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1 UNITED STATES DISTRICT COURT  
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 DAVID FLOYD, et al.,

4 Plaintiffs,

5 v.

08 CV 1034(SAS)

6 CITY OF NEW YORK, et al.,

7 Defendants.

8 -----x

New York, N.Y.  
April 9, 2013  
10:00 a.m.

10 Before:

11 HON. SHIRA A. SCHEINDLIN,

12 District Judge

13 APPEARANCES

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1 (Trial resumed)

2 EDGAR FIGUEROA, resumed.

3 THE COURT: Mr. Kunz.

4 CROSS-EXAMINATION (Cont'd)

5 BY MR. KUNZ:

6 Q. Good morning, Officer. Thanks for coming back.

7 A. Good morning.

8 Q. When we left yesterday, I was asking you about an incident  
9 that happened in February 2011, a stop of Clive Lino, is that  
10 correct?

11 A. Yes, that's correct.

12 Q. Did you ever speak to a supervisor at your precinct about  
13 that stop?

14 A. Yes, I did.

15 Q. Do you remember who you spoke to?

16 A. I believe it was Sergeant Otero, assistant ICO.

17 Q. Can you tell the Court a little bit about that  
18 conversation?

19 A. He wanted to know exactly what happened in the stop, if I  
20 explained myself to the individual that was being stopped, if I  
21 explained why I stopped him, things of that nature.

22 Q. Was there anything that happened as a result of that  
23 conversation with the sergeant?

24 A. No, not to my knowledge.

25 Q. After that conversation, I think you said yesterday that

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Figueroa - redirect

1 A. Yes.

2 Q. If you could please turn to your deposition at page 180,  
3 lines 14 through 17.4 Were you asked the following question and did you give  
5 the following answer:6 "Q. Did there ever come a time when you ended a month and you  
7 had less than two arrests or less than 30 summonses?"

8 "A. To my knowledge, no."

9 Did you give that answer to that question?

10 A. Yes, I did.

11 Q. You also just testified that you spoke with Sergeant Otero  
12 about Mr. Lino's stop?

13 A. Yes, I did.

14 Q. But you spoke with Sergeant Otero before the CCRB  
15 substantiated Mr. Lino's complaint against you, correct?

16 A. Yes.

17 Q. And you didn't speak to anyone at the NYPD about the stop  
18 after the CCRB substantiated the complaint, correct?

19 A. Not to my knowledge.

20 Q. Just drawing your attention back to the poster that you saw  
21 at the beginning of your tour that day, which is in evidence as  
22 Plaintiffs' Trial Exhibit 187.23 You testified yesterday that the information in this  
24 flyer is all the information you had about the suspect,  
25 correct?

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D498FL01 Esposito - direct

1 A. March 27th of this year.

2 Q. How many years did you serve in the New York City Police  
3 Department?

4 A. 44 and a half.

5 Q. Is that 44 and a half as a sworn officer or 44 and a half  
6 in total?

7 A. In total. In '68 I started as a police trainee. I became  
8 a police officer in 1971.

9 Q. At the time of your retirement, you were the only four star  
10 chief in the department, correct?

11 A. Correct.

12 Q. As the only four star chief, that made you the highest  
13 ranking member of the New York City Police Department at the  
14 time of your retirement?

15 A. Highest ranking uniform member.

16 Q. Highest ranking uniform member of the department?

17 A. Correct.

18 Q. As the highest ranking uniform member, you would report to  
19 the police commissioner, correct?

20 A. Correct.

21 Q. You became the chief of department in August of 2000?

22 A. That's correct.

23 Q. Would you agree with me that when you became the chief of  
24 department in August of 2000, there was at that time some  
25 amount of public attention focused on street encounters between

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D498FLO1 Esposito - direct

1 black and Hispanic residents of the city and the New York City  
2 Police Department?

3 A. Yes.

4 Q. And much of that had to do with the unit called the street  
5 crime unit, correct?

6 A. Yes.

7 Q. You recall that the street crime unit was a unit that  
8 operated out of Randall's Island, correct?

9 A. Yes.

10 Q. Their primary purpose or focus or target was the  
11 apprehension of illegal weapons and getting guns off the  
12 street, right?

13 A. In part. Violent crime.

14 Q. But their primary focus was getting guns off the street,  
15 right?

16 A. I don't know if that's accurate. I would say violent  
17 crime, street robberies, guns are part of it, but it was  
18 violent street crime.

19 Q. But one of the targets or focuses of the street crime unit  
20 was the apprehension of illegal weapons and getting those guns  
21 off the street, correct?

22 A. Yes.

23 Q. You recall back on February 4, 1999 an incident in the  
24 Bronx when an individual named Amadou Diallo was killed by  
25 members of the street crime unit, correct?

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1 A. That's correct.

2 Q. Following that incident, a decision was made to  
3 decentralize the street crime unit from a city-wide unit to  
4 borough-wide street crime units correct?

5 A. Yes.

6 Q. Then in August of 2002, a decision was made to abolish the  
7 street crime unit, correct?

8 A. When was that?

9 Q. August of 2002.

10 A. Yes. I'm not sure about that date. It was in '02 though.

11 Q. At the time the street crime unit was abolished, the  
12 borough-wide street crime unit structure, their duties were  
13 taken over by borough-wide anticrime units, correct?

14 A. That's correct.

15 Q. One of the primary focuses of the borough-wide anticrime  
16 unit continued to be the apprehension of illegal weapons and  
17 getting guns off the street, correct?

18 A. That was part of their assignment. But as being borough  
19 anticrime units, they would be focused on what was the  
20 important mission of that borough at the particular time. It  
21 could be burglaries, it could be robberies, it could be street  
22 violence. That would be determined by the borough commander.

23 Q. One of the primary focuses of the anticrime unit was the  
24 apprehension of those carrying illegal weapons and getting  
25 those weapons off the street, right?

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D498FLO1 Esposito - direct

1 A. One of their missions, yes.

2 Q. Would you say one of the primary focuses of the anticrime  
3 unit?

4 A. No. I would say it depends on the borough and what the  
5 commander of that borough decided was the most important thing  
6 at that particular time. If we were having a series of  
7 robberies where guns weren't used, but they were mugging older  
8 women going to and from the trains, then that would be the main  
9 focus at that time. It varied from day to day. It could vary  
10 from day to day. But that is one of their functions, yes, guns  
11 off the street.

12 Q. Chief Esposito, you gave two depositions in this case,  
13 right?

14 A. Yes.

15 Q. One in August of 2009 and one in November of 2009, correct?

16 A. I believe so.

17 Q. At those depositions, of course you had taken an oath like  
18 you took here today to be truthful and honest in your answers,  
19 correct?

20 A. Yes.

21 Q. And you attempted to be as truthful and honest as you could  
22 at those depositions, correct?

23 A. Yes.

24 Q. I am not going to repeat that when I ask you to refer to  
25 your deposition testimony, but throughout the time you gave the

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D498FL01 Esposito - direct

1 deposition, you were doing your best to be as truthful and  
2 honest as you could, correct?

3 A. Of course.

4 Q. I am going to direct you to page 20 of your deposition,  
5 which is the August -- both of them are numbered sequentially.  
6 So the August 7, 2009 deposition, page 20.

7 A. I think I am looking at the right one.

8 Q. There's a page with four frames of testimony in it. It's  
9 called a mini-script. It saves paper doing it that way, which  
10 is something we are all trying to do.

11 On page 20, do you recall being asked beginning at  
12 line 11 being asked the following questions and giving the  
13 following answers:

14 "Q. Would you agree with me one of the principal focuses of  
15 the borough-wide anticrime units was still to deal with  
16 identifying and combating violent crimes?

17 "A. Yes.

18 "Q. One of the primary focuses of the anticrime unit was the  
19 apprehension of those carrying illegal weapons and getting  
20 those weapons off the street?

21 "A. Yes."

22 So did I read that correctly?

23 A. Yes, you did.

24 Q. Do you agree with me that, although they would be called on  
25 to deal with whatever situation arose within the borough, one

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D498FL01 Esposito - direct

1 of the primary focuses of the anticrime unit was the  
2 apprehension of those carrying illegal weapons and getting  
3 those weapons off the street?

4 A. Yeah, to some degree. I would also refer to line 3 where  
5 it says, The mission here was to try to make it more responsive  
6 to some of the borough's problems, were not just violence.

7 So I am giving the same answer, but yes, we are  
8 focusing -- the mission was to focus on guns. But again, in  
9 line 3, 4 and 5 and 6, it says be receptive to the problems of  
10 the borough.

11 Q. Fair enough. I was focusing on the use of the word primary  
12 focuses, but if you don't agree with that, that's fine.

13 A. OK.

14 Q. The decision to decentralize the street crime units was  
15 made by the police commissioner at the time, correct?

16 A. Yes.

17 Q. That was Howard Safir, right?

18 A. Yes, it was.

19 Q. That was before the current police commissioner Raymond  
20 Kelly was the police commissioner, correct?

21 A. Yes.

22 Q. The decision to abolish the street crime unit and to  
23 replace it with the borough-wide anticrime units, was Howard  
24 Safir still the police commissioner at that point or was it  
25 Raymond Kelly?

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1 A. What was the date?

2 Q. August of 2002.

3 A. No. That's Commissioner Kelly.

4 Q. So it was Commissioner Kelly who made the decision to  
5 essentially abolish the street crime unit, but to replace it  
6 with borough-wide anticrime units, correct?

7 A. That's correct.

8 Q. Now, you also recall, do you not, Chief Esposito -- can I  
9 still call you chief?

10 A. If you like. Just Joe.

11 Q. Just Joe.

12 THE COURT: I don't think so.

13 Q. I won't call you Joe. I will call you chief.

14 You also recall that back in sometime in 1999, shortly  
15 after the Diallo incident, that a case was filed, a class  
16 action case was filed challenging the police department's stop  
17 and frisk practices called Daniels v. City of New York,  
18 correct?

19 A. Yes.

20 Q. And that case made allegations similar to what is being  
21 made here about racial profiling and the lack of reasonable  
22 articulable suspicion in stops and frisks in the City of New  
23 York, correct, those were the allegations in that case?

24 A. I believe so.

25 Q. And you were made aware of the allegations in that case,

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1 correct, at the time?

2 A. I became aware of them, yes.

3 Q. Certainly, as you went on, when you became the chief of  
4 department, you remained familiar with the allegations in that  
5 case, correct?

6 A. Yes.

7 Q. You also recall, do you not, that in December of 1999, the  
8 attorney general of the state of New York issued a report  
9 concerning racial profiling and the lack of reasonable  
10 articulable suspicion by the police department in their  
11 practice of stop and frisk. Do you recall they issued a report  
12 back then?

13 A. I believe so.

14 Q. You were aware of that report, correct?

15 A. To some degree.

16 Q. Well, you know it was done by another law enforcement  
17 agency, it was done by the attorney general of the state of New  
18 York, correct?

19 A. Correct.

20 Q. That's a law enforcement agency to some extent?

21 A. Yes.

22 Q. Do you recall that that report was based on a study that  
23 researchers for the attorney general's office had done of stops  
24 and frisks that had occurred in New York City prior to the  
25 issuance of the report?

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1 A. I am not familiar with all the details.

2 Q. Without being familiar with the details though, do you  
3 recall that the report looked at approximately 175,000 stops  
4 that had taken place in a 15-month period from October 1998 to  
5 April 1999 in the City of New York?

6 A. I don't know that.

7 MR. MOORE: Judge, I will see if this will refresh his  
8 recollection.

9 Q. I will hand you what has previously been marked as  
10 Plaintiffs' Exhibit 333. It's not in evidence, but I want to  
11 see if this refreshes your recollection.

12 Directing your attention to this paragraph where it  
13 begins, "The cornerstone of the OAG's work." If you can just  
14 look at that, and don't read it out loud, but look at it and  
15 then I will ask you a question.

16 Have you had a chance to look at that?

17 A. Yes.

18 Q. Does that refresh your recollection that the attorney  
19 general's report looked at 175,000 stops that occurred in New  
20 York City over a 15-month period?

21 A. No. I am learning it now. I didn't know what the number  
22 was back then.

23 Q. This is the first time you're aware that there were that  
24 many stops that were looked at by the attorney general's report  
25 as you sit here today?

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

2 Q. Did you ever actually read the attorney general's report at  
3 any time prior to today?

4 MS. GROSSMAN: I just want to assert an objection.  
5 The plaintiffs were supposed to give us documents that they  
6 were going to show the witness to facilitate the examination,  
7 and they have not. So I just wanted to register that  
8 objection.

9 THE COURT: If they had not given them to you before  
10 the examination, you should have brought that to my attention  
11 before we started. Did they give you any?

12 MS. GROSSMAN: They didn't identify this as a  
13 document.

14 THE COURT: Did they identify the documents they  
15 intend to use during the examination?

16 MS. GROSSMAN: Yes.

17 THE COURT: They did. And they omitted this one?

18 MS. GROSSMAN: Yes. I was giving leeway on some of  
19 the questions, but now I think we are going a little bit too  
20 far. It's not fair.

21 MR. MOORE: I can't frankly understand how --

22 THE COURT: She said you told her the documents you  
23 intend to use, but you didn't tell her about this one.

24 MR. MOORE: I think there has been an exchange back  
25 and forth in the last couple of weeks. I wasn't the person

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1 doing that exchange of documents. I know up until last night  
2 we were identifying other documents.

3 THE COURT: So you should have told her you were going  
4 to use this one. It's not a big deal. I will allow this last  
5 question.

6 Have you previously read this report?

7 THE WITNESS: No.

8 THE COURT: OK.

9 Q. As you sit here today, your testimony is you have never  
10 read the attorney general's report?

11 THE COURT: He just said that, Mr. Moore. He said he  
12 never read the report.

13 MR. MOORE: I apologize. I keep thinking I am in  
14 front of a jury.

15 Q. Did anybody on your staff make you aware of the findings of  
16 that attorney general's report?

17 MS. GROSSMAN: Same objection.

18 THE COURT: That doesn't relate to the report. I will  
19 overrule it.

20 Did anybody in your staff talk to you about the report  
21 or make you aware of the contents of the report at the time?

22 THE WITNESS: Not that I recall.

23 Q. Did anybody make you aware specifically that the report  
24 concluded that blacks and Hispanics were overstopped with  
25 respect to stop and frisk in the City of New York during the

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1 period of time that was studied, did anybody make you aware of  
2 that specifically?

3 A. Give me a date. What year are we talking about?

4 Q. The report was in 1999.

5 A. No one made me aware of that.

6 Q. You became chief in August of 2000?

7 A. That's correct.

8 Q. At any point either before or certainly after you became  
9 chief, it's your testimony that nobody spoke to you about what  
10 was contained in the attorney general's report?

11 A. Not that I recall at this time.

12 Q. Did anybody at any point -- withdraw that.

13 As a result of the attorney general's report, was  
14 there any ongoing dialogue established between the police  
15 department and the office of the attorney general looking at  
16 the issue of stop, question and frisk?

17 A. Not that I recall.

18 Q. Are you aware that one of the recommendations by the office  
19 of the attorney general was that they were hoping to get  
20 continued cooperation with the NYPD concerning this issue of  
21 stop, question and frisk?

22 A. I don't recall it.

23 Q. You recall of any requests that were made during the time  
24 that you were chief of department by the office of attorney  
25 general for documents or for updated stop, question and frisk

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1 forms that they wanted to look at?

2 A. Not that I recall.

3 Q. Do you recall anybody from the attorney general's office  
4 communicating with the police department relative to the issues  
5 of training or supervision of officers in relation to the  
6 question of stop and frisk?

7 A. Not that I recall.

8 Q. Now, you recall that there was a report that the police  
9 department received from the RAND organization, correct?

10 A. Yes.

11 Q. That report was, in fact, a report that was requested to be  
12 done by the police department, right?

13 A. That's correct.

14 MS. GROSSMAN: I just want to also let the judge know  
15 there are 30(b)(6) witnesses and other witnesses who are going  
16 to be talking about RAND. So to the extent we spend a lot of  
17 time duplicating testimony and topics, I would just raise that  
18 with the judge right now, with your Honor right now, so that we  
19 don't waste time when other witnesses are going to have more  
20 information to say about the RAND report.

21 THE COURT: This was the highest ranking officer. So  
22 I think number one guy should be allowed to be asked what he  
23 knew and what he didn't know at the time. So I am going to  
24 allow it.

25 MR. MOORE: Thank you, Judge.

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1 Q. Following the receipt of that RAND report, the police  
2 department had a discussion within the police department about  
3 ways to address recommendations made in that report, correct?

4 A. That's correct.

5 Q. But nobody in the police department did that with respect  
6 to the attorney general's report, correct?

7 A. Not that I recall. It may have been done, but I just don't  
8 recall.

9 Q. If it happened, you weren't aware of it, right?

10 THE COURT: He didn't say that. He said he didn't  
11 recall.

12 THE WITNESS: Thank you, your Honor.

13 Q. After the attorney general's report and after the  
14 abolishment of the street crime units, the number of stops and  
15 frisks increased year after year from approximately 97,000 in  
16 2002 to almost 685,000 in the year 2011, correct?

17 A. That's correct.

18 Q. I will show you what was used as a demonstrative exhibit in  
19 the opening statement by Mr. Charney. This records the number  
20 of stops by year from 2002 to 2012, correct?

21 A. Yes.

22 Q. So that increase is all on your watch, correct?

23 A. Yes, it is. As is the 40 percent decrease in crime --

24 Q. Fair enough.

25 A. -- during my time.

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1 Q. Fair enough.

2 A. The 80 decrease in the last 20 years.

3 Q. From 2002 to 2011, what is the percentage increase there?

4 A. I'm sorry?

5 Q. It's about 600, 700 percent increase, right?

6 A. I didn't hear you.

7 Q. The percentage increase between 2002 and 2011, that's a  
8 slightly higher increase than 40 percent, right?

9 A. Yes.

10 Q. Probably closer to almost 700 percent increase, right?

11 A. I'm not that good in math, but I will take your word for  
12 it.

13 Q. That's why I became a lawyer and you became a police  
14 officer.

15 So is it fair to say, Chief Esposito, that this issue  
16 of stop and frisk has been an issue that's been on the front  
17 burner for you the entire time you have been the chief of  
18 department?

19 A. It's been on the burner. I don't know if I would call it  
20 front burner, but it's been talked about on a regular basis.

21 Q. While the Daniels case was pending, the police department  
22 issued its own order which for the first time on paper stated  
23 that the police department had a policy against racial and  
24 other profiling, correct?

25 A. First time on paper, correct.

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1 Now, really all that did was put in writing what has  
2 been the policy for as long as I can remember.

3 MR. MOORE: Can you bring up Exhibit No. 184?

4 THE COURT: Is that in evidence?

5 MR. MOORE: Yes, Judge.

6 Q. Before you is a copy of the policy that was issued on March  
7 13, 2002, which is Plaintiffs' Exhibit 184 I believe, correct?

8 A. Yes.

9 Q. That policy was in place until May of last year, right, May  
10 2012, when it was replaced by a new operations order, correct?

11 A. I believe so.

12 MR. MOORE: Can you bring up Plaintiffs' Exhibit 183?

13 If it's not in evidence, we move the admission of 183,  
14 which is the policy.

15 MS. GROSSMAN: Can I just have an extra copy?

16 MR. MOORE: Here it is.

17 Actually, let me put the elmo back on.

18 Q. I will give you a copy.

19 THE COURT: This is May 16, 2012?

20 THE WITNESS: Yes. It says May 16, 2012.

21 THE COURT: This is the policy prohibiting racial  
22 profiling?

23 THE WITNESS: Yes.

24 MR. MOORE: Do you want a copy, Judge?

25 THE COURT: I can see it.

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1 Q. So this order replaced the order that had previously been  
2 in existence, right?

3 A. I believe so.

4 MR. MOORE: Move 183 into evidence.

5 MS. GROSSMAN: No objection.

6 THE COURT: 183 received.

7 (Plaintiffs' Exhibit 183 received in evidence)

8 Q. Now, 183, if we can look at it on the screen here, was  
9 entitled an operations order, correct?

10 A. Yes.

11 Q. By direction of the police commissioner, right?

12 MS. GROSSMAN: I don't think that's 183.

13 MR. MOORE: Sorry. 184. Thank you.

14 Q. That's an operations order, correct?

15 A. Yes.

16 Q. 183 is styled an interim order. Do you see that?

17 A. Yes.

18 Q. Which means it's not a permanent order of the police  
19 department?

20 A. It means we will have it in place until it becomes part of  
21 the permanent record, the patrol guide, wherever we are going  
22 to put it.

23 Q. When is that scheduled to take place?

24 A. I don't recall. But this remains in place until that  
25 happens. It's kind of semantics. It's still an order.

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1 Q. The interim order remains in place until it's either made a  
2 part of the patrol guide or it's revoked or changed?

3 A. Yes.

4 Q. In Plaintiffs' Exhibit 183, the May '12 policy speaks about  
5 the importance of --

6 A. May 16.

7 THE COURT: He means May 2012.

8 Q. May 2012. The interim order that's now in place, it speaks  
9 about building relationships with the community, right?

10 A. To some degree, yes.

11 Q. And you would agree, would you not, that unjustified stops  
12 and frisks taking place is something that does harm to building  
13 that relationship between the police department and the  
14 community, correct?

15 A. It does harm in a number of different ways, that being one  
16 of them, sure.

17 Q. Specifically with respect to the relationship that the  
18 police department hopes to have with the communities it serves,  
19 if there is a high incidence of unjustified stops and frisks,  
20 that's not good for the relationship between the department and  
21 the community, correct?

22 A. Correct.

23 Q. And in the original order, the operations order, back in  
24 March of 2002, paragraph 4 says, "Commanding officers will  
25 establish a self-inspection protocol within their command to

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1 ensure that the contents of this order are complied with,"  
2 correct?

3 A. Yes.

4 Q. The contents of the order meaning the policy against racial  
5 profiling, right?

6 A. Correct.

7 Q. And the interim order, if you look at paragraph 6, it also  
8 speaks about a self-inspection system, correct?

9 A. Yes.

10 Q. It says, "Commanding officers will continue to ensure that  
11 self-inspections are conducted within their commands regarding  
12 stop, question and frisk activity." Do you see that?

13 A. Yes.

14 Q. I read that correctly?

15 A. Yes.

16 Q. It doesn't say self-inspections to ensure that the contents  
17 of the racial profiling policy are complied with, does it?

18 A. No. But that's what --

19 Q. It doesn't say that, right?

20 A. That's what the order is referring to. If you look at the  
21 title, if you just scroll down a little bit, the title of this  
22 order is regarding racial profiling. So I don't think you have  
23 to state it every step of the way. The title of this interim  
24 order is policy on racial profiling.

25 Q. The operations order had the same title, correct?

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1 A. Yes.

2 Q. Policy regarding racial profiling.

3 And that self-inspection protocol was set out to make  
4 sure that the contents of this policy against racial profiling  
5 are complied with, correct?

6 A. Correct.

7 Q. The new order, the interim order, says only that commanding  
8 officers will continue to ensure that self-inspections are  
9 conducted within their commands regarding stop, question and  
10 frisk. It doesn't refer to the policy, correct, just by its  
11 terms? I understand how you interpret it, but it doesn't speak  
12 to the policy, it only speaks to the issue of stop, question  
13 and frisk, right?

14 THE COURT: The document says what it says. There is  
15 nothing he can add to that.

16 THE WITNESS: I disagree.

17 THE COURT: He is just asking you about the words on  
18 the screen. It's kind of a waste of time because I can read  
19 it.

20 THE WITNESS: What I would refer to is the fact that  
21 it says racial profiling on the top. That's the subject  
22 matter.

23 THE COURT: See what you got yourself into.

24 MR. MOORE: Words are important sometimes.

25 THE COURT: I can see them. Asking him what is not in  
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1 the words is kind of a waste of time.

2 MR. MOORE: I don't want to waste anybody's time.

3 THE COURT: Good.

4 Q. After the policy was issued in 2002, in the Daniels case,  
5 there was a settlement of that case, correct?

6 A. Yes.

7 Q. I am handing you what has been marked Plaintiffs' Exhibit  
8 114. Do you recognize this as the stipulation of settlement in  
9 the Daniels case?

10 A. Yes.

11 MR. MOORE: Move the admission of Plaintiffs' Exhibit  
12 114.

13 MS. GROSSMAN: No objection.

14 THE COURT: 114 is received.

15 (Plaintiffs' Exhibit 114 received in evidence)

16 Q. That settlement occurred sometime around the year 2004 when  
17 it was finally signed off by the court, correct?

18 A. Yes.

19 Q. Although you were aware of the settlement, at your  
20 deposition, that was the first time you were actually seeing  
21 that stipulation, correct?

22 A. I believe so.

23 Q. And that stipulation provided that the police department  
24 would do several things, correct?

25 A. Yes.

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1 Q. One of the things it provided was that the police  
2 department would maintain its policy against racial profiling,  
3 right?

4 A. Correct.

5 Q. And the police department has done that, as far as you can  
6 tell, right?

7 A. Sure.

8 Q. It continues to have a written policy, right?

9 A. Yes.

10 Q. Another thing that the settlement provided was that the  
11 quality assurance division, which we will call QAD, you use  
12 those initials, correct?

13 A. Yes.

14 Q. And when I say QAD, you will know what I am referring to?

15 A. Yes, I will.

16 Q. QAD would conduct audits, correct?

17 A. Yes.

18 Q. One of the audits will be concerning whether and to what  
19 extent documents that have been filled out by officers have  
20 been completed in accordance with NYPD regulations, correct?

21 MS. GROSSMAN: Objection. That's not what the  
22 stipulation says.

23 Q. Take a look at it. Look at subsection D(1)(a). Have you  
24 got that on page 6?

25 A. Yes.

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1 Q. It says, does it not --

2 MR. MOORE: Judge, do you want a copy of it?

3 THE COURT: I will be able to see it on the screen.

4 Q. Paragraph D(1) begins, "QAD has developed protocols  
5 necessary to integrate review of stop, question and frisk  
6 practices into its existing audit cycle of NYPD commands,  
7 including determinations as to what material shall be reviewed  
8 and what standards shall be applied."

9 A. I'm sorry. You said (1)(a).

10 THE COURT: You're not on the same page?

11 Q. Subsection D, beginning on page 5.

12 A. Yes.

13 Q. (1)(a). I don't want to read the whole thing.

14 MS. GROSSMAN: I think you should read the whole  
15 thing. It gives context.

16 Q. All right. "Municipal defendants have provided class  
17 counsel with an audit outline that includes these protocols,"  
18 correct?

19 THE COURT: Are you with us at the top of page 6?

20 A. Go ahead.

21 Q. Have you got it?

22 A. Yes.

23 Q. And then it says, "QAD shall conduct audits that at a  
24 minimum address the following issues:"

25 Subsection (a) says, "Whether and to what extent

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1 documents" -- and then there is a paren -- "(i.e., UF-250s  
2 officers' activity logs) that have been filled out by officers  
3 to record stop, question and frisk activity have been completed  
4 in accordance with NYPD regulations."

5 That's what subsection D(1)(a) says QAD will do  
6 pursuant to this order, correct?

7 A. That's part of what they will do.

8 Q. I am saying that's part of what they will do.

9 A. It's part of it. At a minimum. If you look at the line  
10 before, QAD will do these audits at a minimum to address the  
11 following issues. So there could be more, but this will be the  
12 minimum standard.

13 Q. There could be more. That's correct. In a minute we will  
14 get to whether there is in fact more.

15 At a minimum, it says, they will do an audit to  
16 determine to what extent documents have been filled out by  
17 officers to record stop, question and frisk completed in  
18 accordance with NYPD regulations, right?

19 A. Correct.

20 Q. It specifically mentions UF-250s and officers' activity  
21 logs, correct?

22 A. Yes.

23 Q. Officers' activity logs are also what is referred to as an  
24 officer's memo book, right?

25 THE COURT: He is asking. Is an officer activity log

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1 the same thing as a memo book?

2 THE WITNESS: Yes. Thank you.

3 Q. Subsection (b) of this stipulation says another minimum  
4 thing the QAD will do would be to audit whether and to what  
5 extent the audited stop, question and frisk activity is based  
6 upon reasonable suspicion as reflected in the UF-250 forms,  
7 correct?

8 A. Yes.

9 Q. Now, counsel for the city wanted to include this term,  
10 "Municipal defendants have provided class counsel with an audit  
11 outline that includes these protocols." Do you see that?

12 A. Yes.

13 Q. At no time was class counsel, pursuant to this order or any  
14 order that you're aware of, able to dictate to the police  
15 department what kind of audits they would do, correct?

16 A. I have no knowledge of that.

17 Q. You wouldn't expect that I would call you up and say, I  
18 think you should do this audit?

19 MS. GROSSMAN: Objection, your Honor.

20 THE COURT: You wouldn't have expected that?

21 THE WITNESS: No.

22 A. I don't think you would have called me. You would have  
23 called legal. You wouldn't have called me.

24 Q. And if I had called you, you probably wouldn't have  
25 listened to me anyway, right?

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1 A. I always listen to you, counsel.

2 Q. Another thing that the stipulation of settlement required  
3 is that CompStat must inquire into stop, question and frisk  
4 activity, correct?

5 MS. GROSSMAN: That's not exactly what this says.

6 A. I think it would be continue to look at it.

7 Q. CompStat will continue to look at --

8 THE COURT: Where are you? Are you reading from the  
9 document?

10 MS. GROSSMAN: Paragraph 5.

11 THE COURT: Paragraph 5. You have to move it.

12 There you go. Thank you.

13 Q. Under the subsection entitled "supervision and monitoring,"  
14 which is subsection D, 5 says, "Inquiry about stop, question  
15 and frisk activity shall continue to be integrated into the  
16 NYPD's existing CompStat review process," right?

17 A. Yes.

18 Q. Now, you have never actually had an individual stop,  
19 question and frisk form that you have reviewed at a CompStat  
20 meeting, have you?

21 A. The form at the meeting, probably not, not that I can  
22 recall.

23 Q. We will return to this when we get to the CompStat. I just  
24 want to move on for the moment.

25 Now, with respect to the self-inspection process set

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1 out both in the Daniels decree and the operations order, both  
2 of them talk about self-inspections, right?

3 A. Yes.

4 Q. At least at the time you gave your deposition, you didn't  
5 know what, if anything, was done by the NYPD regarding  
6 self-inspection protocols, correct?

7 A. I don't recall.

8 THE COURT: You don't recall what you said at the  
9 deposition?

10 THE WITNESS: I don't recall.

11 Q. Why don't you look at page 33 of your deposition and read  
12 to yourself line 5 to line 10. And when you finish reading  
13 that --

14 A. Page 33?

15 Q. Yes.

16 A. Line?

17 Q. Line 5.

18 A. OK.

19 Q. Does that refresh your recollection at the deposition you  
20 said you didn't know what was done by the NYPD, at least at the  
21 time you sat at your deposition, regarding self-inspection  
22 protocol?

23 MS. GROSSMAN: I would just ask that the witness  
24 continue to look to the following lines 11 through 18.

25 A. OK.

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1 THE COURT: She just wanted you to look at it.

2 Your question, Mr. Moore.

3 Q. My question is, having read the portion of the transcript  
4 that I referred you to, does that refresh your recollection at  
5 the time of your deposition you didn't know -- at least you  
6 answered you didn't know what was done by the commanding  
7 officers with respect to establishing a self-inspection  
8 protocol, correct?

9 A. Well, yes. But commanding officers don't establish the  
10 self-inspection. That's established by QAD.

11 Q. Well, you don't really know, do you, how a self-inspection  
12 procedure would determine if officers are engaging in racial  
13 profiling, do you?

14 A. Well, a self-inspection would be established by QAD, and if  
15 it was going to be -- the purpose of it was to look at racial  
16 profiling, then they would develop it in accordance with it.  
17 But it's not the commanding officer's responsibility.

18 Q. Sitting here today, do you recall specifically what was  
19 done with respect to protocols regarding racial profiling?

20 A. I believe we established self-inspections.

21 THE COURT: You said not the commanding officer's  
22 responsibility. Can we see the interim order and the one  
23 before it? I thought it did say commanding officers shall.  
24 Maybe I'm wrong.

25 A. I don't think they would establish --

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1 THE COURT: I want to see what the wording was in both  
2 of them. "Commanding officer will establish," paragraph 4.

3 MR. MOORE: And in 183.

4 THE COURT: The other one, "Commanding officer will  
5 continue to ensure that." One said establish and one said  
6 ensure that.

7 THE WITNESS: Exactly. Paragraph 6, that last one  
8 there, they will ensure --

9 THE COURT: I see the word ensure. The previous one  
10 which was in effect said establish.

11 THE WITNESS: I think this is more accurate.

12 THE COURT: But you agree it said establish?

13 THE WITNESS: Yes.

14 Q. As you understand the self-inspection protocol, there is a  
15 form that is filled out with a number of captions?

16 A. Yes.

17 Q. You don't recall what those actual captions are?

18 A. Not right now.

19 Q. Really, the goal of the inspection, as you understand it,  
20 is simply to determine whether the form is filled out properly,  
21 right?

22 A. No.

23 Q. Why don't you take a look at your deposition at page 37?

24 A. OK.

25 Q. Let me ask you this way. One of the goals of the

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1 self-inspection process is to determine whether the form is  
2 filled out properly?

3 A. Yes, one of the goals. That's different from what you  
4 asked.

5 Q. That's why I rephrased it.

6 It's your understanding, is it not, Chief Esposito,  
7 that you're not sure if you could have a self-inspection  
8 procedure -- withdraw that.

9 It's your position that you couldn't determine whether  
10 there was racial profiling going on by simply doing  
11 self-inspections of 250s, stop and frisk forms, right?

12 A. I think that's part of the determination, part of the  
13 process.

14 Q. Just by looking at the form itself, it's your position you  
15 couldn't determine whether racial profiling was taking place,  
16 by looking at the form?

17 A. I think you could. If you establish reasonable suspicion,  
18 then there is no racial profiling. That's the key. The key to  
19 this whole thing is developing --

20 THE COURT: That's way beyond this question. His only  
21 question, can you figure it out just by looking at the UF-250?

22 Q. If you look at your deposition on page 38, do you recall  
23 being asked this question on line 9:

24 "Q. Under any system of review, evaluation or inspection?

25 "A. I don't know if you could do it by looking at the forms,

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1 to be honest with you, by examining the form solely. I don't  
2 know if you can do it."

3 Do you recall being asked that question and giving  
4 that answer at your deposition?

5 A. Yes.

6 Q. And you said, essentially, you would have to do something  
7 more than just look at the forms, correct?

8 A. I said I don't know if you could, yeah.

9 Q. As you sit here today, it's your belief that you have to do  
10 more than just look at the forms to determine whether there is  
11 racial profiling?

12 A. Not necessarily. It says I don't know. It doesn't say no.  
13 It says I don't know.

14 THE COURT: Between then and now, now you know?

15 THE WITNESS: As I think about, since this has been  
16 going on since '08, yeah, I think if you look at that form, if  
17 it's filled out properly, it gives you reasonable suspicion,  
18 and if you have reasonable suspicion established, then you do  
19 not have racial profiling. It's as simple as that.

20 THE COURT: So now you take the view that just by  
21 reviewing the form, you can tell whether or not there has been  
22 racial profiling, just by reviewing the UF-250?

23 THE WITNESS: That's a big part. Yes, you can do it.

24 THE COURT: That's your testimony, you can do it.

25 Q. The other part that you would want to do -- withdraw.

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D498FL01 Esposito - direct

1 Part of what you rely on in determining whether in  
2 fact there is racial profiling is that you have a certain  
3 amount of trust in your supervisors, correct?

4 A. Yes.

5 Q. And you believe that if the form has enough boxes checked  
6 off that establishes in your mind reasonable suspicion, that by  
7 definition means there is no racial profiling, correct?

8 A. You talk about supervisors. Are we talking about the  
9 self-inspection now or with supervisors now? Supervisors is a  
10 whole different package.

11 Q. Let me rephrase the question. Is it your testimony that in  
12 looking at the form, if you believe that there's enough boxes  
13 checked off that it satisfies your understanding of what is  
14 necessary for the form, that that in and of itself would be  
15 sufficient for you to determine that there is no racial  
16 profiling?

17 A. If it establishes reasonable suspicion, there is no racial  
18 profiling.

19 (Continued on next page)

20

21

22

23

24

25

D489FLO2 Esposito - direct

1 Q. And the form that we presently -- that's presently in use  
2 in the New York City Police Department is essentially a  
3 check-off form, right?

4 A. That's correct.

5 Q. And if enough boxes are checked off that, for you,  
6 establishes reasonable suspicion; that means by definition  
7 there is no racial profiling, right?

8 A. Are we talking about self-inspection or are we talking  
9 about supervisor on patrol?

10 Q. Talking about you looking at a 250.

11 If in your looking at a 250 and in your mind enough  
12 boxes are checked off to satisfy reasonable suspicion, that's  
13 the end of the inquiry for you in terms of whether there's  
14 racial profiling?

15 A. No. I look at the whole package. I look at the  
16 supervisors. We do an analysis at CompStat. We look at the  
17 QAD reports. It's not one thing by itself. It's everything.

18 THE COURT: That's what he asked you earlier. Do you  
19 think that you could look at a 250 yourself, look at the 250  
20 and if you were satisfied that the boxes show reasonable  
21 suspicion, that you could then conclude that there had been no  
22 racial profiling?

23 THE WITNESS: That's possible, yes.

24 Q. We'll get back to the self-inspection in a bit. I want to  
25 ask you now about a -- at some point there was a report issue

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1 by the RAND Corporation in 2006, right?

2 A. Yes.

3 Q. And you were still chief of the department, right?

4 MS. GROSSMAN: I think the date of the report wasn't  
5 2006.

6 THE WITNESS: I think the report is '08.

7 MS. GROSSMAN: '07.

8 MR. MOORE: Somewhere between 2006 and 2008.

9 THE COURT: Ms. Grossman says 2007. She's probably  
10 right. 2007. Okay.

11 Q. And the RAND report made certain recommendations, correct?

12 A. Yes.

13 Q. One -- the first recommendation was that officers should  
14 clearly explain to pedestrians why they were being stopped,  
15 right?

16 A. Yes.

17 Q. And that was because -- withdraw that.

18 And as a result of that recommendation, the police  
19 department developed a palm card to hand out to people who were  
20 stopped, correct?

21 A. Yes.

22 Q. And that began as a pilot project, right?

23 A. That's correct.

24 Q. And is it now in place throughout the New York City Police  
25 Department?

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1 A. Yes, it is.

2 Q. And so every time an officer stops somebody based on what  
3 they believe to be reasonable suspicion and there is no further  
4 enforcement activity, they're supposed to give a palm card to  
5 them, correct?

6 A. No. They can give a palm card. They don't have to.

7 Q. When can they? What's the rule or the guidelines with  
8 respect to that?

9 A. I believe it's when they feel it's appropriate.

10 Q. And when would they -- when in your understanding would it  
11 be appropriate to do that?

12 A. Every situation is different.

13 Q. Well tell me what you believe would be an appropriate  
14 situation to do that.

15 A. An appropriate one?

16 Q. Yeah.

17 A. Well, you stop somebody and you question them and they're  
18 asking: What did I do? What happened? Here's a card, you  
19 know, ma'am, sir, this is why you were stopped. This gives all  
20 the information.

21 Q. So it would only be if a person raised a question about the  
22 stop?

23 A. No. I said every situation is different. The officer has  
24 to make that decision based on his or her interaction with the  
25 person.

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D489FLO2 Esposito - direct

1 Q. And what did they actually train with respect to that, do  
2 you know?

3 I don't want you to make an assumption. But do you  
4 know what the actual training is with respect to the use of  
5 this palm card?

6 A. No.

7 Q. Do you know how often it's used?

8 A. No.

9 Q. And between 2004 and -- January 2004 to June 2012 there  
10 were 4,430,140 stops based upon reasonable suspicion.

11 Do you recall that number?

12 A. Sounds reasonable.

13 Q. I'm showing you what was previously used in the testimony  
14 of Professor Fagan, a chart that indicates from the year  
15 January 2004 to June 2012. You can look at the total on the  
16 left, 4,430,140 stops were done by police officers in the city  
17 of New York, correct?

18 A. That's what this report says.

19 Q. And do you have any idea, any rough idea how many palm  
20 cards were sent out to those folks?

21 A. No.

22 Q. Would you agree with me that of all those 4.43 million  
23 stops, that about somewhere between 88 and 90 percent lead to  
24 no further enforcement activity?

25 A. Yes.

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1 Q. So roughly 88 to 90 percent of that 4.4 million would be at  
2 least eligible to get a palm card, correct?

3 A. Yeah.

4 Q. Depending on the discretion of the officers, right?

5 A. Yes.

6 Q. Do you know how often they are actually sent out or  
7 actually passed out?

8 A. No.

9 Q. Anybody ever looked at that in the department?

10 A. I don't know.

11 THE COURT: Sorry. Your answer was I don't know?

12 THE WITNESS: I don't know if anybody looked at it.

13 Q. All right.

14 Now, another recommendation by the RAND Corporation  
15 was that the police department should look at boroughs where  
16 there was a large racial disparity in stops, correct? Do you  
17 recall that?

18 A. Yes.

19 Q. The police department did not do that, right?

20 A. That's correct.

21 Q. That report specifically mentioned Staten Island as having  
22 a large racial disparity, right?

23 A. Yes.

24 Q. But nobody in the police department looked at that, right?

25 A. I don't believe so.

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D489FLO2 Esposito - direct

1 Q. And the report specifically mentioned the amount of force,  
2 the disproportionate amount of force used in stops in patrol  
3 borough Brooklyn South.

4 Do you recall that?

5 A. I don't recall that.

6 Q. Well do you recall whether, in fact, the police department  
7 never looked at the disproportionate use of force during stops  
8 that took place in patrol borough Brooklyn South?

9 A. I don't recall that part.

10 MR. MOORE: One second, your Honor.

11 Q. Another recommendation by RAND that was the police  
12 department should consider revising the 250 to capture the use  
13 of force.

14 Do you recall that as a recommendation?

15 A. Yes.

16 Q. And at the time of the deposition in 2009, at least as of  
17 that time you weren't sure whether that had been done, correct?

18 A. Correct.

19 Q. Do you now know that it's been done?

20 A. Yes.

21 Q. When was that change made?

22 A. I don't recall.

23 Q. Was it within the last year?

24 A. I don't recall.

25 Q. Sometime after 2009 though, right?

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1 A. I don't recall.

2 Q. Well --

3 THE COURT: After your deposition he's saying.

4 THE WITNESS: I'm not sure.

5 THE COURT: Okay.

6 Q. You just don't know one way or the other, right?

7 A. That's correct.

8 Q. Now, in conjunction with RAND's consideration of the  
9 UF 250, I'm not interested in their -- whatever result they  
10 came up with, but do you recall them mentioning in the course  
11 of their report anything about the purpose of what a UF 250  
12 form was?

13 A. I'm not sure.

14 Q. Do you recall the report mentioning that the UF 250 was  
15 intended for investigative purposes and not for assessing a  
16 police officer's performance or racial disparity? Do you  
17 recall them saying that?

18 A. I don't recall that line.

19 Q. Why don't you turn to page 215 of your deposition.  
20 Beginning on line 25.

21 Just read to yourself.

22 A. Page 215 are you talking about?

23 Q. Yes. Page 215, line 25, going on to page 216.

24 A. Okay.

25 Q. Read to yourself the question and answer.

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1 MS. GROSSMAN: What lines?

2 THE WITNESS: Apparently I'm reading something you  
3 handed me, I guess, at the deposition.

4 MR. MOORE: Page 215.

5 THE WITNESS: I have it. It looks like I'm reading  
6 something that you handed me at the deposition.

7 Q. You're reading something from the RAND report that says --

8 A. That you handed me.

9 MS. GROSSMAN: Can you give the witness the exhibit  
10 that he's referring to in the deposition.

11 MR. MOORE: It's in the deposition. Let me do it this  
12 way.

13 Do you recall being asked this question: "Okay. It  
14 says here in the bottom of that page, it says the last sentence  
15 there begins, quote, the UF 250 was intended for investigative  
16 purposes and not for assessing officers' performance or racial  
17 disparity."

18 And I asked you at the deposition whether you saw that  
19 language. And you said yes, correct?

20 A. Yes.

21 Q. And then I asked you whether you agreed with that, right?

22 A. Yes.

23 Q. And you said you don't know what that means, right?

24 A. Yeah.

25 MR. MOORE: One second, your Honor.

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D489FLO2 Esposito - direct

1 Q. But later on in your deposition you then agreed with that  
2 statement, that the 250 was really meant for investigative  
3 purposes and would not be something you could use to pick out  
4 racial disparities.

5 Do you recall saying that later on in your deposition?

6 A. I don't recall it but I'm sure it's here. Investigative  
7 purposes. That's part of what a 250 would be for, sure.

8 Q. But --

9 THE COURT: I think he was interested in the "not"  
10 part of your answer, what not to be used to identify racial  
11 disparities.

12 THE WITNESS: Not what?

13 THE COURT: That's apparently what you said; is that  
14 right?

15 Q. It can't be used to pick out racial disparities. That's  
16 what you said in your deposition.

17 Do you recall that?

18 A. What does that mean, pick out racial disparities?

19 THE COURT: Identify.

20 MR. MOORE: Identify.

21 THE COURT: You must have said at your deposition that  
22 it can't be used, the UF 250 can't used to identify whether or  
23 not there have been racial disparities in the stop.

24 THE WITNESS: Okay.

25 THE COURT: Stops.

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1 THE WITNESS: Again, I go back to the reasonable  
2 suspicion. That's what's most important here. If it  
3 articulates reasonable suspicion, then you don't have anything  
4 else.

5 Q. Let me ask you -- let me ask you if you recall being asked  
6 this question and giving this answer at the deposition.

7 "Q. Well, I think --

8 THE WITNESS: What page are you on? Where are you?

9 MR. MOORE: I'm going to read it to you. You can  
10 follow along on page 216 on line 18 if you want.

11 "Q. Well I think what it may mean is that, given the way the  
12 form has been constructed with check-offs, that it's not  
13 designed primarily for assessing performance or racial  
14 disparities. It's really designed to capture a reason for the  
15 stop and then provide information such as demographic  
16 information on the person who is stopped, which may be used for  
17 investigative purposes. Does that sound like what it means to  
18 you?

19 "A. I agree that the UF 250 was intended for investigative  
20 purposes. And the way it's written, the way it's described you  
21 would have -- yes, we don't assess the officers' performance.  
22 Yes. I guess you can't pick out racial disparities also. All  
23 you can do is identify a stop."

24 Then do you want me to continue reading that to be  
25 fair?

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1 MS. GROSSMAN: Yes.

2 MR. MOORE: And then the question I say, "Reasonable  
3 suspicion?"

4 And the answer, "Exactly reasonable suspicion. That's  
5 what it's designed to do, to get us to see if the stop the  
6 officer made was legitimate. And I think that form does, in  
7 fact, do that."

8 Q. Do you recall being asked that question and giving that  
9 answer at your deposition, right?

10 A. Yes.

11 Q. So even though you -- it's your testimony as you sit here  
12 today that the UF 250 form is really primarily designed for  
13 investigative purposes?

14 A. That's part of its function, yeah.

15 Q. The primary function, right?

16 A. Well I think it's also to document when we stop someone.  
17 So it's part for the documentation and part for the  
18 investigative aspect of it also.

19 Q. Would you say -- would you agree with me or not -- and if  
20 you don't, that's fine -- that's its primarily purpose is for  
21 investigative purposes?

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

23 Q. And would you agree with me that although you may, in your  
24 judgment, in your opinion, be able to determine whether  
25 reasonable suspicion is present, you can't use the form, as you

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1 say, pick out racial disparities, correct? That's your  
2 testimony?

3 A. Yeah.

4 Q. Another recommendation by RAND was that they recommended  
5 that police officers get better training on the question of  
6 stop and frisk, correct?

7 A. Correct.

8 Q. So that they're fully conversant with how to document  
9 stops, right?

10 A. How to conduct a stop as well to document.

11 Q. And document as well?

12 A. Right.

13 Q. And to your knowledge this was done to the extent that the  
14 field training unit lesson was revised by the police  
15 department, correct?

16 A. I believe that was part of it. I think they may have done  
17 something at the academy also.

18 Q. At least as of the time of the deposition, the thing you  
19 referred to in the deposition was the revision of the field  
20 training unit lessons, correct?

21 A. Yes.

22 Q. So that the lesson with respect to -- or the discussion of  
23 stop and frisk for field training units became a separate  
24 lesson plan, correct?

25 A. Correct.

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D489FLO2 Esposito - direct

1 Q. Going forward in those documents that are given to officers  
2 who are involved in field training, right?

3 A. Yes.

4 Q. And that's primarily -- well it's not actually given to  
5 officers. It's given to the supervisors of the officers who  
6 are assigned to the operation impact program, correct?

7 A. I believe so.

8 Q. So, the officers don't themselves get it. It's their  
9 supervisors who get it. And the supervisors are expected to  
10 then train their officers with respect to what's in that  
11 document, correct?

12 A. Well they're trained in the academy. Then the supervisors  
13 do some field training to see how the officers apply that  
14 knowledge when they're on the street and correct it if  
15 necessary. The training is not done on the street.

16 Q. But the field training -- in terms of the extent that the  
17 police department tried to change their -- how they do things  
18 based on the RAND recommendation, the one thing that you can  
19 recall is that they changed the field training lesson plan,  
20 correct?

21 A. That's correct.

22 Q. I know that they continue to -- and have always continued  
23 to have stop and frisk discussed in the academy.

24 A. Yes.

25 Q. That goes back a long time, correct?

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1 A. Yes.

2 Q. But with respect to the recommendation that -- made by RAND  
3 that they amend or they consider changing or improving their  
4 training, what the police department did with respect to that  
5 recommendation was they changed the field training lesson plan,  
6 correct?

7 MS. GROSSMAN: Your Honor, can we just read that  
8 question back because it was very long.

9 THE COURT: With respect to the recommendation that --  
10 made by RAND that they amend or they consider changing or  
11 improving their training, what the police department did with  
12 respect to that recommendation was they changed the field  
13 training lesson plan, correct?

14 THE WITNESS: Yes. But I also think they did some  
15 type of modification in the police academy also. I'm not sure.  
16 I could be wrong.

17 Q. You didn't mention that at your deposition though, right?

18 A. I'm sorry?

19 Q. You didn't mention that at your deposition, did you?

20 A. I'm sorry if I didn't.

21 Q. Another recommendation or one of the last recommendations  
22 that we'll talk about here by RAND was that the police  
23 department should attempt to identify and flag and investigate  
24 officers who they believe have out-of-the-ordinary stop  
25 patterns.

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D489FLO2 Esposito - direct

1 Do you recall that?

2 A. Yes.

3 Q. And that's because in the -- when RAND looked at the police  
4 department they identified and flagged officers who they  
5 believed had out-of-the-ordinary stop patterns, right?

6 A. I believe so.

7 Q. The police department never did anything about that, right?

8 A. I don't know if that's accurate. I think we looked at it.  
9 We looked at some software, looked at a way to try to implement  
10 it. I don't think it gave us the group we wanted.

11 Q. Well at your deposition you said -- and that was in August  
12 of 2009 -- you said you don't know if that was ever done.

13 Do you recall saying that at your deposition?

14 A. I didn't read it but if you say so, I believe you.

15 Q. Thank you, Chief.

16 A. No problem.

17 I think what I'm saying now is more accurate, though.  
18 That's the bottomline.

19 Q. So whatever you were saying now would have happened after  
20 the deposition, correct, probably?

21 A. No. I'm saying I'm recalling it now better than I recalled  
22 it at the deposition.

23 Q. Does the -- the police department doesn't have any program  
24 now where they try to identify officers who have  
25 out-of-the-ordinary stop patterns, correct, that you're aware

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D489FLO2 Esposito - direct

1 of, at least at the time you left?

2 A. Correct.

3 Q. And as far as you can recall during the entire time you've  
4 been chief of the department there was no program in the police  
5 department that tried to identify officers who had  
6 out-of-the-ordinary stop patterns, correct?

7 A. Well, if I can explain?

8 I think we have a system in place where if it comes to  
9 our attention, complaint -- if we get complaints about a  
10 particular officers, well then we will, in fact, look at that  
11 officer's record, whether it's CCRBs or other written reports  
12 that come in. And if it indicates some kind of pattern like  
13 that, then obviously we would investigate it. And we have  
14 investigated people with CCRBs that come in that articulate  
15 this type of --

16 THE COURT: I guess he's saying proactively there was  
17 no program to try to identify over-stoppers.

18 THE WITNESS: I don't know. Looking into the CCRBs  
19 might be considered proactive.

20 THE COURT: That's generated by a complaint. I'm just  
21 saying the police department did not initiate investigation to  
22 identify over-stoppers on its own.

23 THE WITNESS: Well we rely on the supervisors, again.  
24 I think we're going to talk about that. We rely on the  
25 supervisors to be -- to be aware of that. If a supervisor is

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1 doing his or her job, then they would come to our attention,  
2 through the supervisor.

3 Q. But just to close the circle here. That being said, you're  
4 not aware of any program or -- program within the police  
5 department that proactively seeks to determine whether there  
6 are officers -- some officers who have out-of-the-ordinary stop  
7 patterns, correct?

8 A. No. We rely on the supervisors. I would call that a  
9 program. I would call that a system to identify officers that  
10 aren't performing properly, whether it's in that category or in  
11 any other category. That's -- I consider that a program. You  
12 may not. I think that's a strategy and a program, how we do  
13 it.

14 Q. Well the police department has performance monitoring  
15 programs, correct?

16 A. True.

17 Q. Different levels, level one, level two and level three?

18 A. Yes.

19 Q. And those programs are set forth in police department  
20 documents, right?

21 A. Yes.

22 Q. And you get on that -- you become -- you're put on a  
23 performance monitoring if you have a certain amount of  
24 unsubstantiated or a certain amount of CCRB complaints,  
25 correct?

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1 A. Correct.

2 Q. Over a certain period of time?

3 A. Yes.

4 Q. So when I say a program, I mean something like that.

5 The police department doesn't have any similar program  
6 for identifying officers who have out-of-the-ordinary stop  
7 patterns, correct?

8 A. I disagree with your definition of program.

9 I think the program is the system we have, the  
10 supervisory system we have in place that goes from the lowest  
11 rank to the highest rank. I think that's a program.

12 Q. But there's nothing -- there is no document that sets  
13 forth -- no policy document, no directive, no interim order,  
14 operations order that sets forth a program that seeks to --  
15 whether -- that seeks to identify officers who have  
16 out-of-the-ordinary stop patterns, correct?

17 I understand your testimony about supervision. But  
18 there is no document or order or written document that sets  
19 forth any such program the way there would be for performance  
20 monitoring, right?

21 A. If you look at the patrol guide under duties and  
22 responsibilities of a supervisor there might be something in  
23 there that we can interpret to fit your definition of a  
24 program.

25 Q. Well, so you can't say one way or the other whether there's

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1 actually any documents that you're aware of in the police  
2 department that sets forth an initiative by the police  
3 department to identify officers who have out-of-the-ordinary  
4 stop patterns, correct?

5 As you sit here today you can't refer me to any  
6 particular document that does that, right?

7 A. I think if you would look at the duties and  
8 responsibilities in the patrol guide of supervisors, there  
9 would be something there that's going to tell us -- that would  
10 fit into that category. It may be in a general sense, but I  
11 believe it's there.

12 Q. Okay. We'll take a look at that.

13 Now, in order to ensure that stops and frisks are  
14 being done in compliance with the law and the constitution, it  
15 was your policy while you were chief of the department, and the  
16 department policy, to rely on a system of checks and balances,  
17 right?

18 A. Yes.

19 Q. And as you explained in your deposition, those include the  
20 following, the self-inspection protocols, correct?

21 A. Yes.

22 Q. And those protocols are reviewed by QAD, correct?

23 A. Yes.

24 Q. And they do audits on a yearly basis where they-- and they  
25 report the results of those audits up the chain of command in

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1 the police department, correct?

2 A. Yes.

3 Q. And the second thing that is done as part of the system of  
4 checks and balances is the CompStat review of 250s, correct?

5 A. The CompStat review of 250s?

6 Q. Yes.

7 A. Yeah, that's part of it.

8 Q. To the extent that that happens, right?

9 A. Yes.

10 Q. The third thing that you mentioned as part of this checks  
11 and balances is investigations of officers' stop activity that  
12 may or may not lead to discipline.

13 So that if somebody complains about an officer doing a  
14 bad stop, there may be some kind of -- may lead to a complaint  
15 and then that complaint is investigated. So you would rely --  
16 that's part of the checks and balances, relying on that  
17 disciplinary process to determine whether officers are doing  
18 their job in a constitutional fashion, right?

19 A. Yes.

20 Q. And of course the fourth big element is the supervisory  
21 review, right?

22 A. Yes.

23 Q. And that's really -- that's really the paramount one in  
24 your judgment, correct?

25 A. It's a big part of it.

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1 Q. It's one of the primary ways that the NYPD ensures stops  
2 are constitutional, right?

3 A. It should be part of it, yeah.

4 Q. I guess primarily would be the same as big part?

5 A. I didn't say that. You did.

6 Q. Well would you agree with me?

7 A. I think it's a big part. I don't know if primary is the  
8 word I would use.

9 Q. And the supervisors -- supervision in turn relies on a  
10 review of 250s completed by the officer to try to determine  
11 whether there was a reasonable suspicion.

12 Is that what your testimony is?

13 A. In part.

14 Q. In part. Okay.

15 With respect to these elements of what you believe to  
16 be the checks and balances, would you agree with me that the  
17 rate of discipline with respect to substantiated CCRB  
18 complaints has decreased over the last few years?

19 A. I'm not sure. I don't know.

20 Q. Do you know whether the discipline by the police department  
21 of officers who have substantiated CCRB complaints has been  
22 going down in the last few years?

23 A. I believe it has.

24 Q. And with respect to the self-inspection protocols and the  
25 QAD audits -- let me withdraw that.

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1 Self-inspection protocol is a document that's filled  
2 out by somebody in the precinct, correct?

3 A. The self-inspection?

4 Q. Yes.

5 A. Yes.

6 Q. Usually integrity control officer?

7 A. Could be.

8 Q. And then that is -- those inspection protocols are then  
9 audited by QAD, right?

10 A. Yes.

11 Q. It's not possible to tell from those audits by QAD of the  
12 self-inspection protocols whether there is, in fact, reasonable  
13 suspicion, is there?

14 A. I believe there is.

15 Q. Is that because it looks for whether the boxes are checked  
16 off?

17 A. If the form is fill out appropriately, yes.

18 Q. That in your judgment is reasonable suspicion, right?

19 A. From QAD's point of view, yes.

20 Q. And from your point of view too, right?

21 A. No. I also rely on the supervisor.

22 Q. I'm speaking about just looking at the 250.

23 A. No. Just looking at the QAD report.

24 Q. I'm speaking about the audit done by QAD of 250s.

25 You believe that that audit of QAD -- done by QAD of

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1 250s would be sufficient for you to determine that --

2 A. Not for me to determine. For QAD.

3 Q. That reasonable suspicion?

4 A. No, not for me. For QAD.

5 Q. Okay. QAD. That would be sufficient to determine whether  
6 there's reasonable suspicion?

7 A. Yes.

8 Q. They never actually go and ask the officer to discuss --

9 A. I'm sorry. Look this way.

10 Q. I apologize.

11 They never -- withdrawn. We'll get to the QAD audit  
12 in a minute.

13 It's not possible in your opinion to tell from the QAD  
14 audits or self-inspections whether or not racial profiling is  
15 present in any particular situation, is there?

16 A. If they determine there is reasonable suspicion, then there  
17 is no racial profiling. So if they determine reasonable  
18 suspicion, you don't have racial profiling.

19 Q. And when you say whether they determine that there's  
20 reasonable suspicion, that's whether enough boxes are checked  
21 off, right?

22 A. If the form is prepared correctly.

23 Q. So there is no -- QAD doesn't go behind the form? It  
24 doesn't do an investigation of the circumstances of the form,  
25 for the most part, right?

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1 A. For the most part.

2 Q. So if you wanted to go back and take a look at how an  
3 officer had performed in terms of stop, question, and frisk by  
4 looking at the form, that review would basically be to see if  
5 the form was filled out correctly, right?

6 A. I'm sorry. Repeat that.

7 THE COURT: You're saying the review would be just to  
8 look at form itself? You wouldn't go behind the form?

9 MS. GROSSMAN: Are we talking about the QAD audit?

10 THE COURT: If you were looking at a form to determine  
11 if there was reasonable suspicion, just look at the form.

12 THE WITNESS: It would depend on who is looking at  
13 that form. If it was the first line supervisor, we would  
14 expect a lot more. If it was just QAD, then basically that's  
15 all they have to go on a lot of times. But they can, if they  
16 see a discrepancy, they can go deeper.

17 Q. You've never seen that happen though, have you?

18 A. I don't recall. It may have. I don't know. They do a lot  
19 of audits.

20 Q. Do you have any personal knowledge of that ever happening,  
21 Chief Esposito?

22 A. No. That's doesn't say it hasn't happened.

23 Q. I understand. I'm just asking if you ever were aware of  
24 it, that that happened.

25 A. Mm-hmm.

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1 THE COURT: Well Mr. Moore it looks like you might be  
2 turning to a new topic so let's take our morning recess now and  
3 reconvene at quarter of twelve.

4 THE WITNESS: Thank you, your Honor.

5 (Recess)

6 Q. Chief Esposito, just to try to summarize what you have said  
7 so far with respect to the 250 form. You agree with me that  
8 there is no way to review a 250 form to determine whether the  
9 officers are complying with the policy against racial  
10 profiling, right? Just looking at the form itself?

11 A. (No response).

12 Q. Setting aside relying on supervision, just looking at the  
13 form itself, you can't tell looking at the form whether --

14 A. If the form articulates reasonable suspicion, then there is  
15 no racial profiling. So you're sort of backing into it.

16 Q. In your deposition turn to page 47. Do you recall being  
17 asked this question and giving this answer?

18 MS. GROSSMAN: Line.

19 MR. MOORE: Line 3.

20 "Q. Is there anything about that form -- and it's referring to  
21 the UF 250 -- is there anything about that form and reviewing  
22 it which would provide information to you to determine whether  
23 officers are complying with the policy against -- policy  
24 regarding racial profiling?

25 "A. No.

D489FLO2 Esposito - direct

1 "Q. So if that, in fact, is the case, what does the -- in the  
2 CompStat review, what does the department look at to determine  
3 whether the quality of the stop, question and frisk are in  
4 compliance with the policy regarding racial profiling?

5 "A. I look to the supervisors to give me the answers that an  
6 officer is not abusing the 250 process, the quality of life  
7 summons process, the arrest process. I have got to rely on  
8 those supervisors to do that."

9 Do you recall being asked those questions and giving  
10 those answers at your deposition?

11 A. Yes.

12 Q. And that's what you believe as you sit here today, right?

13 A. No.

14 Q. So you've now changed your testimony about whether you can  
15 determine -- let me finish the question. What part of that  
16 don't you agree with?

17 A. The fact that looking at the form -- you can determine if  
18 there's racial profiling by determining there is reasonable  
19 suspicion. If you determine there is -- if you look at that  
20 form and you determine that there is reasonable suspicion, then  
21 you have determined there is no racial profiling.

22 Q. That's not what -- the question and answer I read didn't  
23 say that, right?

24 A. Correct.

25 THE COURT: Could there be both? Could there be both  
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1 reasonable suspicion and racial profiling such as  
2 disproportionate amount of stops which is an argument that's  
3 been made here?

4 THE WITNESS: Your Honor, I just feel that if you  
5 articulate a good stop, one based on reasonable suspicion, then  
6 can't be racially profiling.

7 THE COURT: Okay. Just wanted to ask the question.  
8 Q. Don't you agree though, Chief Esposito, that the UF 250  
9 form can be manipulated?

10 A. Anything can be manipulated, sure.

11 Q. And so the officer, even if they don't see a furtive  
12 movement, or they don't see somebody casing the joint, if they  
13 stop somebody and they check off furtive movement or casing the  
14 joint or high crime area, and that form is reviewed, and you  
15 were reviewing that form and those were checked off, you would  
16 say that's reasonable suspicion and therefore there is no  
17 racial profiling, right?

18 A. That's why we rely so strongly on the supervisors. It's  
19 not one particular thing.

20 Q. Right.

21 A. You would have to rely on the quality of our supervisors,  
22 right up the chain.

23 THE COURT: So that would mean you couldn't tell just  
24 by reviewing the form?

25 THE WITNESS: Yes. If we feel that form is filled out  
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1 correctly, then -- if it's determined that it's a legitimate  
2 stop based on reasonable suspicion.

3 THE COURT: I know. But all you're looking at, in my  
4 question, is the form.

5 THE WITNESS: Yeah.

6 THE COURT: So as you said, anything can be  
7 manipulated?

8 THE WITNESS: Yeah.

9 THE COURT: Any officer can check off high crime area  
10 and furtive movements?

11 THE WITNESS: Sure.

12 THE COURT: You really don't know much about the stop  
13 just by looking at the form, do you?

14 THE WITNESS: Correct.

15 THE COURT: Okay.

16 THE WITNESS: We know that it's filled out properly.  
17 We know where it was performed, the stop was performed. We  
18 know what time. And does that fit with what we're expecting  
19 our officers to do. Is there a certain crime pattern, a crime  
20 increase in a certain area that we're saying hey, that's where  
21 we would expect our officers to do their enforcement.

22 So now if all these stop and questions are being done  
23 in sector A where there is a high level of daytime burglaries  
24 and that's where the stops are being done, that's part of the  
25 process also. Are they doing their work where they should be?

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1 If for some reason all the stops are being done over  
2 on the other side of the precinct at the wrong time and the  
3 wrong place, maybe we have to look a little deeper.

4 It's not just one thing you can look at. You just  
5 can't look at one thing. You have to rely on the whole system.

6 THE COURT: And that's why he's been asking you and  
7 asking you: Can you look just at the form and make this  
8 determination that there's been no racial profiling, just by  
9 looking at a form?

10 THE WITNESS: It depends on who is looking at it I  
11 guess too.

12 THE COURT: Okay. We've been over it.

13 Q. Well, with respect to the UF 250 form in terms of whether  
14 it shows reasonable suspicion, you don't require -- there are  
15 no details in the UF 250 other than the circumstances of the  
16 stop. It's just a check-off form, correct?

17 A. Correct. There is no room for narrative.

18 Q. So if somebody checks off furtive movement on the 250,  
19 they're not required to put any additional narrative in that  
20 form as to what the furtive movement was, correct?

21 A. That's correct.

22 Q. And so you would hope that they're being honest but you  
23 can't be certain one way or the other whether, in fact, they  
24 are being honest, can you?

25 MS. GROSSMAN: Objection. This is all the possibility

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1 questions that you've sustained objections to over -- many  
2 times over this trial. So I just make that same objection.

3 THE COURT: You're asking if it's possible that the  
4 person really didn't observe a furtive movement, then the  
5 answer is of course it's possible.

6 That doesn't sound like -- that wasn't your question,  
7 really. It's possible the office was not being honest, and the  
8 answer is of course it's possible.

9 MR. MOORE: No. My question is: You can't be certain  
10 that they're not being dishonest when they check off --

11 THE COURT: It's the same thing. It's always possible  
12 that the person wasn't being honest and that's why the question  
13 is objectionable because anything is possible.

14 BY MR. MOORE:

15 Q. Well there is no system in place in the police department,  
16 is there, Chief Esposito, to go behind the UF 250 form and  
17 determine whether, in fact, the officer is being honest or not  
18 when they check off furtive movement on the form?

19 A. You know I hate to be redundant but it goes back to the  
20 supervisor. There is a system. We expect the first line  
21 supervisors to be out there.

22 Are the officers performing their assignment where  
23 they're supposed to be performing, where the sergeant, where  
24 the lieutenant, where the CO of the precinct or the PSA of the  
25 transit district wants them? Are there personal observations

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1 by the first line supervisor of these officers?

2 The supervisor has a certain amount of officers to  
3 oversee. And we would expect them to look at the quality of  
4 how they do their job -- are they a good officer or not.

5 Q. Let me show you what's been marked Defendants' Exhibit C5.

6 Can you identify that document?

7 A. Patrol supervisor.

8 Q. That's the patrol guide provision with respect to patrol  
9 supervisors, setting forth the responsibilities of a patrol  
10 supervisor, correct?

11 A. Yes.

12 MS. GROSSMAN: Can I just have a copy of that. That's  
13 the first time that you're notifying us that you're using it.

14 MR. CHARNEY: It's your exhibit, Heidi.

15 MR. MOORE: Judge, move the admission of C5.

16 THE COURT: Do you have a copy for Ms. Grossman?

17 MS. GROSSMAN: I don't have it.

18 MR. MOORE: I don't think I have another copy.

19 THE COURT: You don't think?

20 MR. MOORE: I can put it on the screen.

21 THE COURT: I realize that.

22 If he doesn't, he doesn't. But maybe he can make one  
23 over the recess, over the luncheon recess before your  
24 cross-examination.

25 So leave it with my clerk.

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1 Anyway your question.

2 Q. This sets forth the duties of a patrol supervisor -- the  
3 responsibilities of patrol supervisor, correct?

4 A. Yes.

5 Q. And there's nothing in this -- actually it's a two-page  
6 form and it's -- the front page and then the back page,  
7 correct?

8 A. Yes.

9 Q. And if -- there's nothing in this -- set forth in this  
10 particular document that discusses what you just said a patrol  
11 supervisor should do with respect to reviewing an officer's  
12 UF 250 activity, correct?

13 A. Could you turn the page over, please.

14 Q. Sure.

15 A. "Supervise members performance of duty. Test knowledge of  
16 command conditions and closely evaluate members' activity."

17 I think that just about says it all.

18 Q. So in a general way you would say that means an officer,  
19 supervisors -- that would tell a supervisor they have to  
20 question an officer about what goes in -- whether they're being  
21 honest or dishonest in filling out the 250?

22 A. "Test the knowledge of the command's conditions. Closely,  
23 closely evaluate the members' activity."

24 Yeah. I think it does say that.

25 Q. Not specifically. You're interpreting --

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1 A. I was the chief of the department. And that's what I would  
2 expect my officers to do after reading this.

3 Q. I believe that.

4 My question is whether that's what your supervisors  
5 are actually doing, Chief Esposito?

6 A. The majority of the case, yes.

7 Q. The majority meaning more than 50 percent?

8 A. I would say close to 99 percent.

9 Q. And are you sure about that?

10 A. Yes.

11 Q. And why are you so sure that 99 percent of your supervisors  
12 are doing what you expect them to do with regard to the things  
13 you just mentioned in this paragraph 22 of this patrol guide  
14 provision. Why are you so sure of that?

15 A. Because we rely on these sergeants, we rely on the  
16 lieutenants who supervise the sergeants. We rely on the  
17 executive officers, whether they be captains. We rely on the  
18 COs of the units, the captains, inspectors, deputy inspectors.  
19 It's a system of checks and balances which is -- I have talked  
20 about that -- that they will look and evaluate the performance  
21 of the people that work for them.

22 THE COURT: Let me ask this. What do you really  
23 expect them to do with respect to the UF 250s, the first  
24 line -- what should that person do with respect to the UF 250?

25 THE WITNESS: They should observe the way the officer  
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1 conducts himself or herself while on patrol. Is the person  
2 courteous? Is the personal knowledgeable of the law? Again,  
3 it says to test it -- could you flip it over please.

4 THE COURT: That's why I asked you what do you think  
5 that person should do with respect to the forms. Should he  
6 randomly check forms? Should he check all the forms? Should  
7 he spot check forms? What should he do?

8 THE WITNESS: Each form is signed by a supervisor. So  
9 when they sign it, we're expecting that they reviewed it and  
10 looked at it for completeness.

11 Now what we'd like is that the supervisor who is  
12 signing it has knowledge of the officer who filled out that --  
13 the report. And knows of -- has evaluated his or her  
14 performance.

15 THE COURT: Okay.

16 Q. Well there are two ways in which officers are instructed to  
17 document their stop activity based on reasonable suspicion,  
18 correct?

19 A. Yes.

20 Q. One is the UF 250, correct?

21 A. Correct.

22 Q. And the other is putting an entry in the memo book,  
23 correct?

24 A. Correct.

25 Q. Other than those two documents, the particulars of what

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1 could or was the basis for stopping somebody is not set forth  
2 in any other document in the police department, correct?

3 Assuming it doesn't lead to an arrest or a summons, if it's  
4 a --

5 A. Correct.

6 Q. If the stop leads to no further enforcement activity, the  
7 only way -- the only documents in the police department where  
8 the information about that stop would be captured is in the  
9 UF 250 or in the memo book, correct?

10 A. For written purposes, yes.

11 Q. Right.

12 THE COURT: Not "or." You meant "and."

13 MR. MOORE: Yes.

14 THE COURT: It should be both.

15 THE WITNESS: Yes.

16 THE COURT: Should the first line supervisor review  
17 the memo book too?

18 THE WITNESS: They should.

19 Q. Well look at -- memo book meaning the activity log,  
20 correct?

21 A. I'm sorry.

22 Q. Memo book meaning the activity log?

23 A. Yeah.

24 Q. Look at paragraph twelve. And this is a responsibility of  
25 a patrol supervisor that would be the first line supervisor of

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1 a patrol officer, correct?

2 A. The sergeant? Are you talking about the sergeant?

3 Q. Yes.

4 A. Yes.

5 Q. The first line supervisor, right?

6 A. Yes.

7 Q. And paragraph twelve sets forth -- this is the only  
8 document -- this is the only portion of this form setting forth  
9 responsibilities of patrol supervisor that talks about looking  
10 at an officer's memo book or activity log, correct?

11 A. Yes.

12 Q. And it says, "Visit police officers assigned to foot and  
13 radio motor patrol frequently and at irregular intervals during  
14 tour and indicate visit by signing activity log of each  
15 member."

16 That's what it says, right?

17 A. Yeah.

18 Q. It says nothing about inspecting the activity log, right?

19 A. Correct.

20 MR. MOORE: C5 is in evidence, I think, Judge, right?

21 THE COURT: I don't know that. But if it isn't, are  
22 you moving it?

23 MR. MOORE: Yes.

24 THE COURT: Any objection? Other than you need a  
25 copy.

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1 MS. GROSSMAN: No objection.

2 THE COURT: C5 is received.

3 (Defendants' Exhibit C5 received in evidence)

4 THE WITNESS: Counselor, we expect the --

5 THE COURT: I don't think there's a question.

6 THE WITNESS: I wanted to clarify.

7 THE COURT: Yeah, I know. Lots of witnesses do want  
8 to.

9 Q. Now, the memo books of the patrol supervisors are reviewed  
10 by their superior as well, correct?

11 A. Correct.

12 Q. And that's done by the special operations lieutenant,  
13 correct?

14 A. Could be.

15 Q. Or the platoon commander, the platoon commander of the  
16 squad, correct?

17 A. Correct.

18 Q. Take a look at -- hand you first Plaintiffs' Exhibit 353.

19 A. Thank you.

20 Q. Can you tell us what that document is?

21 A. These are the duties and responsibilities of the special  
22 operations lieutenant.

23 MR. MOORE: Judge, move the admission of 353.

24 MS. GROSSMAN: Again, I haven't seen a copy.

25 THE COURT: You've seen it -- you mean right now

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1 though?

2 MS. GROSSMAN: Right.

3 THE COURT: Can you show her that at least now for a  
4 few moments and we'll have a copy made of that over the lunch  
5 recess too.

6 MR. MOORE: They have a copy of C5, Judge.

7 THE COURT: 353?

8 MS. GROSSMAN: This is for me?

9 THE COURT: Again, there's only one. But do you  
10 object to its admission?

11 MS. GROSSMAN: No, your Honor.

12 THE COURT: But I know you need a copy.

13 353 is received.

14 (Plaintiffs' Exhibit 353 received in evidence)

15 Q. There's nothing in there that says the patrol supervisor  
16 should inspect the activity log of the patrol officer, right?

17 A. Correct.

18 Q. Take a look at paragraph 9 with regard to the  
19 responsibilities of the special operations lieutenant.

20 A. Yes.

21 Q. That says inspect and sign activity log, right?

22 A. Yes.

23 Q. So, it's contained in -- with respect to the  
24 responsibilities of a lieutenant but there's nothing that says  
25 that men -- that directs, in words, a patrol supervisor to

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1 inspect the activity log of a patrol officer, correct? It  
2 doesn't say that in the form, right?

3 A. Correct.

4 MR. MOORE: Judge, move the admission of 353? Did I  
5 already do that?

6 THE COURT: There wasn't an objection and I said  
7 received.

8 MR. MOORE: The reason I'm doing this, Judge, is  
9 because I was surprised by his answer to the early document so  
10 I'm going to show him another document.

11 MS. GROSSMAN: Objection.

12 THE COURT: That's a statement. It should be  
13 stricken. I'm not interested in why you asked the question.  
14 He's so used to a jury, he said. That's the problem.

15 Anyway, go ahead. Ask something else.

16 MR. MOORE: I wanted to head off an objection that I  
17 didn't identify a document.

18 Q. Can you identify this document Plaintiffs' 354?

19 A. Lieutenant platoon commander.

20 Q. That sets forth the responsibilities of a lieutenant  
21 platoon commander in the New York City Police Department,  
22 right?

23 A. Yes.

24 MR. MOORE: Judge move the admission of Plaintiffs'  
25 354 into evidence.

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1 MS. GROSSMAN: No objection.

2 THE COURT: 354 is received.

3 (Plaintiffs' Exhibit 354 received in evidence)

4 Q. Plaintiffs' 354 is the responsibilities of a lieutenant  
5 platoon commander, correct?

6 A. Yes.

7 Q. That would be the immediate supervisor of the patrol  
8 supervisor, correct?

9 A. I'm sorry?

10 Q. That would be a person who would be the immediate  
11 supervisor of a patrol supervisor, correct?

12 A. Yes.

13 Q. And on the third page of this document under paragraph 21,  
14 do you see there?

15 A. Yes.

16 Q. It says -- one of the duties of a patrol platoon commander  
17 is inspect the activity log of patrol supervisors daily,  
18 correct?

19 A. Yes.

20 Q. So we now know that patrol supervisors' activity logs are  
21 inspected. That says that. And in the patrol guide provision  
22 itself, correct?

23 A. Yes.

24 Q. There's nothing that directs in the patrol guide provision  
25 with respect to the patrol supervisor, nothing in there that

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1 says inspect the activity log of the patrol officer working for  
2 them, correct?

3 A. No. I don't think that's correct. I would have to read  
4 the entire patrol guide section on patrol supervisor. There  
5 may be something else in there that says look at their  
6 paperwork. You know, I don't have that memorized. I'd have to  
7 take a look. There may be something in there that would be  
8 interpreted as inspecting a memo book.

9 Q. I don't mean to belabor the point but in C5, which was  
10 admitted into evidence, you identified the only section that  
11 sets forth the duties and responsibilities of a patrol  
12 supervisor with respect to looking at or handling an officer's  
13 activity log is set forth in paragraph twelve of this document.  
14 Now there may be other documents. But with respect to this  
15 document, this is the only paragraph of this document that  
16 deals with duties of a -- responsibilities of a patrol  
17 supervisor with respect to the activity log of a patrol  
18 officer, correct?

19 A. I don't know. I'd have to read it. Give me a chance to  
20 read it, I'll read it.

21 I got it. It's on here. I can read it.

22 Q. Okay.

23 (Pause)

24 MR. MOORE: Tell me when you want me to turn it over.

25 (Pause)

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1 THE WITNESS: Turn it, please.

2 It doesn't say specifically to inspect. But in  
3 practicality when an officer -- when a supervisor signs a memo  
4 book of a subordinate, they make sure it's up-to-date. They're  
5 not going to sign a book if there's two days missing, a day  
6 missing, a week missing. They in practicality, as I was a  
7 supervisor, I would never sign a book if it wasn't -- if I  
8 didn't inspect it first.  
9 Q. Chief Esposito, let's go onto another topic and return to  
10 memo books later.

11 Tell us what CompStat is.

12 A. CompStat is a process where we call in a particular patrol  
13 borough and look at their work, how they're operating, how  
14 effectively they're addressing the crimes in that borough.

15 Q. And you direct --

16 A. Not just crime but also conditions.

17 Q. When you were the chief of department you would direct and  
18 run those CompStat meetings, correct?

19 A. I would what?

20 Q. Direct and run those CompStat meetings?

21 A. With the deputy commissioner of operations.

22 Q. And with respect to the CompStat, am I accurate in saying  
23 that one of the things that happens is that there's a -- if  
24 you're looking at a particular precinct or a patrol borough  
25 there are -- an image appears on the screen that indicates

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1 where crime is occurring in that borough or that -- where crime  
2 reports have been filed with respect to that borough or that  
3 precinct?

4 A. It's one of the things on the map, yeah.

5 Q. And one of the things that you would want to also -- is  
6 also on the map is where arrests, summonses, and 250s are made,  
7 correct?

8 A. Yes.

9 Q. And so there's --

10 A. Along with other information.

11 Q. I understand, with this other information.

12 But there would be an overlay that you would look at,  
13 correct?

14 A. Yeah.

15 Q. And you would expect in doing -- you would expect that  
16 there would be some convergence between where enforcement  
17 activity is taking place and where crime is occurring, correct?

18 A. It's one of the things we look at.

19 Q. That's what you look at. Okay.

20 And one of the things you review at CompStat meetings  
21 are the number of 250s that are being done by a particular unit  
22 that you're looking at, correct?

23 A. That's one of the things we look at, sure.

24 Q. You look at like year-to-date numbers, how many 250s they  
25 are doing this year compared to last year, that kind of

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1 information, correct?

2 A. Yes. Where they're being conducted. What time they're  
3 being conducted. Why they're being conducted.

4 Q. And when a borough or a command is scheduled to make a  
5 presentation at CompStat, they report the number of 250s  
6 completed for the current year, correct?

7 A. Yes.

8 Q. And you look at --

9 A. At times.

10 Q. And you look at those numbers as a way of assessing the  
11 effectiveness of the officers in that command, correct?

12 A. That's part of it.

13 We look at a number of different things. Very rarely  
14 one thing is going to tell us how effective they are.

15 Q. I understand. But that's part of it?

16 A. That's part of it. Sure. It could be part of it.

17 Q. As you said earlier you don't actually review the 250s but  
18 you look at -- you certainly look at the numbers of the 250s,  
19 right?

20 A. No. We look at the database, where -- we pull out where.  
21 We pull out why. We pull out when.

22 Q. Well, you don't actually review a 250 to determine whether  
23 there's racial profiling going on, right?

24 A. We don't have the hard copy in our hand. We have the  
25 database.

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1 Q. The question is you don't look at a 250 to determine  
2 whether this is an incidence or an example of racial profiling,  
3 right?

4 A. We look to see if there's reason --

5 THE COURT: Can you answer yes or no to that?

6 THE WITNESS: I'm sorry?

7 THE COURT: Can you answer yes or no to that last  
8 question. I think you can.

9 THE WITNESS: Your Honor, I'm very sorry --

10 THE COURT: I think you can give a yes or no. Do you  
11 want to hear that question again. I'll ask the reporter to  
12 read it back.

13 (Record read)

14 THE WITNESS: I just don't think it's a yes-or-no  
15 answer.

16 THE COURT: You don't?

17 THE WITNESS: No. Your Honor, I'm sorry.

18 Again, I just say if we determine it's reasonable  
19 suspicion, then automatically it's not racial profiling. If,  
20 in fact, we determine it's based on reasonable suspicion.

21 We look at that stop. We look where the crimes are  
22 happening. We look if these stops are being made where the  
23 precinct is experiencing a crime problem. Are they stopping  
24 them for the crime that is spiking in that particular zone?  
25 Are they stopping at the time? It's all of that.

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1 If we determine it's a stop based on reasonable  
2 suspicion, then we have determined it's not based on racial  
3 profiling. Yeah.

4 So, I'm sorry. I just can't give a yes-or-no answer  
5 on that.

6 Q. And in questioning supervisors about 250 activity at  
7 CompStat, you've never raised a concern at any of the CompStat  
8 meetings you've ever been at, about racial profiling, correct?

9 A. I don't know if I've used the term racial profiling. But  
10 when we look at the quality of the stops, automatically that  
11 comes into play.

12 Q. So can you answer that question yes or no? Has there ever  
13 been an instance -- withdraw that.

14 There's never been an instance while you were chief of  
15 the department in directing and running those CompStat meetings  
16 where you ever discussed racial profiling in conjunction with  
17 250 activity, correct?

18 A. I'm sorry. Repeat it.

19 Q. In questioning supervisors about their 250 activity at  
20 CompStat, you've never raised a concern at any of the meetings,  
21 any of the CompStat meetings that there might be racial  
22 profiling present?

23 A. I don't know if I've used the term racial profiling. But  
24 we do talk about lawful stops. And if it's a lawful stop, it's  
25 not racial profiling.

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1 THE COURT: But that wasn't his question.  
2 Do you remember asking at a CompStat meeting,  
3 discussing the topic of racial profiling?

4 THE WITNESS: I don't know if I've ever used the term  
5 racial profiling, no.

6 (Continued on next page)

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D498FLO3 Esposito - direct

1 Q. Well, going back to the operations order, which I think is  
2 at least the old one, which is 184, paragraph 4 says, the last  
3 sentence says, "Performance in this area will also be included  
4 in CompStat review." Do you see that?

5 A. Yes.

6 Q. This is about performance in terms of the inspection  
7 process to determine whether there is compliance with the  
8 department's racial profiling policy, right?

9 A. Yes.

10 Q. As you sit here today, you can't recall ever questioning a  
11 supervisor in relationship to 250 activity where racial  
12 profiling was discussed, those terms, racial profiling?

13 A. Again, I don't have to say the words racial profiling to  
14 address it.

15 Q. Let me ask you to turn to your deposition on page 68, line  
16 15, and you were asked this question and you gave this answer:  
17 "Q. Have there been instances in your experience at any point  
18 while you have been --"

19 A. What line?

20 Q. I'm sorry. Line 15.

21 A. Go ahead.

22 Q. "Have there been instances in your experience at any point  
23 while you have been in the CompStat meetings where you have had  
24 a situation where you have reviewed 250s, and they appear to be  
25 properly filled out, and yet you believe that there may be

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1 racial profiling going on, and you address a lieutenant or  
2 precinct commander about that? Have there been any such  
3 circumstances like that in your memory in the CompStat  
4 meetings?

5 "A. Specifically geared toward racial profiling?

6 "Q. Yes.

7 "A. No."

8 Do you recall being asked those questions and giving  
9 those answers at your deposition, Chief Esposito?

10 A. Yes.

11 MR. MOORE: One second, your Honor.

12 Q. I am going to hand you what has been marked as Plaintiffs'  
13 Exhibit 281, which I will state for the record are redacted  
14 portions of transcripts of CompStat meetings at which you were  
15 present and directing. There are heavily redacted portions,  
16 but do you see that there are some portions that are not  
17 redacted?

18 A. Yes.

19 MR. MOORE: Move the admission of Plaintiffs' 281.

20 MS. GROSSMAN: We have objections. First of all, they  
21 are hearsay. They are not transcripts. They are just  
22 indications that someone wrote some indication of what occurred  
23 at the meeting, but it's not a sworn transcript and it's  
24 hearsay.

25 THE COURT: It may not be hearsay if it's an admission

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1 of a party opponent. But I don't know who prepared it.

2 MR. CHARNEY: These were produced by the city in 2009  
3 in lieu of the actual audio recordings, which we originally  
4 asked for, of those meetings. These are business records.  
5 Also, the defendants did not object to these exhibits in the  
6 JPTO.

7 MS. GROSSMAN: We can assert a hearsay objection.

8 THE COURT: You can assert relevance. I would have  
9 wanted hearsay before. But I don't think I have a hearsay  
10 problem because these are statements of a party opponent so  
11 they can come in under that. There is also an argument they  
12 are business records, but they are certainly statements of a  
13 party opponent. Apparently, you produced them in lieu of  
14 simultaneous transcripts and you did not object on those  
15 grounds. So what you preserve at trial is relevance. They  
16 seem to be relevant. So the only issue left is hearsay. I  
17 doubt they are hearsay. They are not. They are a statement of  
18 a party opponent. Whether or not they are business records, I  
19 don't know. But they were produced by you in lieu of the  
20 actual transcript. I don't know why.

21 MR. CHARNEY: In lieu of the audio recordings.

22 THE COURT: So given that, I will allow it to be  
23 admitted.

24 (Plaintiffs' Exhibit 281 received in evidence)

25 THE COURT: What do you want the chief to do with it,

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D498FLO3 Esposito - direct

1 Mr. Moore?

2 MR. MOORE: First of all, I want to move it in  
3 evidence.

4 THE COURT: We just did that. I accepted it for  
5 evidence.

6 MR. MOORE: Do you want a copy?

7 THE COURT: Sure.

8 What do you want him to do?

9 Q. Chief Esposito, turn to the --

10 MS. GROSSMAN: In terms of proceedings forward, I  
11 don't know if the plaintiffs' attorney expects to go through  
12 every page.

13 THE COURT: I don't know either.

14 MS. GROSSMAN: The pages that he is going to ask the  
15 witness about, I understand your ruling about hearsay so the  
16 witness can answer. But if he is not going to ask questions  
17 about these documents, I don't think the document should come  
18 into evidence. I just want to address that as the time comes.

19 MR. MOORE: I am not sure what that --

20 MS. GROSSMAN: It means if you don't ask the witness  
21 questions, I don't think the whole document should come into  
22 evidence.

23 THE COURT: I don't know why. It still is a statement  
24 of a party opponent and he is offering it.

25 BY MR. MOORE:

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D498FLO3 Esposito - direct

1 Q. Chief Esposito, this document contains statements  
2 attributed to you that were made during the CompStat meetings,  
3 correct?

4 A. These are typed minutes. Someone is there typing up  
5 minutes as the meeting --

6 THE COURT: Everybody there is a member of the police  
7 department or not?

8 THE WITNESS: Sometimes DAs will be there. We will  
9 have a representative from the DA's office.

10 THE COURT: Anybody else, or that's it, police  
11 department and maybe a DA?

12 THE WITNESS: Maybe some other law enforcements from  
13 time to time, but basically it's all NYPD.

14 THE COURT: OK.

15 MR. MOORE: Judge, just to explain this document what  
16 we asked for were --

17 THE COURT: The audiotapes.

18 MR. MOORE: The audiotapes with respect to any  
19 discussion of 250s. So what we have, why it's so heavily  
20 redacted is --

21 THE COURT: Everything that was eliminated doesn't  
22 relate to 250s. OK.

23 Q. If you look at the first page 7016, the second page of  
24 this, this relates to a CompStat meeting on July 17, 2008,  
25 where the command being analyzed was Patrol Borough Manhattan

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1 North, correct?

2 A. Yes.

3 Q. At the beginning of that, the unredacted portion, it says  
4 "CH Espo." That's Chief Esposito, right?

5 A. Yes.

6 Q. You say, "Let's talk about the 28th Precinct," correct?

7 A. Correct.

8 Q. If you go to the next page, page 7017, Bates stamp 7017.

9 A. Yes.

10 Q. You say, attributed to you, "Your ENF numbers are way  
11 down." What is ENF?

12 A. Enforcement.

13 Q. "Last year 60 percent of your Cs were on overtime. As an  
14 XO you have to look at that activity, activity on straight  
15 time. If you look at raw number of 250s, you are down 50  
16 percent."

17 Those are remarks that you made at the CompStat  
18 meeting, right?

19 A. Yes.

20 Q. So you're referring to the actual -- this reflects that  
21 you're looking at the raw numbers of 250s for a command as part  
22 of your CompStat analysis, right?

23 A. Yes.

24 Q. Turn to the next page, 7019. This reflects a CompStat  
25 meeting at which Patrol Borough Manhattan North was present, as

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1 well as representatives from Precincts 28, 32 and 33, correct?

2 A. Correct.

3 Q. The next page --

4 THE COURT: That's October 10, '08?

5 THE WITNESS: Yes.

6 Q. This reflects a discussion you're having with the members  
7 of the police department present concerning the numbers within  
8 the patrol borough, correct?

9 A. Yes.

10 Q. In the middle of the page, attributed to "CH Espo," that's  
11 you, correct?

12 A. Yes.

13 Q. You say, "It's a big ship and we are turning it. We've to  
14 keep close eye on it. Cs down 22 percent and 250s down  
15 10,000." Do you see that?

16 A. Yes.

17 Q. What does that refer to, 10,000 250s? Is that the raw  
18 numbers?

19 A. I would imagine.

20 Q. Then you say -- I am sure the city won't object if I add  
21 this.

22 Assistant Chief Diaz says, "More quality stops,  
23 Chief."

24 And then you say, "Yes, I can't complain. Your crime  
25 is down, but just keep eye on those numbers. What were you

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1 saying, 20,000 bad stops."

2 20,000 bad stops, is that 20,000 bad stops that are  
3 reflected in UF-250s?

4 MS. GROSSMAN: Can you just read the whole sentence?

5 THE COURT: It starts with, "Yes, I can't complain.  
6 Your crime is down, but just keep eye on those numbers. What  
7 were you saying, 20,000 bad stops last year? I don't think  
8 that's why you're implying."

9 THE WITNESS: That's what you're implying.

10 THE COURT: I realize that. That's what it says.

11 Q. Is that referring 20,000 bad stops that would be reflected  
12 in the UF-250s?

13 A. No.

14 Q. What does 20,000 bad stops mean?

15 A. It's a statement I am making. The last line says it all.  
16 "I don't think that's what you're implying." He talks about  
17 quality. We stress quality.

18 THE COURT: What was the reference to 20,000 bad  
19 stops? You made it. What were you saying?

20 THE WITNESS: It is in '08.

21 THE COURT: That's true. Fair enough.

22 THE WITNESS: I am looking at something. Is that a  
23 typo? I'm not sure. It may have been that I am really talking  
24 about the 10,000. Because we say earlier on that the 250s are  
25 at 10,000. So now I am saying it's 20,000. So I am thinking

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1 it may be a typo where it should be 10, not 20. You follow?

2 THE COURT: Not really. The first sentence talks  
3 about the number of 250s are down 10,000. This has to do with  
4 bad stops.

5 THE WITNESS: We are still referring about that  
6 10,000. Why are we down 10,000? We are stressing quality, not  
7 quantity. In the context of CompStat, we always stress  
8 quality.

9 THE COURT: I got that. I don't know what the  
10 reference to bad stops is.

11 THE WITNESS: Because he is saying we, the borough, is  
12 now stressing better quality. So if you have 10,000 fewer,  
13 which I think is the right number, are you trying to say you  
14 did 10,000 fewer because you did 10,000 bad ones last year?

15 THE COURT: I see.

16 THE WITNESS: And I am saying that's not what you're  
17 implying. And he agrees, that's not what we are implying.

18 Q. Better quality means stops that meet the level of  
19 reasonable suspicion, right?

20 A. Yes. But it also is a stop that's addressing the crime  
21 that is currently giving the precinct a problem.

22 Q. Right. But it also means stops that satisfy the standard  
23 of reasonable suspicion, right, that's what you just said?

24 A. Yes.

25 Q. Turn to the page which has Bates stamp 7024. And this is a

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1 discussion related to the 25th Precinct, correct?

2 A. Yes.

3 Q. There is a statement there by Captain Ryan. He was the  
4 executive officer of the 25th, correct?

5 A. Correct.

6 Q. Where he says, "We have strong quality of life enforcement  
7 in that area. We have extraordinary enforcement. 32 collars,  
8 130 Cs, 192 250s. It's a transient area." Do you see that?

9 A. Yes.

10 Q. Once again, you're referring to the actual numbers of  
11 stops?

12 A. Yes.

13 THE COURT: He is not.

14 Q. There is a reference to the numbers?

15 A. Captain Ryan is.

16 Q. Now, I understand why at CompStat you would be interested  
17 about stuff where there is enforcement activity, collars,  
18 summonses. By collars we mean arrests, correct?

19 A. Yes.

20 Q. But as you agreed, 90 percent of the UF-250 activity does  
21 not lead to any further enforcement action, right?

22 A. That's correct.

23 Q. So when you're referring to 192 250s, can we assume that 90  
24 percent of those are stops that led to no enforcement action?

25 A. You want to assume? We can.

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1 Q. How does basically an innocent stop that doesn't result in  
2 any enforcement action become a topic at CompStat? That's what  
3 I don't understand. I can understand arrests. I can  
4 understand summonses. But you're talking about stop activity  
5 of which there turned out to be no suggestion of criminology.

6 MS. GROSSMAN: Objection. Innocent stop?

7 THE COURT: I think what he means is led to no  
8 enforcement. Your objection is sustained by calling it an  
9 innocent stop, but he only meant by that no further enforcement  
10 from that stop.

11 The question seems to be, does the reference to 192  
12 250s belong in a discussion of CompStat at all? That seems to  
13 be his question.

14 THE WITNESS: Sure.

15 THE COURT: And why?

16 THE WITNESS: There are a few different reasons. We  
17 look at the baseline. What have you done last year? What have  
18 you done this year? If there is a major increase or decrease,  
19 it may be an indication of something we have to find out why.  
20 Why are we giving more? Why are we giving less? If crime is  
21 up, why are we doing less enforcement?

22 THE COURT: Now you're saying enforcement. He is  
23 talking about stops.

24 THE WITNESS: 250s. I think what we fail to realize,  
25 just because there is no enforcement off that 250 doesn't mean

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1 it's not a legitimate stop --

2 THE COURT: Doesn't mean what?

3 THE WITNESS: A legitimate stop based on reasonable  
4 suspicion. And we make stops when we think a crime is  
5 happening, we think one is about to happen, or we think one has  
6 just happened.

7 Q. Or at least you would hope so, right?

8 A. Yeah. That's when we are allowed to do a stop.

9 Now, I think what we fail to understand -- I  
10 understand and I think a lot of people do -- is that how many  
11 crimes are prevented by stopping a person that is giving us  
12 reasonable suspicion? If a precinct is being plagued with car  
13 break-ins on a midnight --

14 MR. MOORE: I am going to object to this.

15 MS. GROSSMAN: Let him finish the answer.

16 THE COURT: I think his objection is it's beyond the  
17 scope of his question. It's becoming a bit of a narrative that  
18 wasn't responsive to the question.

19 MS. GROSSMAN: He was responding to the question.

20 THE COURT: I don't think so. I think it's now beyond  
21 the scope of the question.

22 MS. GROSSMAN: The question was why does 192 belong in  
23 CompStat at all?

24 THE COURT: That was my question.

25 MS. GROSSMAN: Yes, it was.

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1 THE COURT: I think he gave the answer.

2 MS. GROSSMAN: But he didn't finish.

3 THE COURT: No, because it's turning into a narrative,  
4 otherwise known as a speech, and I am not here for that  
5 purpose.

6 Go ahead, Mr. Moore.

7 Q. Turn to page 7026, if you would.

8 THE COURT: I have handwriting in my copy. Does  
9 everybody else have it?

10 THE WITNESS: I do.

11 THE COURT: I don't think you meant for us to have  
12 that. It's not part of the document?

13 MR. MOORE: It's my handwriting. I am guilty of that.

14 THE COURT: As long as I know it's not part of the  
15 evidence.

16 MR. MOORE: I apologize.

17 THE COURT: No problem.

18 Q. This is dealing with the 28th Precinct, correct?

19 A. Yes.

20 Q. Inspector Montgomery was the commanding officer of the 28th  
21 Precinct?

22 A. At the time, yes.

23 Q. I didn't hear you.

24 A. Yes. At the time, yes.

25 Q. Toward the bottom of the page, you ask Inspector

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1 Montgomery, "How many C summonses are given out per officer on  
2 straight time? What would average be?"

3 Inspector Montgomery says, "2.3, sir, and 2.3 for 250s  
4 as well."

5 Do you see that?

6 A. Yes.

7 Q. So at least in the 28th Precinct, Montgomery had some  
8 information with respect to what the average number of 250s or  
9 C summonses officers were giving out, correct?

10 A. Yes.

11 Q. Is that something you would want to know at CompStat, what  
12 the average is per officer of the 250s and their Cs?

13 A. Sure.

14 Q. You asked it, right?

15 A. Sure.

16 Q. You're getting a specific number back, correct?

17 A. Yes.

18 Q. Turn to page 7080. Do you have that page, Chief Esposito?

19 A. Yes.

20 Q. This is in regard to the 43rd Precinct now, correct?

21 A. Yes.

22 Q. You say at some point, "Listen, I don't have time, I have  
23 to go, but nine robberies compared to none, I don't think we  
24 are doing enough in that zone. You have four Cs and five 250s  
25 in 28 day period." Do you see that?

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1 A. Yes.

2 Q. So this reflects, does it not, that with regard to trying  
3 to identify whether your officers are being effective in  
4 responding to incidents of reported crime, that you look at the  
5 number of 250s they are doing over a certain period of time,  
6 correct?

7 A. Sure.

8 Q. Because that gives you an indication of whether they are  
9 being effective or not, the number of 250s, right? That's one  
10 indication, right?

11 A. That's a part of it, yes.

12 Q. If those numbers are down, you would expect them to get the  
13 numbers up, right?

14 A. Not necessarily.

15 Q. Well, you say not necessarily. I don't quite understand  
16 that. What did you mean here that five 250s in a 28 day period  
17 was not enough given that there were nine robberies reported?

18 A. You see -- I'm sorry, counselor. You don't understand the  
19 concept. I come in here and I say, I don't think we are doing  
20 enough. And I quote some numbers. The response would be, he  
21 or she, the commander is going to say, here is the strategy we  
22 are doing to go after the robberies. And it may be a strategy  
23 that doesn't involve 250s. It may be a strategy that doesn't  
24 involve C summonses. They have to articulate that to me. What  
25 is your plan? Here is the plan. OK. I agree, continue, go

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1 with it. I may give suggestions. I may want to tweak their  
2 plan a little bit. But part of my questioning would be what  
3 would be done.

4 Q. When you refer to the five 250s in a 28 day period, you're  
5 not saying -- withdraw that.

6 Your reference to the five 250s in a 28 day period is  
7 an indication that you think that that enforcement activity  
8 isn't enough, isn't it?

9 A. No. It's something that has to be discussed. When the  
10 commander comes back and gives me an answer, I may be  
11 satisfied.

12 Q. It has to be discussed because you think, at least in  
13 reading it, you think that five 250s, until you get an  
14 explanation, that's not enough, right?

15 A. It's an indicator to me that we have to look at it.

16 Q. But the only thing that is mentioned there with respect to  
17 dealing with these robberies is the four Cs and five 250s in a  
18 28 day period, right?

19 A. I don't know what is redacted here. I am not sure.

20 Q. That's true.

21 A. Part of his plan may be articulated here.

22 Q. Fair enough.

23 Who was the CO at the time of the 43rd precinct?

24 A. I don't recall.

25 Q. Actually, this is a reference to Chief Jaffe, right?

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1 A. She was not the CO of the 43rd Precinct at that time.

2 Q. I know. She was chief of housing.

3 A. But you notice at the top there it says that the robbery  
4 pattern apparently involves Monroe Houses as well.

5 Q. Overlapping, right?

6 A. Yes.

7 Q. Would it be fair to say that whoever was the CO of the 43rd  
8 Precinct would have left this meeting thinking he has got his  
9 Cs and 250s up?

10 A. Not necessarily.

11 Q. But it may be, right?

12 A. It may be. But again, he may have articulated to me, or  
13 she may have articulated to me that this activity was fine.

14 Q. Do you think by focusing on the raw numbers, that that  
15 gives sometimes the wrong impression to your subordinates that  
16 simply by getting the numbers up, they will be satisfying your  
17 directive that they deal with a crime pattern?

18 A. No. Because we deal with the quality much more than the  
19 number. We look at the quality.

20 MR. MOORE: One second, Judge.

21 Q. Let me show you what has been marked as Plaintiffs' Exhibit  
22 283.

23 THE COURT: Is that another minutes of a CompStat  
24 meeting?

25 MR. MOORE: Yes, Judge.

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1 THE COURT: Same objection. Same ruling. I will  
2 allow it.

3 MR. MOORE: Let me also indicate with respect to these  
4 documents that we were limited, I think, because of argument by  
5 the city, pursuant to your ruling, to what we could get in  
6 terms of the number of transcripts, the number of meetings. So  
7 although we probably asked for, as plaintiffs' lawyers  
8 sometimes do, everything, this is what we got.

9 THE COURT: OK. Did you want to give me a copy?

10 MR. MOORE: Yes. Hopefully, there is no handwriting  
11 on it.

12 THE COURT: Thank you. So this is 283, which is  
13 received.

14 (Plaintiffs' Exhibit 283 received in evidence)

15 THE COURT: Page, Mr. Moore.

16 Q. Page 7959, if you can go there.

17 Do you have that, Chief Esposito?

18 A. Yes.

19 Q. This is in regard to the 43rd Precinct, correct?

20 A. Yes.

21 Q. For a CompStat meeting that took place on January 24, 2008,  
22 I believe?

23 A. Yes.

24 THE COURT: In the Patrol Borough Bronx?

25 THE WITNESS: 43rd Precinct.

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1 THE COURT: It's in Patrol Borough Bronx, right?

2 THE WITNESS: Right.

3 THE COURT: Let's go.

4 Chief Esposito says, "The 43 Brendan, one 250 and four  
5 Cs for whole day tour."

6 Q. Is it fair to assume from this that you weren't speaking  
7 with admiration for those numbers, you were being critical of  
8 those numbers?

9 A. Yes.

10 Q. You wanted to see those numbers get up, right?

11 A. Or give me an explanation why they are so low.

12 MR. MOORE: Again, Judge, just so that the record is  
13 clear, we asked for any references to 250s in these  
14 transcripts, any reference, and this is what we got.

15 MS. GROSSMAN: Your Honor, I just want you to know you  
16 reviewed these in camera. So at some point, whatever we  
17 received, it's after an in camera review by your Honor.

18 Q. Turn to page 8002. This is in relation to CompStat minutes  
19 from March 13, 2008.

20 THE COURT: Brooklyn North, right?

21 Q. Patrol Borough Brooklyn North. Look at the page before.

22 MS. GROSSMAN: 8002?

23 THE COURT: 8002.

24 MS. GROSSMAN: Doesn't it say Patrol Borough Queens  
25 South?

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1 MR. MOORE: That may be. What I tried to do --

2 THE COURT: I understand. You tried to put the page  
3 in front.

4 MR. MOORE: I tried to redact all the pages where it  
5 was just a black.

6 THE WITNESS: This is probably Queens.

7 THE COURT: OK.

8 Anyway, you say, "Collars are up and 511 are down.  
9 That's good. Raw number of 250s are up, but Cs and 250s are  
10 done on overtime and that will come back to hurt us. That has  
11 to be managed at precinct level, but looked at the borough  
12 level."

13 THE WITNESS: Correct.

14 Q. Then down below you say, "Last year too 50 percent done on  
15 overtime. We have to handle at squad, precinct level. We need  
16 a lot more proactive. Your gun collars are down and straight  
17 time activity is down. Can someone give update on JRIP?"

18 That's you talking, correct?

19 A. Yes.

20 Q. Then turn to page 8025.

21 This is a CompStat meeting of June 19, 2008.

22 A. Counselor, I am assuming you don't want me to comment on  
23 these things. There will be a question if you have a question?

24 THE COURT: That's right.

25 Q. Unless you want to say something good.

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1 A. Good for who?

2 THE COURT: Let's go on to 8025.

3 You say, "Quality on 250s. Forget the number. 5  
4 percent enforcement rate off 250s. 102 precinct is the worst  
5 with enforcement off 250s. A lot of this is probably training,  
6 but quality of 250s in Queens South has a lot to be desired."

7 Q. What did you mean by 5 percent enforcement rate off on  
8 250s? You mean the number was down?

9 A. There was a 5 percent enforcement rate; in other words, for  
10 the 250s, 5 percent resulted in an arrest or a C summons or  
11 some type of enforcement.

12 Q. The actual percentage in Patrol Borough Queens South, at  
13 least as of June of 2008, is that in 95 percent of the  
14 instances where people were stopped, may be frisked, may be  
15 searched, but certainly stopped, that in 95 percent of the  
16 cases, no further enforcement activity was taken, correct?

17 A. That's what I interpret from reading this.

18 Q. Then it says, "Quality of the 250s in Queens South has a  
19 lot to be desired." Does that mean that you're seeing 250s  
20 where there is no reasonable suspicion? It could mean that,  
21 right?

22 A. I'm not sure what it means by reading this.

23 Q. That's one of the things it could mean, correct, when you  
24 talk about quality?

25 A. No. I think we talk more about where and when. Does it

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1 match up with the crime picture? That's what is paramount.

2 Does it match up with the crime picture? If we have those  
3 burglaries during the day, do we have officers in that area,  
4 where we're experiencing the break-ins, and are we doing  
5 enforcement in that area, other than other areas?

6 Q. One of the ways that you refer to 250s in terms of whether  
7 there is reasonable suspicion is that you have quality 250s,  
8 right? You said that previously in your testimony?

9 A. Yeah. But quality, it's more of where and when and why.

10 Q. I understand. But quality could include whether, in fact,  
11 it's a good 250, whether there is reasonable suspicion, right?

12 A. It could.

13 Q. Turn the page to 8045. Can you read that portion?

14 A. Yes.

15 THE COURT: "Everyone is working hard. Just trouble  
16 with the violence. 250s down, Cs down, arrests down. OCCB  
17 collars up 16 percent. Doing great job. We appreciate that.  
18 Why PSB down?"

19 What does PSB refer to?

20 THE WITNESS: Patrol Services Bureau.

21 THE COURT: "Why Patrol Services Bureau down?"

22 That's the statement. Do you have a question about  
23 it, Mr. Moore?

24 MR. MOORE: Not at this point, Judge.

25 Q. If you turn to -- actually, there doesn't appear to have a  
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1 Bates number on it. After 8054, there are two pages that don't  
2 have a Bates number.

3 The second page relates to the 28th Precinct. Do you  
4 see that?

5 A. Where are you looking? After 54?

6 THE COURT: We have actually reviewed that page  
7 already.

8 A. After 8054?

9 Q. I think we have reviewed it.

10 THE COURT: We have done that page.

11 Q. In any of these transcripts or notes from CompStat in  
12 relation to 250s, you don't see any discussion about racial  
13 profiling, do you?

14 A. No.

15 Q. Or at least the use of the term reasonable suspicion,  
16 right?

17 A. No.

18 MR. MOORE: I am going to move on to a different area.  
19 Should I just keep going or do you want to take a break?

20 THE COURT: If you're going to move on to a different  
21 area, then it's the right time for the lunch break.

22 We will reconvene at 5 after 2.

23 (Luncheon recess)  
24  
25

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AFTERNOON SESSION

2:05 p.m.

1

2

3

JOSEPH ESPOSITO, resumed.

4

BY MR. MOORE:

5

Q. Good afternoon, Chief Esposito.

6

A. Good afternoon.

7

Q. Now, you have talked a lot in your testimony today about  
8 relying on supervisors to make sure that the officers are

9

complying with the law. Is that a fair statement?

10

A. Yes.

11

Q. Particularly, with respect to stop and frisk, you rely on  
12 your supervisors to make sure that officers are complying with  
13 that part of the law, correct?

14

A. I look to the supervisors to look at everything about the  
15 person they are supervising, the team they are supervising. It  
16 goes from clerical, sick record, CCRBs, everything.

17

Q. Well, what I don't quite understand from your testimony is  
18 who actually is the supervisor who reviews an officer's stop  
19 and frisk activity? Is it the officer's squad supervisor? Is  
20 it the desk officer? Is it the patrol lieutenant? Is it the  
21 integrity control officer? Who is it?

22

A. It could be any of those individuals. The book says the  
23 desk officer reviews the 250, but in practicality, when you get  
24 down to the street level, it will be the squad sergeant that  
25 may do it, anticrime sergeant may do it, special operations

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1 lieutenant may do it, or the desk officer may do it.

2 Q. I am handing a document which is already in evidence, which  
3 is Plaintiffs' Exhibit 98, which it might be the book you just  
4 referred to. That's the patrol guide provision with respect to  
5 stop and frisk, right?

6 A. Yes.

7 Q. You can ignore my little exhibit tag. This provision sets  
8 forth the responsibilities with respect to different officers  
9 regarding stop and frisk, right?

10 A. Yes.

11 Q. There's responsibilities set forth for the uniformed member  
12 of the service, correct?

13 A. Yes.

14 Q. And then on the next page, there is, as you say, there is a  
15 reference to the responsibilities of a desk officer, right?

16 A. Yes.

17 Q. Then there is the responsibilities of the commanding  
18 officer, correct?

19 A. Yes.

20 Q. As you say, there is nothing in there that actually  
21 specifically refers to the officer's squad supervisor to be the  
22 person who actually reviews the UF-250, right?

23 A. Correct. Sometimes his supervisor will be the desk  
24 officer.

25 Q. Right. I guess the evidence is that you can't tell from

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- 1 day to day who is actually going to be the person reviewing the  
2 officer's stop and frisk activity, right? One day it may be  
3 the desk officer, one day it may be his squad supervisor, the  
4 next day it may be the patrol lieutenant, correct?  
5 A. Correct.  
6 Q. And nothing in this patrol guide provision specifically  
7 refers to the squad supervisor being the person to review the  
8 250 form, correct?  
9 A. Correct.  
10 Q. If you look at paragraph 7 in this document of the first  
11 page, with respect to the uniformed member of the service?  
12 A. Yes.  
13 Q. In addition to filling out the information on the 250, they  
14 are required to enter the details concerning the stop and frisk  
15 in their activity log or their memo book, correct?  
16 A. Correct.  
17 Q. Then it says submit the stop and frisk report, the 250, to  
18 the desk officer, right?  
19 A. Yes.  
20 Q. That's how they are trained, correct?  
21 A. Yes.  
22 Q. Then if you go to the next page, it sets forth the duties  
23 of the desk officer, which include reviewing the 250, correct?  
24 A. Yes.  
25 Q. Including instructing the member, if necessary?

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- 1 A. Yes.  
2 Q. Enter a serial number, correct?  
3 A. Yes.  
4 Q. And then bring it to the attention of the commanding  
5 officer, right?  
6 A. Does it say that?  
7 Q. Number 11.  
8 A. Yes.  
9 Q. And make the appropriate entries in the stop and frisk  
10 index of the precinct, right?  
11 A. Yes.  
12 Q. This is one of only two ways that stop activity that  
13 doesn't lead to any further enforcement activity is actually  
14 documented, either in the 250 or in the memo book, correct?  
15 A. Yes.  
16 Q. It's fair to say if it's a busy precinct, and if it's the  
17 desk officer who is reviewing it, that desk officer would be  
18 called upon to review not just the 250s of one officer, but all  
19 the officers on tour that day, correct?  
20 A. Yes. That's possible.  
21 Q. That could be 40, 50 officers, right?  
22 A. In a big precinct, yeah.  
23 Q. If they each had done five 250s that day, that could be 200  
24 to 250 UF-250s, right?  
25 A. I don't think we have ever seen a place give that many 250s

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1 out on a tour.

2 Q. Pick a number. If it's two and there's 40 or 50 officers,  
3 and they are all doing UF-250 activity, that could be 80 to 100  
4 forms that the desk officer is supposed to review, right?

5 A. The average 250 per officer, for an operational officer, is  
6 about two and change a month. So that's the real workload. 80  
7 a day, I don't think we are going to get to that number. Your  
8 average officer, who does police work on the street fighting  
9 crime, the five operational boroughs that do police work --  
10 when I say police work, what I am talking about is on the  
11 street operational work -- they do about, average, two and  
12 change stop, questions a month per officer, that's the average.  
13 So you're talking about 80 on the tour? That's unreasonable.

14 Q. Well, we know that on a yearly basis, for most years, since  
15 the year 2006 anyway, that the number of stops that have been  
16 documented for which there is a 250 ranges from 472,000 in 2007  
17 to 685,000 in 2011, correct?

18 A. Correct.

19 Q. So there could be occasions when the desk officers are  
20 required to review more than a couple of 250, right?

21 A. More than a couple, yes. But it's not going to be anywhere  
22 near 80.

23 Q. And the desk officer would not be somebody that was out on  
24 patrol with the officer?

25 A. Generally, no.

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1 Q. There is no other procedure set forth in the patrol guide,  
2 other than the one before you 212-11, which sets forth the  
3 responsibilities of a patrol supervisor to review a 250 form,  
4 correct?

5 A. Correct. But, in practicality, it is the supervisor --

6 Q. You answered the question.

7 A. I thought you were looking for the truth here. The truth  
8 is it's not always the desk officer.

9 Q. When you said yes, that wasn't the truth?

10 A. Yeah. But it's more than that. It's the desk officer will  
11 do it. But when you get down to the street, and what really  
12 happens on the street, is that there are a number of  
13 supervisors that will review that work. For instance, an  
14 anticrime supervisor may be the one who reviews his or her  
15 anticrime officers.

16 MR. MOORE: Judge, with all due respect, I don't think  
17 that's responsive to the question.

18 Q. The question was, is there any other procedures set forth  
19 in the patrol guide, other than set forth in PG 212-11, which  
20 sets forth the responsibilities of a supervisor to review a  
21 completed 250 form? And the answer was no, right?

22 A. That's correct. The answer is no.

23 Q. With respect to the review that is done, for the most part,  
24 that's simply making sure that the form is filled out  
25 accurately, correct?

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1 A. Yes. For the most part, and put a serial number on it,  
2 yes.

3 Q. With respect to whoever is reviewing it, whether it's the  
4 person's squad supervisor or the desk officer or somebody else,  
5 am I accurate in saying that, for the most part, that review is  
6 simply to see if the boxes are properly filled out, a serial  
7 number is on it, and beyond that there is not much of a review?

8 A. I don't agree.

9 Q. Well, it's not typical that the desk officer or the patrol  
10 supervisor would review the underlying facts of the actual  
11 stop, correct? That doesn't happen?

12 A. That's why I make reference to the other supervisors.

13 Q. I am asking you whether the person who signs the 250, it's  
14 not typical that that person would review the underlying facts  
15 that make up --

16 A. I don't agree.

17 THE COURT: You think they are going to go behind the  
18 250 and investigate the facts of the stop?

19 THE WITNESS: It's very possible. He said the person.  
20 Now, that person could be the anticrime sergeant. So if the  
21 anticrime sergeant is looking at his or her anticrime officers,  
22 they will look at the report, they will look and say, OK, where  
23 was this stop conducted? Well, Sergeant Jones, I told you I  
24 need you in Sector Adam because there is a daytime burglary  
25 problem. Why are you stopping these people in Sector George

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1 because you think they are breaking into a car? I need you  
2 here. Why are you not where I told you to be?

3 THE COURT: It is possible to do it, but in the  
4 millions of these, if there are, how many times do you think  
5 people go behind the form to actually investigate the stop?

6 THE WITNESS: I think many times. I just said, it's  
7 only less than three an officer per month. They really can do  
8 an analysis.

9 THE COURT: OK.

10 Q. Less than three officers --

11 THE COURT: Three 250s.

12 A. Three stops per month per officer.

13 Q. Three per patrol supervisor -- per patrol service bureau or  
14 all officers in the police department?

15 A. Operational bureaus.

16 Q. There is nothing in writing, that you know of, that  
17 instructs a supervisor to review the underlying facts of a stop  
18 as the basis for information put on a UF-250 form, right, there  
19 is nothing in writing that says that?

20 A. I don't agree. If you look again at the duties and  
21 responsibilities of the supervisor, wasn't it to check the work  
22 of the officer? Didn't we read that earlier in one of the  
23 earlier exhibits?

24 Q. There is nothing that specifically talks about using the  
25 term stop and frisk, stop or 250, there is nothing in writing

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1 that sets forth the duties of a supervisor to do that, that you  
2 are aware of, right?

3 A. If we wrote down every single piece of paper we expected  
4 the sergeant to look at, we would need volumes of paper to  
5 write it down.

6 Q. So the answer to that is no?

7 A. The answer is not no. The answer is, if you look at that  
8 line under duties and responsibilities -- and if you could put  
9 it up again, I will mention it -- it says to review the work of  
10 their officer. And it lists a few different categories. And  
11 one of them I would interpret as being paperwork, paperwork in  
12 the stop, question and frisk. What is the reason behind it?  
13 We examine arrests. We examine summonses. We look at all of  
14 the work the officers do. Our sergeants are the best in the  
15 nation, the best in the country, the best in the world rather,  
16 and we expect them to supervise their officers in an effective  
17 way, and they do it. And part of what they do is to look at  
18 all the work that that officer produces, whether writing,  
19 operation or whatever it is. And part of that is the stop,  
20 question and frisk report.

21 Q. Let's talk then about the supervisor with respect  
22 to -- actually, let's talk about the officer. The officer  
23 fills out a 250, right?

24 A. Yes.

25 Q. Are they supposed to fill out the information in their memo

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1 book?

2 A. Yes.

3 Q. But you know that that doesn't happen, correct?

4 A. A good part of the time it doesn't happen.

5 Q. Absent a situation where there is an arrest or a summons,  
6 an officer is instructed that they prepare a 250 and also put  
7 their entry in a memo book, correct?

8 A. Yes.

9 Q. I will show you what has already been marked Plaintiffs'  
10 Exhibit 85. That's a UF-250 form, correct?

11 A. Yes.

12 Q. Previously in the police department, there was a 250 form  
13 that was different than this, right?

14 A. Yes.

15 MR. MOORE: Judge, I am going to mark this. This is  
16 an exhibit that I provided to the city yesterday as one that I  
17 was going to use. I will mark it as Plaintiffs' Exhibit 449.

18 Q. Do you recognize this document?

19 A. Yes.

20 Q. That's the old 250, right?

21 A. That's correct.

22 MR. MOORE: I move the admission of 449 into evidence.

23 MS. GROSSMAN: No objection, your Honor.

24 THE COURT: 449 is received.

25 (Plaintiffs' Exhibit 449 received in evidence)

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1 MR. MOORE: I also thought it would be helpful for the  
2 Court to see how it used to be done.

3 THE COURT: Yes.

4 Q. So when did this form change, Chief Esposito, if you know?

5 A. I forget exactly.

6 THE COURT: Do you know what year?

7 THE WITNESS: I don't want to give a wrong answer.

8 THE COURT: Anybody know what year?

9 MS. GROSSMAN: 2002. It says it on the document.

10 MR. MOORE: The old form I believe was in  
11 operation -- the new form, the one he just identified, 85, has  
12 an entry there of 2002. So I assume it was sometime before  
13 2002. I don't know how far before 2002.

14 THE COURT: OK.

15 Q. As you can see, the old UF-250 form had an area where a  
16 narrative is captured, correct?

17 A. Yes.

18 Q. These forms were the forms that were reviewed by the office  
19 of the attorney general when they did their review of stop and  
20 frisk activity back in 1999, correct?

21 A. Yes.

22 Q. Now, officers have experiences every day in writing down  
23 narratives?

24 A. I'm sorry?

25 Q. Officers have experiences every day in writing down a

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1 narrative about something that occurred?

2 A. Yes.

3 Q. Often they have to do it when they are filling out a  
4 complaint, correct?

5 A. Correct.

6 Q. An online booking sheet calls for a narrative, correct?

7 A. Yes.

8 Q. An aided report calls for a narrative, correct?

9 A. That's correct.

10 Q. So writing a narrative of some facts that they observed is  
11 not something that is foreign to any police officer?

12 A. No.

13 Q. But with respect to the stop and frisk activity, at some  
14 point a decision was made by the police department to go switch  
15 from a form that primarily captured a narrative to a check-off  
16 form, correct?

17 A. Yes.

18 Q. That was so you wouldn't have to have all these varying  
19 forms of narratives being written down by the officers, right?

20 A. I think there's a couple of different factors that went  
21 into it.

22 Q. That wasn't one of the factors?

23 A. That there would be different -- I'm sorry.

24 Q. Were you concerned that you were getting -- withdraw that.  
25 Tell us why the form changed.

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1 A. Well, I think it's a lot easier to capture the information  
2 now and get it into a database with the current form. These  
3 forms we felt weren't being filled out as accurately as they  
4 could have been in many instances.

5 Q. So when officers have to do a narrative, you're concerned  
6 about them being able to fill out the form accurately, correct?

7 A. At times.

8 Q. That's one of the reasons why you changed the form, right?

9 A. Yes.

10 Q. Not you, but the police department?

11 A. Yes.

12 Q. With respect to the database, other forms in the police  
13 department, like online booking sheets, complaint reports, they  
14 are all entered into a database with a narrative, correct?

15 A. That's correct.

16 Q. There is nothing unusual about having to do that in the  
17 police department, right?

18 A. No. Except that they can put the minimum in here, and it's  
19 a little rougher to put a minimum in an online booking that the  
20 DA is going to question you, and things of that nature. There  
21 is more of an immediate analysis of that done.

22 (Continued on next page)

23

24

25

D499FLO4 Esposito - direct

1 Q. How many complaints are prepared every year in the police  
2 department, do you know?

3 A. Complaint reports?

4 Q. Yeah.

5 A. A few hundred thousand. But there's an immediate review of  
6 that.

7 Q. Well, there could be an immediate review of the 250 form,  
8 too, right?

9 A. Could be. But it's not as critical as a new arrest or a  
10 crime that just happened.

11 What we found was these were not filled out as  
12 accurately as we would like, as completely as we would like.

13 MR. MOORE: So, by the way, I think there was some  
14 question about whether 85 is in evidence. Plaintiffs' Exhibit  
15 85. I thought it was.

16 THE COURT: I thought it was, the new form?

17 MR. MOORE: The new form, yeah.

18 THE COURT: It's been in evidence.

19 MS. COOKE: There are two new forms. This is a 2002  
20 new form. Then there's a 2011.

21 THE COURT: Anyway, if it isn't in evidence, it should  
22 be, so it is.

23 (Plaintiffs' Exhibit 85 received in evidence)

24 Q. Now activity logs are an important part of what an officer  
25 has to do on a daily basis, right?

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1 A. Yes.

2 MR. MOORE: One minute, your Honor.

3 Q. I'm going to show you, Chief Esposito, Plaintiffs' Exhibit  
4 96 which is an operations order dated 9-11-08 concerning  
5 activity logs which is identified Plaintiffs' Exhibit 96.

6 You're familiar with this document, correct?

7 A. Yes.

8 MR. MOORE: Judge, we move 96 into evidence if it's  
9 not already in.

10 It's in. Okay. Thank you.

11 Q. So operations order 44, the activity log, the first  
12 paragraph reads, "Uniformed members of the service are reminded  
13 that activity logs are a valuable resource provided to all  
14 uniformed members below the rank of captain to accurately  
15 record important information while on duty," correct?

16 A. Yes.

17 Q. And this particular patrol guide provision mandates that  
18 all members must chronologically record all their assignments  
19 and information pertaining to their tour, correct?

20 A. Yes.

21 MR. MOORE: Come back to that in a minute.

22 Q. I want to show you what's been marked Plaintiffs' Exhibit  
23 352. This is another patrol guide provision with respect to  
24 activity logs, correct?

25 A. Yes.

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1 Q. Plaintiffs' Exhibit 352. And you're familiar with this  
2 document, correct?

3 A. Yes.

4 MR. MOORE: Judge, move the admission of 352 if it's  
5 not already in evidence.

6 THE COURT: Any objection?

7 MS. GROSSMAN: I'm trying to look for it.

8 THE COURT: It's a page of the patrol guide.

9 MS. GROSSMAN: Right. No objection.

10 THE COURT: It says one of two, the second page is  
11 over, on the other side, Mr. Moore, so that just make sure it's  
12 all in evidence.

13 All right.

14 MR. MOORE: There's a second page.

15 THE COURT: So the full document is there and it's  
16 received.

17 (Plaintiffs' Exhibit 352 received in evidence)

18 Q. Now it says -- this document says that information  
19 pertinent to assignment or observed suspected violations of law  
20 should be recorded in the activity log, correct?

21 A. Yes.

22 Q. And that would include stop-and-frisk activity, right?

23 A. Yep.

24 Q. And actually to go back to Exhibit 96, in addition to  
25 having some text in it setting forth the importance of the

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1 activity log, it also provides an example for the officers on  
2 the kind of information the police department is looking for in  
3 their activity log entries, correct?

4 A. Yes.

5 Q. And the beginning up there it says, and you agree with this  
6 do you not, that activity logs serve to accurately record  
7 important information for uniformed members of the service who  
8 are required to prepare them.

9 Do you see that?

10 A. Yes.

11 Q. And you agree with that, right?

12 A. To some degree.

13 Q. Which part don't you agree, that serve to accurately record  
14 important information or that they're required to prepare them,  
15 or what part don't you agree?

16 A. I sometimes think we put too much information in our books,  
17 we're redundant many times, and we're asking the officers, who  
18 are working very, very hard on the street, to document so much  
19 stuff that sometimes it impacts on their ability to do police  
20 work, answer radio runs. So I understand why at times the  
21 officers don't have completed memo books.

22 Q. Well --

23 A. In a perfect world, I think this is a hundred percent  
24 acceptable. But we're not in a perfect world out there.

25 Q. Well, look at the front page of Exhibit 96 again. The fact

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1 it says a member -- paragraph two says a member of the service  
2 who fails to make required entries in their memo book can be  
3 subject to disciplinary action, correct?

4 A. That's correct.

5 Q. So, this is an important part of an officer's daily  
6 activity, recording the information -- recording their activity  
7 in their memo book, correct?

8 A. Yeah.

9 Q. There is no other document that they have that they carry  
10 with them that records their daily activity the way a memo book  
11 does, right?

12 A. Not the way a memo book does. That's correct.

13 Q. At least in terms of what's provided to them by the police  
14 department, right?

15 A. Correct.

16 Q. And, in fact, this says, as well, that supervisors are  
17 reminded of the importance of inspecting subordinate members'  
18 activity logs for accuracy and completeness, right?

19 A. That's correct.

20 Q. So it's an important part of how the police department  
21 functions, officers who are engaged in important activity are  
22 supposed to put that activity in their memo books, correct?

23 A. Yes.

24 I'm just telling you what happens in reality.

25 Q. One of the reasons why the police department -- how many

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1 officers are there in the police department?

2 A. 35,000 -- thirty-four and change right now.

3 Q. With an organization that big, you don't know what every  
4 officer is doing at any particular time, right?

5 A. No.

6 Q. You don't know whether a supervisor is doing a good job  
7 supervising or an officer is doing a good job? You may know a  
8 lot of them personally, but you don't know all of them?

9 A. Personally. No. That's why we have a chain of command.

10 Q. That's why you have training, correct, to make sure they  
11 know how to do their job right, correct?

12 A. Yep.

13 Q. And that's why you have documents like Plaintiffs' Exhibit  
14 96, to tell them what's expected of them, right?

15 A. That's correct.

16 Q. All right. So that they don't just go out there and make  
17 it up. They're told how they're supposed to do certain things,  
18 right?

19 A. Yes.

20 Q. Okay. So, in addition to telling officers that they  
21 have -- that it's important to put entries in their memo book,  
22 there's a specific reference in this document to stop and  
23 frisk.

24 Do you see that?

25 A. Yes.

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1 Q. And it says, "When a member of service has cause to  
2 temporarily detain and/or frisk an individual, it is imperative  
3 that a detailed entry be made as indicated."

4 Correct?

5 A. Yes.

6 Q. That's what it says?

7 A. Yep.

8 Q. That's what officers are trained to do, right?

9 A. Yes.

10 Q. And the example given on the sample memo book page there is  
11 that -- which is an entry at 1715 on that book.

12 Do you see it?

13 A. Yes.

14 Q. And it says SQF. That's stop, question and frisk, right?

15 A. Yes.

16 Q. And UF 250. That means a UF 250 was prepared, right?

17 A. Yes.

18 Q. And then it says suspect male randomly looking in apartment  
19 windows, correct?

20 A. Yes.

21 Q. And what would you call that, casing a place for cause for  
22 criminal activity?

23 A. I would call it one of those incidents when I talked about,  
24 where we prevented a crime, we're not really able to tell us  
25 how many happens.

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1 Yeah, that would be a person maybe that was looking at  
2 breaking into a house.

3 Q. If you were filling out a 250, you might put in the 250,  
4 check off the form that says actions indicative of casing a  
5 victim or a location.

6 Do you see that, on the left-hand side under: What  
7 were circumstances which led to stop?

8 A. Yes.

9 Q. That would be -- if, in fact, the officer saw somebody  
10 suspicious -- or I don't know if that's suspicious or  
11 suspect -- male randomly looking in apartment windows, if  
12 that's what they saw them do, the actual facts of what they saw  
13 them do, when they went to the 250 they'd probably check off  
14 casing, right?

15 A. Yes.

16 Q. But if you were looking at this form without having made  
17 the memo book entries, if they made it, and it was just checked  
18 off casing, you wouldn't know that that casing involved  
19 randomly looking in apartment windows, correct?

20 A. Correct.

21 Q. You wouldn't know from the 250, right?

22 A. Correct.

23 Q. And if it wasn't written down in the memo book, it wouldn't  
24 be either in the 250 or the memo book, those particular facts,  
25 right?

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1 A. Right.

2 Q. And so -- and there is no other document that would capture  
3 that information, correct?

4 A. No.

5 Q. And again this is how officers are trained, right?

6 A. Yes.

7 Q. And the language is pretty strong. It says it's  
8 imperative. It's not saying it's suggested -- or it's  
9 suggested, it's a good idea.

10 It's imperative, right?

11 A. That's what it says.

12 Q. And one of the reasons why you might want an officer to  
13 fill out a memo book with the actual case specific facts of  
14 what they saw or observed is because it might help that officer  
15 at some point down the road recall those events, right?

16 A. Yes.

17 Q. If all it has to rely on is a form that says casing without  
18 any specific reference to the facts, they may not be able to --  
19 that might not be enough to jog their memory, correct?

20 A. Correct.

21 Q. But if you have a detailed -- not that long -- but some  
22 details about the actual stop, that would help the officer  
23 remember, if he needs to, the circumstances of that particular  
24 stop, right?

25 A. Certainly could.

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- 1 Q. And it would also provide another important function. It  
2 would allow the police department, looking back at this  
3 officer's activity, some actual details about a stop that they  
4 made, correct?  
5 A. Yes.  
6 Q. Wouldn't have to rely on a form that has just a check off,  
7 right?  
8 A. Correct.  
9 Q. It would give the police department some real facts about  
10 that stop so they can, if they were looking at it, they could  
11 determine whether there was reasonable suspicion or even was  
12 there racial profiling, right? Do you agree with that?  
13 A. It depends if the officer filled it out, the memo book.  
14 Q. Well, yes. Obviously.  
15 A. Completely.  
16 Q. The point is though --  
17 A. You could still have a memo book where it gives you no  
18 additional information.  
19 Q. Chief Esposito, where it's filled out, it would allow  
20 somebody looking back to determine whether on that particular  
21 stop there was or was not reasonable suspicion, correct?  
22 A. If it's filled out --  
23 Q. The way they're trained to fill it out under this  
24 procedure?  
25 A. It gives you more information.

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1 Q. If it's filled out that way, that would give the police  
2 department the ability to look and see if, in fact, in a real  
3 way, because you're looking at the real facts of the incident,  
4 not just a check-off summary of what category it falls in, you  
5 would be able to know whether, with more certainty whether  
6 there was reasonable suspicion, correct?

7 A. Not necessarily. I don't believe necessarily.

8 If you check off casing, whether he remembers it or  
9 not, when he did it, it was reasonable suspicion. Now he  
10 documents it in the book. If he just puts I saw a guy casing  
11 the location, it could still be the same thing. It's casing is  
12 casing.

13 Q. But if he's just trying to get some numbers because he's  
14 getting pressure from the supervisor and he fills out a 250 and  
15 says furtive movement or casing and has no details in his memo  
16 book, that may be a way for an officer to look like he's doing  
17 work but not really doing work, correct?

18 A. That's why we rely on the supervisors.

19 Q. So you --

20 A. To ensure that doesn't happen.

21 Q. You agree with me that that might be a situation where you  
22 don't have to write any details, you just can check off a form,  
23 that might be a way for an officer to indicate they're doing  
24 something that they're not really doing, correct?

25 A. So we couldn't falsify the memo book? The same way we

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1 falsify -- you're accusing us of falsifying the 250. Why  
2 couldn't we just falsify the memo book also?

3 THE COURT: Excuse me. He's not accusing you of  
4 anything.

5 MR. MOORE: Thank you, Judge.

6 THE WITNESS: The case you're portraying is a person  
7 who is making up a 250 by faking the report. Well, what's so  
8 hard about faking the memo book?

9 Q. Well then you have a real problem, right?

10 A. It's a problem either way. It's a serious problem either  
11 way.

12 THE COURT: Excuse me. This is not productive.

13 Q. Let me hand you what's been marked as Plaintiffs' Exhibit  
14 348. Can you identify this document?

15 A. Can I identify this document?

16 Q. Can you tell me what it is?

17 A. It says lesson plan coversheet.

18 Q. It's a lesson plan for?

19 MS. GROSSMAN: Your Honor, I'm just going to object.  
20 Again, this was not an exhibit that was identified to the city  
21 as an exhibit that this witness was going to be shown.

22 MR. MOORE: You know what, Judge, I'm tired of hearing  
23 this because we've been asking them for weeks for --

24 THE COURT: You know what, what they didn't do will  
25 come up at another time. Right now we're into what you didn't

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1 do. You were asked to provide the exhibits that you intended  
2 to use with this witness. I have no idea why you didn't  
3 provide this exhibit.

4 There are other witnesses who will cover this exhibit,  
5 I assume?

6 MS. GROSSMAN: Yes.

7 THE COURT: Is it training?

8 MS. GROSSMAN: Yes.

9 THE COURT: I don't think this is the appropriate  
10 person to ask about this exhibit. I think you should move on.

11 MR. MOORE: I just want to point to one particular  
12 thing in the exhibit.

13 THE COURT: One particular -- what's that?

14 MR. MOORE: One particular.

15 THE COURT: Let's see what it is.

16 MR. MOORE: I mean I think -- and it goes to an  
17 important issue.

18 THE COURT: What is the one particular thing?

19 MR. MOORE: The exhibit is properly identified. It's  
20 a lesson plan for the sergeants leadership course.

21 THE COURT: What's the one particular thing you want  
22 to show?

23 MR. MOORE: Just one second, Judge.

24 MS. GROSSMAN: Your Honor, I'm sorry but this is why  
25 this is taking so much time and we need to be able to put our

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1 case on too. This is just not right. We have witnesses who  
2 are going to be talking about this.

3 THE COURT: I understand that. He has one item to go  
4 over in this exhibit.

5 BY MR. MOORE:

6 Q. Look at where it says ensure officer makes complete  
7 activity log entries. Pertinent details must be recorded for  
8 every stop situation.

9 Do you see that?

10 A. Yes, I see it.

11 Q. Do you see that?

12 A. Yeah.

13 Q. And that's how newly promoted sergeants are trained by the  
14 police department, correct?

15 A. Yes.

16 THE COURT: Okay. That's all with that exhibit. You  
17 said you wanted to point out one thing. You did.

18 Q. I'm going to hand you what's been marked Plaintiffs'  
19 Exhibit 375. And I'll identify this as a lesson plan.

20 MS. GROSSMAN: This is the same objection, your Honor,  
21 all of these.

22 THE COURT: You were not given this either?

23 MS. GROSSMAN: Yes.

24 THE COURT: I'm not going to allow it.

25 I'm sorry. We have to stay organized here. You were

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1 supposed to produce the exhibits that you intended to use on  
2 his direct.

3 MR. CHARNEY: Can I just point out that we did discuss  
4 this at one of the pretrial conferences that we would make our  
5 best efforts, which we have done, and there are going to be  
6 oversights.

7 THE COURT: That's fine. There will be oversights.  
8 But I can't allow this exhibit.

9 MR. MOORE: All right. Move on.

10 Q. You agree with me, will you not -- do you not, Chief  
11 Esposito, that officers who are promoted to sergeant are given  
12 instruction with respect to how to perform their duties as  
13 sergeants, correct?

14 A. Yes.

15 Q. And one of the things they are told is that they have to  
16 make sure that officers when they -- fill out their memo book  
17 entries completely, correct?

18 A. Yes.

19 Q. And that's set forth both verbally and in documents that  
20 they're given when they go through their training when they  
21 first become sergeants, correct?

22 A. Yes.

23 Q. Let me ask it this way.

24 You agree with me, do you not, that the activity log  
25 is the officer's primary means of documenting their daily

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1 activity, correct?

2 MS. GROSSMAN: I mean, your Honor, we have been going  
3 over the same activity log over this time.

4 MR. MOORE: You know what, Judge.

5 THE COURT: We have. We have, Mr. Moore.

6 MR. MOORE: It's important.

7 THE COURT: I know it's important. Everything in the  
8 trial is important. But we have gone over activity logs.

9 MR. MOORE: Right. And since we're now being limited  
10 with respect to what documents we can show them, although it's  
11 clearly documents that he was asked about in his deposition.

12 THE COURT: But how is this question not cumulative?  
13 You've covered the importance of activity logs. You really  
14 have.

15 MR. MOORE: Because to the extent that the police  
16 department in document after document stresses the importance  
17 of officers putting the pertinent details of a stop and frisk.

18 THE COURT: I have no doubt about that. I'm the trier  
19 of fact. I understand the importance of putting it in the  
20 activity log.

21 And so does he, I think. Don't you think it's  
22 important to put an entry --

23 THE WITNESS: Yes.

24 THE COURT: Now we both think so.

25 MR. MOORE: We have some questions about how important

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1 he thinks it is, Judge.

2 THE COURT: Okay. All right.

3 Q. Is it fair to say that you don't agree with this training?

4 A. What training?

5 Q. You think it's appropriate that officers enter these  
6 details in their memo book, but you don't think it's mandated  
7 for a police officer to do that, correct?

8 Yes or no, Chief Esposito, if you can.

9 A. Is it mandated to make an activity report?

10 Q. Yes.

11 A. They urge strongly to do it. There are -- you have to fill  
12 out a memo book, yeah.

13 Q. It would be an appropriate activity for an officer to do  
14 but it's not one that you believe is mandated by the police  
15 department, correct?

16 A. You have to maintain a memo book.

17 Q. Can you answer that question. With respect to making a  
18 memo book entry, it's something that you believe is appropriate  
19 but not mandated by the police department, correct?

20 A. I'm not saying that.

21 THE COURT: It's not hard question. Do you think  
22 putting the entries in is mandated?

23 THE WITNESS: Regarding what? Entries in general?

24 THE COURT: Regarding 250s.

25 MR. MOORE: Regarding stop-and-frisk activity.

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1 THE WITNESS: Yes, it is.

2 THE COURT: Mandated?

3 THE WITNESS: Yes.

4 THE COURT: Okay. That's his answer.

5 Yes, it's mandated.

6 Q. Why don't you turn to page 130 of your deposition. And  
7 you're saying that -- you said just now that you believe it's  
8 mandated but I want you to turn to page 130 of your deposition,  
9 line 21.

10 Do you recall being asked this question and giving  
11 this answer at your deposition.

12 "Q. All right. What is your understanding as to an officer's  
13 responsibility for documenting the stop-and-frisk activity? Is  
14 it just the UF 250 form or do they have responsibility to  
15 document it elsewhere?

16 "A. A memo book entry is appropriate.

17 "Q. Well aside from whether it's appropriate, is there an  
18 obligation on an officer to document the UF 250.

19 "A. I don't think --

20 "Q. The stop-and-frisk activity in the memo book?

21 "A. I don't think it's specifically mandated."

22 Do you recall being asked that question and giving  
23 that answer?

24 A. Sure.

25 Q. So your testimony is -- today is different, correct?

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1 A. Yes. This was '08. When did I --

2 THE COURT: Nine.

3 THE WITNESS: '09. A few years later. The department  
4 has put a lot more emphasis on it since then.

5 Q. So, it's your testimony that the reason your deposition  
6 testimony is different than what you testified to today is that  
7 over the passage of time the department has put a lot more  
8 emphasis on this issue, correct?

9 A. That's correct.

10 Q. In fact, do you recall at your deposition, which was in  
11 2009, you testified that you weren't even sure if officers were  
12 trained to put in more information in their memo book than what  
13 matters in a 250. That was your testimony at the deposition,  
14 correct?

15 A. Correct.

16 Q. And specifically if an officer checks off in one of the  
17 boxes on a 250 form under the section, "What were circumstances  
18 which led to the stop," you don't think it's necessary to put  
19 anymore details in your memo book other than what appears on  
20 that 250, correct?

21 A. Correct.

22 Q. So, you don't agree that officers are trained to be more  
23 descriptive in filling out their memo books?

24 A. They are trained to be more descriptive.

25 THE COURT: They're what?

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1 THE WITNESS: They're trained to be more descriptive.

2 THE COURT: They are. Okay.

3 Q. They are after 2009, after your deposition, or before?

4 A. We've put in a lot more focus on it now. I think the  
5 training was the same but --

6 THE COURT: You're both speaking at once. I didn't  
7 understand what you said, Mr. Moore.

8 He said there's more focus on it now, so now they're  
9 trained to be more descriptive in the memo book than on the  
10 form, right?

11 THE WITNESS: Yes.

12 Q. And in 2009 when you gave your deposition, it was your  
13 understanding that officers were trained to put -- be more  
14 descriptive in filling out their memo books, right? That was  
15 your understanding back then?

16 A. That they what?

17 Q. They were not trained to be more descriptive --

18 A. Is that what I said here?

19 Q. Yes.

20 THE COURT: In '09.

21 THE WITNESS: In '09?

22 MR. MOORE: Yeah.

23 THE WITNESS: That's what I believed back then.

24 Q. Well, do you recall at your deposition saying it wouldn't  
25 even be helpful for an officer or for the police department to

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- 1 have the more detailed description in the memo book than  
2 appears on the 250? It wouldn't even be helpful for the  
3 officer in determining -- for the department in determining if  
4 the officer acted properly, it wouldn't even be helpful to have  
5 that information?  
6 A. I think it's redundant.  
7 Q. You think it was redundant then. You still think it's  
8 redundant?  
9 A. To some degree.  
10 But my belief is different than what the policy of the  
11 police department is.  
12 Q. Well you're the -- you're speaking as the policymaking  
13 person for the police department today.  
14 A. Okay. I don't make policy.  
15 Q. So your opinion is it's redundant, right?  
16 A. I think --  
17 Q. For the most part?  
18 A. Yeah, right. For the most part. That's correct.  
19 Q. So if an officer checked off furtive movement, that would  
20 be enough for you, correct?  
21 A. Yes.  
22 Q. And they wouldn't have to put any details in their memo  
23 book about what the furtive movement was, correct?  
24 A. Correct.  
25 Q. Now one of the other ways in which officers -- one of the

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- 1 other ways in which the police department seeks to ensure that  
2 officers are either operating -- stopping people only with  
3 reasonable suspicion or that they're not engaging in racial  
4 profiling is by the system of audits, right, the QAD audits,  
5 correct?  
6 A. That's part of the process. Again, I go to the supervisors  
7 as my main --  
8 Q. Correct.  
9 A. -- way of determining about the actions of my police  
10 officers.  
11 Q. I think earlier today in your testimony you mentioned four  
12 things as the -- provided you the checks and balances, the  
13 self-inspection protocols, the QAD audits that follow from  
14 that, correct?  
15 A. Yes.  
16 Q. The CompStat review?  
17 A. Yes.  
18 Q. And we've talked about that, correct?  
19 A. Yep.  
20 Q. The investigations of officers' stop activity that may be  
21 based on some complaint, correct?  
22 A. Yes.  
23 Q. And the fourth, the big one, is supervisory review,  
24 correct?  
25 A. Correct.

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1 Q. So let's look at the QAD audits a little bit. I'm not  
2 going to go into it in much detail.

3 MS. GROSSMAN: Your Honor, I just want to note that  
4 there will be witnesses who are going to talk about QAD audits  
5 but I understand there are a few questions.

6 Q. Now, the self-inspection protocols are mentioned both in  
7 the stipulation of settlement in Daniels and in the policy with  
8 respect to racial profiling issued by the department, correct?

9 A. What was mentioned?

10 Q. The self-inspection protocols, the audits by QAD, correct?

11 A. Yes.

12 Q. And is it -- am I accurate in stating that precincts are  
13 required -- it's called self-inspection so they're required to  
14 inspect a number of 250s on a periodic basis and then some  
15 representative QAD comes and looks at those, correct?

16 A. Yes.

17 Q. And the overall information that's garnered from that  
18 inspection process, that auditing process is compiled by QAD  
19 and it's sent up the chain of command, correct?

20 A. Yes.

21 Q. And that's stuff that would come across your desk as well,  
22 correct? Or when you were chief of the department?

23 A. Yeah.

24 Q. And going forward from the date of the -- both the Daniels  
25 stipulation and that date the racial profiling policy was

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1 adopted, the NYPD has an obligation pursuant to that policy to  
2 take steps to ensure that racial profiling is not occurring in  
3 the department, correct?

4 A. Yes.

5 Q. But isn't it your opinion, Chief Esposito, that that  
6 obligation for you as the department doing the same thing after  
7 March 2002 that it did before March 2002?

8 A. I'm sorry. You got to --

9 Q. The obligation to ensure that racial profiling is not  
10 occurring.

11 A. I might have misunderstood the question before that. Could  
12 you just give me that one before.

13 Q. I'll rephrase it. Withdraw that question.

14 It's your opinion, is it not, Chief Esposito, that  
15 with respect to this obligation to ensure that racial profiling  
16 is not occurring in the department, that what the department  
17 did after March of 2002 when that policy was issued is the same  
18 thing that it did before March 2002?

19 A. The policy was the same.

20 Q. The policy to ensure that racial profiling was not  
21 happening, that the conduct of the police department didn't  
22 change because of that operations order that was issued in  
23 March of 2002?

24 A. The operations order just put into writing what the policy  
25 was before it was put into writing. We're operating the same

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1 way.

2 Q. So you would agree with me then that what the department  
3 did after March of 2002 was the same thing the department did  
4 before March of 2002, with respect to ensuring that officers do  
5 not engage in racial profiling, correct?

6 MS. GROSSMAN: Your Honor, I just think the question  
7 is confusing because the operations order -- the racial  
8 profiling policy was the same before and then what was done  
9 after. It's just confusing.

10 MR. MOORE: I don't think it's confusing, Judge.

11 THE COURT: Let me read it.

12 I think it's straightforward. Do you want to hear it  
13 again.

14 THE WITNESS: Our policy before the memo was the same  
15 as the policy after the memo.

16 Q. So the operations order didn't change anything in your  
17 opinion, correct?

18 A. Correct.

19 Q. Let me hand you what's been marked as Plaintiffs' Exhibit  
20 335.

21 Do you recognize this as the -- a QAD audit stop,  
22 question and frisk activity for the fourth quarter of 2006,  
23 correct?

24 MS. GROSSMAN: Your Honor, again this is another  
25 exhibit that wasn't given to us.

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1 MR. MOORE: Oh no. Oh no. That's not -- yesterday I  
2 gave them a document that listed this exhibit on it.

3 THE COURT: Okay. Then I'll allow you to go ahead.

4 THE WITNESS: What I have in front of me is the '06  
5 fourth quarter review. Stop question and frisk summary, yes.

6 MS. GROSSMAN: Can I have a copy please. Because I  
7 don't have a copy. That wasn't what you -- I have something  
8 else.

9 MR. MOORE: You don't have copies of Plaintiffs'  
10 Exhibits?

11 MS. GROSSMAN: You didn't give that to me. You gave  
12 me something else but not that.

13 THE COURT: All right. I think -- okay.

14 MS. GROSSMAN: Your Honor, this was not given to me.

15 THE COURT: He didn't say given to. He said listed it  
16 yesterday.

17 MS. GROSSMAN: It was not listed yesterday.

18 MR. MOORE: Yes, it was.

19 THE COURT: You can't disagree because I don't want to  
20 have a hearing as to who is right. So maybe prove to you it  
21 was listed.

22 MR. MOORE: I sent them a document yesterday that  
23 identified Plaintiffs' Exhibit 335 and by Bates number.

24 THE COURT: So just show it to Ms. Grossman, maybe  
25 she'll say, Oh, that's right.

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1 MS. GROSSMAN: What he gave me was a summary, a  
2 one-page summary. That's what he sent me. This is not --

3 THE COURT: This is that exhibit. It listed that  
4 exhibit?

5 MR. MOORE: It referenced this exhibit. What I'm  
6 trying to do is speed up the testimony.

7 THE COURT: Fine. I don't know what you mean by  
8 referenced.

9 MR. MOORE: This is the document. I mean clearly says  
10 we intend to rely on this document.

11 THE COURT: Okay. Go ahead.

12 MS. GROSSMAN: Your Honor, I would -- I know we are  
13 going to go forward and we are going here, but I just have to  
14 register my objection. There are very many documents. I was  
15 supposed to get this at least a week ago. Last night, at 8:00  
16 or 7:30, I'm being presented with volumes of material that I  
17 have not had a chance to look at and it's just not right.

18 THE COURT: I don't know what you mean you haven't had  
19 a chance to look at it.

20 MS. GROSSMAN: I have not had a chance to review it or  
21 have the witness be prepared to give testimony about it, which  
22 was the purpose of identifying these documents for the trial  
23 testimony. That was the purpose.

24 MR. MOORE: He gave testimony about this document at  
25 his deposition.

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1 MS. GROSSMAN: It doesn't matter.

2 THE COURT: It does matter. It would be better if you  
3 could have gone over it in time for today. He has gone over it  
4 before. He was deposed about it. There is no real surprise  
5 here. Certainly reviewed his deposition for to day, I would  
6 think. Most witnesses do.

7 But in any event I'm going to allow this one because  
8 it was referenced.

9 BY MR. MOORE:

10 Q. In any event, Chief Esposito --

11 MR. MOORE: Plaintiffs' Exhibit 335, we move its  
12 admission into evidence.

13 THE COURT: I don't know who prepared this. Is this a  
14 city document?

15 MR. MOORE: This is a document -- let me ask him,  
16 Judge.

17 THE COURT: Yes.

18 Q. This is a document prepared by quality assurance division  
19 of the police department, correct?

20 A. I believe so.

21 THE COURT: So it's a city document.

22 MS. GROSSMAN: It is. And, again, I know -- QAD  
23 doesn't report to the chief of the department. It's a separate  
24 unit. It's just seems wasteful and we don't have a lot of time  
25 left.

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1 THE COURT: We don't.

2 Anyway I'm -- but there is no objection really to  
3 admitting the exhibit?

4 MS. GROSSMAN: No.

5 THE COURT: So 335 is received.

6 (Plaintiffs' Exhibit 335 received in evidence)

7 THE COURT: How much are you going to ask him about  
8 this exhibit?

9 MR. MOORE: I'm going to be very short then. I'm  
10 going to go to a document which is a composite of all these  
11 documents for ten years, which I prepared yesterday for this,  
12 in the hope of being able to speed this process along. So it's  
13 a little bit of you're damned if you do, you're damned if you  
14 don't with the city here.

15 THE COURT: I don't know about that. 8:00 last night  
16 is not a lot of notice when people want to prepare their  
17 witnesses.

18 MR. CHARNEY: Just for the record. This document was  
19 already admitted into evidence a week ago.

20 THE COURT: Oh, good. What's the question?

21 MR. MOORE: Thank you, Mr. Charney.

22 Q. The records -- this document includes both a summary of all  
23 the stop-and-frisk activity, the audit of stop-and-frisk  
24 activity for the entire police department, correct, as well as  
25 forms for each command, correct?

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1 A. I haven't had a chance to look at it.

2 Q. Well look at the first page.

3 By the way, Chief Esposito, you may recall I asked you  
4 about this document at your deposition. So it's not the first  
5 time you're seeing it with me talking to you about it, correct?

6 A. Yeah, but the deposition was what year?

7 THE COURT: '09.

8 Q. You read your deposition before today's testimony?

9 A. This looks like a borough recap of stop -- a summary.

10 Q. And you read your deposition, you reviewed your deposition  
11 before you came to testify today, correct?

12 A. Yes.

13 Q. How many times?

14 A. Once.

15 Q. More than once maybe?

16 A. No.

17 Q. At least once, right?

18 A. Yeah.

19 Q. And so the first page is a recap of the inspections for  
20 stop, question and frisk for the entire police department,  
21 correct?

22 A. (No response).

23 Q. Patrol service bureau, the transit bureau, the housing  
24 bureau, OCCB, anticrime, task force, right?

25 A. I don't see detective bureau.

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1 Q. Detectives don't generally do -- generate many 250s?

2 THE COURT: Do they do street stops?

3 THE WITNESS: They do, sure.

4 THE COURT: They do?

5 THE WITNESS: Warrants.

6 THE COURT: I said street stops. Not warrants.

7 THE WITNESS: Warrant division is part of the  
8 detective bureau.

9 THE COURT: The warrant division goes out and does  
10 reasonable suspicion street stops?

11 THE WITNESS: They're out there on the street  
12 everyday.

13 THE COURT: They're doing warrants. If they're  
14 finding people on active warrants, that's not what I'm talking  
15 about.

16 THE WITNESS: I'm not talking about that either.

17 THE COURT: They go out and do reasonable suspicion  
18 stops?

19 THE WITNESS: In the course of their work, they will  
20 come across it, yeah.

21 Detective bureau. We have robbery squad. That does  
22 stops.

23 THE COURT: Okay.

24 THE WITNESS: We have major case squad that does  
25 stops. Special victims squad does stops.

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1 THE COURT: Okay.

2 THE WITNESS: We do. All I'm pointing out the  
3 detective division is not here.

4 Q. But many of the other bureaus or departments of the police  
5 department are in there, correct?

6 A. Yes.

7 Q. All I'm trying to get to is to agree with me that after the  
8 recap page there is similar pages for each borough that's  
9 mentioned on the first page, correct?

10 A. Yes.

11 Q. So, in addition -- so this would show, after the first page  
12 you -- there would be a results of the audit of stop, question  
13 and frisk for patrol borough Manhattan South?

14 THE COURT: Look, I see it. I looked through the rest  
15 of the exhibit. I see that each one is detailed after the  
16 first page. Each one on the left-hand column of the first page  
17 is then detailed.

18 MR. MOORE: Correct, Judge.

19 Q. And there's a column that I want to direct your attention  
20 to is which is on the right side which says check members'  
21 activity log entries.

22 Do you see that?

23 A. Yes.

24 Q. It says number 21 through 25 only, correct?

25 A. Yes.

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1 Q. That means of the 25 stop-and-frisk forms that are  
2 reviewed, the last five are compared to the members' stop and  
3 frisk -- I mean to their memo book entries, correct?

4 A. Yes.

5 Q. And this is, in a sense, like a report card for how the  
6 police department is doing, correct?

7 A. For the most part, yeah.

8 Q. And the highest you can get on this report card is a four,  
9 right?

10 A. I believe so.

11 Q. And the lowest number you can get is a one, correct?

12 A. I'm not sure.

13 Q. I believe you testified to that in your deposition. Are  
14 you still not sure?

15 A. I'm not sure.

16 Q. All right. In any event, anything below a three is a  
17 deficiency, correct?

18 A. I believe so.

19 THE COURT: Okay. I can read it. Everybody but  
20 transit got below a three in that column, right?

21 MR. MOORE: Right. In the patrol service --

22 THE COURT: I'm asking the witness. Look down. Both  
23 see the same thing.

24 THE WITNESS: Yeah.

25 Q. And the patrol service bureau overall, its average in this  
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1 audit was 1.1, correct?

2 THE COURT: I'm sorry. 1.4.

3 MR. MOORE: 1.1.

4 THE WITNESS: PSB.

5 THE COURT: I don't see the 1.1. Where is that?

6 MR. MOORE: If you go down the left side you come to

7 PSB.

8 THE COURT: Okay, 1.1. Citywide average 1.4.

9 MR. MOORE: Right.

10 Q. The citywide average is 1.4. But most of the stops and  
11 frisks are done by the patrol service bureau, correct, the  
12 overwhelming majority of them, correct?

13 A. Yes.

14 THE COURT: And that's 1.1. I see that.

15 Q. So, in terms -- as far as report cards go, that's a pretty  
16 bad score, right?

17 A. In that one area.

18 Q. Yes.

19 A. But they passed the test, 3.2.

20 Q. They failed that course.

21 A. They got a passing grade when you put it altogether.

22 MS. GROSSMAN: I do object to this summary that was  
23 just given to me last night where I did not have a chance to --

24 MR. MOORE: Hold on. Hold on.

25 THE COURT: Don't interrupt.

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Esposito - direct

1 MS. GROSSMAN: I did not have a chance to verify the  
2 accuracy of this demonstrative exhibit, so I would like to  
3 reserve the right --

4 THE COURT: Wait a minute. This exhibit is not a  
5 demonstrative.

6 MR. MOORE: No. I'm handing a new exhibit.

7 THE COURT: He's going to something else.

8 MR. MOORE: In an excess of caution, I asked them if  
9 they were going to object. That's why I didn't think it was  
10 appropriate for her to talk about a document you hadn't seen.

11 THE COURT: You know I don't like to see them and I'm  
12 not going to take them because it is nonjury. So I try not to  
13 see it until I rule.

14 MR. MOORE: I'll make a representation what this  
15 document is, Judge.

16 THE COURT: Okay.

17 MR. MOORE: Similar to the one for Plaintiffs' Exhibit  
18 335, I compiled these very same forms for every year from 2003  
19 to 2012.

20 THE COURT: Noted the score on that column.

21 MR. MOORE: And noted the score on that column with  
22 respect to how the patrol service bureau performed over those  
23 ten years.

24 THE COURT: In that one column?

25 MR. MOORE: Just that one column.

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D499FLO4

Esposito - direct

1 THE COURT: You did this yourself?  
2 MR. MOORE: Yeah, it was not that --  
3 THE COURT: But you did it?  
4 MR. MOORE: It didn't require regression analysis.  
5 THE COURT: You did it yourself. So you can represent  
6 that you looked at the underlying document.  
7 MR. MOORE: I looked at the underlying document.  
8 THE COURT: Such as 335, right. And you put it  
9 together.  
10 MR. MOORE: And I cited -- and I prepared a chart that  
11 indicates the score.  
12 THE COURT: I understand. So it's a summary exhibit  
13 which is allowed under Federal Rule of Evidence 2006. So  
14 what's the problem.  
15 MS. GROSSMAN: I haven't had a chance to verify it.  
16 THE COURT: I'll accept it conditionally because  
17 Mr. Moore did it personally and you'll verify it.  
18 (Plaintiffs' Exhibit 450 received in evidence)  
19 Q. I'll hand you what's been marked as Plaintiffs' Exhibit  
20 450.  
21 THE COURT: Do you have a copy of that for me?  
22 MR. MOORE: Yes.  
23 THE COURT: Okay. Go ahead. Thank you.  
24 Any reason you selected just one quarter per year?  
25 MR. MOORE: I'm sorry?

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D499FLO4 Esposito - direct

1 THE COURT: Mr. Moore, any reason you selected one  
2 quarter per year? You just took one quarter per year.

3 MR. MOORE: They only do it once a year and they pick  
4 a quarter.

5 THE COURT: So you didn't do any picking?

6 MR. MOORE: I don't wean out quarters.

7 THE COURT: Just make sure you didn't select certain  
8 quarters.

9 MR. MOORE: Right. No.

10 THE COURT: Okay.

11 MR. MOORE: And as you note -- as you can see, Judge,  
12 I footnoted for each year the documents to which these numbers  
13 correspond. And I would move for the admission of all these  
14 exhibits listed there just for the record, conditional upon  
15 their checking it out.

16 THE COURT: I understand.

17 MR. MOORE: So I move for the admission of those  
18 documents, Judge.

19 MS. GROSSMAN: Well I don't even -- I haven't had a  
20 chance to look at them and I don't know what my objection would  
21 be.

22 THE COURT: But there is no objection. The exhibit --  
23 is the exhibit not the same as 335?

24 In other words, all these other exhibits, 90, 91, 92,  
25 94, 95, G6, 78, X5, and 57, are all quarterly reports exactly

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D499FLO4 Esposito - direct

1 like 335. That's what he's saying. That he just pulled that  
2 column out. You can check the column on the underlying  
3 exhibit. That's exactly what 1006 permits. So I'll accept it  
4 conditionally. And of course you can check each exhibit number  
5 and make sure it's exactly like 335. That's what he's saying.

6 MS. GROSSMAN: I don't know if these are complete  
7 records. I know, for example, Plaintiffs' Exhibit 91 is one  
8 page. And I know these audits are usually much larger.

9 MR. MOORE: It's the front page.

10 MS. GROSSMAN: But we may want to put the whole  
11 exhibit in.

12 THE COURT: You can, if that's what you want. But all  
13 I'm saying, it's the same as 335, at least the first page of  
14 335, which is a city record.

15 MR. MOORE: In some cases, Judge, I relied on a  
16 defendants' exhibit.

17 THE COURT: But they are all like 335. They are all  
18 quarterly reports for that year.

19 MR. MOORE: They make your eyes roll. They are all  
20 these charts.

21 THE COURT: They're all the same as 335?

22 MR. MOORE: All the same.

23 THE COURT: So I'm conditionally taking all the  
24 exhibits and the summary exhibit. Obviously, if somebody comes  
25 in tomorrow and says overnight they checked him and somehow

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D499FLO4 Esposito - direct

1 they are not right, we'll go over it. But they should be  
2 accurate. They should all be like 335. And all he did was  
3 pull out that number in that one column.

4 So assuming its accuracies what's the question for  
5 Chief Esposito.

6 MS. GROSSMAN: What's the Exhibit number?

7 MR. MOORE: 450.

8 THE COURT: This one page.

9 MR. MOORE: 450.

10 THE COURT: It's not marked on mine, but 450 is  
11 conditionally received, as are all the underlying exhibits for  
12 the same reason as 335.

13 (Plaintiffs' Exhibits 90, 91, 92, 94, 95, G6, 78, X5,  
14 and 57 received in evidence).

15 Q. Chief Esposito, you see that for the ten years from 2003 to  
16 2012 with respect to the QAD audit for stop, question and frisk  
17 for whether members are putting the details of the stop in  
18 their activity log entries, for those ten years the best score  
19 that the police department got was 2.4, correct?

20 A. Yes.

21 Q. And that's below -- that's a deficiency, correct?

22 A. Correct.

23 Q. And the average for those ten years is 1.44, correct?

24 A. Yes.

25 We sure are getting better though, aren't we. Look

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D499FLO4 Esposito - direct

1 how much better we're getting the last few years.

2 Q. You're going from a 50 to a 55?

3 A. We're almost a passing.

4 Q. Seventy?

5 THE COURT: Anyway, I noticed that too. From 2007 on  
6 it gets better every year.

7 Okay. Next question.

8 Q. And do you recall, Chief Esposito, that every year when the  
9 deficiency in this particular area is noted there is a memo  
10 that goes out directing the police department to correct that  
11 problem, correct?

12 A. Yes.

13 Q. And every year it's essentially a memo that says the same  
14 thing: We've noted a deficiency in the memo books and it  
15 should be corrected, correct?

16 A. Yes.

17 Q. But for those ten years that hasn't happened, correct?

18 A. No. It's getting better.

19 THE COURT: But it's not yet acceptable?

20 THE WITNESS: It's not at the point where we're  
21 passing. In that one category, we're still below passing.

22 THE COURT: That's right. And where you want to be.

23 THE WITNESS: But I'm encouraged that it's gotten  
24 much, much better.

25 THE COURT: I see that. But it's not where you want

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D499FLO4 Esposito - direct

1 to be, right?

2 THE WITNESS: No.

3 THE COURT: Okay.

4 MR. MOORE: Because of that, Judge, I can whisk  
5 through this.

6 Q. Now one of the -- move away from the QAD audits and  
7 hopefully not talk about memo book entries for a while.

8 THE COURT: That would be good.

9 Q. And I want to talk about investigations, okay.  
10 Investigation and complaints that made -- of stop-and-frisk  
11 activity which you said is one of the four ways in which the  
12 chain of command makes sure that officers are complying with  
13 the Fourth and the Fourteenth Amendment, correct?

14 A. Yes.

15 Q. Now, there is a section -- there was a section of the  
16 office you used to be the chief of, office of the chief of  
17 department that there's an investigative section, correct?

18 A. Yes.

19 Q. And it investigates complaints, including complaints  
20 regarding stop and frisks, right?

21 A. Yes.

22 Q. And those are complaints that are steered to the office of  
23 the chief of department by either the IAB or the CCRB, correct?

24 A. Correct.

25 Q. And --

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D499FLO4 Esposito - direct

1 A. They have chose to steer -- they're not taking the  
2 investigation themselves.

3 Q. Right.

4 A. IAB has passed on it. CCRB has passed on it. They feel  
5 the appropriate place is with the local bureau, let's say.

6 Q. They haven't passed on it because they don't think it's an  
7 important thing to investigate. It's just not within what they  
8 understand to be their purview, correct?

9 A. I think it's a number of issues.

10 Q. All right. Well they're not passing it on -- well,  
11 withdraw that.

12 When you get a complaint into your office, you take it  
13 seriously, correct?

14 A. Yes.

15 Q. And with respect to stop and frisk complaints, those are  
16 not investigated actually by your office. Those are farmed out  
17 back to the borough or the precinct where the complaint arose,  
18 correct?

19 A. Through the bureau chief.

20 Q. It's referred back to the bureau and then the bureau -- the  
21 borough chief then makes whatever a recommendation he or she  
22 wants to make, correct?

23 A. Correct.

24 Q. And it's not uncommon in that situation for the complaint  
25 that was filed by a citizen with respect to an officer's

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D499FL04 Esposito - direct

1 stop-and-frisk activity to end up being investigated by that  
2 officer's very supervisor, correct?

3 A. Correct.

4 Q. And you don't have a problem with that?

5 A. No.

6 Q. Did you ever see results of any investigation that OCD had  
7 sent out, with regard to stop and frisk, did you ever see the  
8 results of any?

9 A. Not that I recall.

10 Q. And you also don't recall seeing any of the reports from  
11 your office concerning any investigations related to stop and  
12 frisk, right? That may be have been --

13 A. Not that I recall right now.

14 MS. GROSSMAN: Your Honor, again, we have a witness  
15 who is going to be addressing this very topic I just want you  
16 to know in terms of the repetition.

17 MR. MOORE: Judge, I really -- I got to say, we've  
18 spent as much time listening to Ms. Grossman object in a way  
19 that is really not helpful. This is the chief of the  
20 department.

21 THE COURT: I understand.

22 MR. MOORE: This is an important case. It's been  
23 going on now in your courtroom for 14 years.

24 THE COURT: We all know that, Mr. Moore.

25 MR. MOORE: All right.

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D499FLO4 Esposito - direct

1 THE COURT: Anyway I let him answer and I think he  
2 did. He said not that I recall right not.

3 Q. And you know that a database is maintained by the  
4 investigative review section of your office concerning these  
5 complaints that come in, right?

6 A. Yes.

7 Q. And but you don't know of anyone who has ever analyzed that  
8 database with regard to stop and frisk, right?

9 A. Not that I recall.

10 Q. You don't know if anyone has analyzed that database with  
11 respect to whether there's any evidence of racial profiling  
12 going on, correct?

13 A. Not that I recall.

14 Q. Now, I think I asked you this before with respect to -- I'm  
15 not sure actually. That's why I think I need to ask you again.

16 When a complaint is substantiated by the CCRB, it's  
17 sent -- they can't discipline an officer, right?

18 A. No.

19 Q. It's sent to the police department for discipline, right?

20 A. Yes.

21 Q. And the office that gets those complaints is the department  
22 of advocates office, correct?

23 A. That's correct.

24 Q. And they would determine the appropriate course of action  
25 to take with respect to that investigation, correct?

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D499FLO4

Esposito - direct

1 A. Yes.

2 Q. And then if there's a proceeding that takes place,  
3 recommendation would be made to the police commissioner with  
4 regard to punishment, correct?

5 A. Yes.

6 Q. Assuming the officer doesn't negotiate a resolution?

7 MS. GROSSMAN: Your Honor, this is not the chief of  
8 department's role. So we have witnesses who are going to be  
9 talking about these department advocate proceedings. We have  
10 30(b)(6) witnesses.11 THE COURT: I think that's right. And I think we're  
12 getting into a level of detail --

13 MR. MOORE: One more question, Judge.

14 THE COURT: One more question.

15 MR. MOORE: I'm going over topics I think rather  
16 expeditiously, so.17 Q. You're aware that the rate of refusing to discipline the  
18 substantiated complaints from CCRB has decreased in the past  
19 few years, correct?

20 A. Give it to me again.

21 Q. You're aware that rate of refusing to discipline  
22 substantiated complaints that come from the CCRB to the police  
23 department, that the rate of refusing has actually increased;  
24 in other words, there's less discipline now than there was  
25 before?SOUTHERN DISTRICT REPORTERS, P.C.  
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D499FLO4 Esposito - direct

1 MS. GROSSMAN: What do you mean, refused?

2 THE COURT: I think he answered that by the way two  
3 hours ago. I remember the answer. Just because it was  
4 interesting. He said yes.

5 Do you remember that, that there's less discipline now  
6 being imposed?

7 THE WITNESS: Well the answer is yes.

8 THE COURT: Yes. Okay.

9 Q. Is it fair to say, Chief Esposito, that you've heard over  
10 the years many complaints that the police department maintains  
11 quotas?

12 A. Yes.

13 Q. And you were aware, were you not, that officers in the 75th  
14 precinct complained that Deputy Chief Marino maintained quotas  
15 while he was the commanding officer of that precinct?

16 A. Yes.

17 Q. And, in fact, there was an arbitration proceeding held and  
18 he was found -- the police department was found guilty, if you  
19 will, of having maintained a quota in the 75th precinct,  
20 correct?

21 MS. GROSSMAN: Objection to guilty.

22 THE COURT: I don't know what other word to use. But  
23 it was found to have maintained a quota; is that true?

24 THE WITNESS: I believe so.

25 THE COURT: You believe so, right.

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D499FLO4 Esposito - direct

1 Q. Did you ever talk to Chief Marino about that?

2 A. I may have years ago, before the proceeding.

3 Q. Okay. And are you aware of up until at least the time you  
4 left there were nine other grievances that are pending with  
5 respect to the set of quotas, nine grievances by police  
6 officers?

7 A. I didn't realize the number.

8 Q. But there are some that were pending when you left, right?

9 A. Yeah.

10 MR. MOORE: I hope we indicate we listed this one,  
11 Judge, but if not then I -- I'm going to show you what's  
12 previously been marked Plaintiffs' Exhibit 285 and admitted  
13 into evidence.

14 Q. Are you familiar with that document, sir?

15 Also, known as operations order number 52.

16 A. You have to give me time to take a look at it.

17 Q. Sure.

18 (Continued on next page)

19

20

21

22

23

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25

D498FLO5 Esposito - direct

1 Q. You're familiar with this, correct?

2 A. Yes.

3 Q. Is this something that you -- this was issued while you  
4 were the chief of department, correct?

5 A. Yes.

6 Q. October 17, 2011?

7 A. Yes.

8 Q. This document indicates that, with respect to  
9 self-initiated and team led efforts by the police department,  
10 that it refers to proactive enforcement activity. Do you see  
11 that?

12 A. I see where it says proactive enforcement activity.

13 Q. Proactive enforcement activities are described further in  
14 that sentence as issuance of summonses, stopping and  
15 questioning of suspicious individuals and arrests of criminals.  
16 Do you see that?

17 A. Yes. But it also says not limited to.

18 Q. Right. But the only three that are mentioned are arrests,  
19 summonses, and stop and frisks, right?

20 A. Correct.

21 Q. In paragraph 3 it then says, "To provide guidance to police  
22 officers concerning their duties, department managers can and  
23 must set performance goals." Do you see that in paragraph 3?

24 A. Paragraph 3?

25 Q. Yes. In the second sentence of paragraph 3.

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D498FLO5 Esposito - direct

1 A. Yes.

2 Q. Performance goals, when you're talking about arrests,  
3 summonses and 250s, often involve numbers, correct?

4 A. Well, why --

5 Q. Would you agree with that or not?

6 A. I have to answer the question.

7 You're saying performance goals could be other things  
8 also, not limited to. In my mind, performance goals is take  
9 care of the condition. Whether it's a crime condition, or a  
10 quality of life condition, the main thing, the main function of  
11 the NYPD, of these officers we are talking about, the  
12 hard-working officers, is to go out there and correct the  
13 condition.

14 Q. Right. That's why I said may include, performance goals  
15 may include a discussion of numbers, correct?

16 A. Yes.

17 Q. So some officers may hear from their department managers  
18 that, in addition to going out and doing their courageous job  
19 of making the city safe, they would like to see a certain  
20 number of 250s or summonses or arrests made by those officers,  
21 correct?

22 MS. GROSSMAN: Objection.

23 A. I would hope not.

24 THE COURT: What was the objection?

25 MS. GROSSMAN: It's speculative. Look at the  
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D498FLO5 Esposito - direct

1 question. It's a possibility question.

2 THE COURT: It does look like that. Unless he knows  
3 of department managers, that they want to see certain numbers  
4 of 250s, I won't allow the question.

5 If you can rephrase it that way, Mr. Moore, it's all  
6 right.

7 Q. Let me go back. You're familiar with the term quest for  
8 excellence?

9 A. Yes.

10 Q. You were on the committee to help draft the new procedures  
11 with respect to quest for excellence?

12 A. My office was on the committee.

13 Q. But did you get reports from it, were you made aware of it?

14 A. Yes.

15 Q. One of the things that was discussed that you were made  
16 aware of was the issue of performance goals, correct?

17 A. Yes.

18 Q. As you said, performance goals, not always but sometimes  
19 can include the setting of numbers with respect to enforcement  
20 activity, correct?

21 A. Setting of numbers? No.

22 Q. Yes.

23 A. No.

24 Q. Or discussion of numbers?

25 A. Discussion of numbers, sure.

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D498FLO5 Esposito - direct

1 Q. Did anybody that you had any discussion with in the police  
2 department ever tell you that maybe some of the directives  
3 coming from the police department are confusing with respect to  
4 whether there's quotas or not?

5 A. No.

6 Q. Ever have a discussion with Chief Hall about that?

7 A. No. Not that I recall.

8 Q. I am going to hand you a document to refresh your  
9 recollection, Plaintiffs' Exhibit 290.

10 MR. MOORE: Isn't this already in evidence?

11 Plaintiffs' Exhibit 290 is in evidence, Judge.

12 Q. I am going to direct your attention to Bates stamp number  
13 00096, which is the third page of this document, and there is a  
14 shaded portion there. If you could just take a look at that,  
15 Chief.

16 MS. GROSSMAN: Could you give what paragraph you  
17 referred the witness to?

18 Q. Have you had a chance to look at that?

19 A. Sure.

20 Q. Does that refresh your recollection that Chief Hall  
21 expressed to you some concern that in an effort to address  
22 crime and public safety conditions in precincts supervisors had  
23 made statements that could be interpreted as the setting of  
24 quotas for enforcement activity. Does that refresh your  
25 recollection?

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D498FLO5 Esposito - direct

1 A. I thought you said there was a confusion.

2 Q. Does that refresh your recollection that there was some  
3 discussion about that that you had with Chief Hall or other  
4 people in the department?

5 A. I don't know if I had a discussion.

6 Q. It doesn't refresh your recollection, is that what you're  
7 saying?

8 A. I thought you said confusion. It's not confusion. There  
9 are supervisors who may have done this, yeah. OK.

10 Q. Well, actually, what Hall says --

11 A. Hall says supervisors may have made statements that could  
12 be interpreted as setting of quotas.

13 Q. It doesn't say may have. It says supervisors have made  
14 statements that could be interpreted as the setting of quotas  
15 for enforcement activity.

16 A. Correct.

17 Q. It's not may. It's that they have made statements.

18 And you're aware that supervisors had made statements  
19 that could be interpreted that way, correct?

20 A. I have heard that.

21 Q. What supervisors did you hear make those statements?

22 A. I haven't heard a supervisor make that statement.

23 THE COURT: Sorry?

24 THE WITNESS: I have not heard a supervisor make that  
25 statement. I have heard about it.

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D498FLO5 Esposito - direct

1 Q. Who did you hear about? What supervisors did you hear  
2 about?

3 A. I don't recall the names. I didn't get the names.

4 Q. You don't recall any names?

5 A. No.

6 Q. Do you recall their positions? Were they precinct  
7 commanders or borough commanders or executive officers?

8 A. I think at a number of levels it has happened. There are  
9 statements made that can be misinterpreted, yeah.

10 MR. MOORE: Judge, I have maybe a half an hour left at  
11 most. Are you going to take a break?

12 THE COURT: I have been skipping those. Have you been  
13 noticing?

14 MR. MOORE: I noticed.

15 THE COURT: We haven't been taking those anymore. For  
16 days I have stopped taking afternoon breaks.

17 MS. GROSSMAN: I think some of us do need to take --

18 THE COURT: We are not stopping.

19 MS. GROSSMAN: I think the witness may need to take a  
20 few minutes.

21 THE COURT: He knows how to ask. If you need to take  
22 one, go ahead.

23 Go ahead, Mr. Moore.

24 BY MR. MOORE:

25 Q. Were you made aware, Chief Esposito, of some tapes that

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D498FL05 Esposito - direct

- 1 officers have made of supervisors in the 81st Precinct?  
2 A. Yes.  
3 Q. Those were comments that were attributed to Deputy  
4 Inspector Mauriello, correct?  
5 A. Yes.  
6 Q. And other ranking officers in that precinct, correct?  
7 A. Yes.  
8 Q. Including Lieutenant Delafuente and Sergeant Stukes?  
9 A. Yes.  
10 Q. You were chief of department when those comments were first  
11 reported, correct?  
12 A. Yes.  
13 Q. Did you ever investigate that?  
14 A. No. It's my understanding that Internal Affairs was  
15 handling that.  
16 Q. Internal Affairs?  
17 A. And I believe QAD may have been handling part of it also.  
18 Q. Do you know what the result of that investigation has been?  
19 A. Not specifically. Mauriello is not the CO of the 81st  
20 Precinct anymore.  
21 Q. Was he removed because of those statements?  
22 A. I'm not sure.  
23 Q. Who would be sure? You're the chief of department and he  
24 is a deputy inspector. So he is fairly high up. Do you know  
25 who would have made that decision?

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D498FLO5 Esposito - direct

1 A. Those transfers are signed off by Commissioner Kelly.

2 Q. Did you have any discussions with Commissioner Kelly about  
3 that?

4 A. I'm not sure if I specifically -- we discussed it to some  
5 degree, yeah.

6 Q. Did you discuss the content of some of the statements that  
7 were attributed to Mauriello and the others in the 81st  
8 Precinct?

9 A. No.

10 Q. Did you ever see a transcript of those statements?

11 A. No.

12 Q. Do you think it's appropriate for a supervisor of a  
13 precinct to say that everybody in Bed-Stuy has a war?

14 A. No.

15 Q. That suggests racial stereotyping, correct?

16 A. It could.

17 Q. You think a lieutenant or a supervisor in the precinct  
18 referring to members of the community as riffraff? Do you  
19 think that's an appropriate comment for a supervisor to make?

20 A. No.

21 Q. Do you remember the slogan of the street crime unit, do you  
22 remember what that was?

23 A. Which one are you referring to?

24 Q. The street crime unit that mustered out of Randall's  
25 Island. Do you remember the slogan of that unit?

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D498FLO5

Esposito - direct

1 THE COURT: How long ago was that, Mr. Moore, the  
2 slogan?  
3 MS. GROSSMAN: Beyond 1999.  
4 THE COURT: Is that what you're talking about?  
5 MR. MOORE: Until they were disbanded in 2002.  
6 THE COURT: Even that's 11 years ago.  
7 MR. MOORE: It's a simple question.  
8 THE COURT: It's 11 years ago. I don't care what the  
9 slogan was 11 years ago. Trying to deal with the last decade  
10 is enough trouble.  
11 MR. MOORE: It's appropriate for the next question.  
12 THE COURT: I don't need it.  
13 Q. Do you think a statement by a precinct commander that "we  
14 own the streets" is an appropriate comment for a precinct  
15 commander to make?  
16 A. No.  
17 Q. Or for a supervisor in the precinct, that's not an  
18 appropriate comment, right?  
19 A. No.  
20 Q. That's the same kind of mentality that the street crime  
21 unit had when --  
22 MS. GROSSMAN: Objection.  
23 THE COURT: Sustained. I am not going into the street  
24 crime unit a decade ago.  
25 Q. You don't recall ever having discussed with Commissioner  
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D498FLO5 Esposito - direct

1 Kelly any issues regarding racial profiling, do you?

2 A. Not that I recall.

3 Q. You don't recall ever discussing with Commissioner Kelly  
4 any of those QAD reports that show the deficiencies in filling  
5 out the memo book entries, right? Did you ever discuss that  
6 with Commissioner Kelly?

7 A. No.

8 Q. You never discussed with Commissioner Kelly the toll that  
9 these policies may be having on a generation of black and  
10 Hispanic youth, have you?

11 MS. GROSSMAN: Objection.

12 A. Say it again.

13 Q. Have you ever discussed with Commissioner Kelly the toll  
14 that the policies that are being challenged here have taken,  
15 may be having on a generation of black and Hispanic youth, have  
16 you ever had a discussion with Commissioner Kelly about that?

17 THE COURT: I will allow that.

18 A. I discussed the issue of stop, question and frisk with  
19 Commissioner Kelly and then those issues may have come up. But  
20 the one prior you spoke about may have come up also in the  
21 discussion of stop, question and frisk.

22 Q. Specifically, do you recall discussing with him or he  
23 discussing with you that these policies are taking a terrible  
24 toll on a generation of black and Hispanic youth?

25 MS. GROSSMAN: Objection.

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1 THE COURT: I will allow it.

2 Do you remember discussing that, in words or  
3 substance, the toll on black and Hispanic youth?

4 THE WITNESS: No.

5 THE COURT: Or the effect on black and Hispanic youth?

6 THE WITNESS: No.

7 Q. At your deposition, do you recall stating that as of the  
8 time of that deposition, you were not aware of any complaints  
9 of racial profiling that had been made in the past several  
10 years? Do you recall saying that at your deposition?

11 A. Yes.

12 Q. Was that after or before your own deputy commissioner of  
13 community affairs made a complaint about racial profiling?

14 A. I am not sure of the time frame.

15 Q. Do you recall the incident I am referring to?

16 A. Yes.

17 Q. Chief Zeigler, right?

18 A. Yes.

19 Q. What happened with that complaint?

20 MS. GROSSMAN: Objection, your Honor. This is going  
21 so far afield.

22 THE COURT: I don't know who that is or what the  
23 complaint is.

24 MR. MOORE: I can ask him. It goes to their taking  
25 this issue seriously and investigating it.

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Esposito - direct

1 THE COURT: I understand. But this person Zeigler was  
2 complaining about what?

3 MR. MOORE: That he was racially profiled at a stop by  
4 the New York City police officers.

5 THE COURT: That he himself was stopped?

6 MR. MOORE: That he himself was stopped.

7 THE COURT: Do you remember that incident?

8 THE WITNESS: Yes.

9 THE COURT: What was your question?

10 Q. Did the police department investigate that incident?

11 A. The police department investigated, yes.

12 Q. What happened as a result of that investigation?

13 A. I don't recall.

14 MR. MOORE: One second.

15 Nothing further, Judge.

16 Thank you, Chief.

17 THE COURT: Ms. Grossman.

18 MR. MOORE: Just one thing before Ms. Grossman gets  
19 up. With respect to the transcripts of the CompStat hearings,  
20 can we have a stipulation from the city that that's all the  
21 information about 250s that was on those?

22 THE COURT: I assume that when they produced it there  
23 wasn't anything else that had the word 250, or you would have  
24 produced it. Is that right?

25 MS. GROSSMAN: Your Honor reviewed all of the

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1 documents in camera.

2 THE COURT: All of them? You collected all the ones  
3 that referred to the word 250?

4 MS. DONAHUE: That's right, your Honor. And we  
5 proposed certain redactions and you looked at them in camera.

6 THE COURT: As long as you collected all the ones that  
7 referred to 250, then that's stipulated.

8 MR. MOORE: Just a heads-up before we start. The city  
9 has produced no documents to which they said they would intend  
10 to use in the examination of Chief Esposito. So I am going to  
11 object to their using any documents that there hasn't been  
12 prior use.

13 THE COURT: I wasn't sure they had that obligation. I  
14 thought they had the obligation with respect to the witnesses  
15 they were calling.

16 What was your understanding, Ms. Grossman?

17 MS. GROSSMAN: I don't think that this is an issue  
18 right now. We don't have any documents that we haven't  
19 prepared to use today. We don't have any documents that we are  
20 offering separate and apart from what Mr. Moore has used.

21 THE COURT: OK. Then it's not an issue.

22 MS. GROSSMAN: I would note that the plaintiffs went  
23 ahead and put in six exhibits. So if we had to, I don't see  
24 why that would be a problem.

25 THE COURT: We don't need to have theoretical

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D498FLO5 Esposito - direct

1 discussions.

2 CROSS-EXAMINATION

3 BY MS. GROSSMAN:

4 Q. Chief, do you still have the CompStat minutes before you  
5 right now?

6 THE COURT: The redacted?

7 Q. Plaintiffs' Exhibit 281.

8 THE COURT: 281 and 283?

9 THE WITNESS: Yes.

10 THE COURT: That's what I have too.

11 Q. So referring to Plaintiffs' Exhibit 281, at page 7017.

12 A. Yes.

13 Q. Mr. Moore asked you some questions earlier today about an  
14 entry that's contained in these CompStat minutes, correct? Do  
15 you remember that?

16 A. Yes.

17 Q. Referring to 7017, at the very top of the page it says,  
18 according to Chief Esposito, Chief Espo, "Your enforcement  
19 numbers are way down. Last year 60 percent of your Cs were on  
20 overtime. As an XO you have to look at that. Activity on  
21 straight time. If you look at raw number of 250s, you are down  
22 50 percent."

23 Do you see that?

24 A. Yes.

25 Q. Can you explain to the Court why you're interested in

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1 straight time versus overtime?

2 A. Well, we want to assure that our officers are giving the  
3 best service possible to the citizens of the city. It's a  
4 question as to why they can see activity when they are being  
5 paid overtime as opposed to not being able to see activity when  
6 they are on straight time.

7 Q. What is straight time?

8 A. Straight time is their normal 40 hour week let's say, their  
9 normal course of business. The overtime rate, extend the tour,  
10 you may have to come in on a day off. And when you see 60  
11 percent of the activity, in this case it's criminal court  
12 summonses were done on overtime, it's something that has to be  
13 looked at. Why? Why couldn't the officer see it on overtime  
14 and not on straight time? I want to be sure that he or she is  
15 giving the best possible effort when he or she is assigned to  
16 work.

17 Q. Officers are paid more on overtime?

18 A. Time and a half.

19 Q. Now, if you would refer to the page preceding 7017,  
20 referring to 7016, do you see at the middle of the page it  
21 says, "28 XO, shootings up for year 36 percent." Do you see  
22 that?

23 A. Yes.

24 Q. Can you explain why that is important in connection with  
25 your reference to the enforcement numbers on 7017?

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1 A. Well, we gear everything that we do towards the crime  
2 picture, towards making the city's streets as safe as we can.  
3 What I am referring to here is that they are up almost 40  
4 percent in their shootings. That probably refers to the 28 day  
5 period. And we want to compare the activity. Is the activity  
6 where it should be? Is it addressing the crime condition?

7 Q. OK. Moving on to page 7023 and 7024.

8 On direct, Mr. Moore asked you some questions about  
9 the entry on the top of 7024. It refers to Captain Ryan, XO  
10 25. "We have strong quality of life enforcement in that area.  
11 We have extraordinary enforcement. 32 collars, 130 Cs, 192  
12 250s. It's a transient area."

13 Now, do you see that reference, Chief?

14 A. Yes.

15 Q. Now, referring to the preceding page at 7023, there were  
16 conditions being addressed during this CompStat meeting, isn't  
17 that right?

18 A. Yes.

19 Q. So can you explain what the conditions were that concerned  
20 you?

21 A. Well, again, much of this is redacted, but what I can take  
22 away from it is we are talking about quality of life and some  
23 drug sales in a certain area in the 25. And when we have those  
24 complaints or those conditions that we have identified, either  
25 through complaints from the community or our own observations,

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1 we want to see what in fact the precinct is doing about it.

2 Q. Now, on direct the Court asked you if the 192 250s belonged  
3 being discussed at CompStat at all? Can you explain why you  
4 discuss it at CompStat?

5 A. These are part of our analysis. You have got to look at  
6 the crime picture and what we are doing about that crime  
7 picture. If there is 192 250s, and if that's a 100 percent  
8 increase or 100 percent decrease, we want to know why. Why is  
9 there such a difference in the numbers from last year to this  
10 year? It could be that they put additional resources in there.  
11 Maybe they put some overtime people in there. But we have to  
12 look at everything to see if there is a difference, what caused  
13 that increase or decrease?

14 Listen, what we are looking for, basically, what I am  
15 looking for, is no crime and no activity. That's what I want.  
16 Ultimately, am I going to get that? I don't know. But in the  
17 last 20 years, crime has gone down 80 percent. In the last 12  
18 years, since the Bloomberg administration, it's down 40  
19 percent. So the numbers are going down. Crime numbers are  
20 going way down. I think some of the enforcement numbers are  
21 going down.

22 Q. Referring to page 7026, at the top third of the page or  
23 right at the bottom or right at the entry where it says "28  
24 precinct presentation" and there is a reference to Inspector  
25 Montgomery, 28 Precinct?

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Esposito - cross

1 A. Yes.

2 Q. And there is a reference, three sentences down, "Chief  
3 Espo: "Looking at 22 shootings, up 50 percent since last year,  
4 let's talk about it."

5 What was your interest at this CompStat meeting? What  
6 were you looking to find out?

7 A. Well, his shootings were up. It's obvious. He has a 50  
8 percent increase in his shootings. That's very important to  
9 us.

10 Q. Inspector Montgomery a little further down states,  
11 Inspector Montgomery, 28 precinct: "We don't have enough  
12 resources."

13 Chief Espo: "You are up 4 percent in personnel."

14 Can you explain that exchange?

15 A. Yeah. He is trying to say that his personnel is down. He  
16 has a decrease in personnel. I point out that he is up 4  
17 percent. I think what actually turns out is, I think this  
18 meeting is in July?

19 Q. October 2008.

20 A. I think we looked ultimately that he does have an increase  
21 because of that July class graduating. So he may have been  
22 operating with fewer officers from January to July and his  
23 numbers may have gone up in July.

24 Q. Now, moving down a little further, you ask, "How many C  
25 summonses are given out per officer on straight time? What

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1 should average be?"

2 Inspector Montgomery says: "2.3, sir, and 2.3 for  
3 250s as well."

4 Can you explain why you're asking those questions at  
5 this meeting?

6 A. Sure. We do comparisons. We look at what he did last  
7 year, the year before, and if there is a dramatic change either  
8 way, it's got to be explained.

9 Q. What is the relevance of the average to the resource  
10 concern that Inspector Montgomery raised at the meeting?

11 A. Instead of looking just for numbers, we want to look at  
12 what each officer is doing. Is the officer producing, has it  
13 gone up or down, and is there a reason for the increase and the  
14 decrease? And a lot of times there is a reason. Again, I  
15 think I said it earlier, it's 2.3. If the last couple of years  
16 prior to this in the same period it was 10.3, we would be  
17 asking Inspector Montgomery, why such a drastic change?

18 THE COURT: Actually, there are two questions. I  
19 don't know that we know which one he is answering.

20 You said, "How many C summonses are given out per  
21 officer on straight time? What should average be?" I don't  
22 know which one he has answered there. It may be that he is  
23 telling you the average should be 2.3. I don't think you know.  
24 And for 250s as well. It's just not clear from the transcript.  
25 You're guessing.

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Esposito - cross

1 THE WITNESS: I am not guessing, your Honor.

2 THE COURT: Tell me how you know which of the two  
3 questions you posed he answered?

4 THE WITNESS: We expect them to give us that answer,  
5 not to give what he thinks it's going to be.

6 THE COURT: You asked, "What should average be?" And  
7 maybe he answered you, "2.3 and 2.3 for 250s as well." I don't  
8 know whether the answer was the actual number of summonses  
9 given out for officers on straight time or what the average  
10 should be.

11 THE WITNESS: Fair enough. But I think what is  
12 equally as important it's still the same answer. Is there a  
13 big difference?

14 THE COURT: I don't know. But if he answered the  
15 latter question, then he told you what he thought the average  
16 should be.

17 MR. CHARNEY: Just to interject, and you're going to  
18 get this in the record, I think that question is answered in  
19 Inspector Montgomery's deposition, which we are going to put  
20 in. He was asked about this very document. Just to give you a  
21 preview, it is in the deposition that we are submitting.

22 THE COURT: OK. All I am saying is from reading this  
23 transcript alone, there were two questions. I didn't know  
24 which one he answered, and I don't think it's clear from the  
25 context which one of the two he answered.

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D498FLO5 Esposito - cross

1 BY MS. GROSSMAN:

2 Q. Chief, do you expect commanding officers to come prepared  
3 with the average numbers of 250s when they come to CompStat?

4 A. Yes.

5 Q. Now, I believe Mr. Moore asked you some questions referring  
6 to this particular entry about specific numbers. Was it a  
7 specific number rather than a set number?

8 A. Are we looking at this?

9 Q. I believe so.

10 Are you looking for a specific number or a set number  
11 in response to when you're asking for averages?

12 MR. MOORE: Object to the form.

13 THE COURT: What should the average be? That was the  
14 question that you posed to Inspector Montgomery.

15 I guess he was looking for what he thought the average  
16 number given out should be? That's what he said. What should  
17 the average be?

18 Q. Was it a set number that you were looking for?

19 A. No. What I am looking for him to tell me -- and again, I  
20 am trying to elicit information from the precincts. I am  
21 looking to see if the commander knows his or her shop.

22 THE COURT: You want him to give you a number.

23 THE WITNESS: I may already have the answer to that  
24 question.

25 THE COURT: You're asking him, What should the average

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D498FLO5 Esposito - cross

1 be?

2 THE WITNESS: Right. Because I want to see what is  
3 his comparison to years past?

4 I have got to make sure that the officers are  
5 servicing the community the best they can. And again, your  
6 Honor, if they gave out 10 summonses last year, 10 C summonses  
7 or 10 stop and frisks in a 28 day period, that was the average  
8 the year before, and their shootings were down, well, shootings  
9 are up 50 percent this year. Is it because the number is down?  
10 I don't know. What I think we find out eventually at this  
11 CompStat is that the average was the same as it was last year  
12 as it was this year. So there wasn't an issue. But I have got  
13 to see if it is an issue.

14 THE COURT: In other words, despite the same number of  
15 stops, the shootings went up?

16 THE WITNESS: It appears that's what happened. So he  
17 has got to give me an analysis of what is going on and what he  
18 is doing about it.

19 BY MS. GROSSMAN:

20 Q. Chief Esposito, I am going to refer you to 7080.

21 The first entry at the top of 7080, it says, "Chief  
22 Espo: 43, robberies nine versus zero in that zone. We  
23 identified sector C housing development Monroe."

24 And then moving to the next entry, "Chief Espo:  
25 Listen, don't have time, I have to go, but nine robberies

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1 compared to none, I don't think we are doing enough in that  
2 zone. You have four Cs and five 250s in a 28 day period."

3 Do you see those two entries?

4 A. Yes.

5 Q. Can you explain what is going on?

6 A. Sure. We will put up a zone. When I say "we," my office.  
7 We will identify a zone in a precinct many times that has got a  
8 concentration of crime. Whatever the crime can be, car  
9 break-ins, robberies, we will put it up. We bring it to their  
10 attention. Most of the time, 99 percent of the time, they know  
11 about that zone. They will say, we know about that zone, here  
12 is what we are doing about it. And they will give me an  
13 analysis. We will put up that zone and ask them about it. COs  
14 almost always know what is going on. At this point, it was  
15 robberies, nine versus none. That's a tremendous increase  
16 there. So it takes in part of sector Charlie, sector C. It  
17 also takes in the housing development of Monroe. OK. What are  
18 we doing about it?

19 Now, "I have to go," it says. The only reason I leave  
20 CompStat is because Commissioner Kelly has got a meeting  
21 probably. So I am probably leaving the CompStat meeting to go  
22 meet with Commissioner Kelly. So I say, "I don't have time, I  
23 have to go, but nine robberies compared to none, I don't think  
24 we are doing enough." Then I mentioned about, "You have got  
25 four Cs and five 250s in 28 day period." That number alone

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1 seems very low. What he has to do now, what she has to do, is  
2 come back to me and justify it, if there is a justification.  
3 You know, you're right. We are out there, we don't see  
4 anything. The supervisors are out there, we don't see any  
5 quality of life issues. We don't see anybody give us  
6 reasonable suspicion to stop them. Or maybe they have a  
7 different strategy. Maybe they flooded that area with uniform  
8 so much that none of the bad guys are doing anything in that  
9 area because there is a cop at every corner.

10 I am searching for answers when I do CompStat. They  
11 are going to analyze, give me their plan. If I like it, we go  
12 with it. If not, we tweak it and put a little more in there.

13 Q. The reference to "four Cs, five 250s in a 28 day period,"  
14 that's not referring to just one officer, that's referring to  
15 many more?

16 A. That's that whole zone we are identifying. It seems like  
17 it's most of Sector Charlie. That's the precinct Sector  
18 Charlie. And it's all of the Monroe development, which is a  
19 fairly big development.

20 Q. And there are more than a few officers assigned to Sector  
21 Charlie, right?

22 A. Sure. It's covered 24 hours a day. Monroe is one of the  
23 busier housing developments. So housing would have people  
24 there.

25 Q. Now, on direct Mr. Moore asked you if the 43 Precinct CO

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D498FLO5 Esposito - cross

1 was left with the impression that he had to get his 250 numbers  
2 up? What message were you trying to give him about the  
3 robberies?

4 A. We want the robberies to go down. What is your plan? How  
5 are you going to do it?

6 Again, maybe he or she had a plan that justified these  
7 numbers. Again, what we want is no crime, no activity. That's  
8 not the case here. There's nine robberies, there's nine poor  
9 people getting robbed out there in a 28 day period, and we are  
10 not seeing any criminal activity it seems like. Is that  
11 because that's part of the plan? It very well could be. If  
12 not, why aren't you seeing people out there that are suspicious  
13 or committing some type of quality of life offense?

14 Q. What could this be an indicator of, the fact that there is  
15 no activity?

16 MR. MOORE: Object to the form of the question.

17 THE COURT: That calls for speculation.

18 MS. GROSSMAN: As chief of department, as he looks at  
19 indicators, as the chief looks at indicators that inform how he  
20 handles CompStat, I think whatever --

21 THE COURT: Still, there is any number of  
22 possibilities. I am going to sustain the objection.

23 Q. Chief, I am going to move on to Plaintiffs' Exhibit 283.

24 These are also CompStat minutes. Do you have that?

25 A. Yes.

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D498FLO5 Esposito - cross

1 Q. Now, referring to 7959?

2 A. Yes.

3 Q. There is an entry in the middle of the page, it says,  
4 "Chief Espo: The 43 Brendan. One 250 and four Cs for whole  
5 day tour.

6 "43 Precinct CO: I'm on top of it. I saw it."

7 A. Yes.

8 Q. Can you explain what your concern was there?

9 A. My concern is the whole day tour. Now, in the 43, a whole  
10 day tour is probably 20-some-odd officers working a day tour.  
11 And in a 28 day period, they have seen one suspicious person  
12 and four quality of life offenses in a 28 day period. Explain  
13 that to me. You really have to explain that to me.

14 Now, this is January of '08, I believe. I don't know.  
15 Was there ten feet of snow on the ground. That's a  
16 possibility. That would be a pretty good excuse why people  
17 aren't out there drinking beer on the corner if it's four  
18 degrees and ten feet of snow. So we need an explanation. Now,  
19 he tells me he is on top of it, he saw it.

20 We have got to make sure the officers are giving us an  
21 honest day's work for an honest day's pay. And in our  
22 profession, that means crime goes down, the quality of life for  
23 the people who live in the city gets better. We have got to  
24 hold these officers to a standard where they are getting a  
25 day's pay for a day's work.

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D498FLO5 Esposito - cross

1 Q. Chief, I am going to refer you now to 8002.

2 A. Yes.

3 Q. And this is an entry, I think it concerns Patrol Borough  
4 Queens South. It's on April 24, 2008.

5 The entry at the top of the page says, "Chief Espo:  
6 PSB collars are up and 511 are down. That's good. Raw number  
7 of 250s are up, but Cs and 250s are done on overtime and that  
8 will come back to hurt us. That has to be managed at precinct  
9 level, but looked at at borough level."

10 A. Correct.

11 Q. Why are you looking at the 250s done on overtime?

12 A. Well, I think I said earlier, it's management. We have to  
13 ask the question, why can they see activity, whether it be  
14 arrests, quality of life issues, reasonable suspicion stops,  
15 why can the officers see it on overtime and not on straight  
16 time? Is it an indicator that he or she says, you know what, I  
17 don't have to work hard on straight time, I will wait for the  
18 overtime and do it then. We can't have that. We have to have  
19 the officer being an officer whenever he or she is at work.  
20 Whenever we are paying them to do their job, they have to do  
21 their job. So if all of it is on overtime, or the majority of  
22 it is on overtime, we have to find out why.

23 Q. Chief, now I am going to refer you to 8025.

24 A. Yes.

25 Q. This refers to Patrol Borough Queens South, June 19, 2008.

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D498FLO5 Esposito - cross

1 That reference is on 8022. But now moving on to 8025, a few  
2 pages later, there is a reference at the middle of the page,  
3 "Chief Espo: Quality on 250s. Forget the number. 5 percent  
4 enforcement rate off 250s. 102 precinct is the worst with  
5 enforcement off 250s. A lot of it is probably training but  
6 quality of 250s in Queens South has a lot to be desired."

7 Can you please explain what your concern is there?  
8 A. My concern is that the stop, question and frisks are not  
9 done in the right areas, the right areas, the right time for  
10 the right offense. If we have a crime problem here, well,  
11 that's where we expect our deployment to be. If I am saying  
12 the quality is off, that's what I am referring to.

13 Also, that 5 percent enforcement, that means how many  
14 people result in an arrest or a summons or some activity and  
15 their percentage is only 5 percent have that enforcement. So  
16 why is that?

17 Q. Does the fact that 88 percent of stops do not result in an  
18 arrest for summons tell you that there was no reasonable  
19 suspicion for those stops?

20 A. Not at all. I think the fact that is tremendously  
21 understated is that we prevent crime by doing a quality stop,  
22 question and frisk, one that's in the right place, the right  
23 time, for the right crime. Again, I was talking about it  
24 earlier. Stop, question and frisk can be done when you think a  
25 crime is about to be committed. So if that sector team is out

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D498FLO5 Esposito - cross

1 there, and they see somebody who they think is suspicious, they  
2 follow him or her for a while, ultimately they don't have  
3 probable cause for an arrest, they don't see the fellow  
4 committing a crime, but they say, this guy is giving us  
5 reasonable suspicion to stop him, he is about to do something,  
6 they stop him or her, that person stops the crime from  
7 happening. The officer stopped the crime from happening. They  
8 may say, I have to go home, they are watching me, I have got to  
9 get out of here. And that has resulted, in the last 12 years,  
10 in a 40 percent decrease in crime. That's the point that gets  
11 away from everything. We don't see that.

12 THE COURT: Only if you attribute that drop solely to  
13 the stop program, right? Couldn't there be other causes for  
14 the drop?

15 THE WITNESS: Without a doubt. That's just one of the  
16 tools in the toolbox.

17 THE COURT: I understand. There are other reasons for  
18 that drop.

19 THE WITNESS: We are focusing on the guns and the  
20 shootings.

21 THE COURT: What question are you answering now? I  
22 think we are done.

23 THE WITNESS: I am just on my pedestal.

24 THE COURT: You can do that outside the building.

25 Q. So there could be what appears to be a crime in progress

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D498FL05 Esposito - cross

1 and an officer may have reasonable suspicion to stop that  
2 person, but not probable cause to arrest that person, right?

3 A. Sure.

4 Q. What are some other examples of those situations where an  
5 officer could stop someone and the crime could actually be in  
6 progress, but that officer didn't have probable cause to  
7 arrest?

8 MR. MOORE: I don't know why we are going into this.

9 THE COURT: I didn't understand the question. What do  
10 you object to?

11 MR. MOORE: I think it's an area of questioning that's  
12 irrelevant to the issue in the case. What the officer could  
13 have been doing? The question calls for speculation.

14 THE COURT: That's what I thought.

15 Q. In your experience, Chief, can you give other examples of  
16 times, which are hard to quantify, when a stop, a reasonable  
17 suspicion stop could be conducted of someone who is not  
18 necessarily innocent of a crime?

19 MR. MOORE: Same objection.

20 THE COURT: Sustained.

21 Q. What are other examples of crimes in progress that might  
22 not result in an arrest?

23 THE COURT: Might not result in an arrest if the crime  
24 is in progress?

25 What is a crime in progress but you can't arrest?

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D498FLO5 Esposito - cross

1 THE WITNESS: We can get on the scene and we don't  
2 have probable cause.

3 THE COURT: Even though you see somebody committing  
4 the crime?

5 THE WITNESS: We get a call that the crime is  
6 progress, and when we get there we may see somebody walking  
7 away, but we don't have enough probable cause to make an  
8 arrest, but we do have enough --

9 THE COURT: There is no crime in progress if the  
10 fellow is walking away.

11 THE WITNESS: Yes.

12 THE COURT: The question is impossible. If they see  
13 it in progress, that's the crime.

14 Q. Are there occasions where you may have reasonable suspicion  
15 to stop someone for casing, but when you make that stop and you  
16 investigate further, you don't have probable cause to make an  
17 arrest?

18 THE COURT: The answer to that -- I will give it to  
19 you -- is of course.

20 THE WITNESS: Of course.

21 Q. Can you explain those kinds of circumstances?

22 MR. MOORE: That is asking him to speculate.

23 THE COURT: I know the answer too. So if I know the  
24 answer, that's amazing because I don't do police work, but it's  
25 too obvious. There have got to be times that are exactly that.

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D498FLO5 Esposito - cross

1 You suspect someone of casing, but there is no proof of the  
2 crime.

3 Q. The fact that contraband might not be found on that  
4 individual does not mean that the stop was a bad stop, right?

5 MR. MOORE: I don't know what stop she is talking  
6 about.

7 THE COURT: Sometimes you stop people on reasonable  
8 suspicion and you don't find contraband. This is no surprise  
9 to me. Now I understand the point. Sometimes that happens,  
10 sure.

11 MS. GROSSMAN: That could very well explain the 88  
12 percent of the stops --

13 THE COURT: I doubt it explains all 88 percent.  
14 Surely, it describes some of them. There is no doubt about it.  
15 I don't think anybody in this room is claiming that all 88  
16 percent lack reasonable suspicion. Certainly, Dr. Fagan didn't  
17 say that. You're basically attacking a straw man. Nobody is  
18 saying all 88 percent are bad stops.

19 MS. GROSSMAN: I think that Professor Fagan has raised  
20 an issue about hit rates, and this is relevant to rebut that.

21 THE COURT: We have done it. I understand. The chief  
22 understands. Mr. Moore understands. You understand. Some of  
23 these stops are based on reasonable suspicion and don't produce  
24 contraband, a summons or an arrest. I understand that.

25 BY MS. GROSSMAN:

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1 Q. Chief, on direct, Mr. Moore asked you some questions about  
2 releasing a suspect immediately after completing an  
3 investigation, and if probable cause for arrest does not exist,  
4 is an officer supposed to provide the suspect with an  
5 explanation for the stop, question and frisk encounter? Do you  
6 remember being asked some questions about that?

7 A. Yes. With regards to the RAND study.

8 Q. Now, I am going to refer you to Defendants' Exhibit A5.

9 MR. MOORE: Do you have an extra copy?

10 No, you don't? You don't want to give me one or you  
11 don't have an extra copy?

12 MS. GROSSMAN: I don't have an extra copy.

13 MR. CHARNEY: I hate to delay things.

14 MR. MOORE: I just think it's a matter of fairness.  
15 They provided no documents to us that they were going to use.

16 THE COURT: Earlier, Ms. Grossman, you said you  
17 weren't going to use any documents that weren't used on direct.

18 MS. GROSSMAN: I think Mr. Moore used some documents  
19 and this is responding --

20 THE COURT: You said you weren't going to use any  
21 documents that he didn't use. Did I misunderstand?

22 MS. GROSSMAN: At this point, this is a new document,  
23 but this is in response to the new documents that the  
24 plaintiffs referred the witness to.

25 THE COURT: Just an hour ago you said you weren't

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D498FLO5 Esposito - cross

1 going to do that. Other than that, what is A5?

2 MS. GROSSMAN: It's the revision to the patrol guide  
3 212-11, stop and frisk, issued April 23, '09.

4 THE COURT: I will allow it.

5 Q. Does this look familiar to you?

6 A. Yes.

7 MS. GROSSMAN: I move to admit.

8 THE COURT: It's fine. It's part of the patrol guide.  
9 (Defendants' Exhibit A5 received in evidence)

10 MR. MOORE: We don't have a copy, but I don't have an  
11 objection.

12 THE COURT: Good.

13 Can you give Mr. Moore a copy tomorrow, Ms. Grossman?

14 MS. GROSSMAN: He can look up here.

15 THE COURT: Ms. Grossman, would you give him a copy  
16 tomorrow?

17 MS. GROSSMAN: Sure.

18 Q. You see section 5, paragraph 5, under 2A5?

19 A. Yes.

20 Q. Does that refresh your memory about whether officers are  
21 supposed to provide the suspect with an explanation for stop,  
22 question and frisk?

23 A. Yes.

24 MR. MOORE: I thought the question was about whether  
25 there was a card.

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D498FLO5

Esposito - cross

1 THE COURT: No. There was some question you asked  
2 about only when they ask.

3 THE WITNESS: I thought you were referring to the card  
4 also.

5 THE COURT: Then you were both wrong.

6 THE WITNESS: We were both wrong.

7 MS. GROSSMAN: Again, this is actually in response to  
8 the new exhibits that Mr. Moore raised today. So I would just  
9 ask for your forbearance.

10 Q. I am going to refer to Defendants' Exhibit Z4.

11 THE COURT: Which is what?

12 MS. GROSSMAN: Which is a revision to the patrol  
13 guide.

14 THE COURT: Revisions to the patrol guides are coming  
15 in.

16 Q. 202-10, executive officer. The date of issue is May 16,  
17 2012.

18 MR. MOORE: Do you have an extra copy?

19 MS. GROSSMAN: I don't, but I will put it up.

20 THE COURT: And provide it tomorrow.

21 MS. GROSSMAN: Sure.

22 (Defendants' Exhibit Z4 received in evidence)

23 Q. Have you had a chance to review that, Chief?

24 Do you see the reference to executive officer?

25 A. Yes.

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D498FLO5 Esposito - cross

1 Q. Do you see the reference to the fact that the executive  
2 officer is to personally conduct, in conformance with the  
3 quality assurance division, self-inspection program, the  
4 command self-inspection of stop, question and frisk report work  
5 sheets?

6 A. Yes.

7 Q. So is that, indeed, who was supposed to be doing the  
8 self-inspections at the command?

9 A. It was raised up to the executive officer.

10 THE COURT: What is the date on this again?

11 MS. GROSSMAN: May 16, 2012.

12 THE COURT: I assume you plan to spend tomorrow here,  
13 part of it, right?

14 THE WITNESS: I wasn't planning, but before lunch I  
15 started getting a realization.

16 THE COURT: She is not going to finish in four  
17 minutes, but hopefully they will do it in the morning.

18 MS. GROSSMAN: We may have to work out some  
19 adjustments with the plaintiffs with other witnesses.

20 THE COURT: I think his schedule comes first. He is  
21 retired.

22 MS. GROSSMAN: It does.

23 Q. Why did you retire, Chief?

24 A. Sometimes I wonder. I didn't know I was retired.

25 THE COURT: You don't have to answer that.

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D498FLO5 Esposito - cross

1 A. Why did I retire? I hit the mandatory age of 63.

2 Q. Who replaced you as chief of department?

3 A. Phil Banks.

4 Q. What were your responsibilities as chief of department?

5 A. To oversee the operational bureaus within the NYPD --  
6 patrol, housing, transit, transportation, traffic,  
7 detectives -- the day-to-day operation, crime fighting efforts,  
8 details, big events, and the CompStat process which takes in  
9 the fighting crime.

10 Q. Is CompStat one of the ways that you develop and coordinate  
11 plans for crime control and crime reduction?

12 A. Yes.

13 Q. I know we discussed CompStat on direct and a little bit  
14 this afternoon, but can you just explain to the judge how the  
15 mapping works when you're involved in the CompStat process?

16 A. We have computerized maps where we are able to put up many  
17 of the indicators, whether they be complaints of drug dealing,  
18 crime, activity, where our Argus cameras are. It's many  
19 different indicators we can put up. Boundaries of sectors,  
20 boundaries in precincts, housing.

21 Q. When did you start using CompStat?

22 A. CompStat started, I guess it was '94, and it developed into  
23 what it is now.

24 Q. Was it in use when you became chief of department?

25 A. What did I use?

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D498FLO5 Esposito - cross

1 Q. Was CompStat in use when you became chief of department?

2 A. Yes. It started when I was, I guess, the CO of the 34th  
3 Precinct up in Washington Heights. That's when it first  
4 started.

5 Q. The CompStat process, is that also where you share  
6 information with other police personnel in the police  
7 department?

8 A. Sure. In that conference room, there are maybe close to  
9 150 to 200 people in that conference room, and throughout the  
10 building we watch it sometimes on closed-circuit, but other  
11 representatives from the other boroughs are there, other units  
12 of the boroughs.

13 Q. How do you use the CompStat process to promote  
14 accountability?

15 A. Well, we call in the borough based on what is happening  
16 recently, whether it be the week, more or less the 28 day  
17 period we look at. If we see something that we are concerned  
18 about, we will call in that borough and we go over the crimes,  
19 or other issues, there are other issues we discuss besides  
20 crime at CompStat, and it's a give and take. We will learn  
21 some things from them, and we will give them some of our ideas.

22 Q. For example, if the Brooklyn North borough is up for a  
23 particular CompStat meeting, who would you expect to attend at  
24 that CompStat meeting?

25 A. All the executives -- a number of the executives from the

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1 borough, the borough commander, all the support. We call them  
2 support, but the other operational bureaus, detective bureau,  
3 OCCB, housing, transit, legal comes, community affairs will  
4 come, the three star chiefs will come. It's a representation  
5 of everybody.

6 Q. Who selects which boroughs or commands must attend CompStat  
7 on a particular week?

8 A. We will make a decision on a Thursday usually, after we  
9 finish CompStat. We will sit down and look at the numbers, the  
10 conditions, who hasn't been in in a while. Even if a place is  
11 doing good, and they haven't been in in four or five months, we  
12 say we have to call them in. So it will be my shop, with the  
13 deputy commissioner of operations. We may include the chief of  
14 patrol at times, chief of housing.

15 THE COURT: Ms. Grossman, we are going to stop for the  
16 day. How much longer do you think your cross will be?

17 MS. GROSSMAN: I am hoping that we don't go beyond an  
18 hour or an hour and a half.

19 THE COURT: So we certainly should finish in the  
20 morning session.

21 MS. GROSSMAN: I am hoping.

22 THE COURT: OK. I hope you get out of here by lunch,  
23 but you're done for the day.

24 See you tomorrow.

25 (Adjourned to April 10, 2013, at 10:00 a.m.)

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