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1 Again, did I summarize that correctly?

2 THE WITNESS: Yes.

3 MS. PUBLICKER: Yes, your Honor.

4 THE WITNESS: If I may continue my answer on the
5 understanding of a comprehensive approach. Again, if training
6 is inadequate, if it's improper, if it's not correctly stating
7 the training officers on the law and their requirements, the
8 written policy and even the form itself will not be effective
9 in accomplishing its official purposes.

10 If the department does not have an adequate audit
11 system for monitoring the department-wide practices, you will
12 create the potential for abuses and it will undermine the
13 entire accountability process.

14 So the comprehensive nature is essential because all
15 of the parts are interrelated in one way or another.

16 BY MS. PATEL:

17 Q. In the field of police accountability, has the
18 understanding that comprehensive approaches should be adopted
19 evolved over time?

20 A. Yes.

21 Q. In what way?

22 A. Well, over the, let's say the last 30 years, we have
23 developed a much deeper -- the law enforcement profession has
24 developed a much deeper and richer understanding of the
25 complexities involved in ensuring professional policing,

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1 constitutional and lawful policing. There was a time when it
2 was considered sufficient, it was considered a major
3 breakthrough to have a written policy on a particular police
4 action. Thinking evolved and realized, well, you actually have
5 to make officers report on each incident, each contact with the
6 city, deadly force or high speed pursuits. The next stage of
7 evolution was understanding that you really have to have not
8 only supervisors review each and every incident in the report,
9 but you really need some department-wide auditing system to
10 make sure that these procedures are happening as intended.

11 So the field continues to change, and we have a much
12 clearer understanding of how complicated it is and what the
13 requirements are to achieve professional and constitutional
14 policing.

15 Q. Is there a body of literature in the field of police
16 practices that addresses the comprehensive approach to which
17 you're referring to?

18 A. Yes.

19 Q. Your opinions related to comprehensive approach, they cover
20 some subtopics, is that right?

21 A. Yes.

22 Q. What are those subtopics?

23 A. Well, the details of each and every one of the components
24 that I have described in this comprehensive approach.

25 Q. In this case, you formed an opinion around a couple of

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1 specific subtopics. Do you need to refer to your report? Do
2 you recall that?

3 A. Yes.

4 Q. What are those?

5 A. Well, specifically, the supervisory review process, also
6 the auditing process, those are the two main ones.

7 Q. When you say auditing, do you mean performance evaluations?

8 A. What is currently done with the QAD, the quality assurance
9 division process, for which I have an alternate recommendation.

10 Q. Let's start with the supervisory component of the
11 comprehensive approach.

12 As part of your opinion regarding comprehensive
13 approach, were you asked to form an opinion as to the remedies
14 necessary to improve the supervisory review structure within
15 the NYPD?

16 A. Yes.

17 Q. In forming this opinion on the remedies for supervisory
18 review, did you assume the plaintiffs would be successful in
19 establishing liability in the NYPD supervisory and oversight
20 structure?

21 A. Yes.

22 Q. What is your opinion?

23 MR. KUNZ: Objection, your Honor. This is where I
24 think we get into the problematic area that we are referring
25 about. To answer this question, he is going to need to cite

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1 evidence from the record and explain what he feels the specific
2 weaknesses are.

3 THE COURT: I think you're anticipating an answer that
4 hasn't happened. The question was, in forming his opinion on
5 the remedies for supervisory review, did you assume the
6 plaintiffs would be successful in establishing liability in the
7 NYPD supervising oversight structure? He already said yes. I
8 don't understand.

9 MR. KUNZ: The next question, what are those opinions,
10 I anticipate the answer coming out talking about specific
11 policies.

12 THE COURT: No. The opinion will be his opinion on
13 remedies for supervisory review. That's what I expect. What
14 remedies would you propose for supervisory review?

15 That's the question: What remedies would you propose
16 for supervisory review? How would you structure supervisory
17 review?

18 THE WITNESS: You want me to answer that?

19 THE COURT: Sure.

20 MS. PATEL: Always answer the judge's question.

21 THE COURT: There's a good rule.

22 THE WITNESS: The NYPD must develop a supervisory
23 review process, whereby police officers provide sufficient
24 information on stop and frisk incident reports such that their
25 supervisors, the sergeants, can make a determination as to the

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Walker - direct

1 adequacy of the reasonable suspicion for each stop.

2 Q. What is your understanding of the components of the way
3 that NYPD officers are required to document stop and frisk
4 encounters?

5 MR. KUNZ: Objection, your Honor.

6 MS. PATEL: I am only offering it for foundation for
7 the basis of his remedy opinion to what his understanding of
8 what is required.

9 THE COURT: The way they are required to document a
10 stop and frisk encounter now? This doesn't call for any
11 summary of the testimony because nobody here disagrees.

12 There is a UF-250 form. Have you seen it?

13 THE WITNESS: Yes.

14 THE COURT: There is a memo book. You know about
15 that, right?

16 THE WITNESS: Yes.

17 THE COURT: That's it?

18 THE WITNESS: Right.

19 THE COURT: That's how they document it. There is
20 nothing to say. We would be closing our eyes to reality if we
21 all didn't know that.

22 That's how it's documented now, the current UF-250
23 form and memo book entries, right?

24 THE WITNESS: Yes.

25 (Continued on next page)

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Walker - direct

1 Q. Can you elaborate on your opinion regarding changes to the
2 NYPD stop and frisk documentation procedures?

3 A. Yes.

4 THE COURT: She's saying how would you change it.

5 THE WITNESS: I would provide greater opportunity for
6 narrative regarding the reasons for reasonable suspicion.

7 THE COURT: Would you want that narrative to be in the
8 UF 250 form, or memo book, or both?

9 THE WITNESS: Both, but especially in the 250 form.

10 THE COURT: Okay.

11 THE WITNESS: Do you want more?

12 THE COURT: Why? Sure.

13 Do you want to tell me why you think that? Sure.

14 THE WITNESS: In the current form, the space is
15 actually fairly small.

16 And it's also, the box you check to fill that in is
17 "other," which seems to imply it's an afterthought, it's
18 something else you might want to add.

19 And there needs to be more space and more clear
20 direction to the officers to explain the reasons for the actual
21 behavior that led you to make a decision that reasonable
22 suspicion existed. And that would be sufficiently detailed so
23 that --

24 THE COURT: How much space would you propose leaving?
25 I mean for folks who have to do their policing work. How long

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1 a narrative do you want them to write?

2 THE WITNESS: It's got to be at least a couple of --
3 two sentences or more; two sentences, three sentences. To
4 provide -- sufficient to provide details, you know, that --
5 such that the sergeant, the first person to review that, can
6 say yes, the details are here, there are sufficient facts to
7 tell me that grounds for reasonable suspicion did or did not
8 exist.

9 THE COURT: Have you seen such a form in any other
10 police department with that kind of space for writing reasons?

11 THE WITNESS: No.

12 THE COURT: You have not?

13 THE WITNESS: No.

14 THE COURT: Okay.

15 Q. What should a supervisor do if -- I'm sorry. Let me back
16 up.

17 What are the modifications -- beyond just changing the
18 form, what are the modifications to the first level supervisory
19 system of stops and frisks in your opinion that the NYPD should
20 look at?

21 THE COURT: This is going to be your last answer for
22 today, though.

23 Go ahead.

24 A. Sergeants need to review the information on the UF 250
25 critically. They need to read it and think about it. Say,

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1 does this information provide -- convince me that there was
2 grounds for reasonable suspicion? Yes or no.

3 If the answer is no or it's not clear, the sergeant
4 should then refer to the memo book to see if there's additional
5 detail there. And the sergeant should talk to the officer.

6 THE COURT: Out of curiosity I asked you a question a
7 moment ago about other police departments having a form with
8 space for the narrative.

9 Does any other police department, in fact, have any
10 form for filling out at the time of the stop, that you know?

11 THE WITNESS: Well all -- it is now standard that
12 incident reports are required. And some of the others
13 essentially do talk about the stop. The New Jersey state
14 police is entirely about vehicle stops.

15 THE COURT: Is there a form that's filled out?

16 THE WITNESS: Yes.

17 THE COURT: So you know of forms?

18 THE WITNESS: Yes.

19 THE COURT: Okay. All right.

20 We'll pick up where we left off tomorrow. We'll start
21 with you, Mr. Walker. Professor Walker will be back on the
22 stand. We may interrupt you when Mr. Moore and Chief Hall are
23 back. And then we'll finish you up.

24 That's the schedule for tomorrow.

25 THE WITNESS: I'm from out of town.

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THE COURT: I know.
THE WITNESS: I would like --
THE COURT: We're doing our best. We can't get Hall
on Friday. We're doing our best.
(Adjourned to May 16, 2013 at 10:00 a.m.)

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