

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

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

5 v. 08 CV 1034(SAS)

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

8 -----x

New York, N.Y.  
April 16, 2013  
10:00 a.m.

10 Before:

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

13 APPEARANCES

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D4g9fl01 Gillespie - direct

1 SEAN GILLESPIE, resumed.

2 THE COURT: Good morning everyone.

3 Please be seated.

4 MR. CHARNEY: Good morning, your Honor.

5 DIRECT EXAMINATION

6 BY MR. CHARNEY:

7 Q. Good morning, Officer Gillespie.

8 A. Good morning.

9 Q. I wanted to clear up something you were talking about at  
10 the end of the day yesterday. It was in regards to your  
11 interview with the CCRB on October 22, 2010. Do you remember  
12 that?

13 A. Okay.

14 Q. And it's correct, right, at that interview you were asked  
15 to provide the description that the Petco employee had given  
16 you of the man that was allegedly following the woman in the  
17 store.

18 Do you remember that?

19 A. Correct.

20 Q. And when -- in answer to that question you told the CCRB  
21 investigator -- the only thing you told him that you remembered  
22 about that description was that the man had been wearing green  
23 camouflage pants, right?

24 A. Correct.

25 Meant camouflage in the nature of the color, not

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1 specifically army fatigues. But yes.

2 Q. And you didn't tell the CCRB investigator that you  
3 remembered anything else about the description that the Petco  
4 employee gave you, correct?

5 A. Correct.

6 Q. So after the Petco employee gave you the description -- now  
7 we're going to go back to the actual incident -- after he gave  
8 you that description -- and by you I mean you and the other  
9 officers on the scene -- you saw Mr. Sindayiganza almost  
10 immediately after that, correct?

11 A. Correct.

12 Q. And he was standing on the street in front of the -- I'm  
13 sorry on the sidewalk in front of the Petco; is that correct?

14 A. Yes, to my recollection.

15 Q. And when you saw him, he was standing about five feet to  
16 the west of where you and the other officers were, right?

17 A. Approximately.

18 Q. And so he was standing either right in front of the  
19 entrance to the store or a little bit to the west of it?

20 A. In that general vicinity. Possibly to the east of the  
21 entrance as well.

22 Q. Okay. Do you remember being deposed in this case?

23 A. Yes, I do.

24 Q. And you took an oath to tell the truth, right?

25 A. Yes, I did.

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1 Q. I want you to turn to page 32 of your deposition, line 21.

2 THE COURT: Mr. Charney could you do me a favor and  
3 keep up your voice up all day.

4 MR. CHARNEY: I will try, your Honor.

5 Q. So page 32, line 1 -- 21. I'm sorry.

6 You see it says, "We, I guess, were just east of the  
7 entrance and then he would have been right about the entrance  
8 or a little bit west of."

9 Do you remember giving that answer?

10 A. Yes, I do.

11 Q. So it's correct then that he was either right in front of  
12 the entrance or a little bit to the west of it, correct?

13 A. Correct.

14 Q. So what I'm going to ask you to do is I'm going to hand  
15 you -- you see we have Exhibit X10 on the screen. I'm going to  
16 hand you another copy of it and a pen. If you could mark with  
17 an X where approximately you remember seeing Mr. Sindayiganza  
18 standing.

19 A. Marker is a little dead but.

20 MR. CHARNEY: You can make that out. I'll just make  
21 it a little darker.

22 I'm going to put this up here and I'm going to mark  
23 this as X10. I'm going to put a little g after it so we know  
24 this is the one Officer Gillespie marked.

25 So is it correct that to your recollection you saw

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1 Mr. Sindayiganza standing about here where this X is?

2 THE WITNESS: Correct.

3 Q. And again, this was almost immediately after the Petco  
4 employee had spoken to you and the other officers, right?

5 A. Yes.

6 Q. And so at the point that you saw him, Mr. Sindayiganza,  
7 Officer White and one or two other officers approached  
8 Mr. Sindayiganza, correct?

9 A. To my recollection.

10 Q. And they got to within two feet of him, right?

11 A. Approximately.

12 Q. And they started speaking to him?

13 A. Yes.

14 Q. And at this point in time they were standing on the  
15 sidewalk to the east of Mr. Sindayiganza, correct?

16 A. From what I remember.

17 Q. And while they were speaking to him you were standing about  
18 five feet away; is that right?

19 A. Approximately.

20 Q. And then after a few minutes of speaking to

21 Mr. Sindayiganza, Officer White and the other officers went  
22 into the store, correct?

23 A. From what I remember, yes.

24 Q. And at that point you and the other officers remained  
25 outside with Mr. Sindayiganza, correct?

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Gillespie - direct

1 A. Correct.

2 Q. And at this point in time you and the other officers were  
3 standing near the curb while Mr. Sindayiganza was standing  
4 between you and the wall of the store, correct?

5 A. From what I can remember.

6 Q. So you and the other officers were standing in between  
7 Mr. Sindayiganza and the street, correct?

8 A. Yes.

9 Q. And during the time that you were standing there and  
10 Mr. Sindayiganza was standing near the building, it was your  
11 understanding that Mr. Sindayiganza was not free to leave the  
12 scene, correct?

13 A. Correct.

14 Q. And then at some point in time Officer White came back out  
15 of the store and he instructed Mr. Sindayiganza to leave the  
16 scene by walking north; is that right?17 A. He asked Mr. Sindayiganza to leave the scene by heading  
18 northbound.19 Q. Okay. Now prior to Officer White doing this, you do not  
20 recall seeing the alleged victim, the woman herself, come out  
21 of the store, do you?

22 A. No, I do not.

23 Q. And after Officer White asked Mr. Sindayiganza to walk  
24 north, Mr. Sindayiganza said that he did not want to do so,  
25 correct?

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1 A. Basically that's what he was getting at. He was very  
2 agitated. He started raising his voice.

3 He didn't use those exact words but yes, he was  
4 refusing to travel northbound.

5 Q. And that's because he wanted to travel to the subway  
6 station at Union Square, correct?

7 A. I believe so.

8 Q. And after he refused to walk north, he was placed in  
9 handcuffs and arrested, correct?

10 A. After he began becoming disorderly and causing alarm on the  
11 scene, causing people to gather and take notice as to what was  
12 going on, yes, he was placed in handcuffs.

13 Q. Now, prior to him being placed under arrest, you didn't  
14 have any reason to suspect he was carrying a weapon, correct?

15 A. No, I did not.

16 Q. And prior to him being placed under arrest you did not have  
17 any reason to suspect him of having committed a violent crime,  
18 correct?

19 A. Correct.

20 Q. So you would agree that before he was placed under arrest  
21 there would not have been any justification to frisk him,  
22 correct?

23 A. Correct.

24 Q. Now, you didn't make any entries about this encounter in  
25 your memo book, right?

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Gillespie - direct

1 A. Correct.

2 Q. And the reason is because in your view this was another  
3 officer's stop, correct?

4 A. Yes. Generally I don't put other officer's stops in my  
5 memo book when I have that little of action in regards to the  
6 encounter. I didn't have any conversation with  
7 Mr. Sindayiganza nor the victim or the, you know -- honestly,  
8 all I really had was when the employee came out and provided us  
9 with the description.

10 Q. So you did have a description, right?

11 A. Yes.

12 Q. And you also observed the interaction between Officer White  
13 and Mr. Sindayiganza, right?

14 A. Yes. I was on the scene. Obviously I was going to observe  
15 everything that was going on.

16 Q. But your practice in such cases like that is to not report  
17 any details about the encounter in your memo book?

18 A. Again, generally I don't -- when my actions in regards to  
19 the encounter are that minimal, I don't put that in my memo  
20 book.

21 Q. And you don't put your observations about the incident in  
22 your memo book either, right?

23 A. No.

24 Q. And you've never been trained by your supervisors in the  
25 NYPD that you should be recording other officers' stop

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1 encounters in your memo book even if you did witness them; is  
2 that right?

3 A. We are trained to put our daily activities in our memo  
4 book. I have never been specifically spoken to by any of my  
5 supervisors in regards to a specific incident where I didn't  
6 put another officer's stop in my memo book.

7 Q. But you also have never been told as a general matter that  
8 if you observe another officer make a stop -- you've never been  
9 told that you should record what you observe in your memo book;  
10 is that right?

11 A. To my understanding if you have, you know, actions involved  
12 with that encounter you should have that in your memo book.  
13 There's many times where you see two officers stopping somebody  
14 and you're simply driving by. They give you a thumbs up that  
15 they're okay. You observed that they were on the scene with  
16 somebody stopped. But is that necessary to put in your memo  
17 book, I don't believe so.

18 Q. Well my question is: If you're actually on the scene and  
19 you observe the stop take place and you see the interaction  
20 between the civilian and the officer, you've never been told by  
21 your supervisors that in those situations you should record  
22 what you observed in your memo book?

23 A. Not specifically, no.

24 Q. So if you were called to testify about another officer's  
25 stop in court or at the CCRB, for example, like you're doing

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1 today, you would rely solely on the memories in your head of  
2 the incident; is that right?

3 A. That's correct.

4 Q. And you've never been disciplined for failing to make an  
5 entry about a stop in your activity log, right?

6 A. No, I have not.

7 Q. Now when you complete a UF 250 form for that stop that you  
8 conduct and you hand it in -- you hand it in to either your  
9 immediate supervisor or the desk sergeant, correct?

10 A. Correct.

11 Q. And the supervisor usually reviews it in your presence?

12 A. Generally, yes.

13 Q. But on no occasion when a supervisor has reviewed one of  
14 your 250s in your presence has he or she asked you to explain  
15 the reasons that you made the stop; is that right?

16 A. No. That's not correct. When they review it they, you  
17 know, they may say ask about, you know, the encounter, what may  
18 have happened, what led to the encounter. I mean I've never  
19 been disciplined or spoken to in regards to like specific memo  
20 book entries but, yeah, they'll discuss the stop with you.

21 Q. Well if you can turn to page 108 of your deposition, line  
22 11.

23 Do you see it says, "Do they review it in your  
24 presence usually?" That's the question.

25 "A. Usually, yes.

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Gillespie - direct

1 "Q. Okay. Have, in your experience, have they ever asked you  
2 questions about anything that you have written on your forms?

3 "A. No. Generally my forms are pretty much on point."

4 MS. PUBLICKER: Though I would continue to the next  
5 set of questions.

6 "Q. Okay. They've never asked you, for example, you know, to  
7 explain why you may have checked off a particular reason for a  
8 stop?

9 MR. CHARNEY: No.

10 MS. PUBLICKER: "Answer: No.

11 "You can answer.

12 "No. Never why like I, you know, if -- if they would  
13 read about the narrative they would read about the stop they  
14 may ask, you know, what happened, what occurred throughout the  
15 stop. But never, 'Why did you check off this box or that  
16 box?'"

17 BY MR. CHARNEY:

18 Q. And when your supervisors do review the 250s that you  
19 completed, they don't typically review your memo book entry at  
20 the same time, do they?

21 A. It really depends on the situation.

22 Q. If you could turn to page 109 of the deposition, line 10.

23 "Q. When they review your UF 250s, did they also review your  
24 activity log entries about the stop typically?

25 "Objection.

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1 "You can answer.

2 "A. No. Not really."

3 Do you remember giving that answer?

4 A. Yes, I remember.

5 MR. CHARNEY: One moment, your Honor.

6 (Pause)

7 No further questions, your Honor.

8 THE COURT: Thank you.

9 Ms. Publicker.

10 CROSS-EXAMINATION

11 BY MS. PUBLICKER:

12 Q. Good morning, Officer Gillespie.

13 A. Good morning.

14 Q. How long have you been employed by the New York City Police  
15 Department?

16 A. Almost five years now.

17 Q. And how long had you been working for the police department  
18 at the time of the stop of Mr. Sindayiganza?

19 A. February 2010, correct?

20 Q. Yes.

21 A. About two, two-and-a-half years.

22 Q. Did you go to college?

23 A. Yes.

24 Q. Where did you go to college?

25 A. I started my freshman year at Sacred Heart University in

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D4g9fl01 Gillespie - cross

1 Connecticut. Then I transferred to Albany State University,  
2 New York.

3 Q. Why did you become a police officer?

4 A. I have a few family members that were on the job and from a  
5 young age it was kind of just always embedded in me, you know,  
6 helping others and protecting the community, serving the  
7 community.

8 Q. Where are you currently assigned within the NYPD?

9 A. Currently I'm assigned to the 13th precinct.

10 Q. How long have you been assigned there?

11 A. Since August of 2010.

12 Q. What area does the 13th precinct cover?

13 A. 14th Street to 30th Street from the East River to 7th  
14 Avenue, the east side of 7th Avenue.

15 Q. What are the typical crime conditions in the 13th  
16 precinct?

17 A. We have all crime, you know, that you can think of, but  
18 generally we usually have high numbers of larceny throughout  
19 the command.

20 Q. What kind of larceny are those?

21 A. Both petit and grand. A lot of you know shoplifting, bag  
22 snatches, phone snatches. For example, you know, we have a lot  
23 of restaurants, bars and clubs in the command, people leaving  
24 their bag out and people just simply picking them up and  
25 walking out with them.

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D4g9flol Gillespie - cross

1 Q. What is your current assignment within the 13th precinct?

2 A. I'm assigned to the special ops conditions unit.

3 Q. What is a conditions unit?

4 A. Basically we, instead of responding to radio jobs obviously  
5 we respond to high priority radio jobs. But instead of  
6 responding to radio jobs like a regular sector on patrol, we  
7 drive around to specific locations that we've identified as  
8 high crime locations through specific patterns in the command  
9 and we do our best to combat the quality of life and crime  
10 patterns that we have.

11 Q. How do you learn about those crime patterns and crime  
12 conditions?

13 A. Well, we review our crime patterns with our supervisor on a  
14 daily basis. We review complaint reports that come in. We  
15 take complaint reports ourselves for specific locations, you  
16 know, so we obviously know firsthand.

17 They have posted in our muster room, they have  
18 different crime patterns and different conditions in each  
19 sector. We have wanted posters. We have recidivist posters.  
20 We have all that stuff posted.

21 Q. Do you use the quest for excellence command conditions  
22 reports?

23 A. Yes.

24 Q. How do you use those?

25 A. Just review them and see what specific, you know, patterns

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D4g9fl01 Gillespie - cross

1 or conditions are taking place in specific areas in the  
2 precinct. And then go out and do our best to combat that  
3 crime.

4 Q. When you're looking at the patterns in this paperwork, what  
5 are you looking for?

6 MR. CHARNEY: Your Honor, I'm going object to this  
7 line of questioning. It has nothing to do with the stop that  
8 he was called to testify about. And I really don't understand  
9 what it has to do with any of the issues.

10 THE COURT: The background concept of crime  
11 conditions, policing. Remember we've had a lot of talk about  
12 robbery and --

13 MR. CHARNEY: I understand.

14 THE COURT: -- the stop involving the robbery. We  
15 talked about all those robberies in the area. We had the map  
16 that showed the robberies in the area. So the idea is it's a  
17 crime condition that's being reported.

18 MR. CHARNEY: I understand that.

19 But this particular stop there was no assertion that  
20 this stop was in any way based on any kind of crime pattern.

21 THE COURT: That's true.

22 MS. PUBLICKER: That's true, your Honor.

23 THE COURT: Also that's true.

24 Now if that's true why are we going on then so much  
25 about crime conditions.

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D4g9flol Gillespie - cross

1 MS. PUBLICKER: Your Honor, we're using Officer  
2 Gillespie also to go beyond just the stop, to talk about, for  
3 example, right now he's talking about the quest for excellence  
4 command conditions reports. You know, Commissioner Beirne was  
5 on yesterday talking about the quest for excellence. So he's  
6 providing information for the Court on how those are used by  
7 officers today.

8 MR. CHARNEY: But they could have asked Commissioner  
9 Beirne about it. He was their 30(b)(6) witness. And  
10 Ms. Grossman asked him one questioned and sat down.

11 THE COURT: And you cross-examined and said: But you  
12 haven't been the precinct commander for 20 years. So this  
13 witness is bringing it to date, so to speak, bringing it  
14 current. You questioned by saying he hasn't really been in the  
15 field for a long time.

16 MS. PUBLICKER: He's also a defense witness that we  
17 again could put on in our own case in chief.

18 THE COURT: Go ahead.

19 Q. Officer Gillespie I believe the question was when you're  
20 looking at these patterns and paperwork, what are you looking  
21 for?

22 A. Well, basically we're looking for specific times,  
23 locations, descriptions or possible photographs, surveillance  
24 photographs, video footage of the crimes that have taken place  
25 in order for us to direct our patrol and our attention to those

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1 times, places and locations.

2 Q. Has there ever been a time where you've investigated a  
3 crime pattern outside of your tour?

4 A. Yes.

5 Q. Could you tell the court about one of those times.

6 A. A few months ago we were having a burglary -- we had a  
7 burglary pattern throughout the command. It was just  
8 commercial establishments, mainly restaurants that had been  
9 broken into. And the time that was identified had been, I  
10 believe, between the hours of like midnight and 3:00 a.m.

11 You know, our commanding officer wanted us to have  
12 around-the-clock coverage for this crime pattern because  
13 obviously it was a big issue in the command.

14 On Sundays and Mondays the majority of the special ops  
15 units aren't in. Myself and my supervisor happened to work  
16 Sunday and Mondays, and were both plain clothes qualified.

17 So our tour was changed. We were doing midnights for,  
18 I think, like three or four weeks on Sundays and Mondays so  
19 that we could have constant coverage in regards to this crime  
20 pattern.

21 Q. Did you believe that tour change was a punishment?

22 A. No. I just thought it was me doing my part in combating  
23 the crime in the precinct.

24 Q. How was that crime condition addressed?

25 A. Well we were out in plain clothes. We were responding to

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D4g9flol Gillespie - cross

- 1 all suspicious person jobs, to all alarm jobs, ten, eleven  
2 alarm jobs in specific locations. We did directed patrols in  
3 the areas of which the, you know, the burglary patterns were  
4 taking place. There was increased patrol, uniform presence  
5 doing directed patrols to all these locations as well.  
6 Q. Was the individual ever arrested?  
7 A. To be honest, I'm not sure. I know that the crime pattern  
8 stopped. I don't know if, you know, it's very possible there  
9 was a pattern throughout other commands as well. You know  
10 maybe a detective unit did at some point apprehend the suspect.  
11 To my knowledge, not from a precinct officer. But you know we  
12 were out there day-in and day-out, you know, directing our  
13 patrol towards these locations. So it's also possible that the  
14 increased presence just deterred the crime itself.  
15 Q. Now, going to the incident with Mr. Sindyiganza, why were  
16 you at the corner of 17th Street and Broadway at about  
17 6:30 p.m. that day?  
18 A. We usually actually went back to that location, everybody  
19 that was on that detail for the day, in order for the van to  
20 just come and pick us up at one spot and transport us back to  
21 the midtown south station house.  
22 Q. How did the employee from Petco flag the officers down?  
23 A. I don't remember him flagging us or anything. We were just  
24 on the corner standing there. Just walked up to us.  
25 Q. Do you remember what that employee looked like?

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1 A. I just remember it was a male white wearing a Petco shirt  
2 with a Petco insignia on it.

3 Q. What happened after he came over?

4 A. To my recollection, he provided us with a description and  
5 there was a person in the vicinity of the Petco that happened  
6 to fit that description, you know, pretty exactly. At that  
7 point Officer White and -- I don't really recall who he was  
8 working with at that time -- but they started to handle the job  
9 themselves.

10 Q. Did you ever speak to the victim?

11 A. No, I did not.

12 Q. Mr. Charney was asking you questions about the description  
13 that you provided to the CCRB about the description provided to  
14 you by the employee. Do you remember that?

15 A. Correct.

16 Q. And I believe at the time of your -- the CCRB you stated  
17 that it was just dark green clothing?

18 A. Yes.

19 Q. Is that correct?

20 A. I think I said camouflage but I didn't mean army fatigues.  
21 I just meant like the coloring of the clothes.

22 Q. Do you recall receiving a more detailed description than  
23 just that one at the time of the incident?

24 A. Yes. I mean we definitely received a pretty detailed  
25 description. And like I said, it just happened to be that

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D4g9fl01 Gillespie - cross

1 there was a person fitting that description in the vicinity  
2 right then and there. I later found out he was identified as  
3 Mr. Sindayiganza.

4 Q. And why do you remember more about this stop now than you  
5 did at the time of your CCRB interview?

6 A. Well at the time I mean it was the first I had really heard  
7 of the incident, since the day of. And again, like I said  
8 earlier, my actions involved in the encounter were minimal. So  
9 just, you know, time and thinking about it and different, you  
10 know, I was provided a statement of what Mr. Sindayiganza said  
11 happened that day. So his statement of what happened helped me  
12 recall some of the incidents and how they actually did and did  
13 not happen, were played out.

14 Q. And were you provided any of those documents before your  
15 CCRB interview?

16 A. No.

17 Q. Did you hear the other officers speaking with  
18 Mr. Sindayiganza that day?

19 A. I mean I know they were engaged in a conversation with him  
20 but I couldn't hear like what they were actually saying to each  
21 other.

22 Q. Did you ever speak with Mr. Sindayiganza?

23 A. No, I did not.

24 Q. What was Mr. Sindayiganza's demeanor at the time he was  
25 stopped?

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D4g9flol Gillespie - cross

1 A. When he was first stopped he seemed a little agitated, a  
2 little confused as to why he was being stopped. Besides that,  
3 you know, until he was asked to travel northbound, he seemed  
4 okay. And then he just started getting very agitated that he  
5 was being asked to go a direction that he didn't want to travel  
6 in.

7 Q. So his demeanor changed at some point during this  
8 interaction?

9 A. Yes, it did.

10 Q. Did you ever see the complainant exit the building?

11 A. No, I did not.

12 Q. So how did you know that she had identified  
13 Mr. Sindayiganza?

14 A. Just from Officer White, from what he was saying and the  
15 way he was handling the situation.

16 MR. CHARNEY: Objection. Hearsay.

17 THE COURT: It's really for what he observed. It's  
18 okay.

19 Q. So what you observed of Officer White indicated to you that  
20 the complainant had identified Mr. Sindayiganza?

21 A. Correct.

22 Q. Did you personally place Mr. Sindayiganza in handcuffs?

23 A. No, I did not.

24 Q. Did you see another officer place him in handcuffs?

25 A. I don't recall who did but I know that he was placed in

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D4g9fl01 Gillespie - cross

1 handcuffs.

2 Q. Do you know whether Mr. Sindayiganza was searched or  
3 frisked before the woman identified him?

4 A. From my recollection he was not searched or frisked before  
5 the woman identified him.

6 MR. CHARNEY: Objection because he doesn't know when  
7 the woman identified. He never saw the woman. So he has no  
8 foundation for that answer. Move to strike.

9 THE COURT: That's true.

10 BY MS. PUBLICKER:

11 Q. So do you know whether Mr. Sindayiganza was searched or  
12 frisked before you believed that the woman --

13 THE COURT: That would be -- I sustain the objection.  
14 Strike the prior answer.

15 Q. So Officer White left the group of officers at some point  
16 to enter the Petco, correct?

17 A. Correct.

18 Q. And did he return at some later point?

19 A. Correct.

20 Q. Was Mr. Sindayiganza searched or frisked before Officer  
21 White returned from inside Petco?

22 A. No.

23 Q. Did you frisk Mr. Sindayiganza?

24 A. No.

25 Q. Did you search him?

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D4g9flol Gillespie - cross

1 A. No.

2 Q. Did you search his backpack?

3 A. No.

4 Q. Did you hear Officer White call Mr. Sindayiganza a dick?

5 A. No, I did not.

6 MS. PUBLICKER: I don't think that's very funny,  
7 Mr. Charney.

8 MR. CHARNEY: I'm not laughing at you.

9 Q. Did you call Mr. Sindayiganza an asshole?

10 A. No, I did not.

11 Q. Did you hear any other officers call Mr. Sindayiganza an  
12 asshole?

13 A. No, I did not.

14 Q. Were you trained on the law of stop, question and frisk in  
15 the police academy?

16 A. Yes, I was.

17 Q. How were you trained on that law?

18 A. Well we were trained in the classroom with patrol guide  
19 procedures, books, student guides. And we were also trained  
20 with role playing scenarios.

21 Q. Have you been trained on the law of stop, question and  
22 frisk since you left the police academy?

23 A. Yes. I mean we review it at many trainings that we go to,  
24 you know, almost a yearly basis.

25 Q. What kind of trainings do you receive on the law of stop,

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D4g9flol Gillespie - cross

1 question and frisk since you've left the police academy?

2 A. I received specific in-classroom trainings and also just at  
3 the different tactical trainings that we go to, the encounters,  
4 stop, question and frisk encounters are always gone over in  
5 those trainings.

6 Q. Have you been trained on accurately filling out police  
7 reports?

8 A. Yes.

9 Q. Have you been trained on telling the truth in police  
10 reports?

11 A. Yes.

12 Q. What is your understanding of what can happen to a police  
13 officer who lies on the police reports?

14 A. Well, you -- be subject to not only disciplinary action  
15 from the department but also, you know, criminal action as  
16 well.

17 Q. I believe you stated earlier that you did not include a  
18 memo book entry about this stop; is that correct?

19 A. Correct.

20 Q. And why didn't you include a memo book entry?

21 A. Again, my action in the encounter just was very small. I  
22 didn't put this in my memo book because generally I don't put  
23 other officers' stops in my memo book.

24 Q. If your interaction with Mr. Sindyiganza had been greater,  
25 would you have included an entry in your memo book?

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D4g9fl01 Gillespie - cross

- 1 A. Yes. If I had any type of conversation or if I were the  
2 officer that possibly searched or frisked Mr. Sindayiganza,  
3 that would be in my memo book.  
4 Q. Do you know if the NYPD has a policy prohibiting racial  
5 profiling?  
6 A. Yes.  
7 Q. What do you understand that policy to be?  
8 A. We do not racially profile.  
9 Q. When did you first learn about that policy?  
10 A. In the academy.  
11 Q. Have you ever reviewed the written policy?  
12 A. Yes.  
13 Q. Have you ever been trained on that written policy?  
14 A. (No response).  
15 Q. Since you left the police academy? I'm sorry.  
16 A. Again like the stop, question and frisk encounters, a lot  
17 of that training comes up in all the role playing scenarios  
18 that we go over in a lot of our different tactical trainings  
19 that we go to.  
20 Q. Have you ever been subject to a quota?  
21 A. No.  
22 Q. Have you ever been pressured to conduct a certain number of  
23 stops, arrests or summonses?  
24 A. No, I have not.  
25 Q. Have you ever felt that if you did not conduct a certain

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D4g9flol Gillespie - cross

1 number of stops, arrests or summonses that you'd be punished?

2 A. No.

3 Q. Have you ever felt pressure to make unconstitutional stops,  
4 arrests or summonses?

5 A. No, I have not.

6 Q. Are you familiar with the quest for excellence Operations  
7 Order 52?

8 A. Yes.

9 Q. Has a supervisor ever explained to you what performance  
10 goals are?

11 A. Yes.

12 Q. And what have they explained to you?

13 A. My understanding, it is more --

14 MR. CHARNEY: Objection hearsay.

15 THE COURT: Sustained.

16 Q. What is your understanding of what a performance goal is?

17 A. It's certain ways that we can go out and self-initiate  
18 arrests, summons activity, stops, directed patrols, certain  
19 ways for us to, you know, understand and generate specific  
20 locations and times and patterns that we could direct our  
21 patrol.

22 Q. Do you understand performance goals to be a quota?

23 A. No.

24 Q. Officer Gillespie, do you recognize the document I just  
25 showed you?

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D4g9flol Gillespie - cross

1 A. Yes, I do.

2 Q. What is this?

3 A. This is my monthly activity report.

4 Q. For what period?

5 A. January 2010, February 2010, and March 2010.

6 MS. PUBLICKER: Your Honor, I would admit Defendants'  
7 Exhibit Q13 into evidence.

8 MR. CHARNEY: No objection.

9 THE COURT: All right. Q13 is received.

10 (Defendants' Exhibit Q13 received in evidence)

11 Q. Officer Gillespie, looking at this first -- this is January  
12 2010. What was your declared condition for that month?

13 A. Grand larceny prevention.

14 Q. And how would you indicate on this form whether or not you  
15 were addressing that condition?

16 A. Well each day you put down what specific post you had or,  
17 you know, detail or assignment for the day. And then you put  
18 whatever type of activity you took, whether it be arrests,  
19 summonses, directed patrols, vertical patrols, radio runs. And  
20 then all the way to the end there the conditions -- conditions  
21 one is the general enforcement and conditions two is how you --  
22 what action you took to prevent the grand larceny, you know,  
23 for that day.

24 Q. So in the column marked condition one you would indicate  
25 the activity you had that day that addressed general

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D4g9fl01 Gillespie - cross

1 enforcement against crime?

2 A. Correct.

3 Q. And then in the column marked conditions two you would  
4 indicate the activity you performed that addressed the declared  
5 condition which for this month was grand larceny prevention?

6 A. Correct.

7 Q. How many days on patrol did you work in January 2010?

8 A. Ten.

9 Q. How many vertical patrols did you conduct that month?

10 A. Eighteen.

11 Q. And were those residential vertical patrols?

12 A. I'm not sure about all of them. But some of them could  
13 have been. Most of them were probably commercial.

14 Q. How many parking violations did you write that month?

15 A. Eighteen.

16 Q. Was it difficult to write 18 parking summonses in a month  
17 in midtown?

18 MR. CHARNEY: Objection.

19 THE COURT: I don't know what it means. Is that the  
20 objection?

21 MR. CHARNEY: Yes. The question --

22 THE COURT: Is vague. I don't know what "difficult"  
23 means.

24 Q. Did you see many parking violations in midtown Manhattan?

25 A. Yes. It's midtown Manhattan. You could probably write a

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D4g9fl01 Gillespie - cross

1 hundred parking summonses a day if you really wanted to.

2 Q. How many summonses did you write that month?

3 A. I believe 25.

4 THE COURT: Where do I find that?

5 THE WITNESS: I have to add it up. I think was 18, 4,  
6 and 3.

7 MS. PUBLICKER: Eighteen parking violations?

8 THE COURT: Okay.

9 Q. How many C summonses, Officer Gillespie?

10 A. Four criminal court summonses.

11 Q. And there's another column marked ECB. Could you explain  
12 to the court what ECB.

13 A. It's environmental control board summonses.

14 THE COURT: Sorry. What?

15 THE WITNESS: Environmental control board summonses.

16 A lot of vending provisions, quality of life, stuff  
17 with animals, summonses such as that. And I had issued three  
18 that month.

19 Q. And how many stop and frisks did you conduct?

20 A. Three.

21 Q. Turning to the back of this page, on the back this is where  
22 you indicate how you've addressed your specified conditions; is  
23 that correct?

24 A. Correct.

25 Q. And so for the month of January 2010 how did you indicate

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D4g9flol Gillespie - cross

1 that you addressed your declared condition of grand larceny  
2 prevention?

3 A. With vertical and direct patrols in many of the commercial  
4 establishments in Times Square.

5 Q. To address your declared condition you did not make a  
6 single arrest?

7 A. No.

8 Q. Or issue a single summons?

9 A. Correct. For my declared condition.

10 Q. Or conduct a stop for your declared condition; is that  
11 correct?

12 A. Correct.

13 Q. In fact, how many arrests did you make that month?

14 A. I did not have any arrests that month.

15 THE COURT: No? Is that right? I thought if you  
16 look --

17 MS. PUBLICKER: There is no arrests that month, your  
18 Honor.

19 THE COURT: What's the two? The bottom. I'm looking  
20 at the category called arrests on the top. The top says  
21 arrests, summonses, reports, conditions. Do you see those  
22 four?

23 MS. PUBLICKER: So Officer Gillespie you see here --

24 THE COURT: Then it says, under arrest, there's  
25 felonies, misdemeanors, violations, and arrests on warrants.

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D4g9flol Gillespie - cross

1 There is a two at the bottom for I guess --

2 MS. PUBLICKER: Your Honor, are you looking at  
3 February?

4 THE COURT: Oh, sorry. No two.

5 BY MS. PUBLICKER:

6 Q. So for the month of January, Officer Gillespie, did you  
7 have any arrests that month?

8 A. For the month of January, no, I did not have any arrests.

9 MS. PUBLICKER: Now I'll move to February, your Honor.

10 THE COURT: But he's still saying no arrests and I see  
11 two, two for violations.

12 MS. PUBLICKER: These are summonses. I'm sorry, your  
13 Honor, I'm not sure --

14 THE COURT: I'm in February. I see. I wasn't in  
15 January. Now we're in February. Okay. Now see two for  
16 violations?

17 MS. PUBLICKER: So for February you did have two  
18 arrests; is that correct, Officer Gillespie?

19 THE WITNESS: Yes.

20 THE COURT: Okay.

21 Q. And in February of 2010 how many parking violations did you  
22 issue?

23 A. February of 2010 --

24 THE COURT: Fourteen.

25 THE WITNESS: Fourteen.

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D4g9flol Gillespie - cross

1 Q. Did you issue any criminal court summonses that month?

2 A. No. I don't have any criminal court summonses that month.

3 Q. Did you have any ECB summons?

4 THE COURT: This is slow. I'm looking at the chart  
5 that's in evidence. I see the figures.

6 Q. So were you punished in any way for dropping in the number  
7 of summonses you issued from January to February, Officer  
8 Gillespie?

9 A. No, I was not.

10 Q. Were you spoken to at all about that drop?

11 A. No.

12 Q. Turning to the back.

13 THE COURT: Could you again state what your -- what activities you  
14 conducted to address your declared condition.

15 A. I believe my declared condition again was grand larceny  
16 prevention and again there is, you know, vertical and direct  
17 patrols in the commercial establishments throughout Times  
18 Square.

19 Q. So again for a second month, for your declared condition,  
20 you did not have any summonses, arrests, or 250s?

21 A. Correct.

22 Q. And now moving to March 2010. What was your declared  
23 condition that month?

24 THE COURT: Look, I'm looking at the form. Alcohol  
25 what?

D4g9flol Gillespie - cross

1 THE WITNESS: Confiscation.

2 THE COURT: Okay.

3 Q. And what did you do that month to address your declared  
4 condition?

5 A. Issued criminal court summonses for open containers with  
6 alcohol.

7 Q. And five of those were on the same day that month?

8 A. Yes.

9 Q. And what day was that?

10 A. March 17.

11 Q. Which is?

12 A. Happens to be St. Patrick's Day.

13 Q. Now turning to the back of this form, what activities did  
14 you conduct to address your declared condition that month?

15 A. I issued summonses for open containers of alcohol, public  
16 consumption of alcohol.

17 Q. Now next to that declared condition there's a three that's  
18 circled. Is that correct?

19 A. Correct.

20 Q. And was this part of your quarterly evaluation by a  
21 supervisor?

22 A. Yes, it was.

23 Q. But does this circled three indicate only an evaluation for  
24 the month of March 2010?

25 A. No. It would be for the entire quarter.

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D4g9flol Gillespie - cross

1 Q. So January, February, and March?

2 A. Correct.

3 Q. And so the three is the highest score you could get,  
4 correct?

5 A. Correct.

6 Q. And that is a three even though you had two months where  
7 you did not have a single arrest, summons, or 250 for your  
8 declared condition?

9 A. Correct.

10 MS. PUBLICKER: No further questions, your Honor.

11 MR. CHARNEY: A couple.

12 THE COURT: Thank you.

13 Mr. Charney, redirect?

14 MR. CHARNEY: Yes.

15 REDIRECT EXAMINATION

16 BY MR. CHARNEY:

17 Q. Officer Gillespie, do you remember you were asked by  
18 Ms. Publicker on cross that one of the things that helped you  
19 remember more about the encounter with Mr. Sindayiganza was  
20 having read his written statement since his -- since your CCRB  
21 interview?

22 A. I didn't say that it was a written statement. I just said  
23 that I received a statement from --

24 Q. Well it would have had to have been in writing?

25 A. It was in writing. I don't know if he's the one that wrote

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Gillespie - redirect

1 it.

2 Q. So you did read a written statement that Mr. Sindayiganza  
3 made, right?

4 A. Correct.

5 Q. So you would agree that having a written report of the  
6 incident helps jog your memory, correct?

7 A. Correct.

8 Q. And isn't that the reason that the NYPD patrol guide  
9 requires officers to document everything that they do on a tour  
10 in their activity log?

11 A. Yes. Everything that they do on their tour.

12 Q. Okay.

13 The other thing I wanted to make sure I understand is  
14 you testified on cross that that you had been with the NYPD  
15 two-and-a-half years at the point that you stopped  
16 Mr. Sindayiganza.

17 Do you remember saying that?

18 MS. PUBLICKER: I don't believe that's what the  
19 witness testified to.

20 THE WITNESS: I think I said approximately two,  
21 two-and-a-half years.

22 MR. CHARNEY: So he did say that.

23 THE WITNESS: My math might not have been correct. I  
24 came on in July of 2008. And the stop was February of 2010.

25 MR. CHARNEY: So it would have been about a

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Gillespie - redirect

1 year-and-a-half?

2 THE WITNESS: July of 2008 and February 2010. Yeah, I  
3 guess it was about a year-and-a-half then.

4 Q. And you had been out of the academy only about a year at  
5 that point, right?

6 A. Yes. Correct. From January 2009 to --

7 Q. So 13 months?

8 A. Correct.

9 Q. Now, you also testified on cross about I guess a burglary  
10 pattern that you had been working on in your new assignment.  
11 In terms of this burglary pattern, what was the locations of  
12 the reported burglaries? How far apart from each other were  
13 they?

14 A. They were more or less on First and Third Avenue at the  
15 commercial establishments. I believe from about -- I think the  
16 chicken place was on 21st Street and the other place was on  
17 17th Street.

18 Q. So all between First and Third Avenues?

19 A. First and Third Avenue, yeah, from like I'd say 21st,  
20 22nd down to about 16th Street.

21 Q. And last question. Exhibit Q13 which we were looking at,  
22 your monthly performance reports, and I want to actually look  
23 at the last page again, the March 2010, the supervisor  
24 quarterly review?

25 A. Yes.

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Gillespie - redirect

1 Q. So Ms. Publicker asked you about the scores that your  
2 supervisor gave you. And it looks like you got a three out of  
3 three on the item two which is your addressing declared  
4 conditions. But on number one, the general enforcement, you  
5 got only a four out of six, right?

6 A. Correct.

7 Q. So you didn't get the highest score for that one, right?

8 A. Correct.

9 Q. And that could have been because your supervisor determined  
10 that your efforts to address general enforcement were not the  
11 highest they could have been?

12 MS. PUBLICKER: Objection, your Honor. Speculative.

13 THE COURT: Could have been.

14 Q. Do you know why you only got a four out of six on that?

15 THE COURT: That I'll take.

16 THE WITNESS: No, I don't.

17 THE COURT: Nobody told you?

18 THE WITNESS: No.

19 I mean we review our quarterly ratings with our  
20 supervisors. We have to sign off on them.

21 But I wasn't given specific -- a specific directive as  
22 to why I got a four instead of a six.

23 Q. And also going down here your supervisor, in the additional  
24 comments section, didn't write anything, right?

25 A. No, he did not.

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Gillespie - redirect

1 Q. Okay.

2 MR. CHARNEY: No further questions, your Honor.

3 MS. PUBLICKER: Nothing further, your Honor.

4 THE COURT: Thank you.

5 (Witness excused)

6 THE COURT: Who is next?

7 MS. MARTINI: Plaintiffs call officer Edward  
8 Arias.

9 EDWARD ARIAS,

10 called as a witness by the Plaintiffs,  
11 having been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MS. MARTINI:

14 Q. Good morning, Officer Arias.

15 A. Good morning.

16 Q. You joined the NYPD in July 2006, correct?

17 A. Yes.

18 Q. And in February of 2008 you were assigned to the 28th  
19 precinct?

20 A. No. The 23rd precinct.

21 Q. I'm sorry. The 23rd precinct.

22 And on February 5, 2008 you stopped a man named Clive  
23 Lino, correct?

24 A. Yes.

25 Q. And your partner that night was officer Brian Kovall?

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D4g9fl01 Arias - direct

1 A. That's correct.

2 Q. You saw Mr. Lino and another man standing on the corner of  
3 103rd Street and Lexington Avenue?

4 A. Yes.

5 Q. And Mr. Lino was wearing a yellowish beige coat, correct?

6 A. Yes, he was.

7 Q. And his friend was wearing a darker coat, correct?

8 A. I believe so, yes.

9 Q. And you told one of the men that the reason for the stop  
10 had to do with one of the jackets that one of the individuals  
11 was wearing, correct?

12 A. I believe that's correct, yes.

13 Q. And prior to the stop you had been informed of a robbery  
14 pattern in the area; isn't that right?

15 A. Yes.

16 Q. You had been informed of the robbery pattern by a  
17 supervisor, correct?

18 A. Yes.

19 Q. And you were told that the pattern included two black  
20 males, correct?

21 A. Yes.

22 Q. Committing gunpoint robberies, right?

23 A. Yes.

24 Q. One of the robberies was in the vicinity of a check cashing  
25 place near 103rd and Lexington Avenue?

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D4g9flol Arias - direct

1 A. Yes.

2 Q. And that one of the robberies included a male wearing a  
3 beige or yellow coat and an accomplice wearing a blue or black  
4 coat, correct?

5 A. Sounds right, yes.

6 Q. But that is all that you recall being told by the robbery  
7 pattern, correct?

8 A. Yeah. I suppose that individual robbery pattern, yes.

9 Q. I'm sorry?

10 A. That individual robbery pattern, yes.

11 And we also had pedigree information on the two male  
12 blacks. We had approximate age, height, weight. So there was  
13 other information involved in the robbery pattern. It wasn't  
14 just two black males wearing winter coats.

15 Q. You gave a deposition in this case, correct?

16 A. Yes, I did.

17 Q. And you swore to tell the truth that time deposition,  
18 correct?

19 A. Yes, I did.

20 Q. I'm handing you your deposition in this case. I'm going to  
21 read from page 29 beginning at line 25 through page 30, ending  
22 at line 18.

23 "Q. What were you told about the robbery pattern?

24 "A. The robberies included two black males committing gunpoint  
25 robberies in the confines of the 23rd precinct, one of them

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D4g9fl01 Arias - direct

1 having occurred in the vicinity of the check cashing place  
2 between 102nd, 103rd and Lexington Avenue.

3 "Q. What else were you told about the robbery pattern?

4 "A. One of the robberies included a male wearing a beige or a  
5 yellow style winter coat with an accomplice wearing a darker,  
6 perhaps blue or black coat.

7 "Q. Were you told anything else about the robbery pattern?

8 "A. That is what I recall mostly about the robbery pattern."

9 Did you provide those answers to those questions?

10 A. Yes, I did. But I also provided other answers during the  
11 deposition. That was what I said earlier.

12 MR. KUNZ: So, your Honor, I just want to point out on  
13 the previous page, page 28, lines 3 through 8.

14 "Q. What was the robbery pattern for the height and stature?

15 "A. I believe it was somewhere like five/six, five/eight to  
16 six feet tall, roughly. I don't recall exactly what it was."

17 THE COURT: Did you say five/six what?

18 MR. KUNZ: Five/six, five/eight, to six foot.

19 THE COURT: So somewhere between five/six and six  
20 feet?

21 MR. KUNZ: Right. Roughly -- well five/six,  
22 five/eight to six foot, somewhere in that range.

23 "Roughly. I don't recall exactly what it was but at  
24 the time I thought they fit the robbery pattern."

25 So the point is that was improper impeachment.

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D4g9flol Arias - direct

1 THE COURT: Well, the point is you read the other part  
2 into the record and that's fine.

3 All right.

4 BY MS. MARTINI:

5 Q. Officer Arias, you hadn't seen any robbery pattern  
6 documents prior to stopping Mr. Lino, correct?

7 A. I don't believe so.

8 Q. And up hadn't seen a video about the robbery pattern,  
9 correct?

10 A. No.

11 Q. According to you, at the time you and Officer Kovall saw  
12 Mr. Lino he was standing on the street in front of a Chinese  
13 restaurant, correct?

14 A. That's correct.

15 Q. And according to you when you and Officer Kovall exited the  
16 vehicle he retreated into the Chinese restaurant, correct?

17 A. Yes.

18 Q. So when you actually reached one of the men, it was only  
19 Mr. Lino's friend that was still standing on the sidewalk?

20 A. Yes.

21 Q. And while Mr. Lino was inside the Chinese restaurant you  
22 could see him the entire time, correct?

23 A. Yes.

24 Q. And eventually Mr. Lino exited the Chinese restaurant,  
25 right?

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D4g9flol Arias - direct

- 1 A. Yes, he did.  
2 Q. And he walked out with food?  
3 A. I believe so, yes.  
4 Q. But you believe that Mr. Lino walking into the Chinese  
5 restaurant when you approached them constituted a furtive  
6 movement, correct?  
7 A. At the time, yes, I did.  
8 Q. Even though you could see him the entire time he was inside  
9 the restaurant?  
10 A. Yes.  
11 Q. And even though he exited from the restaurant carrying the  
12 food?  
13 A. That's correct.  
14 Q. And even though before you stopped the car you had driven  
15 around the block once and Mr. Lino and his friend were still  
16 standing in the same spot when you drove back, correct?  
17 A. Yes.  
18 Q. They hadn't walked away, correct?  
19 A. They had not, no.  
20 Q. You don't recall Mr. Lino making any other furtive  
21 movements, correct?  
22 A. Not that I can recall, no.  
23 Q. Not that you can recall now?  
24 A. No.  
25 Q. And according to you, you asked Mr. Lino for identification

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D4g9flol Arias - direct

1 and he provided it to you, correct?

2 A. Yes, he did.

3 Q. And both men were frisked during this encounter, correct?

4 A. Yes, they were.

5 Q. And during the encounter Mr. Lino was not free to leave,  
6 correct?

7 A. No, he was not.

8 Q. And backup arrived at some point, correct?

9 A. My supervisor arrived.

10 Q. Your supervisor and two additional officers, correct?

11 A. His driver and another officer, correct.

12 Q. So there was three additional officers that arrived on the  
13 scene, correct?

14 A. That's correct.

15 Q. And Lieutenant Gaglio was one of those officers, right?

16 A. He is the supervisor.

17 Q. And Lieutenant Gaglio asked Mr. Lino and his friend a few  
18 questions when he arrived, right?

19 A. Yes, he did.

20 Q. And Officer Arias, you routinely carry a personal cellphone  
21 on patrol, correct?

22 A. I do.

23 Q. I'd like to show you what has been marked Plaintiffs' Trial  
24 Exhibit 211, already in evidence. This is a copy of the UF 250  
25 form filled out for the stop of Mr. Lino.

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D4g9flol Arias - direct

1 Now you didn't fill out this form, correct?

2 A. That's correct.

3 Q. Just turning to the second page.

4 Do you see here under the box entitled, "Was the  
5 person frisked?"

6 "Refusal to comply with officer's directions" is  
7 checked.

8 A. Yes.

9 Q. But to your knowledge Mr. Lino didn't refuse to comply with  
10 any directions, correct?

11 A. To my knowledge, he did not.

12 Q. And you were there for the entire stop, correct?

13 A. Yes, I was.

14 Q. And you didn't see Mr. Lino refuse to comply with any of  
15 Officer Kovall's directions, correct?

16 A. I didn't see it, no.

17 Q. And you keep a memo book, Officer Arias, correct?

18 A. Yes, I do.

19 Q. I'd like to show you what has been marked as Plaintiffs'  
20 Trial Exhibit 214 for identification. Do you recognize this  
21 document, Officer Arias?

22 A. Yes, I do.

23 Q. It's a copy of several entries of your memo book, correct?

24 A. Yes.

25 MS. MARTINI: I'd like to move Plaintiffs' Trial  
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D4g9flol Arias - direct

1 Exhibit 214 into evidence.

2 MR. KUNZ: No objection.

3 THE COURT: 214 received.

4 (Plaintiffs' Exhibit 214 received in evidence)

5 Q. Looking at the second page of this document, Officer.

6 The only entry related to the stop of Mr. Lino appears  
7 on the line beginning with the numbers 2020, correct?

8 A. That's correct.

9 Q. And the only thing written next to the numbers 2020 is 93Q,  
10 right?

11 A. Yes.

12 Q. So the -- it's fair to say that the only entry included in  
13 your memo book relating to the stop and frisk of Mr. Lino is  
14 93Q, correct?

15 A. That's fair to say, yes.

16 Q. So with respect to this stop of Mr. Lino you failed to  
17 prepare your memo book in accordance with NYPD policy, right?

18 A. That's correct.

19 Q. And a supervisor reviewed your memo book at 2238, which is  
20 just a few hours after the stop, correct?

21 A. That's correct.

22 Q. But he didn't discuss this entry with you, right?

23 A. Not that I recall.

24 Q. And no one in the NYPD ever told you that you should have  
25 written more in your memo book regarding this stop, correct?

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D4g9flol Arias - direct

1 A. Not regarding this stop, no.

2 Q. And you were never reprimanded or disciplined in any way  
3 for not including more details about the stop in your memo  
4 book, correct?

5 A. Correct.

6 Q. You heard fellow police officers complain about quotas;  
7 isn't that right?

8 A. Throughout the command you hear -- I wouldn't say quotas.  
9 Activity.

10 (Continued on next page)

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D4F8FLO2 Arias - direct

- 1 Q. If you could just turn to your deposition at page 144. I  
2 am going to read lines 2 through 8.  
3 "Q. Have you ever heard any NYPD officers complain about  
4 quotas?  
5 "A. Cops you mean?  
6 "Q. Anybody.  
7 "A. Yes, you hear it. Cops complain about it all the time.  
8 Locker room talk, yes. Office talk, yes. Sure."  
9 You provided those answers to those questions,  
10 correct?  
11 A. Yes, I did.  
12 Q. And officers complain that there is a quota even if the  
13 precinct commander says that there is no quota, correct?  
14 A. Repeat the question.  
15 Q. Officers complain that a quota exists even if the precinct  
16 commander says that there is no quota, correct?  
17 A. You have your faction of police officers that believe there  
18 is a quota.  
19 Q. And, specifically, you heard anticrime officers complain  
20 that they are being asked for 250 activity, correct?  
21 A. Yes, I have.  
22 Q. And when asked at your deposition whether the NYPD has  
23 quotas, you responded that there is a performance initiative,  
24 correct?  
25 A. Yes.

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D4F8FLO2 Arias - direct

1 Q. And that's what you believe today, correct?

2 A. Yes.

3 Q. And you believe that the difference between a quota and a  
4 performance goal is in the interpretation of the person who is  
5 either reading it or disseminating it, correct?

6 A. Sure. Yes.

7 MS. MARTINI: No further questions, your Honor.

8 THE COURT: Thank you.

9 Mr. Kunz.

10 CROSS-EXAMINATION

11 BY MR. KUNZ:

12 Q. Good morning.

13 Could you tell the Court a little bit about your  
14 employment history before you joined the NYPD?

15 A. After high school I entered the military. I came back from  
16 military. I worked at accounts payable/receivable at a  
17 not-for-profit organization for a few years. While going to  
18 school, I also worked at a family owned business. I did  
19 paralegal work at a law firm. And then I joined the NYPD.

20 Q. Can you explain to the Court your educational background?

21 A. I have a bachelor of science in criminal justice from John  
22 Jay College.

23 Q. Can you very briefly walk the Court through your various  
24 assignments with the NYPD?

25 A. Sure. I joined in July 2006. I did six months in the

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D4F8FLO2

Arias - cross

1 academy. Then I was transferred to the 23rd Precinct impact  
2 for approximately six months. I then joined a conditions team  
3 in the 23rd Precinct. I believe I worked there for over a  
4 year, and then I was moved to the SNEU team in the 23rd  
5 Precinct, street narcotics enforcement is what SNEU stands for.  
6 And then a little short of a year ago, I was transferred to  
7 OCCB narcotics, Manhattan South.

8 Q. So that's the Manhattan South narcotics division?

9 A. That's correct.

10 Q. The area that's in the 23rd Precinct, that's East Harlem?

11 A. Yes. Spanish Harlem.

12 Q. Could you describe to the Court the crime conditions in the  
13 23rd Precinct?

14 A. The crime conditions in the 23rd Precinct, you have a lot  
15 of gang activity, a lot of crews with a lot of beef in between  
16 housing developments. There is a high amount of housing  
17 developments in the 23rd Precinct. Robbery is a constant  
18 concern, phone snatchings, those type of crimes usually.

19 Q. Are there areas in the precinct that are worse than other  
20 areas in terms of crime?

21 A. Sure. You see higher crimes, obviously, on 103rd, 110th  
22 Street and Lexington. That's where the two subway stations,  
23 two of the three subway stations in the confines of the 23rd  
24 Precinct are located. Also, around the housing developments  
25 you usually have a spike in crime.

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D4F8FLO2 Arias - cross

- 1 Q. Why is it that you see more crime around the subway  
2 stations?  
3 A. More foot traffic.  
4 Q. What sorts of crime do you see there?  
5 A. Phone snatchings, muggings, robberies, assaults.  
6 Q. Now, in February of 2008, you were in the conditions unit  
7 in the 23rd Precinct?  
8 A. Yes, I was.  
9 Q. At that point in time, were you aware of the crime  
10 conditions that were going on in the precinct?  
11 A. Yes.  
12 Q. How did you become aware of the crime conditions?  
13 A. Usually a supervisor will tell us during a roll call.  
14 Q. Any other way?  
15 A. Word of mouth. You would speak to detectives. Detectives  
16 will let you know. They will come down and say, listen, we are  
17 looking for someone that has committed these crimes in this  
18 location. You get it disseminated at a roll call.  
19 Q. Now, you're from Manhattan as well, correct?  
20 A. Yes.  
21 Q. Does your knowledge of Manhattan, being a native  
22 Manhattanite, affect your knowledge of crime conditions?  
23 A. I would say it helps to be from Manhattan and patrol in  
24 Manhattan.  
25 Q. Now, directing your attention to February 5, 2008, you were

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D4F8FLO2 Arias - cross

1 assigned to the 23rd Precinct. Do you remember what particular  
2 tour you were working that day?

3 A. I believe I was working a 4 to 12, 1500 by 2335.

4 Q. When you started your tour that day, did you have a roll  
5 call?

6 A. Yes.

7 Q. Can you describe the roll call to the Court?

8 A. A conditions roll call is less formal than patrols roll  
9 call. We had an office so it would be the conditions team in  
10 the office, and the supervisor will walk in and give us the  
11 instructions for the day, let us know of any developments in  
12 the precinct, any conditions that need addressing.

13 Q. Then you would get an assignment at the roll call as well?

14 A. Yeah. Or you would just pick a partner from the team.  
15 Usually you have people that you work with pretty steadily so  
16 that usually wasn't an issue.

17 Q. Now, do you specifically recall the roll call on February  
18 5, 2008?

19 A. No.

20 Q. Why is that?

21 A. It's February 5, 2008.

22 Q. That's over five years ago?

23 A. Yes.

24 Q. And you had a roll call at the beginning of almost every  
25 tour since then?

D4F8FLO2

Arias - cross

1 A. Yes.

2 Q. Now, before going out in the field that day, were you aware  
3 of specific crime conditions going on in the area?

4 A. Yes, I was.

5 Q. I believe you talked a little bit about this on direct, and  
6 it was a robbery pattern that had been going on?7 A. Yeah. There was a robbery pattern in the 23rd at that  
8 time.

9 Q. Do you recall how you became aware of the robbery pattern?

10 A. I don't recall specifically how I became aware, but I do  
11 remember being aware of it.12 Q. Now, you were asked a question on examination earlier about  
13 whether or not you saw a video related to this pattern. Did  
14 you remember seeing a video related to this pattern?

15 A. No.

16 Q. Could you explain to the Court, was it common or uncommon  
17 to see videos in connection with crime conditions?18 A. Yes. There is a large screen TV at our roll call room, and  
19 I think almost every roll call room in the department, but I  
20 just know that the 23rd has a large screen TV where they will  
21 play on the loop usually either videos of interest or pictures  
22 of subjects of interest or missing, anything of interest to the  
23 precinct usually gets played in the roll call room.24 Q. Now, going back to the pattern that you knew about when you  
25 went out on tour that day, what do you remember about that

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D4F8FLO2

Arias - cross

1 pattern?

2 A. I remember the pattern consisted of two black males  
3 conducting gunpoint robberies in the vicinity of Lexington  
4 Avenue, 103rd Street, Third Avenue and 103rd Street, around  
5 that location. The two black males were described to have, I  
6 believe, a black handgun they were using for the robberies.

7 Q. Do you recall anything about the locations that were  
8 involved in the robberies?

9 A. Yeah. There was one particular robbery that involved a  
10 check cashing location that's on the hill on -- on Lexington  
11 Avenue, between 102nd and 103rd Street.

12 Q. I am going to show you a photograph that's in evidence as  
13 Defendants' Exhibit M10. Can you just explain to the Court  
14 what this photograph here depicts?

15 A. Yes. This is a picture facing northbound on Lexington  
16 Avenue from the perspective of 102nd Street looking at 103rd  
17 Street.

18 Q. Now, the blue awning in the middle of the photograph here,  
19 what is that blue awning?

20 A. That is a Chinese restaurant.

21 Q. Is that the Chinese restaurant in front of which you  
22 encountered Mr. Lino?

23 A. Yes, it is.

24 Q. Then this yellow awning here, what is that?

25 A. That's the check cashing location that was in the robbery

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D4F8FLO2

Arias - cross

1 pattern.

2 Q. Then this green thing here with the green globe on top, is  
3 that the 103rd and Lexington Avenue subway station?

4 A. Yes. There's also one across the street.

5 Q. So there is one right here and two underneath the  
6 scaffolding?

7 A. That's correct.

8 Q. Now, you went over this a little bit on examination  
9 earlier, but did the pattern that you were aware of, did it  
10 include descriptions of the actual perpetrators as well?

11 A. Yes, it did.

12 Q. Sitting here today, what do you recall about the  
13 descriptions of the perpetrators from the pattern?14 A. I remember distinctly that the pattern mentioned a beige,  
15 yellowish beige coat. It involved two black males, approximate  
16 age I want to say 25 to 30 years old, 5'6" to 6 feet.17 Q. Now, as we discussed earlier, this incident happened over  
18 five years ago?

19 A. Yes, it did.

20 Q. At the time of the incident, did you know more details  
21 about the descriptions of the robbers?

22 A. Yes.

23 Q. Sitting here today, is it fair to say your memory of that  
24 has just faded over time?

25 A. That's fair.

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D4F8FLO2 Arias - cross

1 Q. Now, you were out on patrol that day --

2 THE COURT: I want to back up. At the time of the  
3 incident, you said you knew more details about the description  
4 of the robbers?

5 THE WITNESS: Yes, your Honor.

6 THE COURT: Like what, what more details?

7 THE WITNESS: Who the victims might have been, stuff  
8 that would be particular to the crime pattern that I may not  
9 recall today.

10 THE COURT: Did you at one time know more about the  
11 descriptions other than two black males between 5'6" and 6  
12 feet?

13 THE WITNESS: Other than they ran up 103rd Street at  
14 the completion of the robbery, nothing pertinent probably to  
15 the individuals.

16 THE COURT: Nothing pertinent to the individuals other  
17 than that. Did you tell me you had an age range or did you  
18 just say two black males between 5'6" and 6 feet?

19 THE WITNESS: There was an age range.

20 THE COURT: What was that again?

21 THE WITNESS: I believe 25 to 30. It might have been  
22 a little younger. I may be off on the numbers, but there was  
23 definitely an age range that I remember at the time that I  
24 possibly may be off now.

25 THE COURT: The height range is so large, 5'6" to 6

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(212) 805-0300

D4F8FLO2 Arias - cross

1 feet. Doesn't that describe all black males between 25 and 30?

2 THE WITNESS: It's not really uncommon, your Honor,  
3 for there to be that type of disparity.

4 THE COURT: I am just saying that's not much of a  
5 description though. That would include the entire black male  
6 population between 25 and 30. Most men are between 5'6" and 6  
7 feet, aren't they?

8 THE WITNESS: Yes.

9 THE COURT: What does that really tell you about them  
10 other than one is wearing a light coat?

11 THE WITNESS: The coat was what caught my attention in  
12 regards to that. The coat was spot on in color. And then the  
13 amount of individuals was two, same thing as the pattern. And  
14 the location was another indicator for me. Standing on 103rd  
15 Street, relatively cold February evening. They were both  
16 standing on the corner. We went around the block, circled the  
17 block, came back, they were both still standing there. As  
18 Officer Kovall and I exited the vehicle to speak to them, Mr.  
19 Lino went into the Chinese restaurant. So it seemed a little  
20 odd being that they had been there probably over five minutes  
21 by the time we came back around. Then the proximity to the  
22 check cashing location, which was one of the locations where  
23 one of the robberies had occurred. So all of those things  
24 together is what led me to focus on these two individuals.

25 THE COURT: Tell me about the coat description again.

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D4F8FLO2

Arias - cross

1 What was that?

2 THE WITNESS: Beige, winter-like coat. Beige, like a  
3 parker type of coat. That's what Mr. Lino was wearing, I  
4 believe, that day, and that's what one of the robberies -- one  
5 of the victims stated that one of the gentlemen who robbed  
6 them, I don't know if it was a he or she, was specifically  
7 wearing. So it was very specific on the color. And that's  
8 what drew my attention like I said.

9 THE COURT: The description was a beige parker-like  
10 coat?

11 THE WITNESS: Beige coat, correct?

12 THE COURT: It was parker like?

13 THE WITNESS: It was a winter coat, a beige winter  
14 coat.

15 THE COURT: Thank you.

16 BY MR. KUNZ:

17 Q. I am going to show you what has been marked as Defendants'  
18 Exhibit G9. Do you recognize what this is?

19 A. This is a copy of the robbery pattern.

20 Q. Just to be clear, you don't remember if you saw this actual  
21 document before you went out on patrol that day?

22 A. That's correct, yes.

23 THE COURT: I thought your testimony was you saw no  
24 documents. Are you changing your testimony? Earlier I thought  
25 you said you didn't see documents.

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D4F8FLO2

Arias - cross

1 He just asked you whether you earlier said you were  
2 not sure you saw the documents. I thought you said you didn't  
3 see any documents.

4 THE WITNESS: Can you repeat the question?

5 THE COURT: Do you know that you didn't see any  
6 documents?

7 THE WITNESS: I didn't see any documents.

8 THE COURT: OK.

9 Q. Since the incident, have you had a chance to review that  
10 pattern?

11 A. Yes, I have.

12 Q. Is that the pattern that you were aware of when you went  
13 out on patrol that day?

14 A. Yes.

15 MR. KUNZ: We would move that document into evidence.

16 MS. MARTINI: Objection, your Honor.

17 THE COURT: He didn't see the document. But after  
18 reviewing the document, he says that's the pattern he was aware  
19 of.

20 MS. MARTINI: What is in his mind at the time that he  
21 saw Mr. Lino is what matters for the reasonable suspicion.

22 THE COURT: He said it matches --

23 MS. MARTINI: He just testified to what was in his  
24 mind before he stopped Mr. Lino.

25 THE COURT: He says it matches what was in that

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D4F8FLO2

Arias - cross

1 document.

2 MS. MARTINI: The document is several pages long, and  
3 I think what Officer Arias is able to articulate as a basis for  
4 stopping Mr. Lino is what matters, not what counsel showed him  
5 five years later.

6 THE COURT: I don't think it would be right to take  
7 the document. I am not going to take the document in evidence.  
8 He did not see it beforehand.

9 Q. So you said that when you initially saw the two men, your  
10 attention was drawn to them based on the jackets and then you  
11 drove around the block, is that correct?

12 A. That's correct.

13 Q. Did you have any discussions --

14 THE COURT: Did you say jackets, plural?

15 Q. What about the men caught your attention?

16 A. The jacket that Mr. Lino was wearing, specifically the  
17 color, but also indicated was a darker color jacket that one of  
18 the other gentlemen was wearing.

19 Q. So it was the beige jacket that initially caught your  
20 attention, but the other jacket also -- what about the other  
21 jacket did you notice?

22 A. It matched part of the robbery pattern.

23 Q. So while you were -- then you drove around the block and  
24 you circled back. During that time before you actually exited  
25 the vehicle, did you have any conversation with Officer Kovall?

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D4F8FLO2

Arias - cross

1 A. Yes.

2 Q. Tell the Court about that discussion.

3 MS. MARTINI: Objection. Hearsay.

4 THE COURT: Sustained.

5 Q. What did you say?

6 THE COURT: It's hearsay also. He is here.

7 Q. What is the first thing that happened after you circled the  
8 block and arrived back?9 A. We pulled up to the corner where the two gentlemen were  
10 standing. I was driving. Officer Kovall was the recorder. We  
11 exited the vehicle and approached the two gentlemen. Mr. Lino  
12 turned around and walked away from us into the Chinese  
13 restaurant. So we had a conversation with the other individual  
14 who stood behind on the sidewalk.15 Q. Then at some point did Mr. Lino come out of the Chinese  
16 restaurant?

17 A. Yes, he did.

18 Q. Were the men frisked?

19 A. Yes, they were.

20 Q. Why were they frisked?

21 A. They were being stopped in regards to a robbery pattern  
22 that included two armed, or at least one armed male black. So  
23 for our safety, I thought it would be prudent to at least just  
24 make sure that they weren't carrying any weapons at the time.

25 Q. Was there anything else besides the pattern that led to the

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D4F8FLO2

Arias - cross

1 frisk?

2 A. No.

3 Q. When you say frisk, what do you mean?

4 A. Frisked, touching the outermost garment, feeling for heavy  
5 objects or anything that could be considered a weapon.

6 Q. How long did the frisk last?

7 A. 20 seconds, 15 seconds.

8 Q. Did you go into the pockets of either of the men?

9 A. Absolutely not.

10 Q. What happened after the frisk was completed?

11 A. Officer Kovall and I had the IDs. We were waiting for  
12 Lieutenant Gaglio to show up to the scene to verify the stop.

13 Q. Why did you call the lieutenant to the location?

14 A. Lieutenant Gaglio at the time was the special operations  
15 lieutenant for the 23rd Precinct and was well aware of the  
16 robbery pattern in the 23rd Precinct. So we wanted to clear it  
17 with him before letting these two individuals go, making sure  
18 that these weren't the individuals being sought for the robbery  
19 pattern.

20 Q. Now, what happened when the lieutenant arrived?

21 A. Lieutenant Gaglio arrived. He exited the vehicle. Officer  
22 Kovall and I approached him, explained to him the circumstances  
23 of the stop. I believe he might have taken the ID cards. He  
24 went up to the two gentlemen that were stopped, asked them a  
25 few questions, and at that point returned the IDs to us, told

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D4F8FLO2 Arias - cross

1 us it's a good stop but it's not them, prepare a 250. And he  
2 got in his car and drove off.

3 Q. How long did the lieutenant's investigation last?

4 A. A minute at most.

5 Q. Did you see the lieutenant or either of the officers with  
6 him frisk either of the men?

7 A. Absolutely not. The lieutenant is the only one that even  
8 approached the two gentlemen. Officer Puello and Officer  
9 Georgiadis, they stood -- they were actually leaning on the  
10 car. I don't think they ever even stepped on to the sidewalk.

11 Q. What happened after the lieutenant finished his  
12 investigation?

13 A. We took down -- Officer Kovall took down the information  
14 and then we returned the IDs to Mr. Lino and the other  
15 gentleman and told them they were free to go.

16 Q. How long was the entire encounter?

17 A. No longer than ten minutes tops.

18 Q. There was a CCRB investigation in regard to this incident,  
19 is that correct?

20 A. Yes, it is.

21 Q. Do you know the results of the CCRB investigation?

22 A. I believe it was -- I can't remember the terminology that  
23 they use.

24 Q. Was it unsubstantiated?

25 A. Yes, it was.

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D4F8FLO2

Arias - cross

1 Q. Did anyone from the NYPD talk to you about this incident?

2 A. About which incident, the stop or the CCRB?

3 Q. The CCRB.

4 A. I can't say definitively, but I think my ICO might have  
5 spoken to me about it.

6 Q. Was that a normal way that you would find out about CCRB  
7 complaints?

8 A. Yes. In the 23rd Precinct, the ICO was usually charged  
9 with telling cops or members of the service whenever they  
10 received a CCRB. So I am sure that he came up to me and said  
11 you got a CCRB for this date. At that point, we will probably  
12 have a small conversation regarding the circumstances of that  
13 CCRB, if it's something we remember off the top of our head.

14 Q. I am going to show you what has been marked as Plaintiffs'  
15 Exhibit 215 for purposes of this trial. Do you recognize that?

16 A. Yes, I do.

17 Q. What is it?

18 A. It's my activity reports from January, February and March  
19 of 2008.

20 MR. KUNZ: Your Honor, I move these into evidence.

21 MS. MARTINI: No objection.

22 THE COURT: Received.

23 (Plaintiffs' Exhibit 215 received in evidence)

24 Q. Directing your attention to the first page of your monthly  
25 activity report from January of 2008, what was your declared

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D4F8FLO2 Arias - cross

- 1 condition for the month?  
2 A. Robbery.  
3 Q. Why did you choose that as your declared condition?  
4 A. Robbery is usually a declared condition in the confines of  
5 the 23rd Precinct.  
6 Q. Then for February your condition was also robbery?  
7 A. That's correct.  
8 Q. And also for March, is that correct?  
9 A. That is correct.  
10 Q. Now, looking at your level of activity for January 2008,  
11 you had 16 days on tour?  
12 A. Yes.  
13 Q. And you conducted 12 vertical patrols?  
14 A. Yes.  
15 Q. Made four arrests?  
16 A. Yes.  
17 Q. Issued 33 summonses?  
18 A. Yes.  
19 Q. And did 14 stop and frisks?  
20 A. Yes.  
21 Q. Now, looking at February, the next month, your stop and  
22 frisks dropped to four. So it went from 14 in January to four  
23 in February, is that correct?  
24 A. Yes.  
25 Q. Were you punished in any way for the decrease in your

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D4F8FLO2

Arias - cross

1 A. No.

2 Q. Have you ever been told that if you don't conduct a certain  
3 amount of activity within a certain specified time period, you  
4 would be punished in any way?

5 A. No.

6 MR. KUNZ: No further questions, your Honor.

7 THE COURT: Redirect.

8 MS. MARTINI: Briefly, your Honor.

9 REDIRECT EXAMINATION

10 BY MS. MARTINI:

11 Q. Officer Arias, Mr. Kunz just showed you your monthly  
12 activity report, and I just want to draw your attention to  
13 February of 2008. And these numbers on the left here refer to  
14 the day of the month, correct?

15 A. That's correct.

16 Q. So if I look across at the fifth line, that should indicate  
17 your activity for February 5, 2008, correct?

18 A. That's correct.

19 Q. And there is no stop and frisk marked in the box for  
20 February 5, right?

21 A. There wouldn't be -- it wouldn't be marked on my activity  
22 report because then -- I mean, in theory, what is handed in  
23 should match what is on your activity report. Officer Kovall  
24 handed in that 250. He completed it. He filled it out. So I  
25 wouldn't have it on my activity report.

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D4F8FLO2 Arias - redirect

1 Q. So there is at least one stop and frisk that you conducted  
2 that isn't reflected in your monthly activity report?

3 A. That's accurate.

4 Q. You just testified on cross that you remembered at the time  
5 of the stop more about the description of the suspects from the  
6 robbery pattern than you do now five years later, correct?

7 A. Correct.

8 Q. But you gave a sworn statement to the CCRB just three  
9 months after the incident, correct?

10 A. Correct.

11 Q. And you told the CCRB that the description of the  
12 individuals in the pattern that you were aware of was two male  
13 blacks, ages 18 to 24, one with a hoody and one with a blue  
14 coat, correct?

15 THE COURT: Sorry. One with a hoody and one with a  
16 blue coat?

17 MS. MARTINI: Correct.

18 A. That's correct. I also said in CCRB that the coat is what  
19 caught my attention. So I was probably off on the color, but I  
20 know that the coat is what caught my attention. I did say that  
21 in the CCRB.

22 MS. MARTINI: Thank you. No further questions.

23 THE COURT: Anything further for this witness, Mr.

24 Kunz?

25 MR. KUNZ: No. Thank you.

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D4F8FLO2 Arias - redirect

1 THE COURT: We will take our morning recess now and  
2 try to reconvene at 20 to 12.

3 (Recess)

4 THE COURT: Your next witness.

5 MR. CHARNEY: Plaintiffs call Charles Ortiz.

6 CHARLES ORTIZ,

7 called as a witness by the plaintiffs,

8 having been duly sworn, testified as follows:

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

11 THE WITNESS: Charles Ortiz, C-H-A-R-L-E-S, O-R-T-I-Z.

12 THE COURT: Thank you.

13 DIRECT EXAMINATION

14 BY MR. CHARNEY:

15 Q. Good morning.

16 A. Good morning.

17 Q. Now, you are recently retired from the police department?

18 A. Yes.

19 Q. What year did you retire?

20 A. About six weeks ago, this year.

21 Q. What rank did you retire at?

22 A. Inspector in the New York City Police Department.

23 Q. I am going to refer to you as Inspector Ortiz if that's OK?

24 A. That's fine.

25 Q. How many years did you work for the New York Police

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D4F8FLO2 Ortiz - direct

1 Department?

2 A. In total, just over 21 years.

3 Q. So you joined the department in 1992, is that right?

4 A. January of 1992.

5 Q. In February of 2008, you became the commanding officer of  
6 the 43rd Precinct, is that correct?

7 A. Yes. I believe February 14.

8 Q. The 43rd Precinct is in the Bronx, right?

9 A. Yes, it is.

10 Q. How long were you the commanding officer of the 43rd  
11 Precinct?

12 A. Approximately four and a half years.

13 Q. So when did you stop being the precinct commander?

14 A. October -- late August, early September of last year.

15 Q. So August of 2012?

16 A. Approximately.

17 Q. When you were the commanding officer of the 43rd Precinct,  
18 all of the lieutenants in the precinct reported directly to  
19 you, right?

20 A. Yes.

21 Q. So that would include the special ops lieutenant?

22 A. Yes.

23 Q. And during your tenure as the commanding officer of the  
24 43rd Precinct, was one of the special ops lieutenants a man by  
25 the name of Fernando Guimaraes?

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D4F8FLO2

Ortiz - direct

1 A. Yes.

2 Q. The special ops lieutenant supervised the anticrime units  
3 in the precinct, correct?

4 A. Among various other units, yes.

5 Q. Was one of the anticrime sergeants in the 43rd Precinct  
6 when you were the commander a man by the name James Kelly?

7 A. Yes, he was.

8 Q. Another of the lieutenants in the precinct when you were  
9 the commander who reported to you was the integrity control  
10 officer, correct?

11 A. Yes.

12 Q. And during your tenure as the commanding officer of the  
13 43rd, one of the ICOs, we will call him, integrity control  
14 officers, was a man by the name of Cosmo Palmieri, correct?

15 A. That is correct.

16 Q. When you were the commander of the 43rd, you reported  
17 directly to the borough commander of the patrol borough Bronx,  
18 correct?

19 A. Yes. He was one of my bosses, yes.

20 Q. And that was, the chief of the patrol borough, a man by the  
21 name of Thomas Purtell?

22 A. Chief Purtell, that is correct.

23 Q. I want to show you what has been previously admitted into  
24 evidence as Defendants' Exhibit D12. I want to pull it up on  
25 the screen for you.

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D4F8FLO2

Ortiz - direct

1 Inspector, do you recognize this document?

2 A. Yes, I do.

3 Q. Can you tell us what this document is?

4 A. It's duties and responsibilities on the New York City  
5 Police Department's patrol guide, for the rank of -- for the  
6 designation of commanding officer.

7 Q. So does this document set forth the duties and  
8 responsibilities for the precinct commander position, as you  
9 understood them, when you were the commander of the 43rd  
10 Precinct?

11 A. Yes. It covers a good portion of our command duties and  
12 responsibilities.

13 Q. Do you see in paragraph 2(c) it says that one of your  
14 responsibilities as a commander is informing members of the  
15 command of current directives and orders?

16 A. Yes, I do.

17 Q. So that was one of your responsibilities as the 43rd  
18 Precinct commander, correct?

19 A. Correct.

20 Q. By directives and orders, do you understand that to mean,  
21 for example, the operations order that the commissioner puts  
22 out?

23 A. Yes.

24 Q. And that would include memorandums that the chief of patrol  
25 would distribute to the precincts?

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D4F8FLO2

Ortiz - direct

1 A. Yes.

2 Q. Patrol guide procedures as well, correct?

3 A. Yes.

4 Q. Do you see in paragraph 5 it says -- paragraph 4 it says,  
5 "Instruct and frequently test the knowledge of members of the  
6 command regarding their duties and responsibilities"?

7 A. Yes.

8 Q. So that was also one of your jobs as the precinct  
9 commander, correct?

10 A. Yes.

11 Q. You would agree that the police department operates through  
12 a chain of command?

13 A. Yes.

14 Q. So when you were the precinct commander of the 43rd  
15 Precinct, you relied on the supervisors, the lieutenants and  
16 the sergeants, to make sure that police officers were complying  
17 with the directives and orders that were handed down by the  
18 police department, right?19 A. Ultimately it is my responsibility. My supervisors help me  
20 achieve those goals.21 Q. So you worked with the supervisors to make sure that  
22 officers were complying with department orders and directives,  
23 right?

24 A. That is correct.

25 Q. To do that, you would meet with your supervisors regularly,

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D4F8FLO2

Ortiz - direct

1 right?

2 A. Yes.

3 Q. By supervisors, I am referring to lieutenants and  
4 sergeants. You would agree that's a good definition for  
5 supervisors?

6 A. Yes.

7 Q. So you would meet with them directly regularly and  
8 communicate various directives and orders so that they would  
9 then communicate those directives and orders to the officers  
10 that they supervised, right?

11 A. That is correct. I would also communicate directives and  
12 orders directly to the rank and file.

13 Q. So if, for example, you wanted to make sure that the  
14 anticrime unit officers were conducting stop and frisks in  
15 compliance with NYPD policies and procedures, you would discuss  
16 that with Lieutenant Guimaraes, right?

17 A. I would discuss that with my executive officer. I would  
18 discuss that with my integrity control officer, Cosmo Palmieri.  
19 I would also discuss that with Lieutenant Guimaraes, who is my  
20 special ops lieutenant, and speak to the direct supervisor,  
21 which would be Jimmy Kelly, in regards to compliance to stop,  
22 question and frisk.

23 Q. You would agree that it's particularly important to make  
24 sure that anticrime unit officers are complying with NYPD  
25 policies and procedures for stop and frisk, because when you

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D4F8FLO2 Ortiz - direct

1 were the CO of the 43rd, a large portion of the stop and frisk  
2 activity was conducted by anticrime officers, right?

3 A. I think it's important that all officers under my command  
4 operate under the lawful orders and directives from the  
5 department.

6 Q. That would include anticrime officers, right?

7 A. Yes.

8 Q. And you would agree that anticrime officers and other  
9 special unit officers did do a large portion of the stop  
10 activity in the 43rd Precinct?

11 A. I think they -- yeah, absolutely.

12 Q. Are you aware that Lieutenant Guimaraes, now Captain  
13 Guimaraes, testified earlier in this case?

14 A. No.

15 Q. Now, you mentioned another supervisor that you would speak  
16 to regularly about NYPD policies and procedures was the  
17 integrity control officer, right?

18 A. Yes.

19 Q. That would be Lieutenant Palmieri?

20 A. Yes.

21 Q. And so you would speak to him about stop and frisk  
22 policies, because as the ICO, he was responsible for making  
23 sure that officers were not violating citizens' rights,  
24 correct?

25 A. Just to be correct, are you talking directly about the

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D4F8FLO2 Ortiz - direct

1 anticrime or generally about all the officers?

2 Q. Let me back up. All officers in the 43rd Precinct, to make  
3 sure that they don't or were not violating citizens' rights and  
4 break the law, you relied heavily on your integrity control  
5 officer to help you make sure that that didn't happen?

6 A. I rely on all the supervisors within the 43rd Precinct to  
7 ensure that that does not happen.

8 Q. That would include the integrity control officer, right?

9 A. Yes.

10 Q. You relied on him to make sure or to help you make sure  
11 that officers' stop and frisks were conducted properly, right?

12 A. Yes.

13 Q. And you met regularly with Lieutenant Palmieri, is that  
14 right?

15 A. Yes.

16 Q. Almost on a daily basis?

17 A. Yeah. I would say so.

18 Q. But you never discussed stop and frisk policies and  
19 procedures or UF-250s with Lieutenant Palmieri when you met  
20 with him, right?

21 A. Excuse me, sir?

22 Q. You never discussed stop and frisk policies and procedures  
23 or UF-250s with Lieutenant Palmieri when you met with him?

24 A. I spoke to Lieutenant Palmieri on a regular basis to ensure  
25 that he goes out in the field to monitor police services that

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(212) 805-0300

D4F8FLO2 Ortiz - direct

1 are out there, including the stop, question and frisk.

2 Q. So your testimony today is that you did speak to him about  
3 the stop, question and frisk policy and procedures?

4 A. Overall, all police operations, he used to go out there and  
5 monitor that.

6 Q. And that would include stop and frisk policies and  
7 procedures?

8 A. Yes.

9 Q. Do you remember being deposed in this case? I know it was  
10 a while ago.

11 A. That was quite a bit of time.

12 Q. Yes. I think it was three and a half years ago.

13 Do you remember that you took an oath to tell the  
14 truth at that deposition, right?

15 A. Yes, I did.

16 Q. I am showing you a copy of the transcript of that  
17 deposition. If you could turn to page 54, line 2. Do you see  
18 there is a question there:

19 "Q. Do you have regular meetings with your integrity control  
20 officer?"

21 "A. I probably meet with him almost daily.

22 "Q. Are there topics that you regularly discuss with him?

23 "A. Yes."

24 MS. GROSSMAN: I think this is improper impeachment.  
25 There is nothing here that is inconsistent.

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D4F8FLO2

Ortiz - direct

1 THE COURT: Is there something inconsistent?

2 MR. CHARNEY: He just testified that he did speak to  
3 Palmieri about stop and frisk policies and procedures. This  
4 answer shows that he did not.

5 THE COURT: OK. Then go ahead.

6 Q. "What are those topics?"

7 "A. Corruption issues, possible corruption issues, issues that  
8 systems would put in place to identify possible corruption and  
9 so forth.

10 "Q. What about the issue of stop, question and frisk?"

11 "A. That has not been brought up.

12 "Q. What about UF-250s?"

13 "A. UF-250s, I don't remember recent meetings that I have had  
14 with him."

15 Do you remember giving those answers?

16 A. Yes.

17 Q. I want to show you what has been previously admitted into  
18 evidence as Exhibit 184, Plaintiffs' Exhibit 184.

19 MS. GROSSMAN: Mr. Charney, I didn't get a copy.

20 MR. CHARNEY: Yes, you did.

21 MS. GROSSMAN: You didn't notify me that you were  
22 using this. Do you have a spare copy?

23 MR. CHARNEY: We did notify you. Every time we  
24 notified the defendants of the exhibits that we are using, we  
25 always say, and any exhibit that has been previously admitted.

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(212) 805-0300

D4F8FLO2 Ortiz - direct

1 This exhibit has been shown to no less than ten witnesses in  
2 this trial.

3 THE COURT: Do you have a copy?

4 MR. CHARNEY: I don't have an extra copy, but it's a  
5 one page document. We are going to put it up on the screen.

6 I am sure your Honor recognizes this very well.

7 BY MR. CHARNEY:

8 Q. Inspector, do you recognize this document?

9 A. Yes, I do.

10 Q. This is the NYPD's policy regarding racial profiling that  
11 was in place at the time you became the precinct commander of  
12 the 43rd Precinct?

13 A. Yes, it is.

14 Q. In fact, this policy was in place until May 16th of 2012,  
15 right?

16 A. I'm not sure how long, but I do recognize the form.

17 Q. Do you see in paragraph 5 there at the bottom it says,  
18 "Commanding officers will ensure that the contents of this  
19 order are brought to the attention of members of their  
20 commands." Do you see that?

21 A. Yes.

22 Q. So it's fair to say that, given what your responsibilities  
23 were as the 43rd Precinct commander, this was another  
24 department directive that you were responsible for ensuring  
25 that police officers were familiar with and complied with,

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D4F8FLO2 Ortiz - direct

1 right?

2 A. Yes.

3 Q. So, again, to do so, you would speak to your lieutenants  
4 and your sergeants about it, with the expectation that they  
5 would then instruct the police officers in the precinct on this  
6 policy, right?

7 A. Sir, I instruct my supervisors to ensure that that is  
8 happening. I also speak to officers out there, and I observe  
9 my officers out there in the street to ensure that that is  
10 taking place.

11 Q. But you don't remember whether you ever talked about this  
12 policy with Lieutenant Palmieri, right?

13 A. We talk about this policy in regards to stops and racial  
14 profiling throughout the year. It's a topic that we are  
15 constantly covering.

16 Q. My question was, did you ever speak to the integrity  
17 control officer, Lieutenant Palmieri, about this?

18 A. I am sure I have because it's been spoken about in  
19 supervisors' meetings. It's been spoken in in-service  
20 training. Lieutenant Palmieri is a member of the 43rd  
21 Precinct. So he is well aware of the racial profiling policy  
22 of the New York City Police Department. Everyone in the police  
23 department is very aware of that.

24 Q. OK. I want to then ask you about paragraph 4 here. Let's  
25 see if we can read it.

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(212) 805-0300

D4F8FLO2 Ortiz - direct

1 It says, "Commanding officers will establish a  
2 self-inspection protocol within their command to ensure that  
3 the contents of this order are complied with. The quality  
4 assurance division will include compliance with this directive  
5 in all of its command inspections."

6 Then the last sentence says, "Performance in this area  
7 will also be included in CompStat review."

8 You have attended many CompStat meetings in your time  
9 as a commander of the 43rd, right?

10 A. Yes.

11 Q. In fact, you probably did so once a month, once every other  
12 month?

13 A. Not that frequent.

14 Q. How many times a year would you say?

15 A. It depends on the crime conditions in the particular  
16 precinct or the borough. If we go down to one Police Plaza for  
17 a CompStat, if the Bronx is spiking in crime one year, we will  
18 have more appearances. If crime is down and there is no reason  
19 to bring us down, then we wouldn't be going down for CompStat.

20 Q. So in the four-and-a-half years you were the precinct  
21 commander of the 43rd, would you say you went to CompStat at  
22 least ten times?

23 A. Yeah. Yes.

24 Q. At none of those meetings do you recall this policy ever  
25 being discussed, do you?

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D4F8FLO2 Ortiz - direct

1 A. During the course -- now, did the chief of department,  
2 deputy commissioner of operations, did they say we are going to  
3 talk about racial profiling today? No. But in the context of  
4 the overall CompStat process, they ensure that the proper  
5 procedures are in place.

6 Q. My question is, at CompStat, is this policy discussed, is  
7 the issue of racial profiling ever discussed?

8 A. If you're asking me did they put up this operations order  
9 and say --

10 THE COURT: He is saying, did the subject of racial  
11 profiling get discussed?

12 THE WITNESS: What they ensure, as far as if we are  
13 talking about racial profiling as far as stops, they are  
14 looking at stops to see if the stops are occurring in the  
15 locations where the crime is being driven, violent crime,  
16 burglaries, robberies.

17 THE COURT: You don't remember anybody saying, We may  
18 have a racial profiling problem here. We have heard complaints  
19 of this. Let's talk about racial profiling. Are officers  
20 doing it? Nobody would ever talk about racial profiling?

21 THE WITNESS: No, ma'am.

22 Q. You also, when you were the precinct commander of the 43rd  
23 Precinct, had regular meetings with the borough commander,  
24 Chief Purtell, correct?

25 A. Yes.

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D4F8FLO2 Ortiz - direct

1 Q. Similarly, same question, at none of those meetings was the  
2 issue of racial profiling ever discussed?

3 A. No.

4 Q. I want to show you what has been previously admitted as  
5 Plaintiffs' Exhibit 98.

6 Inspector, do you recognize this document?

7 A. Yes.

8 Q. So again, this is the patrol guide procedure regarding stop  
9 and frisk, right?

10 A. Yes, it is.

11 Q. So this would be yet another one of those directives that  
12 you were responsible for making sure your officers in the 43rd  
13 Precinct understood and complied with, right?

14 A. Yes, it is.

15 Q. I want to look at paragraph 7, which is a little bit down  
16 the first page. You see there it says that uniformed members  
17 of the service are to enter details about the stops that they  
18 make in their activity logs, right?

19 A. Yes.

20 Q. So you would agree that NYPD policy requires that officers  
21 enter the details of every stop and frisk they conduct into  
22 their activity logs, right?

23 A. Yes.

24 Q. The reason this is important is because, if at a future  
25 time an officer is asked to testify about a stop or to recount

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D4F8FLO2 Ortiz - direct

1 what happened during a stop, they would actually have something  
2 to help refresh their memory, correct?

3 A. Yes. That is correct.

4 Q. Because they are not always going to have access to the  
5 250, right?

6 A. Well, they would have access to the 250 if they requested  
7 it.

8 Q. But you would agree that the 250 -- the level of detail on  
9 the 250 is not as extensive as what can be written in a memo  
10 book entry, right?

11 A. I disagree. I think the 250 covers pertinent information  
12 for a stop.

13 Q. So your testimony is that by reviewing a completed 250  
14 form, if all the boxes are filled out correctly, you believe  
15 that you could determine by looking at that form that the stop  
16 was or was not based on reasonable suspicion?

17 A. Yes.

18 Q. OK. I want to take a look at what has been previously  
19 admitted as Defendants' X4. This is actually a UF-250  
20 completed by officers in your precinct. And I believe this  
21 stop occurred while you were the commanding officer as well.

22 You can see in the top right corner it says precinct  
23 43rd, right?

24 A. Correct.

25 Q. The date is February 27, 2008?

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D4F8FLO2

Ortiz - direct

1 A. Yes.

2 Q. Shortly after you came on as the commanding officer?

3 A. That is correct, two weeks.

4 Q. If you see under the "what were the circumstances which led  
5 to stop," you see that only one box is checked there, correct?

6 A. I really -- I see that one box is checked.

7 Q. You want us to make it bigger? I know it's hard to make it  
8 out here.

9 A. I think it says furtive movement.

10 Q. It's checked off furtive movements, right?

11 A. Yes.

12 Q. But other than checking that box, there is no other  
13 information there about what the furtive movement is, right?

14 A. No.

15 Q. But it's your belief that by looking at this form, you can  
16 tell what in fact the officer observed in the way of furtive  
17 movements?

18 A. I would have to look at the entire form.

19 Q. Let's look at the second page.

20 So there is some additional factors that the officer  
21 checked off. You see we have time of day, right, day of week?

22 A. We are missing the top.

23 Q. The top, that's the area for frisk. And I believe, and if  
24 you will take my word for it, the top right corner, what was  
25 checked off was the person was not, I guess, following the

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D4F8FLO2 Ortiz - direct

1 officer's directions. I think we have heard about that. We  
2 actually have the electronic version if we keep going.

3 If you will take my word for it that the electronic  
4 version of the form is accurate, we can look at the electronic.  
5 It's easier to read.

6 Let's go to the next page then, page 3.

7 So going down here, if we scroll down, you see under  
8 circumstances again furtive movements is checked, right?

9 A. Yes.

10 Q. Again, on that portion, there is no description of what the  
11 furtive movement is.

12 Then if we keep going down, we have the name of the  
13 person, address, and that doesn't tell you anything about what  
14 the furtive movement was, right?

15 A. No.

16 Q. Then if we keep going to the next page, we have what kind  
17 of photo ID he provided, his demographic information, his  
18 height and weight, and that doesn't tell you what the furtive  
19 movement was, right?

20 A. No.

21 Q. Then if we keep going, we have whether or not the officer  
22 explained the reason for the stop, if there were other people  
23 stopped during the encounter, whether or not any physical force  
24 was used, and that also doesn't tell you what the furtive  
25 movement is, right?

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D4F8FLO2 Ortiz - direct

1 A. No, it does not.

2 Q. Then if we keep going down, we know if the officer was in  
3 or not in uniform, right?

4 A. Yes.

5 Q. Again, we know if a summons was issued, but we don't know,  
6 again, looking at these portions, what the furtive movement  
7 was.

8 Then we keep going down, and now we get to the portion  
9 that was cut off on the other form. And you see they checked  
10 off "furtive movements and refusal to comply with officer  
11 directions." Do you see that?

12 A. OK.

13 Q. Does that tell you what the furtive movement that they  
14 observed was?

15 A. No.

16 Q. We can keep going if you want. Was the person searched?  
17 No, they weren't. Was a weapon found? No. Was contraband  
18 found? So that doesn't tell you what the furtive movement was,  
19 right?

20 A. No.

21 Q. Then keep going, I think we are almost done here. Then  
22 here are those additional circumstances again. And we have  
23 time of day, corresponding criminal activity. We have evasive,  
24 false or inconsistent responses, and we have ongoing  
25 investigation. And that doesn't tell you what the furtive

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D4F8FLO2 Ortiz - direct

1 movement is?

2 A. It doesn't tell me what the furtive movement is, but you're  
3 relying on that one caption on the 250 for furtive movement.  
4 If you look at the actual 250, overall, what is checked off in  
5 the boxes, helps me determine whether that's a lawful stop.

6 Your original question to me was, is the 250, is the  
7 report itself, am I comfortable with the report giving me  
8 enough information whether the stop was lawful or not? And it  
9 does.

10 Now, we went from that to furtive movement. So I am a  
11 little confused here.

12 Q. Let me ask you some questions about that.

13 You would agree that in order to determine if the stop  
14 is based on reasonable suspicion, you have to know the reasons  
15 the officers gave for stop and frisk, right?

16 A. Yes.

17 Q. So what I am trying to figure out is whether or not we  
18 actually understand what those reasons are simply by looking at  
19 this form.

20 A. I can tell you the reasons why those officers are at that  
21 location, the time of day and the conditions.

22 Q. That wasn't my question. My question is the reasons that  
23 the person was stopped. And one of them is the time and day  
24 and the location. That's one of the reasons.

25 Is it your testimony that if that was the only reason

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1 indicated, the time of the day and the location of a crime  
2 pattern, in your view, that would be a legitimate reason to  
3 stop and frisk somebody?

4 A. No.

5 Q. OK. So you would agree there has to be more than just time  
6 of day and location of crime, right?

7 THE COURT: The answer is yes?

8 THE WITNESS: Yes.

9 Q. So the other boxes checked here were evasive answers,  
10 right, and furtive movements, correct?

11 A. Furtive movements, evasive, false, inconsistent responses  
12 to the officers, an ongoing investigation, which means that  
13 there is crime pattern in that particular area.

14 Q. Inspector, I just asked you, if all we knew was that there  
15 was a crime pattern in that area, would that be --

16 THE COURT: He answered that. He said, if that's all  
17 he knew, that wouldn't have been enough. But then there are a  
18 total of three other boxes checked: Furtive movements,  
19 evasive, false, inconsistent responses, and ongoing  
20 investigation.

21 Q. My question is, if we all agree that there was a pattern,  
22 for the sake of this argument, there was a crime pattern, we  
23 have established that?

24 A. There was a crime pattern.

25 Q. We will agree with it for the purpose of this discussion

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Ortiz - direct

1 because there is a dispute in the case about whether there was.  
2 But for the purpose of this discussion, we agree that was the  
3 reason, one of the reasons. Now, unless we have an additional  
4 reason, we don't have a legal stop, right?

5 THE COURT: He already said that twice. Yes.

6 Q. I want to know how do you know the other two reasons given  
7 are legitimate by looking at this form?

8 How do you know that the furtive movements are  
9 legitimate, that was a legitimate observation by looking at  
10 this form?

11 A. Another reason why I know that is because the supervisor  
12 there that's responsible for that team signed off on that  
13 particular form.

14 Now, the supervisor for that crime team I believe was  
15 present, correct?

16 Q. My question is, is it your testimony that if a supervisor  
17 signs off on a form, you know for sure that that stop was a  
18 legal stop?

19 A. It indicates that my officers are being supervised. That's  
20 what we want in the police department is supervision.

21 Q. I understand. What about if the supervisor signed off on  
22 it, but they had not observed the stop, would you be  
23 comfortable with a stop that only had furtive movements,  
24 evasive answers and a crime pattern?

25 A. The way it works is the supervisors, when they receive a

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1 UF-250, these officers give it directly to their supervisors,  
2 the crime team. The crime team, the supervisor is going to ask  
3 them to articulate the reasons for the stop before he reviews  
4 and signs this.

5 Q. My original question and your original answer was, can you  
6 determine by looking at the form alone whether or not the stop  
7 was based on reasonable suspicion?

8 A. I can determine by looking at the entire form, I am  
9 comfortable that the stop was based on reasonable suspicion,  
10 yes.

11 Q. So you're comfortable with furtive movements being checked  
12 off here even though you don't know what the furtive movement  
13 was?

14 A. I am comfortable with -- we would like activity log  
15 entries. And that coupled with the activity log entries helps  
16 us get a good picture of what is going on at that particular  
17 stop. But the form itself captures enough information that I  
18 am comfortable that the stop was lawful.

19 THE COURT: I guess what he is trying to get you to  
20 focus on is that you don't discount the box furtive movements  
21 because you don't know what those movements were. You accept  
22 it at face value as one of the four boxes checked. Without  
23 knowing what those movements are, you can say, that's one of  
24 the four, I will go with it.

25 THE WITNESS: Yes.

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1 Q. Now, you did mention activity logs. Do you agree that an  
2 officer should be including in their activity logs more detail  
3 than what is on the form?

4 A. We would like more details in the form.

5 Q. You also said that it would be really important that the  
6 supervisor review the activity log entry in addition to the  
7 250?

8 A. The way it's set up is the supervisors, they respond to  
9 these stops. So they should have intimate knowledge of the  
10 stop.

11 THE COURT: He is asking you a simpler question. He  
12 is asking you, should the supervisor review the memo book along  
13 with the form?

14 THE WITNESS: Yes, ma'am.

15 Q. That's because the memo book often can include important  
16 information about the stop that's not in the form itself,  
17 right?

18 A. The memo book is more for the officer to recall information  
19 about the stop.

20 THE COURT: Why would you like the supervisor to  
21 review the memo book as well as the form?

22 THE WITNESS: Because if he wasn't present for the  
23 initial stop, he can review and sign it, but I want my  
24 supervisors to take it a step further and actually speak to the  
25 officer in regards to the stop.

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1 Q. Now, when you were the commander of the 43rd Precinct, the  
2 supervisors in your precinct did not, to your knowledge, review  
3 the officer's activity log at the same time that they reviewed  
4 the 250, right?

5 A. I wouldn't know that offhand.

6 Q. You never directed your supervisors, in fact, to review the  
7 activity log concurrently with their review of the 250, right?

8 A. If the supervisor signs an activity log later in the day  
9 and the stop was early in that morning, we want the officer  
10 to -- if he has not handed it in to his direct supervisor, we  
11 want them to hand it to the desk officer if that direct  
12 supervisor isn't in. There can be a time that a 250 might be  
13 turned in already. So if the officer has a 250, I would expect  
14 my supervisor to look at the 250 and scratch the activity log.  
15 But that doesn't always happen during the course of the day,  
16 things are busy, and the sergeant has a lot of  
17 responsibilities.

18 Q. I understand. But that was never something that you  
19 specifically directed your supervisors to do?

20 A. No.

21 Q. Now, you mentioned earlier that in the situations where  
22 supervisors were not actually present for a stop that one of  
23 your officers did, it was your expectation that they would  
24 speak to the officer about the stop?

25 A. Yes.

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1 Q. But that's not what you testified to when you were deposed,  
2 right?

3 If you want to refresh your recollection, I will ask  
4 you to do this. If you look at page 74, line 8.

5 MS. GROSSMAN: I would just note that the witness gave  
6 testimony, but this deposition is from 2009. So I don't know  
7 that this is proper impeachment.

8 THE COURT: He said, if you want to refresh your  
9 recollection, why don't you read. It was not to impeach him.

10 Q. Read from line 8 through line 16.

11 THE COURT: That's to yourself.

12 Does reviewing that portion refreshes your  
13 recollection?

14 THE WITNESS: It does.

15 THE COURT: What question do you want to ask?

16 Q. Your recall that at least since November 2009, at that  
17 point in time, there was no requirement that your supervisors  
18 do anything other than review the 250, right?

19 A. The reason why we have our supervisors -- protocol dictates  
20 that we are --

21 THE COURT: I'm sorry. Clearly, you're not answering  
22 the question that was asked.

23 THE WITNESS: I am trying to get to it.

24 THE COURT: The prologue is not part of what he asked.  
25 Stick to the question.

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1 He said, as of 2009, was the supervisor required to  
2 look at the memo book as well as the 250 at the same time?

3 THE WITNESS: No, ma'am.

4 Q. They also weren't required to speak to the officer about  
5 the stop?

6 A. Yes. That is something that they do.

7 THE COURT: At that time?

8 THE WITNESS: Yes.

9 Q. So you're saying that in 2009, you testified that at that  
10 point in time, that officers were required to speak to officers  
11 about the stop?

12 A. Yes. I'm not sure if I understood the question then. But  
13 I can assure you that our supervisors are to inquire from their  
14 officers when they sign, sign the 250, the reason why we want  
15 them to sign the 250 of their immediate subordinates is so that  
16 they can ask them the questions if they weren't present.

17 Q. When you testified in 2009, that's not what you testified  
18 to, right?

19 THE COURT: If you have that, you can read it as  
20 impeachment.

21 Q. The question was, this is page 74, line 8.

22 "Q. OK. But in a situation where the sergeant was not on the  
23 scene, because obviously a sergeant can't be five places at  
24 once, in a situation where a sergeant was not actually present  
25 when a stop was done, in that situation, other than reviewing

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D4F8FLO2 Ortiz - direct

1 the UF-250s, is there anything else that the sergeant is  
2 required to do to determine if the stop was a legal stop?

3 "A. That particular sergeant, no."

4 MS. GROSSMAN: You need to read before. On page 73,  
5 line 16.

6 "Q. What did the sergeant do besides reviewing the form to  
7 determine if the stop, question and frisk that an officer did  
8 was in fact legal and constitutional?

9 "A. While they are out there supervising them in the field,  
10 again, as far as that's the reason why I want the sergeants out  
11 there in the field to look at these stops and to make sure that  
12 these --

13 THE COURT: Well, that was totally irrelevant, Ms.  
14 Grossman. The question was, when the supervisor was not on the  
15 scene, is that supervisor required to question the officer?  
16 Apparently not.

17 MS. GROSSMAN: Sorry, your Honor.

18 THE WITNESS: Your Honor, I omitted to say that in the  
19 last testimony, but what I am saying is that is what they are  
20 doing.

21 THE COURT: OK.

22 Q. I understand. Let's move on.

23 So you were aware throughout your time as the  
24 commanding officer in the 43rd Precinct that there was a  
25 problem with officers failing to make memo book entries about

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(212) 805-0300

D4F8FLO2 Ortiz - direct

1 their stops, right?

2 A. Yes.

3 Q. You're familiar with the NYPD's quality assurance division,  
4 right?

5 A. Yes, I am.

6 Q. You're aware that the quality assurance division does an  
7 annual audit of every precinct's stop and frisk paperwork?

8 A. Yes.

9 Q. When you were the commanding officer of the 43rd Precinct,  
10 QAD audited the stop and frisk paperwork of your precinct each  
11 year, correct?

12 A. Yes.

13 Q. And you're familiar with the reports that QAD puts out each  
14 year summarizing the results of these stop and frisk audits for  
15 the precincts?

16 A. For my individual precinct, yes.

17 Q. You recall being shown some of these reports at your  
18 deposition, right?

19 A. Yes.

20 Q. I want to show you what has been previously admitted into  
21 evidence as Plaintiffs' Exhibit 95.

22 Inspector, do you recognize this document?

23 A. No, I don't.

24 Q. So you don't recall being shown a document like this at  
25 your deposition?

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1 A. I recall -- I did for the deposition, but prior to that I  
2 didn't remember seeing this.

3 Q. If we can blow it up a little bit, let's see if I can ask  
4 you some questions about it and see if that would jog your  
5 memory.

6 You see at the top it says, "Stop, question and frisk  
7 summary citywide 2008, third quarter review." At the top, the  
8 title.

9 A. Yes.

10 Q. It says, "Sample of 25 UF-250s in reverse order." Do you  
11 see that?

12 A. OK.

13 Q. When you were the commanding officer of the 43rd Precinct,  
14 is that your understanding of what QAD was reviewing in your  
15 precinct when they did the audit, a sample of 25 UF-250s?

16 A. Yes.

17 Q. And you were the precinct commander in 2008, in August of  
18 2008, at the 43rd Precinct, right?

19 A. Yes, I was.

20 Q. So do you have any reason not to believe that QAD did  
21 conduct an audit and sample 25 UF-250s in your precinct in  
22 August of 2008?

23 A. No, I do not.

24 Q. So if we go to the fourth page.

25 (Continued on next page)

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1 Q. So if we go to I think the fourth page.

2 You see here at the top it says: Stop and frisk  
3 summary, patrol borough Bronx.

4 Now the 43rd precinct is in the Bronx patrol  
5 borough, right?

6 A. Yes, it is.

7 Q. Do you see on the left-hand side there is a series of  
8 numbers running down 40 through 52.

9 Do you see that?

10 A. Yes.

11 Q. And are those the precincts that make up the patrol borough  
12 Bronx?

13 A. Yes, it is.

14 Q. And so 043 you would agree that would be the 43rd  
15 precinct?

16 A. Yes.

17 Q. And do you see there's a series of numbers going across.  
18 Looks like they range from 4.0 -- well then there's 25 and 22  
19 but I guess I'm focusing on the ratings.

20 We have a 4.0, a 4.0, a 2.0.

21 And then going further across to the next rating  
22 section we have more 4s and 3s.

23 Is it your -- based on your understanding of the QAD  
24 audit are these the kinds of ratings, in other words from one  
25 to four, that precincts could receive for the various portions

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D4g9flo3 Ortiz - direct

1 of the audit that QAD did?

2 A. Yes.

3 Q. And four would be the highest, right?

4 A. Yes.

5 Q. And one would be the lowest?

6 A. Yes.

7 Q. And is it true that a score below a three on any item is  
8 considered failing that particular item of the audit, right?

9 A. I believe it needs improvement.

10 Q. So if you look at the far right there, at the second to  
11 last column from the right, do you see it says at the top -- if  
12 you can blow it up a little bit.

13 It says, "Check member's activity log entries." And  
14 then if you go down -- can you zoom out for a second so we can  
15 see which row is his precinct.

16 So the 43 is going to be the fourth set of numbers.  
17 Okay. So then if we blow it back up and move it over.

18 So you see the fourth row down on the second to last  
19 column from the right -- I'm sorry about this -- do you see for  
20 the one in white, the second white row -- the second one with  
21 numbers. Do you see for the activity log entry item, it says  
22 1.0?

23 A. Yes.

24 Q. And so for 2008 your precinct received for that item on the  
25 audit a score of one out of four, right?

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1 A. For that particular item on that entire audit, yes.

2 Q. And so you would agree that your precinct scored very badly  
3 on that particular item?

4 THE COURT: What's that item again?

5 MR. CHARNEY: That's the check member's activity log  
6 entries.

7 THE COURT: Right.

8 THE WITNESS: Although the overall rating is a 3.2, we  
9 did very well, we needed improvement in that particular  
10 dimension of the audit.

11 Q. And by getting a 1.0 that means that when QAD audited  
12 activity log entries of officers in your precinct to determine  
13 if they had entered a stop that they had made into their  
14 activity log, QAD found that they had not done so, right?

15 A. Needed improvement.

16 Q. My question --

17 THE COURT: Needed improvement because a lot of times  
18 they didn't do that?

19 THE WITNESS: The audit, it's either -- it could be  
20 incomplete entries. It doesn't mean there were not entries at  
21 all, so.

22 THE COURT: So you're saying you don't know why?

23 THE WITNESS: I'm not sure of, you know.

24 THE COURT: You don't know why your precinct got the  
25 1.0 in that category?

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1 THE WITNESS: Ma'am, there is no doubt about it. We  
2 needed improvement.

3 THE COURT: That's right. You don't know what was  
4 defective?

5 THE WITNESS: No.

6 THE COURT: Okay.

7 Q. But whether or not it was incomplete entries or missing  
8 entries, you agree either way it's a problem, right?

9 THE COURT: Yeah, he said that.

10 THE WITNESS: Absolutely. It's an issue.

11 Q. And so in response to this bad score for this item, you did  
12 two things to try to address it, right? You spoke to your  
13 training sergeant, right?

14 A. Yes.

15 Q. Because you thought one of the things that needed to be  
16 done was to train officers on the proper policy for activity  
17 log entries, right?

18 But training is just one piece of the puzzle, you  
19 agree, right?

20 A. Yes.

21 Q. You also need to have supervision, correct?

22 A. Yes.

23 Q. And so you need the supervisors to be checking the activity  
24 log entries to make sure officers are complying with the  
25 policy, right?

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D4g9flo3

Ortiz - direct

1 A. Yes.

2 Q. So to address this supervision piece, you claim you  
3 instructed your sergeants and lieutenants about the need to  
4 closely review officers' activity logs, right?

5 A. Correct.

6 Q. And that would include the lieutenants and the sergeants in  
7 your precinct?

8 A. That would include all supervisors, yes.

9 Q. So that would include Lieutenant Guimaraes, right?

10 A. Yes.

11 Q. And you would also discuss this issue with the ICO,  
12 correct?

13 A. Yes.

14 Q. But the only discussion you had with Lieutenant Palmieri  
15 about activity logs was simply to make sure that sergeants  
16 were, in fact, signing officers' activity logs once a tour,  
17 correct?18 A. Well by signing -- the sergeants, by signing these activity  
19 logs, and him ensuring that they are signing these activity  
20 logs, the sergeants are out there ensuring that the activity  
21 logs contain these stop, question and frisk, any other  
22 pertinent information that should be in the activity log.23 So Lieutenant Guimaraes would inspect the sergeant's  
24 activity logs to see if, in fact, he is inspecting other  
25 activity logs, his officers' activity logs also.

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D4g9flo3 Ortiz - direct

1 Q. But you didn't specifically instruct -- I'm actually asking  
2 about Lieutenant Palmieri. You didn't specifically instruct  
3 Lieutenant Palmieri that he needed to review officer memo books  
4 to make sure they were entering stop-and-frisk entries into  
5 their activity?

6 A. Lieutenant Palmieri understands what's required in activity  
7 logs. He was instructed to scratch these sergeants' activity  
8 logs and when he's out there to scratch police officers'  
9 activity logs to ensure that not only stop, question, frisk  
10 whether it be an arrest, whether it be a motor vehicle  
11 accident, it's the entire -- you know all entries that should  
12 be contained in that activity log is there.

13 Q. And you said that your instruction was that sergeants  
14 should be reviewing officers' activity logs once a tour,  
15 correct?

16 A. If possible.

17 Q. So at most once a tour, right?

18 A. No. I didn't say "at most." You've know, at least.

19 Q. At least once a tour?

20 A. Yeah. I would like that at least once a tour, if possible.

21 Q. And you'd agree -- well two things.

22 One, you'd agree sergeants are very busy; they have a  
23 lot to do, right?

24 A. Some days are busier than others.

25 Q. You'd also agree that tours are eight or eight-and-a-half

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D4g9flo3 Ortiz - direct

1 we looked at earlier, the duties and responsibilities of the  
2 commanding officer.

3 Go down to paragraph eleven at the bottom of the first  
4 page.

5 I'm sorry it's dark.

6 Do you see it says there under number eleven, "Review  
7 activity of members of command each month."

8 Do you see that?

9 A. Yes.

10 Q. I'm sorry --

11 THE COURT: All right. We see it.

12 Q. So that is, in fact, something that you did as well as the  
13 commanding officer of the 43rd precinct?

14 A. Yes.

15 Q. In fact, you reviewed the monthly activity reports of every  
16 officer in the 43rd precinct each month, right?

17 A. That's correct.

18 Q. Now I want to take a look at another exhibit that's also in  
19 evidence. This is Plaintiffs' Exhibit 178. Just to look at an  
20 example of a monthly activity report for a second.

21 Blow it up a little bit.

22 So this is a monthly activity report from September of  
23 '07. I know that's before you got to the precinct. But is  
24 this an example of the monthly activity reports you would  
25 review? Does this look like the ones you would review when you

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1 were the commander?

2 A. Yes.

3 Q. So it's fair to say that this document indicates the number  
4 of various categories of enforcement activity an officer would  
5 engage in for a month, right?

6 A. Correct.

7 Q. And that would include, for example, arrests that he made  
8 in the month, right?

9 A. Yes.

10 Q. And stops and summonses, right?

11 A. Verticals, radio runs, and so forth, yes.

12 Q. All those things. Okay.

13 And you would review these each month for every  
14 officer. And on several occasions when you were the precinct  
15 commander you did tell sergeants and officers that the amount  
16 of activity reflected on their reports was too low, correct?

17 A. Too low?

18 Q. Yes.

19 A. That's not correct.

20 Q. You didn't tell them that? Okay.

21 If we can turn to page 171 of your deposition, line

22 10.

23 Question was asked, "Have you ever communicated to an  
24 officer or a sergeant that an officer's activity as reflected  
25 on their monthly performance report was too low?"

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D4g9flo3 Ortiz - direct

1 "A. Yes.

2 "How often have you done that? How many times have  
3 you done that? More than ten?

4 "A. Yeah, I'm sure more than ten."

5 A. Okay.

6 Q. So I guess my question is: When you would make this  
7 determination about the activity not being high enough, that  
8 was in relation to the crime conditions in the precinct?

9 A. Yeah. What I understood when you asked me now if the  
10 overall, just looking at this activity report, did I tell --  
11 did I say that this officer's activity was too low? No.

12 What I'm -- what I was articulating is: Looking at a  
13 particular location where we send officers to that location,  
14 and if that officer's activity was at that particular location,  
15 just the overall -- overall activity.

16 Now, this just -- let me backtrack here.

17 When we're talking about activity, it depends on the  
18 condition. So if we're talking about activity, it could be  
19 vertical patrol. So if that particular officer has a burglary  
20 condition in his particular -- in his area of responsibility,  
21 whether it's his footpost, whether it's his sector, we expect  
22 that officer to do vertical patrols in that particular -- if  
23 it's a condition where it's a burglary condition in a  
24 five-story walkup, how do we combat that? We have officers go  
25 up and down doing vertical patrols in those locations.

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Ortiz - direct

1           So we look at the actual conditions and the officers  
2 that are assigned to those areas and the total package, just  
3 not looking at the activity report. So I didn't understand  
4 what you were --

5 Q. I understand.

6           But I think you're answering my question partially.  
7 The question I have is if there is a spike in crime, right, you  
8 want to see more activity on the activity report to show that  
9 an officer is addressing the crime?

10 A. That's not totally -- that's not correct. Depends on the  
11 crime and the way we decide to deploy our officers.

12           If -- sometimes when we deploy our officers to a  
13 particular location, there might be displacement in this crime.  
14 They might see the deployment out there. So if there's --  
15 there is no conditions on his post, how do you expect him to  
16 have any activity?

17           Now, if we -- if there is a particular area like a  
18 park and I'm getting complaints from the community that there  
19 is drinking in the park and there's marijuana smoking, people  
20 smoking marijuana in the park. I drive by there. I see that.  
21 We correct -- I call officers there. They make arrests or they  
22 issue summonses.

23           Other officers that are working that tour address the  
24 situation. If I see a whole squad addressing a particular area  
25 where there's a condition and this officer doesn't see

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D4g9flo3 Ortiz - direct

1 anything, it's something that I need to take a closer look at.

2 But --

3 Q. But you did testify that you told officers that you have  
4 told officers that the activity reflected on these monthly  
5 reports was too low, correct?

6 A. What I said was the activity that we have, coupled with the  
7 conditions that we are addressing. There's a lot of different  
8 factors. You just cannot make a determination on an officer  
9 from an officer's activity report. There's more. There's only  
10 one -- that's only one thing that we look at to see if an  
11 officer is doing his job or not.

12 Q. So your testimony today is -- your answer to the question:  
13 Have you ever communicated to an officer or a sergeant that an  
14 officer's activity as reflected on their monthly performance  
15 report was too low?

16 Your answer to that question today is not yes?

17 A. No. It is yes. But what I'm saying is that there's other  
18 factors that you have to take into consideration. It's just  
19 not the activity report.

20 Q. Okay. So moving on.

21 You, as a precinct commander of the 43rd, you also  
22 attended on a regular basis what are called borough stat  
23 meetings; is that right?

24 A. Yes, sir.

25 Q. Those are kind of like mini CompStat meetings that were

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1 held for the Bronx patrol borough, right?

2 A. Yes.

3 Q. That would just be the precincts from the Bronx?

4 A. Yes. It would just be the precinct that's called. There's  
5 only one precinct.

6 Q. So one precinct per meeting.

7 And those meetings would be run by Chief Purtell, the  
8 borough commander?

9 A. Yes.

10 Q. One of the things he would look at, Chief Purtell, at these  
11 meetings would be the stop and frisk and summons and arrest  
12 statistics for your precinct, right?

13 A. One of many things.

14 Q. And the reason he looked at these was to assess, again, if  
15 officers were conducting enforcement activity in the right  
16 locations of the precinct, right?

17 A. Yes.

18 Q. And so to do that the borough commander would compare crime  
19 statistics in various parts of your precinct with your  
20 enforcement activity statistics in those areas of the precinct  
21 to make sure that enforcement was matching where the crime was,  
22 right?

23 A. That is correct.

24 Q. And so, again, the expectation would be if the borough  
25 commander saw a spike in crime in a particular area of the

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1 precinct, he would expect that your enforcement activity would  
2 also go up in that precinct, right?

3 A. Not necessarily.

4 Q. And you also, as I think you mentioned earlier, you went to  
5 CompStat meetings as a precinct commander, right, downtown?

6 A. Correct.

7 Q. And at these CompStat meetings, again, the number of C  
8 summonses and arrests and 250s done by officers in your  
9 precinct in a month was discussed, right?

10 A. Yes.

11 Q. And that's because, again, the chiefs of CompStat would  
12 evaluate whether your precinct was doing enough to address  
13 crime conditions in the precinct, right?

14 A. That is correct.

15 Q. And one way they would evaluate that -- one way would be to  
16 look at number of 250s that your officers were doing, right?

17 A. That is correct.

18 Q. And, again, would it be fair to say that the chiefs at  
19 CompStat would expect that if there was a rise in crime in a  
20 certain area in your precinct, they would like to see a  
21 corresponding increase in the number of enforcement actions in  
22 that area?

23 A. No.

24 Q. That's not what your --

25 A. What I'm saying is that that is one dimension that they

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1 would ask you questions in regards to the conditions at that  
2 particular location.

3 If the response -- what the chief of department or  
4 anyone chairing a CompStat, that they want a plan from the  
5 commanding officer.

6 So if my plan is omnipresence and we are saturating  
7 that area with uniformed police officers, then he's not going  
8 to be expecting, you know, like -- there is no expectation for  
9 250s. He wants you to give him a plan, that we're doing  
10 something for the community. We're responding to their  
11 complaints and we're addressing those issues.

12 So it's not -- it's something that's not captured on  
13 an activity report. He just wants you to verbalize it.

14 Q. So your answer today is that the chief did not expect that  
15 if there was a rise in crime in a certain area he would like to  
16 see a corresponding increase in enforcement activity?

17 A. My testimony is that that's not my interpretation of what  
18 he was saying to me.

19 Q. Do you want to page 191 of your deposition -- I'm sorry  
20 189. I'm sorry. 189 line 21.

21 You were asked this question; "So it's fair to say  
22 that the chief at least maybe not you --

23 A. Hold on a second. 189 you said?

24 Q. 189, line 21.

25 A. Twenty-one. Got it.

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1 Q. "So it's fair to say that the chief, at least, maybe not  
2 you or others in the police department, expects that if there's  
3 a rise in crime somewhere, he wants to see a corresponding  
4 increase in the number of 250s that officers are doing?

5 "A. No.

6 "Objection to form.

7 "Q. He's not saying that?

8 "A. No. I'm saying he's not the only one."

9 So --

10 A. That's not what I said. That's not what -- I'm consistent  
11 in what I'm saying now. It's not -- when I said, that's not  
12 the only one, I meant the only dimension. He is not looking --

13 Q. Well it says "he's not the only one." It doesn't say  
14 that's not the only one.

15 THE COURT: He's suggesting that's probably a typo.

16 THE WITNESS: It's a typo. Or I was misunderstood.

17 Because that's exactly -- that is definitely not what the chief  
18 of the department is looking for.

19 Q. So --

20 A. There is no benefit of looking at numbers just to generate  
21 numbers. We're there to address the crime conditions. If we  
22 just stop people indiscriminately, it does nothing with -- for  
23 us to reduce crime. It only fosters hostility between us and  
24 our community that we serve. We enjoy a very good relationship  
25 with our community. And we're not going to jeopardize that by

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1 pushing our officers to stop people that -- indiscriminately.  
2 This does not make sense.

3 Q. So in terms of the evaluation at CompStat of your stop --  
4 precinct's stop activity, they didn't look at individual 250s  
5 at CompStat, right?

6 A. I don't recall that. I don't recall that.

7 Q. So the answer is no?

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

9 Q. So the only thing they really had to go on was the  
10 aggregate statistics of those 250s, right?

11 A. Yes, the overall number.

12 Q. Yeah.

13 A. Yes.

14 Q. I want to show you what's been previously admitted as  
15 Plaintiffs' Exhibit 281.

16 And I think we need to go to page 66. This was a  
17 document that was admitted last week with Chief Esposito. And  
18 this is -- these are some minutes from a CompStat meeting.

19 If you look at the top it says patrol borough Bronx.  
20 August 21, 2008. It says precinct presentations. The 43rd  
21 and the 47th.

22 Right?

23 A. Yes, sir.

24 Q. So you were the precinct commander of the 43rd at this  
25 time, right?

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1 A. Yes, I was.

2 Q. So if we go about five pages in, get past the redactions.

3 You see here there is an exchange?

4 MS. GROSSMAN: Bates number?

5 MR. CHARNEY: NYC \_ 27080.

6 Q. You see there's some notes of an exchange, looks like,  
7 involving Chief Esposito. And then about halfway down you see  
8 it says 43CO.

9 A. Yes.

10 Q. Do you have any reason to think that that would not be you?

11 A. No. I'm sure that was me.

12 Q. So if you see here at the top it says Chief Esposito says  
13 43, robberies nine versus zero in that zone. We identified  
14 sector C housing development Monroe.

15 Now housing development Monroe was a particular public  
16 housing complex in your precinct?

17 A. Yes. It's Monroe houses.

18 Q. So it's fair to say that he was looking at the crime in a  
19 particular housing complex, right?

20 A. In or around.

21 THE COURT: All right. I'm going to have to call the  
22 luncheon recess now, anyway you have to return, five after two.

23 (Luncheon recess)

24

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Ortiz - direct  
AFTERNOON SESSION  
2:12 p.m.

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CHARLES ORTIZ, resumed.

DIRECT EXAMINATION CONTINUED

BY MR. CHARNEY:

Q. Good afternoon, Inspector.

A. Good afternoon.

Q. Before the break we were talking about this CompStat meeting that you attended in August 2008. We were about to look at the minutes from one of the exchanges you had with Chief Esposito about I guess a robbery spike in a particular housing development.

Do you recall that?

A. That specific CompStat?

Q. I'm sorry. Do you recall we were discussing that before the break?

So looking at these notes here, it looks like Chief Esposito had identified a robbery spike in this particular housing development called the Monroe houses, right?

A. Yes. In and around Monroe houses from what I get.

Q. And he says that the robberies went from nine versus zero. So there had been nine reported robberies in an area where prior there had not been any? Is that what you understand it to mean?

A. That's what the note said.

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1 Q. Do you see under that, under the redacted part it says,  
2 Chief Esposito says, listen don't have time I have to go but  
3 nine robberies compared to none, I don't think we're doing  
4 enough in that zone. You have 4Cs and 5 250s in a 28-day  
5 period.

6 Do you see that?

7 A. Yes, sir.

8 Q. So is it fair to say that Chief Esposito felt that the  
9 enforcement activity you had done in that particular area in  
10 response to this robbery spike was not sufficient?

11 A. That's not what the chief is saying.

12 MS. GROSSMAN: Objection. I'm sorry. Chief Esposito  
13 felt. I don't know that it would be fair for this witness to  
14 say what Chief Esposito felt.

15 THE COURT: What he said. Whatever he said.

16 Q. So you don't interpret, "I don't think we are doing enough,  
17 you have 4Cs and 5 250s in a 28-day period," you don't  
18 understand him to be saying that's not enough enforcement  
19 activity?

20 THE COURT: Those are the words. "That's not enough."

21 THE WITNESS: What he's saying is that he wants an  
22 explanation for -- that we have a spike in robberies, nine  
23 versus zero. And he -- the activity that's on paper, he wants  
24 an explanation on what's our plan.

25 THE COURT: But he says the words, "I don't think we

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1 are doing enough."

2 You can't quarrel with it, right?

3 THE WITNESS: No.

4 THE COURT: "I don't think we are doing enough."

5 Okay.

6 Q. And it was not uncommon, right, in your experience for  
7 Chief Esposito or other chiefs at a CompStat meeting to discuss  
8 with you the monthly and summons and 250 activity in your  
9 precinct, right?

10 A. I'm sorry. Could you say that -- repeat that.

11 Q. Sorry.

12 It was not uncommon for you at CompStat meetings to  
13 have a discussion with the chiefs about the monthly summons and  
14 250 activity in your precinct, right?

15 A. No. That's not uncommon.

16 Q. I want to go back just real quick to those QAD audits that  
17 we were talking about earlier. We looked at the 2008 audit. I  
18 wanted to look quickly at the 2009 which is previously admitted  
19 as Plaintiffs' Exhibit I believe 69.

20 Do you see again this same format as the previous  
21 audit report we looked at, right?

22 A. Yes.

23 Q. If we go again to the, I believe, the fourth page. This  
24 would be Bates number NYC \_ 218 -- I'm sorry 5 -- it's the  
25 third page, 527.

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1 Do you see this page again lists the audit results for  
2 all the precincts in the Bronx patrol borough, right?

3 A. That is correct.

4 Q. So that would again be the 43rd precinct which would be  
5 your precinct?

6 A. Yes, sir.

7 MR. CHARNEY: If we can zoom it a little bit.

8 Q. If we look at the -- in the area that's -- the chart that's  
9 not shaded dark, if you look, the second column from the right  
10 again is the check member's activity log entries item.

11 Do you see under the 43rd precinct there's a score  
12 of 2.0?

13 A. Yes, sir.

14 Q. So, that's better than you did in 2008, right?

15 A. It's a slight improvement. But we -- I felt that we could  
16 do better.

17 The overall rating was a 3.2, and that was one  
18 dimension that we underperformed.

19 Q. So, again, for the dimension on activity log entries you  
20 were still substandard, correct?

21 A. I think we need improvement, yeah.

22 Q. But you would agree that a score of below 3 is considered  
23 unsatisfactory to the police department, correct?

24 A. It's unsatisfactory to me.

25 Q. Well isn't it also unsatisfactory to the police department?

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1 A. Yes. I think it's something that we strive to do better  
2 at.

3 Q. And then if we can look real quick at Plaintiffs' Exhibit  
4 78 which is also admitted. This is the 2010 audit for stop and  
5 frisk.

6 If we can go to I believe the fourth page which is  
7 Bates number NYC \_ 2217 -- I think we're going to go to 744.  
8 So I guess that's --

9 MS. GROSSMAN: This is Plaintiffs' 78?

10 MR. CHARNEY: Yes.

11 Q. Again if we look at the 43rd precinct -- if we can blow  
12 it up a little bit. If you look at that item, the second  
13 column from the right in the lighter colored chart for check  
14 member's activity log entries, again, the 43rd precinct got a  
15 score of 1.0, correct?

16 A. That is correct.

17 Q. So is it fair to say that, again, in 2010 on that dimension  
18 your precinct performed unsatisfactorily?

19 A. That is correct.

20 Q. So we've looked at three -- the three years 2008 through  
21 2010 in your precinct and in each of those years the audit  
22 showed that your officers were not doing activity log entries  
23 for stop and frisks adequately, correct?

24 A. In the dimension of activity logs, yes.

25 Q. And you had mentioned, I think before the break, that to

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1 address that you had talked to the training sergeant, one  
2 thing, right?

3 A. That's one thing that we implemented is having the training  
4 sergeant train the officers.

5 Q. And you started doing that in 2008?

6 A. We started doing that -- yeah, I would say right after that  
7 audit we would have the training sergeant instruct the officers  
8 at their unit training during roll call.

9 Q. But as of 2010 would you agree with me that the training  
10 didn't seem to be having an effect?

11 A. Yeah. You can see there that the memo book entries  
12 continue -- under my tenure in the 43rd precinct we could  
13 have done much better.

14 What we -- we did have improvement. At the beginning  
15 of this -- these audits, what we were finding is that there  
16 weren't memo book entries.

17 Then we saw that the officers began to start  
18 indicating the stops in their memo books. And we were at the,  
19 you know, we were trying to improve the amount of detail that  
20 they were putting in the memo books.

21 So we implemented these steps to ensure that this took  
22 place.

23 Q. But as of 2010 you still are scoring a 1.0 in that  
24 dimension on the audit, right?

25 A. For that particular audit, for that sample that they took,

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1 yes.

2 Q. And then lastly I want to look at -- this is Plaintiffs'  
3 Exhibit 81. And this is the 2011 audit. I'm going to show  
4 this to you.

5 Actually I would move that this be admitted into  
6 evidence.

7 MS. GROSSMAN: What exhibit?

8 MR. CHARNEY: Eighty-one. I just want to hand --

9 MS. GROSSMAN: No objection, your Honor.

10 THE COURT: Okay. 81 is received.

11 (Plaintiffs' Exhibit 81 received in evidence)

12 Q. This is the same format, right? But this is for 2011,  
13 right?

14 A. Yes.

15 Q. So, again, if we go now to page NYC\_22186, yes. There we  
16 go.

17 Again if we zoom in for the 43rd precinct here, it  
18 looks like, again, for the dimension regarding activity log  
19 entries your precinct got a 1.0, correct?

20 A. That is correct.

21 Q. So it's fair to say that as of 2011 you were still having a  
22 problem in your precinct with officers not making adequate  
23 activity log entries about the stops they were conducting,  
24 correct?

25 A. Although we had a better rating in the overall inspection,

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1 we fell short, again, in the member's activity log.

2 Q. Now other than talking to the training sergeant, you said  
3 you instructed supervisors to be making sure that they're  
4 scratching officers' memo books at least once a tour, right?

5 A. Yes, sir.

6 Q. Do you know if, in fact, they were doing that?

7 A. Well, we -- again, that was one -- we instructed -- excuse  
8 me.

9 We instructed the sergeants to scratch the individual  
10 officers that are working, performing the tour on their tour,  
11 their particular tour.

12 Now, officers -- we had the integrity officer ensure  
13 that he inspected the sergeant's logs to just look for an  
14 indication that officers' memo books were being scratched. We  
15 also visited -- excuse me, I'm using police jargon here -- the  
16 platoon commander who is working on that particular tour also  
17 inspects the sergeants' memo books to make sure that he is  
18 visiting in -- inspecting these activity logs, coupled with the  
19 sergeants responding to these stops, whether they be arrests or  
20 stops for stop, question and frisk, at that particular moment  
21 they would scratch the officers' logs also.

22 Q. You would agree -- I think we already talked about this  
23 earlier -- that there are stops that are conducted that  
24 sergeants, just for one reason or another, are not going to be  
25 able to be on the scene, right?

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D4g9flo3 Ortiz - direct

1 A. That's not the majority of the time. I hear my supervision  
2 when I'm working -- my police radio is on as long as I'm  
3 working, coming into work, at work, and leaving work. And I  
4 hear my supervisors responding to these locations.

5 If there is a job that comes over where there's a  
6 detailed description and there's a canvass, someone is, for  
7 instance, is getting -- just got robbed and there's a detailed  
8 description and there's a canvass, and there's people stopped  
9 in regards to that, I hear the officers that are actually  
10 putting it over and I also hear the sergeants responding. And  
11 when I'm out there, I am required to do a non-announce, which  
12 means no one knows that I'm working. So I will come directly  
13 from home to work. And no one knows that I'm working. And I  
14 will monitor the police radio. And I will respond to these  
15 jobs. The officers don't know that I'm working.

16 So not only do I know that they're responding, because  
17 I hear it, but I see it. So there is supervision.

18 Q. I understand.

19 But you would agree that there are a certain  
20 percentage of stops -- we don't know the number -- that a  
21 sergeant just cannot be present for, right?

22 A. A small percentage.

23 Q. But you've never actually done an analysis to determine  
24 what percentage of stops a sergeant is not present at, right?

25 A. By practically living in the precinct, I know more often

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1 than not that my supervisors are responding to stops.

2 Q. Have you reviewed each of the 250s done in your precinct  
3 for a month and then determined whether or not the supervisor  
4 had been present at the time?

5 A. Reviewed every 250, no, I haven't.

6 Q. And the other thing I guess that we talked about before the  
7 break was whether or not supervisors were instructed by you to  
8 review the memo book entry at the same time they reviewed the  
9 completed 250.

10 Do you remember that?

11 A. Yes. I remember.

12 Q. And it's correct that you never instructed your supervisors  
13 specifically to do that, right?

14 A. Sorry. I answered that already. Yes.

15 Q. So, yes, you did not instruct them to do that, right?

16 A. Yes.

17 Q. Okay. So is it fair to say that given these audit results  
18 you were concerned that maybe, in fact, supervisors were not  
19 doing the concurrent review of the activity log entry and the  
20 stop form?

21 A. My concern is that to ensure that the stops are lawful and  
22 that my supervisors are out there supervising our officers.  
23 And when there is a stop, that the stop -- they question the  
24 officer in regards to the stop.

25 I am comfortable, extremely comfortable that the stops

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1 that are being conducted in the 43rd precinct are lawful  
2 stops.

3 When it comes to our activity log entry, I stated over  
4 and over again that there needs to be improvement. That is  
5 something that I would like for us to improve on. It's  
6 something that we strive for. And that just will help with  
7 future prosecutions and future investigations.

8 But as far as the stops that are being conducted out  
9 there, I strongly, strongly believe, and know because I'm out  
10 there, that these are lawful stops.

11 Q. And your basis for that belief is that you trust your  
12 supervisors, right?

13 A. No. I trust my community to tell me if there were issues.  
14 I have a strong relationship with my community. And a lot of  
15 community outreach. My community is a vocal, intelligent,  
16 educated community. If there were issues about racial  
17 profiling and unlawful stops, I would know that from my  
18 community meetings.

19 I had many, various meetings weekly with my community.  
20 Open door policy. My phone rings 24 hours a day, seven days a  
21 week -- you can ask my family -- with people from the  
22 community.

23 So if there were issues, trust me, I would know it.

24 Q. Are you aware that there have been civilian complaints  
25 filed for improper stop and frisk against officers in the

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1 43rd precinct during the time you were the precinct  
2 commander?

3 A. Yes.

4 Q. But your testimony is that doesn't constitute a concern by  
5 a community member about an illegal stop?

6 A. No.

7 I'm saying that by my -- us monitoring our officers'  
8 stops, by listening to our community, by being out there, I am  
9 comfortable, extremely comfortable, and I know, that they're  
10 doing a great job and they're respecting the community.

11 THE COURT: But one of the reasons you said that is  
12 because you didn't hear complaints from the community?

13 THE WITNESS: Yes.

14 THE COURT: What he's asking you is don't you know  
15 that there were some complaints within the community.

16 THE WITNESS: Yes. Well when we're talking about  
17 CCRBs, that falls under the jurisdiction of CCRBs. These are  
18 police interactions resulting from enforcement.

19 Have there been complaints? Yes.

20 But you're asking me, directly to me, asking me at my  
21 community meetings, at open forums, at, you know -- I attend  
22 venues where there are three, four hundred people there.

23 Q. Well I didn't ask you about community meetings. I simply  
24 asked you whether the basis for your belief that stops are good  
25 is that you trust your supervisors. And then you said --

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1 A. To quote one of my favorite presidents, I trust but verify.  
2 We trust our officers but we're going to verify and make sure  
3 that they're doing lawful stops.

4 So if there's a complaint that falls under the  
5 jurisdiction of the CCRB, then that's the agency, that is the  
6 agency that is going to investigate it.

7 If there's a determination that it was an unlawful  
8 stop, then that behavior will be addressed.

9 Q. Well let me just ask a different question and then I think  
10 I'm almost done.

11 Is it your testimony that you believe that your  
12 supervisors are, in fact, questioning officers about the  
13 reasons they make stops to ensure that those stops were based  
14 on reasonable suspicion?

15 A. I believe it because I question them.

16 You know, in the particular stop that we brought up  
17 earlier, that there was, you know, that's in question. In that  
18 circumstance, if there's a particular crime issue, I'm going --  
19 I'm going to hear it over the radio and I'm going to question  
20 the supervisor in regards to the stop. What's going on out  
21 there? What was the basis of the stop?

22 Because I'm concerned, one, to make sure that this is  
23 a legitimate stop; but two, that we are at the right location  
24 and if there's any pertinent information that could help us  
25 identify who is committing crimes against our community. These

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D4g9flo3

Ortiz - direct

1 are violent crimes that we're dealing with here, you know.

2 (Continued on next page)

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D4G8FLO4 Ortiz - direct

1 Q. I understand.

2 THE COURT: Let me make sure I understand.

3 The 43rd Precinct, what neighborhoods does that cover?

4 THE WITNESS: It covers Bronx River, Soundview, Castle  
5 Hill, Clason Point, the Monroe section. It's a large precinct.  
6 It's about four square miles.

7 THE COURT: What is the population?

8 THE WITNESS: The population is documented now, with  
9 the last census, it's over 168,000.

10 THE COURT: What housing projects, public housing?

11 THE WITNESS: Public housing developments? We have  
12 Bronx River, Castle Hill, Soundview, Monroe.

13 THE COURT: With all of those communities, you never  
14 heard anybody complain to you about bad stops or racial  
15 profiling?

16 THE WITNESS: Ma'am --

17 THE COURT: I am just asking. Tell me yes or no.

18 THE WITNESS: I have heard complaints. But it's not  
19 about the legality of the stop. It's how the officers, when  
20 they stop them, how the residents feel when they walk away.

21 THE COURT: Did anybody ever complain about racial  
22 profiling?

23 THE WITNESS: No, ma'am.

24 THE COURT: Or about bad stops?

25 THE WITNESS: No.

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D4G8FLO4

Ortiz - direct

1 THE COURT: Just behavior during the stop?

2 THE WITNESS: An explanation of the stop. If we have  
3 the time, the officer should take the time and say, the reason  
4 why we stopped you, you fit the description, maybe get a  
5 broadcast over the radio. So that person can walk away feeling  
6 like, I didn't like this stop, but the officers are trying to  
7 do their job. We could do a better job of doing that. And  
8 sometimes we need to explain. If we have time. Certain  
9 circumstances, we just don't have the time.

10 THE COURT: You never got a complaint in all those  
11 years about either bad stops or racial profiling?

12 THE WITNESS: No, ma'am.

13 BY MR. CHARNEY:

14 Q. I just want to ask you real briefly about the integrity  
15 control officer in the precinct.

16 It was your expectation that your integrity control  
17 officer would be out in the field monitoring officers to make  
18 sure that they were making proper stops, correct?

19 A. To ensure the overall integrity of our police service.  
20 That's not the only thing he's out there looking for.

21 Q. One of those pieces of the overall integrity that you  
22 expected him to monitor was stop and frisk, correct?

23 A. Yes. If our officers was engaging in a stop, I would  
24 expect him to go over there and supervise that.

25 MR. CHARNEY: One minute, your Honor.

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D4G8FLO4 Ortiz - direct

1 No further questions.

2 CROSS-EXAMINATION

3 BY MS. GROSSMAN:

4 Q. Good afternoon, Inspector.

5 A. Good afternoon.

6 Q. Can you tell the Court what your educational background is?

7 A. I have my bachelor's from State University of New York. I  
8 have my master's from Seton Hall University in human resources  
9 training and development. I also attended Columbia Police  
10 Management Institute.

11 Q. Prior to being assigned to the 43 Precinct, you were also  
12 the CO of the 41 Precinct?

13 A. Yes, I was.

14 Q. How long did you serve in that capacity?

15 A. About a year and a half.

16 Q. Have you ever lived in the 43 Precinct?

17 A. Yes, I did.

18 Q. Do any members of your family live in the 43 Precinct?

19 A. All of my family that's not in Puerto Rico, the large  
20 majority of them live in the 43 Precinct.

21 Q. Approximately how many officers were assigned to the 43  
22 Precinct when you were the CO?

23 A. It depends on the year, but I think we ballooned up to  
24 maybe 260.

25 Q. Approximately how many anticrime officers were in the 43

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D4G8FLO4 Ortiz - cross

1 Precinct when you were the CO?

2 A. We strive for ten, two teams of five, one and five, two  
3 teams.

4 Q. What about the SNEU?

5 A. SNEU teams, we had two and 16.

6 Q. What about conditions?

7 A. Depending on the conditions of the precinct, we could have  
8 as many as four, five conditions teams, and we had as little as  
9 two -- I don't think we ever had two, about three.

10 Q. What about impact, how many officers were assigned to  
11 impact?

12 A. Again, depending on the impact, but I would say on average,  
13 anywhere between 40 to 60.

14 Q. What was the supervisor to officer ratio?

15 A. We like to keep in the police department one to eight.

16 Q. Can you describe the impact zones in the 43 Precinct?

17 A. The impact zone, I am just going to give you a generic,  
18 because depending on the impact and the crime trends, it can be  
19 a little smaller or larger.

20 MR. CHARNEY: I am going to object to this because it  
21 is my understanding that the impact zones change every six  
22 months. So what period of time are we talking about here?

23 THE COURT: Can you give us a time frame?

24 Q. When you were the CO of the 43, can you give us a sense of  
25 the impact zones that you were aware of?

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D4G8FLO4 Ortiz - cross

1 A. There are only changes within one or two blocks. They  
2 shrink it a little bit. It's not a significant amount of the  
3 area. We have had it from Bruckner Expressway to Westchester  
4 Avenue, from I want to say Morrison to Ward.

5 Q. So on average, how many avenues, how many streets would you  
6 say an average impact zone would cover in the 43?

7 A. In the 43, I would have to look at the map. I would say  
8 ten blocks, a little bit more.

9 Q. About how many avenues?

10 A. That would be two.

11 Q. Of the 40 to 60 officers in impact, approximately how many  
12 would serve on a particular tour?

13 A. On that tour, any particular tour, we could have, because  
14 we have days off and in court and so forth, it could be 20 and  
15 change.

16 Q. Now, as a CO, how do you determine where to send officers  
17 to on any particular tour?

18 A. Are we talking about impact or in general?

19 Q. In general.

20 A. In general, we follow the crime. We will send officers  
21 where we experience violence. Violence is always our first  
22 priority, whether it be assaults, shootings, robberies,  
23 burglaries, depending on what the violence is. We will deploy  
24 our resources to where the crime is taking place.

25 Q. Is crime evenly distributed within the 43 Precinct?

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D4G8FLO4

Ortiz - cross

1 A. In the 43, no.

2 Q. What is the difference between the uniformed officers on  
3 patrol and the officers assigned to any one of the specialty  
4 units in terms of their function?

5 A. Uniformed patrol, their mission, they answer 911 calls,  
6 calls for service, 311 calls. And when they are not on 911,  
7 311 or whatever complaints are referred to the precinct, they  
8 are to address the conditions in their particular sector. And  
9 conditions will be deployed to areas where we have community  
10 complaints. So it can be anything from, you know, smoking in  
11 the park, drinking in the park, any quality of life conditions  
12 that I am getting from my residents, we can deploy our  
13 conditions to those locations.

14 Then the crime teams are self-explanation. Crime  
15 teams address robberies, burglaries, crimes in progress. And  
16 our SNEU teams are drugs; they are to police the areas where we  
17 have infestation of drugs in those neighborhoods.

18 Q. Now, going back to the impact zones, do the officers cover  
19 the impact zones both on foot and by car?

20 A. They are primarily on foot. There will be a supervisor  
21 that is mobile, and he will be also with impact officers in  
22 that vehicle.

23 Q. Now, when you were the CO in the 41 and the 43, did you  
24 have a crime analysis officer?

25 A. Yes.

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D4G8FLO4 Ortiz - cross

1 Q. What was the responsibility of the crime analysis officer?

2 A. They are to collect, analyze data and to assist me to  
3 identify crime trends and patterns.

4 Q. How did those crime trends and patterns and conditions get  
5 communicated to the police officers?

6 A. Well, our primary record is actually the complaint report.  
7 We take a look at the complaint reports and what has been  
8 submitted to us. But then we can also get intel from our  
9 community, because there might be some issues that are not  
10 reported, we don't know. So they might say, there is a  
11 particular crew of individuals at a particular location that  
12 are committing certain crimes. So we will also take that into  
13 account.

14 Q. Are the crime conditions and the trends and patterns also  
15 communicated at roll call?

16 A. Yes, they are.

17 Q. Is there also a crime information center maintained at the  
18 precincts?

19 A. What you do is, once we have that information, we conduct  
20 an analysis and we move forward with giving the information to  
21 our police officers and our supervisors. We have a crime  
22 information center that's located in the muster room where all  
23 the crime patterns, all the crime trends, all the issues that  
24 we are having are posted. We also have a TV there that -- a  
25 monitor I should say, that we also post the crime trends, the

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D4G8FLO4 Ortiz - cross

- 1 patterns, the locations, wanted subjects and so forth. And  
2 then our supervisors will give instructions from the meetings  
3 they have with myself, information they are getting from me,  
4 on, you know, what the deployment is and what the  
5 responsibilities of their personnel are.
- 6 Q. If there are photographs of individuals who are suspects,  
7 is that available to the officers as well?
- 8 A. Absolutely. We get as much information out there to them  
9 as possible.
- 10 Q. How do you determine whether officers need to shift their  
11 assignments?
- 12 A. Well, everything is fluid. So if we deploy to an area and  
13 there is no reported crime, we saturated that area, and then  
14 there is a crime spike somewhere else, we are going to have to  
15 change our deployment to address where the other issues are  
16 occurring.
- 17 Q. With respect to activity logs, are you aware that the  
18 police department has now been issuing command level B  
19 disciplines to officers for failure to fill out activity logs?
- 20 A. Yes.
- 21 Q. What kind of penalty would that carry now?
- 22 A. It can be from zero to ten days.
- 23 Q. Have you ever disciplined officers for failure to complete  
24 activity logs?
- 25 A. Yes.

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D4G8FLO4 Ortiz - cross

1 Q. After you were at the 43 Precinct, did there come a time  
2 that you were transferred to another command?

3 A. Yes. I was assigned to patrol borough Bronx.

4 Q. What were your duties and responsibilities at patrol  
5 borough Bronx?

6 A. Overtime, CCRBs. We identified officers that had CCRBs,  
7 brought them in to speak to them and stressed the importance of  
8 not getting CCRBs and try to mentor them in the right  
9 direction. We had meetings with the integrity control officers  
10 to make sure that the overall process, the integrity process is  
11 intact, that they are actually going out there on patrol and  
12 doing their responsibilities, as far as their duties and  
13 responsibilities, a string of other things.

14 Q. With respect to supervisors signing UF-250s, how do you  
15 know the squad supervisors are signing UF-250s when you were  
16 the CO in the 43 Precinct?

17 A. Well, they are signing the 250s because it's very easy to  
18 determine that. If you go behind the desk, there is a UF-250  
19 log, and in the log it identifies who is reviewing these  
20 UF-250s. So by viewing the logs, you can see that. You can  
21 also -- just some of the other things that we identified,  
22 indication in the memo book entries that they were present  
23 there. If you look at it, you see the officers, the sergeants  
24 are actually reviewing their particular officers' UF-250s.

25 Q. Now, moving on to community meetings that you started to

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D4G8FLO4 Ortiz - cross

1 talk about when Mr. Charney was asking you some questions. How  
2 often do you meet with members of the community -- let me  
3 rephrase that. How often did you meet with members of the  
4 community when you were the CO of the 43 Precinct?

5 A. Quite often, four or five times a week.

6 Q. Did you also attend community council meetings?

7 A. Yes. Monthly we have community council meetings every  
8 first Wednesday of every month, where the community has an  
9 opportunity to voice their concerns, whether it be deployment  
10 to address their conditions, and then what we did was we  
11 divided the room up with different areas of the room and there  
12 were different stations where they can voice their complaints.  
13 If it was a detective squad issue. If it was a narcotics  
14 issue, I had representatives from narcotics. If it was a  
15 quality of life issue, I had members from my quality of life  
16 team. Then they had an opportunity to interact with me, and I  
17 always made sure that I was the last person out of the room.  
18 So I was available to anyone that wanted to speak to me about  
19 any issue.

20 Q. Approximately how many people on average would attend these  
21 community council meetings?

22 A. It can range anywhere between 30 to, I would say 50, 60  
23 sometimes, depending on the meeting.

24 We also have meetings that I would have with the  
25 district manager, which is our community board meeting, where

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D4G8FLO4 Ortiz - cross

1 they go over a series of issues, and I am the representative  
2 for the police department to address any of the concerns that  
3 people may have at these meetings. People may feel more  
4 comfortable speaking to the district manager, and he can do a  
5 personal introduction to me, and then I can personally  
6 interview them. So that's another way that is available to  
7 them.

8 Q. How often would those meetings take place?

9 A. That's monthly.

10 Q. Monthly?

11 A. Yes.

12 Q. How many people on average would generally attend the  
13 community board meetings?

14 A. Depending on the issues, it can be a zoning board, zoning  
15 issue, you can get up there, I want to say 40 to maybe 100.  
16 It's a packed room there sometimes.

17 Q. Do you also meet with elected politicians?

18 A. I speak to elected politicians, my politicians can be very  
19 vocal, yes.

20 Q. Are there any programs that you have participated in aimed  
21 at engaging in interacting with teenagers in the 43 Precinct?

22 A. Well, every summer we have national night out. It's  
23 something that's on a national -- nationwide. We pick one day  
24 where the police officers interact with the kids on a  
25 non-enforcement capacity. What I do in my precinct is I have

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D4G8FLO4 Ortiz - cross

1 my most active officers that are there, and I have officers  
2 that had gotten CCRBs during that year, where we go out there,  
3 we man the rides, we cook hamburgers and hot dogs for the kids.  
4 It's totally free for the community. So we do a lot. I want  
5 to make sure that my officers interact with my community, our  
6 community, in a positive way, in a non-enforcement way. So  
7 they are grounded.

8 We also have, what we do in the 43rd Precinct is we do  
9 safe streets for treats. On Halloween we will create a safe  
10 environment for our kids to trick-or-treat. We have Mr. Magic,  
11 a famous magician. We have all these dance acts and different  
12 schools participate. So it just creates a nice environment  
13 where we can interact with our community and get to know one  
14 another.

15 Then we also have, in conjunction with the PAL, we  
16 have what we call the impact team centers. Unfortunately, my  
17 last year we weren't able to fund it. But what we did was we  
18 had officers interact with kids. We got a school. The DOE,  
19 Department of Education, would give us a school. We try to get  
20 a location where we see a high incidence of victims -- juvenile  
21 victims and high incidence of juveniles that are committing the  
22 crimes. So we pick a location and the Department of Education,  
23 they supply the actual structure of the building. The PAL  
24 assigns staff. And then the 43rd Precinct, we play ball with  
25 the kids, we make sure that there is security for the kids,

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D4G8FLO4 Ortiz - cross

1 it's a safe environment. Then we interact with these kids so  
2 we know what is going on out there in the precinct.

3 Then we do various other things.

4 Q. Inspector, moving on to supervision, can you describe,  
5 generally, the daily interactions a supervisor has with  
6 officers on his squad?

7 A. Other than the supervisor's husband or wife and the  
8 children, they spend a majority of the day with their officers.  
9 They interact before work, before they get dressed, during roll  
10 call instruction, during the course of the day, of the workday,  
11 and at the end of the day, on the way out, they are interacting  
12 with the officers. They are with them all day.

13 Q. How are supervisors able to learn about the habits,  
14 strengths and weaknesses of his officers in your view?

15 A. Just by working with them. Getting to know -- when we  
16 manage people, we want to manage to their potential. Not  
17 everyone has the same potential. So you want to maximize the  
18 potential, and who benefits from that is our community. So we  
19 try to mentor them and try to keep them focused on the  
20 importance of what we do out there. We affect people's lives.  
21 We are out there to protect them. We are out there to help  
22 them. It's important that we keep them grounded and they  
23 understand that.

24 Q. Do supervisors share the same shifts as their officers?

25 A. Yes.

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D4G8FLO4 Ortiz - cross

1 Q. How does this enable supervisors to learn about the  
2 officers -- how does this help --

3 THE COURT: I think we have had that question over and  
4 over again. The supervisors work with the officers. They work  
5 together on the same shift.

6 In the 43rd Precinct, annually, do you know how many  
7 stops are made, stops that result in UF-250s?

8 THE WITNESS: Depending on the year, ma'am --

9 THE COURT: Roughly.

10 THE WITNESS: Roughly, it could be 7, 8,000.

11 THE COURT: 7 or 8,000 annually that result in  
12 UF-250s?

13 THE WITNESS: If I recall correctly, yes.

14 THE COURT: Again, how many years were you with the  
15 43rd?

16 THE WITNESS: I was there four and a half years.

17 THE COURT: That's your sense of annually each year?

18 THE WITNESS: Yes.

19 THE COURT: When you were at the 41st?

20 THE WITNESS: It's significantly less. The 41st is a  
21 much smaller command and half of it is industrial so it's not  
22 really that populated.

23 Q. Now, sergeants also have opportunities to work with their  
24 officers when they do team led enforcement?

25 THE COURT: Say that again.

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D4G8FLO4 Ortiz - cross

1 MS. GROSSMAN: Team led enforcement.

2 THE COURT: Are we going and over and over again that  
3 the supervisors and officers work together?

4 MS. GROSSMAN: If you get that point --

5 THE COURT: You have made the point. I don't need  
6 points made five or six times. They work together.

7 MR. MOORE: They are supposed to.

8 THE COURT: I got that point.

9 MS. GROSSMAN: This is the first commanding officer  
10 that we are hearing from.

11 MR. CHARNEY: This is not. We just heard from  
12 Inspector McHugh yesterday.

13 THE COURT: Folks, I don't want to hear this point  
14 further. I have heard it many times from Inspector Ortiz, and  
15 I have got it. He thinks that's how supervisors know what  
16 officers do by working with them.

17 THE WITNESS: Yes, ma'am.

18 THE COURT: That's a simple point. I have got it.

19 BY MS. GROSSMAN:

20 Q. When you were the CO of the 41 and the 43, you were  
21 responsible for adjudicating command disciplines arising from  
22 officer misconduct?

23 A. Yes.

24 Q. Did you do so?

25 A. Yes.

D4G8FLO4 Ortiz - cross

1 Q. Did you have access to the Civilian Complaint Review Board  
2 database?

3 A. Yes.

4 Q. Did you have access to the discipline and complaint history  
5 of each police officer?

6 A. Yes.

7 Q. As the CO, were you responsible for carrying out monitoring  
8 plans for each officer placed in performance monitoring  
9 programs?

10 A. Yes.

11 Q. Now, Mr. Charney asked you on direct whether the Office of  
12 the Chief of Department goes over individual 250s at CompStat.  
13 Do you remember that question?

14 A. Yes.

15 Q. Do you actually have any personal knowledge as to what the  
16 chief of department looks at before the CompStat meetings are  
17 held?

18 A. Before the CompStat, he is looking over the actual --

19 THE COURT: Didn't we have the chief of department for  
20 two days here?

21 MS. GROSSMAN: Yes.

22 THE COURT: Well, then, I won't allow the question.  
23 We have heard from him. We heard it right from his mouth, so  
24 to speak.

25 Q. Now, how do you determine as the CO of the 43 Precinct

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D4G8FLO4 Ortiz - cross

1 which officers would receive overtime?

2 A. What we have is when there is overtime that's available,  
3 there is a list. The officers sign their name signing up for  
4 the overtime, and then they are assigned accordingly. We like  
5 to distribute the overtime. If you manage any amount of  
6 people, you want to make sure that it's evenly distributed.  
7 There can be overtime abuse and too much overtime. We want to  
8 make sure there is not burnout or anything like that. So we  
9 definitely make sure it's distributed. We have come to the  
10 point that we eventually have to order people because there was  
11 too much overtime that was available.

12 Q. Now, I am going to show you what has been previously marked  
13 as Defendants' K13. This is the Google map regarding the  
14 pattern during the Floyd stop.

15 So, Inspector, looking at the Cross Bronx Expressway  
16 at the top right part of Defendants' Exhibit K13, do you know  
17 what the distance is between that red dot and the Cross Bronx  
18 Expressway?

19 MR. CHARNEY: I am going to object because this is a  
20 map. The map speaks for itself.

21 THE COURT: That won't tell me how many feet or yards.

22 MR. CHARNEY: We could get this information. He might  
23 have an answer, but it may not be the actual distance.

24 THE COURT: It may not, but he has been there a while.  
25 Let's hear what he says.

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D4G8FLO4 Ortiz - cross

1 From the red balloon in the upper right-hand corner to  
2 the actual expressway, do you know how many feet or yards or  
3 miles?

4 THE WITNESS: About a half a block.

5 Q. What would be the distance in walking to get there?

6 A. From that dot to the Cross Bronx Expressway? Seconds,  
7 maybe a minute.

8 Q. Can you describe for the Court, is there a walkway for  
9 pedestrians to walk across the Cross Bronx Expressway?

10 A. There is a walkway that's a large sidewalk, and I believe  
11 there's three lanes going, I guess, northeast or southeast,  
12 three lanes on the roadway, on each side of the double yellow  
13 line.

14 THE COURT: Three car lanes.

15 THE WITNESS: Three car lanes. There is a walkway for  
16 pedestrians to go to and from.

17 THE COURT: Pedestrians can cross over it?

18 THE WITNESS: Yes.

19 Q. Is it a very narrow sidewalk or a pretty wide sidewalk?

20 A. It's a wide sidewalk.

21 Q. Just a few more questions.

22 Now, when you were the CO of the 43 Precinct,  
23 approximately how many officers received a 2.5 or lower on a  
24 performance evaluation?

25 A. A few, very, very -- not many, but a few.

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D4G8FLO4 Ortiz - cross

1 Q. What about when you were the CO at the 41 Precinct,  
2 approximately how many officers received a 2.5 or lower?

3 A. To be honest with you, I really don't recall.

4 Q. Now, while you were the CO in the 43 Precinct, did you  
5 impose any quotas?

6 A. No.

7 Q. Did you punish any officers for failure to meet quotas?

8 A. Absolutely not.

9 MS. GROSSMAN: I have no further questions.

10 THE COURT: Mr. Charney.

11 MR. CHARNEY: Briefly.

12 REDIRECT EXAMINATION

13 BY MR. CHARNEY:

14 Q. Ms. Grossman asked you on cross about the numbers of  
15 officers that were patrolling in your precinct. Do you  
16 remember that?

17 A. Yes.

18 Q. Were there also borough-wide units, Bronx borough-wide  
19 units that operated in the 43rd Precinct?

20 A. I am sure at one point or another.

21 Q. They wouldn't report to roll calls in your precinct, right?

22 A. No. They would not report to roll calls, no.

23 Q. So you wouldn't have any information and documents which  
24 identified which officers from borough-wide units would have  
25 been operating in your precinct on particular days?

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D4G8FLO4 Ortiz - redirect

- 1 A. I would have -- prior to them being deployed to the 43rd  
2 Precinct, I would speak to whatever commanding officer it is.  
3 He will advise me of the coverage and how many people he has  
4 working in that particular week, how many vehicles and so  
5 forth, so that I can deploy. So we need to coordinate our  
6 deployment. So I would have conversations with their  
7 commanding officer.
- 8 Q. You wouldn't be given, for example, a list of the roster of  
9 the officers from a borough unit that were going to be  
10 operating in your precinct?
- 11 A. Ordinarily, no.
- 12 MR. CHARNEY: No further questions.
- 13 MS. GROSSMAN: No further questions, your Honor.
- 14 THE COURT: OK. You're done. Thank you.  
15 Your next witness.
- 16 MR. MOORE: The plaintiff calls Enno Peters.
- 17 ENNO PETERS,  
18 called as a witness by the plaintiffs,  
19 having been duly sworn, testified as follows:
- 20 THE COURT: State your full name, first and last,  
21 spelling both for the record.
- 22 THE WITNESS: Enno Peters, E-N-N-O, P-E-T-E-R-S.
- 23 DIRECT EXAMINATION  
24 BY MR. MOORE:  
25 Q. Good afternoon, Lieutenant Peters.

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D4G8FLO4 Peters - direct

1 Are you presently employed?

2 A. No, I am not.

3 Q. Were you employed in the New York City Police Department?

4 A. Yes.

5 Q. When did you retire?

6 A. My official retirement date was October 2012, but I had  
7 pretty much stopped working in February of 2012.

8 Q. Before you retired, were you at the 28th Precinct?

9 A. Yes.

10 Q. You were the integrity control officer of the 28th Precinct  
11 at the time of your retirement?

12 A. Yes.

13 MR. MOORE: Judge, this is the precinct involving the  
14 Deon Dennis stop just so you have a reference.

15 THE COURT: Just tell me the facts for two seconds.

16 MR. CHARNEY: The gentleman who they gave him a  
17 summons or were trying to give him a summons for an open  
18 container, and then they arrested him on an alleged warrant.

19 MR. MOORE: They said he had a bottle of Courvoisier  
20 in his hand.

21 THE COURT: It was early.

22 MR. CHARNEY: It was the first week.

23 MR. MOORE: Just so you have that reference, Judge.

24 THE COURT: Thank you.

25 Q. You were the integrity control officer of the 28th Precinct

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D4G8FLO4 Peters - direct

1 from October of 1998 until sometime in February of 2012,  
2 correct?

3 A. That's correct.

4 Q. Almost 14 years, right?

5 A. Yes.

6 MR. MOORE: Can you pull up Defendants' Exhibit F5,  
7 please?

8 Q. I have handed you what has been marked as Defendants'  
9 Exhibit F5, Lieutenant Peters. Can you identify the document?

10 A. It's the duties and responsibilities of the command  
11 integrity control officer.

12 MR. MOORE: Move Defendants' Exhibit F5 in evidence.

13 MR. KUNZ: No objection.

14 THE COURT: F5 is received.

15 (Defendants' Exhibit F5 received in evidence)

16 THE COURT: What did you call this?

17 MR. MOORE: F, as in Frank, 5.

18 THE COURT: Defendants' F5 is received.

19 Q. You're familiar with this document, right, Lieutenant  
20 Peters?

21 A. Yes.

22 Q. This sets forth in some detail the duties and  
23 responsibilities of the integrity control officer of a  
24 precinct, correct?

25 A. Yes.

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D4G8FLO4 Peters - direct

1 Q. In every precinct there is an integrity control officer,  
2 correct?

3 A. Yes.

4 Q. That position is usually held by someone with the rank of  
5 lieutenant?

6 A. Most of the time a lieutenant, some smaller commands they  
7 will be a sergeant.

8 Q. In some precincts, in addition to the lieutenant who is the  
9 ICO, there is also usually an assistant integrity control  
10 officer, correct?

11 A. Ideally, yes.

12 Q. And that person would generally be a sergeant, right?

13 A. Yes.

14 Q. Now, can you tell us, based upon your understanding when an  
15 officer can stop, question and frisk somebody?

16 A. When that officer has reasonable suspicion to believe that  
17 an individual has committed a felony or misdemeanor as defined  
18 in the penal law.

19 Q. When that occurs, the officer is required to fill out a  
20 form called a UF-250, correct?

21 A. Yes.

22 Q. During the time at least -- you recall giving a deposition  
23 in this case at one point, correct?

24 A. Yes.

25 Q. That was in November of 2009?

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D4G8FLO4 Peters - direct

1 A. Yes.

2 Q. I don't know what has changed since then, but at least as  
3 of November 2009, you don't remember ever, since you became the  
4 ICO of the 28th Precinct, you don't ever remember discussing  
5 the procedure regarding stop, question and frisk with members  
6 of the 28th Precinct, right?

7 A. No.

8 Q. No, you don't remember doing that?

9 A. I do remember having that discussion.

10 Q. Why don't you take a look at page 28 of your deposition.

11 You recall giving a deposition in this case, right?

12 A. Yes.

13 Q. As today, you were under oath and took an oath to tell the  
14 truth, correct?

15 A. Yes.

16 Q. Look at page 29 in your deposition. Do you recall being  
17 asked this question and giving this answer:

18 "Q. Since becoming the ICO at the 28th Precinct, have you  
19 discussed NYPD policies or procedures regarding what  
20 constitutes reasonable suspicion with members of the 28th  
21 Precinct?"

22 A. Could you ask the question again?

23 Q. And the answer is:

24 "A. Not that I remember."

25 THE COURT: All he is saying, do you remember being

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1 asked that question and giving that answer?

2 THE WITNESS: Yes.

3 Q. At that deposition, you were also asked, do you recall  
4 discussing NYPD policy or practice with respect to stops,  
5 questions and frisks, and you also answered at that time that  
6 you did not remember at that time, correct?

7 A. Yes.

8 Q. You were also asked at that same deposition whether since  
9 becoming the ICO of the 28th Precinct, have you discussed  
10 compliance with the Fourth Amendment with members of the 28th  
11 Precinct, and your answer to that as well was that you don't  
12 remember, correct?

13 A. Yes.

14 Q. So that was your testimony back in 2009, correct?

15 A. Yes.

16 Q. Do you have a different testimony now, you have a different  
17 memory of it now?

18 A. It's not a different memory. My understanding of the  
19 question is clearer today.

20 Q. So you didn't understand the question that was asked back  
21 in 2009?

22 A. I didn't have specific independent recollection of the  
23 incident so I didn't want to say at that time that I did. But,  
24 obviously, in my time on the job, I have seen hundreds of stop  
25 and frisks, and I have spoken many times to officers about stop

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1 and frisks because I was responsible for giving command  
2 disciplines to officers who failed to properly document stop  
3 and frisks in their memo books, and when you issue command  
4 disciplines, obviously, I was discussing that, and, also, I'd  
5 to go to roll calls and talk about it.

6 Q. Lieutenant Peters, at the time you gave your deposition,  
7 those were your answers, that you didn't remember doing any of  
8 that, correct?

9 A. Right.

10 Q. Just yes or no would be fine, Lieutenant Peters.

11 A. Yes.

12 Q. Now, there is a patrol guide provision with regard to stop,  
13 question and frisk in the police department, correct?

14 A. Yes.

15 MR. MOORE: Could you bring up Plaintiffs' Exhibit 98?

16 This is a document that's in evidence, Judge.

17 Q. Lieutenant Peters, do you recognize this as the patrol  
18 guide provision with respect to stop and frisk?

19 A. Yes.

20 Q. You're familiar with that, correct?

21 A. Yes.

22 Q. Is it in fact true that since you became the ICO of the  
23 28th Precinct, you don't recall discussing this patrol guide  
24 provision with any member of the 28th Precinct, at least as of  
25 the time you gave your deposition?

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1 A. No.

2 Q. That's not true?

3 A. No. I have spoken many times to the officers about it.

4 Q. If you would, if you could turn to page 31.

5 Do you recall being asked this question and giving  
6 this answer back in November of 2009?

7 At the time, you were represented by counsel, correct?

8 A. Yes.

9 Q. And you were given a copy of this deposition to review  
10 after the deposition, correct?

11 A. I received it a short time ago.

12 Q. Are you saying you were not given an opportunity to review  
13 the deposition?

14 A. I never saw it until a couple of weeks ago.

15 Q. In any event, back in November of 2009, do you recall being  
16 asked this question and giving this answer. Line 9, page 31.

17 "Q. Since becoming the ICO at the 28th Precinct, have you  
18 discussed procedure number 212-11 with any member of the 28th  
19 Precinct?

20 "A. Not that I remember.

21 "Q. With anyone else at the NYPD?

22 "A. Not that I remember."

23 Do you recall giving those answers to those questions  
24 back in November of 2009?

25 A. Yes.

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1 Q. Were you confused about those questions back then too?

2 A. Yes. I was being very specific, in that I never went into  
3 anybody and said, I want to discuss with you patrol guide  
4 procedure 212-11, but, obviously, I had many discussions with  
5 my officers and the commanding officer about stop and frisks.

6 THE COURT: When you say that, you mean individual  
7 stops that they did?

8 THE WITNESS: Yes. Quite often and just in general  
9 procedures, because that's part of my job and in doing  
10 investigations that would come up all the time. But I was  
11 being very particular to the language saying, I didn't go in  
12 there and say, according to patrol guide 212-11. So I was  
13 being very exact at the time.

14 Q. Let me hand you what has been marked as Plaintiffs' Exhibit  
15 282.

16 MR. MOORE: I think this might have been marked as a  
17 defendants' exhibit, Judge, but it's Plaintiffs' 282.

18 THE COURT: Is it in evidence?

19 MR. MOORE: I am not sure if it is, but I am going to  
20 move it in evidence.

21 THE COURT: Is it from the patrol guide?

22 MR. MOORE: Yes.

23 Any objection to 282?

24 THE COURT: Do you know what section it is?

25 It's a page of the patrol guide. Does anybody object?

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1 MR. KUNZ: No.

2 THE COURT: 282 is received.

3 (Plaintiffs' Exhibit 282 received in evidence)

4 Q. Do you recall receiving this? This is an interim order  
5 from the police department. Do you recall receiving that,  
6 Lieutenant Peters?

7 A. Not specifically, no.

8 Q. This relates to what?

9 A. It's a revision to the stop and frisk form.

10 Q. Does this deal with the creation of a card that can be  
11 given to people who were stopped?

12 A. According to this patrol guide procedure, it was a pilot  
13 program that was in the 32, 44 and 75.

14 Q. Were you ever aware of this pilot program?

15 A. Since the 28 was not in that pilot program, I was not aware  
16 of it.

17 Q. You never heard it discussed?

18 A. I have no independent recollection.

19 Q. After some period of time, were you aware whether this  
20 became an actual policy of all the precincts in the police  
21 department or did it just stay a pilot program?

22 A. Eventually it went to all the precincts.

23 Q. Do you ever recall -- well, is it your testimony that you  
24 never actually saw this interim order, interim order 20 -- let  
25 me finish the question. Interim order 20 of April 23, 2009,

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1 you don't recall seeing this revision to the patrol guide?

2 A. I am sure I have seen it. I don't have an independent  
3 recollection of when I received it.

4 Q. You don't ever recall discussing this document with anyone  
5 at the police department?

6 A. Of course I have discussed it. If the officers are giving  
7 out those cards, that's part of their required duties.

8 Q. Why don't you turn to page 34 of your deposition.

9 Actually, beginning on page 33. I am going to read  
10 the question and answer. Page 33, line 11.

11 "Q. Lieutenant, I am going to hand you what is going to be  
12 marked as Exhibit 3, which is Bates NYC\_2\_6984."

13 If you look at the document, that's 6984 in front of  
14 you, correct?

15 A. Yes.

16 Q. Just so we are sure about what the document is.

17 "Q. Lieutenant, do you recognize this document?

18 "A. Yes.

19 "Q. What is it?

20 "A. It's a revision to a patrol guide procedure.

21 "Q. How do you recognize this document?

22 "A. Could you clarify the question?

23 "Q. Have you seen it before?

24 "A. Yes.

25 "Q. When have you seen it?

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1 "A. I don't remember.

2 "Q. Have you discussed this document with anyone?"

3 Then Mr. Hazan says: "Besides your attorney.

4 "A. I don't remember."

5 Do you recall being asked that question and giving  
6 that answer at your deposition in November of 2009?

7 A. Yes.

8 Q. So that was your memory back then, right?

9 A. Yes.

10 Q. Have you ever seen this document, sir?

11 A. Yes.

12 Q. This is the operations order 11, dated March 13, 2002,  
13 concerning the department's policy regarding racial profiling,  
14 correct?

15 A. Yes.

16 Q. While you were in the department, was this policy ever  
17 replaced by any other policy?

18 A. I don't remember.

19 Q. Let me show you what was previously marked as Plaintiffs'  
20 Exhibit 183, which is also in evidence, which is a document  
21 also entitled, "Department policy prohibiting racial  
22 profiling."

23 Do you recall receiving this document?

24 A. No. Because I was already on my terminal leave and  
25 retirement.

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D4G8FLO4 Peters - direct

1 Q. You were still in the police department?

2 A. Right, but I wasn't at work.

3 Q. Did you still get operations orders or amendments to the  
4 patrol guide while you were on terminal leave?

5 A. No.

6 Q. In any event, during the time you were the ICO of the 28th  
7 Precinct, you were aware of a policy in the police department  
8 regarding racial profiling, right?

9 A. Yes.

10 Q. What would you describe that policy to be, in your own  
11 words?

12 A. That police officers can't stop people based upon  
13 ethnicity, race, gender.

14 Q. The policy, the one that you're aware of back in 2002,  
15 again, referring to Plaintiffs' Exhibit 184, set forth a  
16 self-inspection protocol with regard to the issue of racial  
17 profiling, correct?

18 A. Yes.

19 Q. I am going to hand you two documents, the first two pages  
20 are Plaintiffs' Exhibit 58, and the second is Plaintiffs'  
21 Exhibit 61, and ask you if you can identify those two  
22 documents.

23 Do you know what Plaintiffs' Exhibit 58, the first two  
24 pages is?

25 A. The self-inspection for police initiated enforcement.

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1 Q. This is a blank copy of the self-inspection form that was  
2 implemented following the operations order number 11 of March  
3 13, 2002, correct?

4 A. Yes.

5 MR. MOORE: Move the admission of Plaintiffs' Exhibit  
6 58.

7 MR. KUNZ: No objection.

8 THE COURT: 58 is received.

9 (Plaintiffs' Exhibit 58 received in evidence)

10 Q. The third page of that document, which is Plaintiffs'  
11 Exhibit 61, is entitled, "Rating parameters for police  
12 initiated enforcement work sheet 802A." Do you see that?

13 A. Yes.

14 Q. That relates to the blank work sheet that has been  
15 identified as Plaintiffs' Exhibit 58, correct?

16 A. Yes.

17 MR. MOORE: Move the admission of Plaintiffs' Exhibit  
18 61.

19 MR. KUNZ: No objection.

20 THE COURT: 61 is received.

21 (Plaintiffs' Exhibit 61 received in evidence)

22 Q. Now, the self-inspection protocol for racial profiling done  
23 in the 28th Precinct was done by you for some period of time,  
24 correct?

25 A. I had my assistant do it.

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1 Q. But you reviewed it, correct?

2 A. I was the reviewing officer.

3 Q. Your assistant prepared it but you reviewed it, correct?

4 A. Yes.

5 Q. That's separate and apart from the self-inspection protocol  
6 on the issue of just stop and frisk generally, correct?

7 A. Yes.

8 Q. The self-inspection protocol for racial profiling involves  
9 reviewing the last five online booking sheets for  
10 self-initiated arrests for that month in the precinct, correct?

11 A. Yes.

12 Q. If the arrest also involves a stop and frisk, then a copy  
13 of the stop and frisk form should be included as part of the  
14 self-inspection, correct?

15 A. Yes.

16 Q. Now, you don't recall discussing this self-inspection  
17 protocol regarding racial profiling with either of your  
18 superiors in the 28th Precinct, is that correct?

19 A. It was a self-inspection that we had so I probably  
20 discussed it with them at sometime.

21 Q. You don't recall discussing it with your superiors in the  
22 28th Precinct, correct?

23 A. I don't have an independent recollection of it, but all  
24 self-inspections were discussed.

25 Q. Why don't you turn to page 40 of your deposition, beginning

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1 on line 23, and read to the next page 41, line 4, read to  
2 yourself.

3 You say you don't have a recollection. Just read  
4 those lines if you would. When you finish, just let me know.

5 A. OK.

6 Q. Does that refresh your recollection that you don't remember  
7 having ever discussed the self-inspection protocols regarding  
8 racial profiling with either of your superiors who you reported  
9 to?

10 A. It says that I did.

11 Q. I'm sorry?

12 A. It gives a specific date that I did, right?

13 Q. The question is, does it refresh your recollection that you  
14 don't remember discussing it?

15 A. Yes.

16 Q. Now, during the time you were the ICO, there was never a  
17 time, was there, where there was an indication that the 28th  
18 Precinct was not complying with the NYPD policies regarding  
19 racial profiling?

20 Do you understand the question?

21 A. Yes. Were we ever noncompliant?

22 Q. You were never not in compliance, as far as you could tell,  
23 with that policy, correct?

24 A. Yes.

25 Q. Now, you are also aware that police officers are required

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- 1 to make entries in their memo books concerning certain  
2 materials, correct?  
3 A. Yes.  
4 Q. Officers must put in the memo books the tour they are  
5 working, correct?  
6 A. Yes.  
7 Q. Their assignment for the day?  
8 A. Yes.  
9 Q. Their partner?  
10 A. Yes.  
11 Q. The vehicle assigned?  
12 A. Yes.  
13 Q. The color of the day?  
14 A. Yes.  
15 Q. Their assignments, any assignment they gave, any activity  
16 they do during the day, correct?  
17 A. Yes.  
18 Q. And the disposition of those assignments, correct?  
19 A. Yes.  
20 Q. With regard to arrests, there should be enough details in  
21 the activity log or the memo book that would be able to refresh  
22 their memory at some point after that fact, correct?  
23 A. Yes.  
24 Q. The same is true with regard to stop and frisk, they are  
25 required to document in their activity logs enough detail so

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D4G8FLO4 Peters - direct

1 that they can recall it at some point later on, correct?

2 A. Yes.

3 Q. That's how they are trained, at least at the academy, how  
4 police officers are trained at the academy, correct?

5 A. Yes.

6 Q. That's how sergeants and lieutenants are trained with  
7 respect to supervising police officers, correct?

8 A. Yes.

9 Q. Now, during the time you were the ICO of the 28th Precinct,  
10 the 28th Precinct consistently failed to live up to  
11 expectations with respect to whether officers were filling out  
12 the details of stops and frisks in their memo books, is that  
13 correct?

14 A. Yes.

15 Q. Let me hand you --

16 MR. MOORE: Judge, this is again a collection of the  
17 QAD audit sheets, but just focusing on the 28th Precinct. I  
18 have provided a copy to the city.

19 THE COURT: Any objection?

20 MR. KUNZ: No. I agree it should have its own exhibit  
21 number.

22 MR. MOORE: I move this document into evidence as  
23 Plaintiffs' Exhibit 459.

24 THE COURT: 459 is received.

25 (Plaintiffs' Exhibit 459 received in evidence)

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D4G8FLO4 Peters - direct

1 MR. MOORE: I will provide you a copy.

2 Q. Are you familiar with these forms, Lieutenant Peters?

3 A. Yes.

4 Q. Would you agree with me that what I have provided here is a  
5 yearly compilation going from 2003 to 2012 of the audit of the  
6 stop, question and frisk, including the 28th Precinct, for  
7 those years?

8 A. Yes.

9 Q. There is a column on this form toward the right which asks  
10 whether members or police officers are entering the details of  
11 stop and frisks into their memo books, correct?

12 A. Yes.

13 Q. Consistently, throughout the years you were the integrity  
14 control officer, your precinct failed this portion of the  
15 audit, correct?

16 A. Yes. There was one year there was a rating period where we  
17 did pass, but I would say for the most part that was --

18 MR. MOORE: I am not going to go through each one.

19 It's in here. You will be able to see how they did.

20 THE COURT: What is a passing score?

21 THE WITNESS: 3.0 is passing.

22 THE COURT: You think one year it was more than 3.0?

23 THE WITNESS: 2010, we had 3.0 in that particular

24 category. We passed the overall inspection.

25 THE COURT: But all the other years it was not a

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1 passing score?

2 THE WITNESS: Right, in that particular category.

3 THE COURT: In that category. OK.

4 Q. In the year 2010, you got a 3.0?

5 A. Correct.

6 Q. Every other year it was below 3.0?

7 A. Yes.

8 Q. Every year it was below 3.0, there would be a directive  
9 sent out saying there should be more training and more  
10 instruction of the officers to make sure they entered the  
11 details of stops and frisks into their memo books, correct?

12 A. Yes.

13 Q. And every year following that, except for 2010, the  
14 precinct failed that portion of the audit, correct?

15 A. Yes.

16 THE COURT: Mr. Moore, do you know how many times you  
17 have now told me that?

18 MR. MOORE: With respect to the 28th Precinct?

19 THE COURT: You're being repetitive. You told me and  
20 then you told me and then you told me again. I only need  
21 things told to me once. We have to watch our time.

22 MR. MOORE: This is the first integrity control  
23 officer --

24 THE COURT: I don't need to hear it three times.

25 MR. MOORE: That's why I did it just for the 28th

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1 Precinct. Sorry.

2 If you can pull up Plaintiffs' Exhibit 96.

3 Judge, Let me just say, I don't want to lengthen this  
4 out, but sometimes it's important to go over something that's  
5 been gone over with a particular witness.

6 THE COURT: It is not important. It's a trier of  
7 fact, nonjury. If I heard it once, I don't need to hear it  
8 three or four times. I have got the point.

9 MR. MOORE: All right, Judge.

10 Q. Are you familiar with Plaintiffs' Exhibit 96?

11 A. Yes.

12 Q. This is an operations order dated September 11, 2008  
13 regarding activity logs, right?

14 A. Yes.

15 Q. There's two pages, some guidelines for officers in filling  
16 out activity logs, correct?

17 A. Yes.

18 (Continued on next page)

19

20

21

22

23

24

25

D4G9FLO5 Peters - direct

1 Q. And on page two there's an example of what the kind of  
2 detail is required in filling out activity logs, correct?

3 A. Yes.

4 Q. And you were aware of that while you were the integrity  
5 control officer of the 28th precinct, correct?

6 A. Yes.

7 Q. Let me hand you a document that has been -- not been marked  
8 into evidence, Plaintiffs' Exhibit 84.

9 Are you familiar with this document, sir?

10 A. No, sir.

11 Q. This is a document entitled command level instructor's  
12 guide dated June of 2008; is that correct?

13 A. That's what it says. I've never seen the document before.

14 MR. MOORE: Judge, I don't think there's any objection  
15 to this being entered into evidence.

16 THE COURT: Is there?

17 MR. KUNZ: There no objection.

18 THE COURT: 84 is received.

19 (Plaintiffs' Exhibit 84 received in evidence)

20 Q. Let me direct your attention to page 8 of this document,  
21 which is Bates stamped number 5419?

22 THE COURT: Start with the bottom right-hand numbers.  
23 5419 will be the last four digits.

24 A. I got it.

25 Q. There's some discussion there of the importance of putting

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1 in the details of a stop in an officer's activity log, correct?

2 A. Yes.

3 Q. And do you agree with the statement that the reason for  
4 that -- the entry should be not limited to just the narrative  
5 information that's contained on the 250 but it should be more  
6 detail?

7 A. Ideally as much information that would help refresh the  
8 officer's memory would be best.

9 Q. This specifically directs, in terms of training officers,  
10 that they're supposed to put details in the memo book that  
11 don't just repeat what's already in the 250, correct?

12 THE COURT: Why do you ask him. The document says it.  
13 "This includes, but is not limited to any narrative information  
14 that is not on the form."

15 MR. MOORE: I'm asking for his understanding, Judge.  
16 But I'll move on.

17 THE COURT: Why do I need it? This is stronger.

18 It also says the log must also be used for every stop  
19 situation.

20 You see all that, right?

21 THE WITNESS: Yes.

22 THE COURT: It's what the document says.

23 Now were people doing it?

24 THE WITNESS: You know, ideally, no.

25 Unfortunately, for many years in the police department

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1 police officers would put a minimal amount into their activity  
2 logs. So it's been a period of retraining, to get them to turn  
3 it around, and put more in as opposed to putting less in.

4 Q. But during the time you were the ICO it wasn't being done,  
5 correct?

6 A. It was getting better. We weren't at a hundred percent.  
7 But it was definitely improving. Where you had officers just  
8 putting one line in, at least we're getting them to do three,  
9 four lines.

10 Was it perfect? No.

11 Q. You attended supervisors' meetings in your capacity as the  
12 ICO of the 20th precinct, correct?

13 A. Yes.

14 Q. And you don't recall if the policies or procedures  
15 regarding stop, question and frisk were either raised or  
16 discussed at those biweekly supervisor meetings, do you?

17 A. Yes.

18 Q. Do you recall that being discussed?

19 A. Yes.

20 Q. Turn to page 60 of your deposition.

21 You remember going to biweekly supervisors' meetings?

22 A. Yes.

23 Q. When you were the ICO, correct?

24 A. Yes.

25 Q. Page 60, line 14. Do you recall being asked this question?

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1 "Q. At the biweekly supervisors' meetings, has the subject of  
2 NYPD policies or procedures regarding stops, question and  
3 frisks ever been raised?

4 "A. I don't remember."

5 That was your testimony back in November of 2009,  
6 correct?

7 A. Yes.

8 Q. And, in fact, at that deposition you were also asked, At  
9 the biweekly supervisor meetings that you attended, you don't  
10 recall the subject -- you don't remember the subject of NYPD  
11 policies regarding racial profiling ever being raised, right?  
12 That's what you testified back then, right?

13 A. Yes.

14 Q. Do you have different memory now?

15 A. Yes.

16 I never -- we would not say at a meeting, like, we  
17 need to talk about racial profiling.

18 Q. I just asked you whether you had a different memory.

19 A. Yes.

20 Q. Your memory --

21 A. My understanding of the question is better.

22 Q. Let me finish the question.

23 Your memory is different now than it was when you gave  
24 your deposition in November of --

25 A. No. My understanding of your question is better.

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1 Q. You were also -- you recall also being asked the question,  
2 "Do you recall at those biweekly supervisors' meetings that you  
3 attended whether the subject of NYPD policies or procedures  
4 regarding activity logs were ever raised?"

5 And you answered at that time, "I don't remember."  
6 Correct?

7 A. Yes.

8 Q. All right.

9 And that was your testimony back in November of 2009,  
10 correct?

11 A. Right.

12 Because I didn't have a specific date when I could say  
13 that.

14 Q. Now there were also -- there were also monthly meetings you  
15 attended throughout the borough of integrity control officers,  
16 correct?

17 A. Yes.

18 Q. So -- and at those meetings you don't recall the subject of  
19 racial profiling ever being discussed at those meetings,  
20 correct?

21 A. I didn't have any independent recollection, no.

22 Q. Well when you gave a deposition November of 2009 you said  
23 you don't remember that subject ever being discussed, correct?

24 A. I couldn't give you a specific date on when it was  
25 discussed.

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1 Q. I'm not asking for a date.

2 THE COURT: I thought you testified previously you  
3 don't remember it ever being discussed. Is that right?

4 THE WITNESS: I mean we talked about, you know, if you  
5 talk about cops making stops and you talk about them making  
6 improper memo book entries.

7 THE COURT: No. That's not what he asked you.

8 Do you remember a conversation --

9 THE WITNESS: I don't remember.

10 THE COURT: Excuse me. Excuse me. Whoa, whoa. I  
11 didn't finish my question.

12 Do you remember any discussion about racial profiling?

13 THE WITNESS: No.

14 THE COURT: Okay.

15 Q. Or about memo book entries or --

16 THE COURT: That he says he does.

17 Memo book entries you do recall discussing, right?

18 THE WITNESS: Yes.

19 THE COURT: Stop and frisk?

20 THE WITNESS: Yes.

21 THE COURT: That too. Okay.

22 MR. MOORE: Well, Judge, not to belabor the point.

23 Q. But look at page 63 of your deposition, Lieutenant Peters.

24 Were you asked this question at your deposition?

25 "At the ICO meetings that you have attended, has the

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(212) 805-0300

D4G9FLO5 Peters - direct

1 subject of the NYPD policies or procedures regarding activity  
2 logs ever been raised?"

3 And you answered at the time, "I don't remember."

4 That was your answer back then, correct?

5 A. Yes.

6 Q. All right. And other meetings -- such meetings you had  
7 when you were the ICO was biweekly meetings with the captain or  
8 the CO of the precinct, correct?

9 A. Yes.

10 Q. And you don't recall at those meetings ever discussing the  
11 issue with respect to stop, question and frisk, right?

12 A. I'm sorry. Could you ask the question?

13 Q. You don't remember stop, question and frisk ever being  
14 discussed at those biweekly captains' meetings, do you?

15 A. No. I can't -- I don't have a specific independent  
16 recollection.

17 Q. And you don't remember the issue of racial profiling being  
18 discussed at those biweekly captains' meetings, do you?

19 A. No.

20 Q. And you don't remember the issue of whether officers were  
21 in compliance with the Fourth Amendment ever being discussed at  
22 the biweekly captains' meetings, correct?

23 A. We never spoke about the Fourth Amendment.

24 We talked about cops making memo book entries. If  
25 that falls in, then yes, we did.

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(212) 805-0300

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1 Q. Do you understand that in making stops of people on the  
2 street, that the officers have to comply with the Fourth  
3 Amendment to the U.S. constitution?

4 A. Right.

5 Q. Do you understand that?

6 A. Yes.

7 Q. So was that ever discussed in those terms, was the Fourth  
8 Amendment ever --

9 A. We talked about probable cause --

10 Q. Allow me to finish the question.

11 A. It would incorporate the Fourth Amendment, yes.

12 Q. Do you ever recall -- do you remember the Fourth Amendment  
13 being discussed at those meetings?

14 A. No. Nobody ever said we have to talk about the Fourth  
15 Amendment.

16 THE COURT: You're not really listening to the answer.  
17 He said they never discussed the Fourth Amendment by name. But  
18 they did discuss the probable cause requirement, right?

19 THE WITNESS: Yes.

20 THE COURT: Right.

21 Q. Probable cause for arrest?

22 A. Probable cause for arrest or reasonable suspicion for stop  
23 and frisks.

24 Q. Well I asked you whether you recall whether stop and frisk  
25 was ever discussed at those meetings, and you said you didn't

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(212) 805-0300

D4G9FLO5 Peters - direct

1 remember.

2 A. These things come up all the time at those meetings. So it  
3 was, you know -- I can't give you a specific date. But yeah,  
4 that was always the topic of discussion.

5 Q. All right. Now, I want you to go back for a moment to  
6 Defendants' Exhibit F5.

7 THE COURT: Which one is that?

8 MR. MOORE: That's the one -- sets out the duties of  
9 the command integrity control officer.

10 THE COURT: I think I have that.

11 MR. MOORE: I gave you a copy.

12 THE COURT: It says 7761 in the corner?

13 MR. MOORE: Correct, Judge.

14 THE COURT: Okay.

15 Q. Number four of this?

16 MR. KUNZ: I'm sorry. Just -- F5 was issued on  
17 April 18, 2003. This copy was issued on a different date. So  
18 I don't know if we want to make sure we're actually using F5 as  
19 opposed to whatever this is.

20 THE COURT: I don't know. The one in evidence in  
21 front of me was issued June 24, '05.

22 MR. MOORE: That was while you were the ICO, correct?

23 THE WITNESS: Yes.

24 MR. MOORE: All right.

25 MR. KUNZ: So I don't know if we want to give this one

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(212) 805-0300

D4G9FLO5 Peters - direct

1 a different exhibit tab number. I'm looking at F5 on my  
2 screen, and it's a different date.

3 MR. MOORE: Is it different, Mr. Kunz?

4 MR. KUNZ: I haven't gone through it line by line,  
5 Mr. Moore, but I imagine if there was a different number there  
6 were changes.

7 MR. MOORE: Judge, if you want me go through having  
8 a --

9 MR. KUNZ: Just put a tab number on that one.

10 THE COURT: He's just saying put a Plaintiffs' number.

11 MR. MOORE: Fine. I'll put on 460. Move the  
12 admission of Plaintiffs' Exhibit 460, Judge.

13 MR. KUNZ: No objection.

14 THE COURT: 460 is received.

15 (Plaintiffs' Exhibit 460 received in evidence)

16 THE COURT: He wants you to look at number four for a  
17 minute.

18 Q. Number four says that one of the responsibilities of a  
19 command integrity control officer is to make recommendations  
20 concerning -- to the commanding officer concerning integrity  
21 control, correct?

22 A. Yes.

23 Q. Did you ever make any recommendations to the commanding  
24 officer during the time you were the ICO concerning anything  
25 having to do with memo book entries or activity logs?

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(212) 805-0300

D4G9FLO5 Peters - direct

1 A. Yes.

2 Q. Turn to page 77 of your deposition.

3 Line 2, page 77.

4 "Q. Have you made any recommendations regarding activity log  
5 entries?

6 "A. I don't remember."

7 So at your deposition in November 2009 when you were  
8 asked that question you said you didn't remember whether you  
9 had ever made any, correct?

10 A. Yes.

11 Q. But you're now remembering that you made some now?

12 A. I always make -- we always make recommendations. I can't  
13 tell you a specific. So that's why I said no at that time.

14 Q. So if you did you can't --

15 A. A specific one, no, I don't.

16 But everyday I met with the CO. There was always  
17 issues to be discussed. And recommendations to be made.

18 Q. And you don't recall making any recommendations at any time  
19 to the commanding officer concerning stop, question and frisk,  
20 right?

21 A. I'm sure we had numerous discussions about memo book  
22 entries and stop and frisks but --

23 Q. Do you recall being asked at your deposition:

24 "Q. Have you made any recommendations regarding stop, question  
25 and frisk?"

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D4G9FLO5

Peters - direct

1                   And your answer was, "I don't remember."

2                   That's what you testified to at your deposition,

3 correct?

4 A. Yes.

5 Q. And finally, at these -- with respect to making  
6 recommendations, you don't remember ever making any  
7 recommendations to the -- to your -- concerning -- to your  
8 commanding officer concerning anything having to do with racial  
9 profiling, right?

10 A. I don't remember mentioning racial profiling, no.

11 Q. You don't remember ever mentioning the word racial  
12 profiling?

13 A. Right. Correct.

14 Q. Then it says, if you look at paragraph ten, it says you  
15 have -- one of your responsibilities is "conduct investigations  
16 and submit reports," correct?

17 A. Yes.

18 Q. And you don't recall ever conducting any investigations  
19 concerning whether officers were in compliance with the  
20 regulations concerning stop, question and frisk, right? You  
21 don't remember that, right?

22 A. I can't -- I get many cases. They -- a lot of them  
23 incorporated people who said they were unlawfully stopped.

24 So -- yes, they would fall into those categories.

25 Q. Once again at your deposition, page 82.

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D4G9FLO5 Peters - direct

1 "Q. Have any of those investigations to which you have been  
2 assigned involved an officer's compliance with NYPD policies  
3 and procedures regarding stop, question and frisk?"

4 And your answer was, "I don't remember."

5 That's what you testified to in November of 2009,  
6 correct?

7 A. Correct.

8 Q. And you also testified in 2009 that you don't remember any  
9 investigations concerning either racial profiling or memo book  
10 or activity logs, correct?

11 A. Correct.

12 Q. Now, take a look at paragraph 28 of this document; the  
13 second page, item number 28.

14 Do you see that?

15 A. (No response).

16 Q. It says "Debrief prisoners concerning corruption/serious  
17 misconduct, when possible"?

18 A. Yes.

19 Q. Did you ever have occasion to debrief people who were in  
20 custody while you were an integrity control officer in the  
21 28th precinct?

22 A. We tried to do seven to ten prisoners a month, debrief  
23 them.

24 Q. I'm sorry. I didn't hear the answer.

25 A. We usually try to hit -- we usually try to do seven to ten

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(212) 805-0300



D4G9FLO5 Peters - direct

1 prisoners a month on --

2 Q. Did you ever have -- you never asked any of those people  
3 about issues related to stop and frisk, did you?

4 A. I asked them the circumstances of why they were arrested.  
5 I asked them if they had any complaints about the officer's  
6 conduct. And if they had a complaint then I would file --  
7 appropriately, you know, give -- do a civilian complaint. Or  
8 if it was an allegation of missing property, we would notify  
9 internal affairs.

10 Q. So, is it your testimony that you do recall debriefing a  
11 prisoner regarding stop, question and frisk or you don't?

12 A. I didn't specifically ever ask a prisoner about --

13 Q. Stop, question --

14 A. Stop, question and frisk. But I asked them about the  
15 arrest, the circumstances of the arrest and if anything was  
16 inappropriate.

17 Q. Again, you don't ever recall debriefing a prisoner about  
18 the possibility of their arrest having been based on -- or  
19 their stop having been based on issues involving racial  
20 profiling, right?

21 You never debriefed a prisoner on that, correct?

22 A. If a prisoner had any issues --

23 Q. If you could answer yes or no, if you could recall doing  
24 that?

25 A. Yes.

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(212) 805-0300

D4G9FLO5 Peters - direct

1 Q. Do you ever recall doing that?

2 A. Not particularly. I would ask them a general thing. If  
3 they said yes, they were stopped because they were black  
4 obviously we'd do a CCRB for them.

5 Q. So you did CCRB complaints?

6 A. If someone made a civilian complaint, yeah, of course, we  
7 do civilian complaints.

8 Q. So is it your testimony that you said you would do a CCRB  
9 complaint for them?

10 A. If they had a civilian complaint we'd have one taken. I  
11 don't remember specifically --

12 Q. I'm trying to understand the answer to your last question.

13 My question was do you ever recall ever debriefing  
14 prisoners about racial profiling?

15 And you said if they said they were stopped because  
16 they were black, they would -- you would do a CCRB complaint  
17 for them? Isn't that what you testified to?

18 A. Yes.

19 THE COURT: So what does that mean? He's trying to  
20 find out what does it mean to do the complaint for them?

21 THE WITNESS: We'd go in there and we'd fill out the  
22 civilian complaint form. At some point --

23 THE COURT: You would?

24 THE WITNESS: Yeah, because the person is complaining.

25 THE COURT: So you would fill it out for them?

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(212) 805-0300

D4G9FLO5 Peters - direct

1 THE WITNESS: Right. We wouldn't give them a pen.  
2 But we would fill out the form. And then you know at some  
3 point down the road somebody from CCRB would contact them.

4 THE COURT: I just wanted to know if you would  
5 actually fill out the form for them.

6 THE WITNESS: Yeah.

7 THE COURT: And then they'd sign it?

8 THE WITNESS: They'd sign it or we'd give them the  
9 number that we got because we would call it in right away, so  
10 we at least give them the number. Sometimes CCRB would  
11 interview them right there.

12 Q. How many complaints do you recall facilitating about the  
13 issue of racial profiling?

14 A. I don't remember.

15 THE COURT: More than one?

16 THE WITNESS: Oh, yes. I mean people would stop --  
17 people would often say the reason I was stopped was because I  
18 was black.

19 THE COURT: Did that happen more than ten times?

20 THE WITNESS: At least a half a dozen. I mean a lot  
21 of civilian complaints when you would read them, that's what  
22 people would allege. I mean, that's --

23 Q. And, all right. So --

24 MR. MOORE: Judge, I'm going to, again, what number  
25 are we up to?

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D4G9FLO5 Peters - direct

1 THE COURT: 461.

2 What is 461?

3 MR. MOORE: Judge, these are three months of filled  
4 out 802-A worksheets for the year 2009 that Lieutenant Peters  
5 had reviewed.

6 I want to move them into evidence. I provided copies  
7 of them to the city previously.

8 THE COURT: Any objection, Mr. Kunz?

9 MR. KUNZ: I'm confused how they don't have an exhibit  
10 number.

11 MR. MOORE: Because they were taken out of a larger  
12 document, exhibit called D6, which was Defendants' Exhibit. I  
13 pulled the ones just for --

14 THE COURT: I see.

15 MR. MOORE: -- lieutenant Peters.

16 MR. KUNZ: If these are excerpts of D6 we have no  
17 objection.

18 THE COURT: They are. So 461 is received.

19 (Plaintiffs' Exhibit 461 received in evidence)

20 MR. KUNZ: I will say that it does not look like that  
21 D6 was identified as a potential exhibit with this witness.

22 MR. MOORE: I disagree.

23 MR. KUNZ: I have the printed list right here.

24 Q. Lieutenant Peters, do you recognize these forms here?

25 A. This is the 28 precinct self-inspection for

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(212) 805-0300

D4G9FLO5 Peters - direct

1 police-initiated enforcement.

2 Q. And just for the record I'll indicate that it's for the  
3 months of August, September, and July 2009.

4 THE COURT: July, August, September.

5 MR. MOORE: July, August, September.

6 THE COURT: I know. But that's what you meant July,  
7 August September. Okay.

8 Q. With each 802-A worksheet there is the -- well, the  
9 coversheet and then there is the five -- the documents with  
10 respect to five police-initiated enforcement actions in the  
11 precinct, correct?

12 A. Yes.

13 Q. And just so the Court, if it wants to look at it, if you  
14 look at the first enforcement action it appears at page 7849  
15 which is the fourth page of this document.

16 THE COURT: Okay.

17 Q. This is known as an online booking sheet, correct.

18 A. Yes.

19 Q. The two pages are an online booking sheet, correct?

20 A. Yes.

21 Q. And if you notice up at the top left-hand side of the  
22 document, a little bit down, there's a section -- there's a box  
23 that says stop and frisk.

24 Do you see that?

25 A. Yes.

D4G9FLO5 Peters - direct

1 THE COURT: I don't.

2 MR. MOORE: Coming down from where it says arrest date  
3 up at the top.

4 THE COURT: I see. Stop and frisk, no. On that one.

5 Q. So that means this was a probable cause arrest, correct?

6 A. Correct.

7 Q. And there is no -- there would be no 250 form or  
8 stop-and-frisk form that would go along with this, correct?

9 A. Yes.

10 Q. And so each of these -- each of these enforcement actions  
11 would indicate whether there was a stop-and-frisk form,  
12 correct?

13 A. Yes.

14 Q. If you look at page -- and if the stop -- if there was a  
15 stop-and-frisk form, it should be attached to this document,  
16 correct?

17 A. Yes.

18 Q. If you look at Bates stamp number 7857, just as an example  
19 of one where the stop and frisk is checked yes.

20 THE COURT: Yes. I see it.

21 Q. You see that the stop-and-frisk section, there is box there  
22 is checked yes, correct?

23 A. Yes.

24 Q. But there was no stop-and-frisk form attached to this  
25 document; is that correct?

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(212) 805-0300

D4G9FLO5 Peters - direct

1 A. Not to these copies.

2 Q. Not to the documents that were produced to us, so.

3 Do you have an independent recollection as to whether  
4 there was a stop-and-frisk form attached to this document?

5 A. No.

6 Q. All right. If you look at this particular document, it  
7 says -- if you go to the detail section there, you see the  
8 detail section. We're talking about 7857.

9 A. Yes.

10 Q. It says, "At time/place of occurrence defendant was  
11 observed showing a zip bag of marijuana to an unapprehended  
12 other."

13 Do you see that?

14 A. Yes.

15 Q. So the officer would observe criminal conduct, correct?

16 A. There might have been more to it like unable to identify  
17 the marijuana. I don't know how far the person was. Did they  
18 identify it as marijuana from where they were? Did they have  
19 to go speak to the person?

20 Q. I'm just trying to figure out whether there was even a need  
21 for a stop-and-frisk form here if the officer was observing  
22 somebody --

23 A. Whenever we --

24 Q. Let me finish the question.

25 -- if the officer was observing somebody showing a zip

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(212) 805-0300

D4G9FLO5 Peters - direct

1 bag of marijuana. In that case, wouldn't that be a probable  
2 cause arrest?

3 A. You can't tell from that because "showing a bag of  
4 marijuana," but how was the officer able to identify it as bag  
5 of marijuana?

6 Q. Well if somebody is smoking a marijuana joint?

7 A. It doesn't say that.

8 Q. I know. If somebody is smoking a marijuana cigarette and  
9 the officer observes them they don't necessarily know it's  
10 marijuana. They just believe it's marijuana. That would be a  
11 probable cause arrest, correct?

12 A. Well, you could smell the marijuana.

13 Q. All right. If they just observed them with a marijuana  
14 cigarette, are you saying that would not be a probable cause  
15 arrest?

16 A. No. You'd have to find out more because you would have  
17 to -- was the marijuana cigarette lit so you could smell the  
18 odor of the marijuana? Otherwise, how could you tell it wasn't  
19 a regular cigarette?

20 Q. All right. Why don't you go to 78 -- go to page 7864 in  
21 this document. Another one of these police-initiated arrests.  
22 This particular one took place in the month of September 2009.

23 Are you at 7864?

24 A. Yes.

25 Q. And the details is that, "At time/place of occurrence the

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(212) 805-0300



D4G9FLO5 Peters - direct

1 defendant was observed exchanging marijuana for U.S. currency  
2 with apprehended buyer."

3 Do you see that?

4 A. Yes.

5 Q. And then it says, "Stop and frisk, no."

6 Do you see that?

7 A. Yes.

8 Q. When you look at these forms do you ever try to determine  
9 whether there was even a need for a stop-and-frisk form?

10 A. On all these arrests, when we can the self-inspection, we  
11 bring the officers up and discuss the arrest.

12 Q. Well, you just said that in each case you would bring the  
13 officer up to discuss it, correct?

14 A. If feasible, 90 percent, 98 percent of the time, yes.

15 Q. Why don't you turn to page 112 of your deposition.

16 Looking at on page 112, looking at line 10, do you  
17 recall being asked this question and giving this answer?

18 "Q. Do you recall any time in which you spoke with an officer  
19 to determine whether an officer had probable cause to make an  
20 arrest?"

21 And your answer was, "At this time I don't recall."

22 That was your testimony back in November 2009,  
23 correct?

24 THE COURT: That's his answer to every question that  
25 you've read.

D4G9FLO5 Peters - direct

1 THE WITNESS: Because I didn't have a specific  
2 incident for you at that time. So that's why I said it.

3 Q. All right.

4 MR. MOORE: All right, Judge. Now I want to -- I have  
5 like another five or ten minutes with respect to worksheet 802.

6 Q. Worksheet 802 is the self-inspection protocol of stop and  
7 frisk, correct?

8 A. Yes.

9 Q. And as the integrity control officer of the 28th precinct  
10 you were responsible for reviewing those, correct?

11 A. No.

12 Q. Up until some point in 2009 you were responsible, right?

13 A. Yes. I was the reviewer on that.

14 Q. And then in 2009 that responsibility was given to somebody  
15 else, correct?

16 A. Yes.

17 Q. But at least up until 2009 that was your responsibility  
18 from the year 2002 to 2009, correct?

19 A. As the reviewer, yes.

20 Q. Let me hand you -- once, again, just so the Court has the  
21 blank form before it, Plaintiffs' Exhibit 71 and Plaintiffs'  
22 Exhibit 62.

23 Plaintiffs' Exhibit 71 is the two-page blank 802  
24 worksheet. And 62 is the --

25 THE COURT: Why do I need that? I got an 802-A right

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(212) 805-0300

D4G9FLO5 Peters - direct

1 in front of me.

2 MR. MOORE: I thought you would want a clean copy.

3 THE COURT: It's clean enough.

4 MR. MOORE: Anyway I would move the admission of 62  
5 and 71 into evidence.

6 MR. KUNZ: No objection.

7 THE COURT: I'm sorry. I don't know what 62 and 71  
8 refers to.

9 MR. MOORE: The first two pages of this document are  
10 Plaintiffs' Exhibit 71, Judge. And the third page is  
11 Plaintiffs' Exhibit 62.

12 THE COURT: 62 and 71 are received.

13 (Plaintiffs' Exhibits 62 and 71 received in evidence)

14 MR. MOORE: Again these are documents taken from  
15 Defendants' Exhibit D6, which I've collected, are the 802  
16 worksheets for July, August and September of 2009 that were  
17 prepared in the 28th precinct and reviewed by Lieutenant  
18 Peters.

19 Q. Lieutenant Peters, I'm going to hand you Plaintiffs'  
20 Exhibit 462.

21 Can you identify these documents?

22 A. It's a stop-question-and-frisk report inspection done in  
23 July of 2009 by Sergeant Rosario of the 28 precinct.

24 Q. With respect to -- and these were prepared by Sergeant  
25 Rosario but reviewed by you, correct?

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(212) 805-0300

D4G9FLO5 Peters - direct

1 A. No.

2 Q. You didn't review them at all?

3 A. No.

4 Q. But you recognize them as the 802 forms that were prepared  
5 by the integrity control officers of the 28th precinct for  
6 July, August and September of 2009, correct?

7 A. No. We didn't prepare these.

8 I was not the reviewer. And Sergeant Rosario was not  
9 the assistant ICO.

10 Q. You don't recognize these documents?

11 A. I recognize --

12 Q. What is the document?

13 A. I recognize the form. I did not prepare that document.

14 Q. What are the documents?

15 A. The documents are stop-question-and-frisk self-inspections.

16 Q. For the 28th precinct for July, August and September of  
17 2009, correct?

18 A. Yes.

19 Q. And are you saying that these never came across your desk?

20 A. No. As you can see where it says reviewer's name, my name  
21 was not on there. It's blank.

22 Q. Did you testify at your deposition that you recognized  
23 these documents as the 802 worksheets for the 28th precinct  
24 for this period of time?

25 A. That's what it is. It's a worksheet. Yes.

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(212) 805-0300

D4G9FLO5 Peters - direct

1 MR. MOORE: Judge, move the admission of Plaintiffs'  
2 Exhibit 462.

3 MR. KUNZ: I thought we just did that. We don't have  
4 an objection.

5 THE COURT: I don't have a copy. But you don't  
6 object. 462 is received.

7 (Plaintiffs' Exhibit 462 received in evidence)

8 MR. MOORE: Judge, I have no further questions.

9 THE COURT: Mr. Kunz.

10 MR. KUNZ: Sorry. One second, your Honor.

11 (Pause)

12 CROSS-EXAMINATION

13 BY MR. KUNZ:

14 Q. Could you very briefly tell the Court about your various  
15 assignments with the NYPD since you joined?

16 A. I went into the academy in July 1984.

17 I was assigned to the 34 precinct in 1985 where I  
18 stayed until 1988.

19 I was assigned to the K9 unit after that.

20 I went to the 6 precinct for approximately a year.

21 And then Manhattan South task force K9 for  
22 approximately three more years.

23 And then I was promoted to sergeant in 1991.

24 I went to midtown south for six months.

25 And then to the 7th precinct where I was from 1991

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(212) 805-0300

D4G9FLO5 Peters - cross

1 to 1997. I was a field training -- patrol supervisor, field  
2 training sergeant and the assistant ICO.

3 In 1997 I was promoted to lieutenant. I was assigned  
4 to the 28 precinct where I was a platoon commander, the  
5 operations coordinator for about six months, and then the ICO  
6 from '98 until my retirement in 2012.

7 Q. As the ICO of the 28 precinct, did you attend roll calls?

8 A. Yes, I did.

9 I tried to attend about three roll calls a week. Each  
10 platoon, day tour, four to twelve, midnights. My tours usually  
11 overlapped, certain tours. So if I was doing -- if I came in  
12 at like 5:00 in the evening, I would hit the midnight tour.  
13 And if I was doing -- whatever tour, I tried to hit at least  
14 once a week.

15 Q. As a ICO at the 28 precinct did you have occasion to review  
16 memo books of the sergeants who worked under you?

17 A. Yes. Once a month I was required to inspect all the  
18 supervisors' activity logs that were assigned to the precinct.  
19 So that was a minimum of once a month. And then periodically,  
20 through investigations and communications, I had to also review  
21 sergeants' memo books.

22 Q. As the ICO did you do field inspections?

23 A. Yes. Tried to about three times a week go out into the  
24 field in an unmarked car. Sometimes these tours -- sometimes  
25 it would be for the entire tour. Sometimes for two or three

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D4G9FLO5 Peters - cross

1 hours. I tried to do it three times a week. At odd hours, you  
2 know. And that was a big part of the job was going out on  
3 patrol.

4 Q. And when you were out on patrol would you observe the  
5 police officers in the 28 precinct conducting activity?

6 A. Yes. I mean whenever radio runs would come over, I'd go to  
7 the location. Sometimes I would maybe stay down the block so  
8 the officers wouldn't know I was in the area so I could watch  
9 from a distance and see how the officers conduct themselves.  
10 Sometimes I would pull up to the scene. It varied.

11 But that's how I'd see if the officers -- how the  
12 officers were interacting with the public, if they were doing  
13 the job properly, was to respond to those radio runs.

14 Q. How often would you communicate with the commanding officer  
15 in the 28 precinct?

16 A. Pretty much on a daily basis. If I was working and he was  
17 working at the same time, the first thing I would do is when I  
18 came to work was go in and -- go in and see the commanding  
19 officer of the precinct to discuss any issues I was having in  
20 the command or -- and address any issues that he was having,  
21 anything that he wanted me to work on. So you spend anywhere  
22 from a half-hour to two hours in his office when I would walk  
23 in.

24 MR. KUNZ: No further questions, your Honor.

25 MR. MOORE: Nothing, Judge.

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D4G9FLO5

Peters - cross

1 THE COURT: Okay. You're done. Thank you.

2 (Witness excused)

3 THE COURT: That's good news.

4 MR. CHARNEY: We're going to do Lieutenant Palmieri.

5 THE COURT: No?

6 All right. Barrelli.

7 MR. CHARNEY: We subpoenaed all three of them for  
8 today.

9 THE COURT: We hoped to -- I was actually sitting here  
10 thinking is it Saturday or Sunday that we have to meet if we  
11 can't stick to this schedule. That's what I was thinking.

12 MR. MOORE: So we're going to do Barrelli.

13 THE COURT: We better do somebody because we can't  
14 keep to this schedule.

15 MR. MOORE: I think we're doing pretty good.

16 THE COURT: You can think what you want. I've got it  
17 in writing. Today we're supposed to complete Barrelli and  
18 Palmieri I doubt that's going to happen.

19 It's only Tuesday but if we can't keep up we're going  
20 to have to go to weekends. I told you that.

21 MR. MOORE: Judge, whatever it takes.

22 THE COURT: That's right.

23 MR. MOORE: We call Lieutenant Barrelli, Judge.

24 THE COURT: That's right. Whatever it takes.

25 MR. KUNZ: We went to go grab him.

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D4G9FLO5 Peters - cross

1 THE COURT: Ms. Richardson went.

2 I suggest to you, Mr. Moore, it would go faster if you  
3 didn't repeat yourself.

4 CARLO BARRELLI,

5 called as a witness by the Plaintiffs,

6 having been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. MOORE:

9 Q. When did you retire from the police department?

10 A. The effective date was April 30, 2012.

11 Q. And prior to that what position did you hold in the police  
12 department?

13 A. I was the ICO of the 107 precinct.

14 Q. For the 107th precinct?

15 A. Yes.

16 THE COURT: Where is that?

17 THE WITNESS: It's in Queens south.

18 MR. MOORE: Judge, this is the precinct involving the  
19 stop that involved David Ourlicht, just for your point of  
20 reference.

21 Q. How long were you the ICO for the 107th precinct?

22 A. It started in approximately April 2004. And my last tour  
23 was the end of January of 2012.

24 Yes. 2012. Correct.

25 Q. And during the time you were the ICO was Detective

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D4G9FLO5 Barrelli - direct

1 Inspector Cirabisi the commanding officer of the 107th?

2 A. Deputy Inspector Stephen Cirabisi, correct.

3 Q. Was he your CO for the entire time?

4 A. No, he wasn't.

5 Q. What period of time was he the CO?

6 A. I believe he was transferred in 2006 until --

7 Q. You never -- during the period of time you were in ICO, you  
8 never initiated any disciplinary action based upon violations  
9 of the NYPD's policies regarding stop, question and frisk,  
10 correct?

11 A. No, I didn't.

12 Q. And during that period of time you never initiated any  
13 disciplinary action concerning a violation of the NYPD's policy  
14 regarding racial profiling, correct?

15 A. No.

16 Q. I'm sorry?

17 A. No.

18 Q. And during that period of time you never initiated any  
19 disciplinary action based upon the improper filling out of a  
20 UF 250, right?

21 A. No.

22 MR. MOORE: Judge, I'm going to hand Lieutenant  
23 Barrelli a copy of what's been marked Plaintiffs' Exhibit 463  
24 which is similar to the document that was prepared for the  
25 28th precinct. It's the QAD audits for the borough that

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D4G9FLO5 Barrelli - direct

1 includes the 107th precinct.

2 THE COURT: So any objection to 463?

3 MS. RICHARDSON: No objection.

4 THE COURT: 463 receive.

5 (Plaintiffs' Exhibit 463 received in evidence)

6 Q. Looking at Plaintiffs' Exhibit 463, during the time you  
7 were the ICO of the precinct with respect to whether the audit  
8 of whether the members were checking their activity logs, the  
9 precinct consistently failed that portion of the audit,  
10 correct?

11 A. I don't know.

12 Q. Well were you ever made aware of the results of the QAD  
13 audits that were done of stop, question and frisk on a periodic  
14 basis by QAD, were you ever made aware of the results?

15 A. No.

16 Q. Handing you what's been marked Plaintiffs' Exhibit 464. Do  
17 you recognize these documents?

18 A. I have seen this -- it's a self-inspection.

19 Q. This is based on worksheet 802 the self-inspection for stop  
20 question and frisk, correct?

21 A. Correct.

22 Q. And were you aware of these audits that were done while you  
23 were the ICO?

24 A. No. I didn't prepare this form.

25 Q. Were you aware of the results?

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D4G9FLO5 Barrelli - direct

1 A. No.

2 Q. Were you the ICO in June of 2009?

3 A. Yes.

4 Q. So you don't know how the -- what the results of the audit  
5 were?

6 A. No.

7 Q. Well turn to page two --

8 MR. MOORE: Judge, move the admission of 464.

9 THE COURT: Any objection to 464?

10 MS. RICHARDSON: No objection, your Honor.

11 THE COURT: Received.

12 (Plaintiffs' Exhibit 464 received in evidence)

13 Q. Turn to page -- second page of this document which is Bates  
14 stamp number 7836.

15 A. Okay.

16 Q. This reflects, does it not, the results of the -- withdraw  
17 that question.

18 They documents reflect the results of the audits that  
19 were done for these three months in the 107th precinct,  
20 correct?

21 A. Three months?

22 Q. The document -- 464 that you have before you.

23 A. Correct.

24 Q. It reflects the audit for June --

25 A. Just for the month of June.

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D4G9FLO5 Barrelli - direct

1 Q. Actually for May, June and July of 2009, correct?

2 A. I only see the period evaluated June 2009. On the front  
3 page. I don't see the other months.

4 Q. You don't see that it covers three months?

5 A. I don't see -- where do you see that? I don't see that.

6 Q. Well --

7 A. Okay.

8 MR. MOORE: Counsel stipulate that it covers those  
9 three months?

10 THE WITNESS: I see there's another page behind it.  
11 It's a separate -- yes.

12 Q. It's a collection of the audits for those three months,  
13 correct?

14 A. Correct. I see it.

15 MR. MOORE: I want to hand you what's been marked  
16 Plaintiffs' Exhibit 465.

17 Q. Do you recognize this document, sir?

18 A. Yes.

19 Q. What is this?

20 A. This is the police initiated self-inspection that I  
21 prepared.

22 Q. And this is based on worksheet 802-A, correct?

23 A. That's right.

24 MR. MOORE: Judge, move the admission of Plaintiffs'  
25 Exhibit 465.

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D4G9FLO5 Barrelli - direct

1 MS. RICHARDSON: No objection.

2 THE COURT: 465 received.

3 (Plaintiffs' Exhibits 465 received in evidence)

4 Q. This reflects audits done with respect to the issue of  
5 racial profiling for July -- May, June and July of 2009,  
6 correct.

7 MS. RICHARDSON: For the record, this document is  
8 worksheet 802-A.

9 MR. MOORE: Right.

10 Q. Do you see that it covers those three months?

11 A. I see June and July. I don't know if I'm overlooking May.  
12 There's May. Okay.

13 Q. May, June and July, correct?

14 A. Yes.

15 Q. And this is the audit done pursuant to the NYPD's policy  
16 regarding racial profiling, correct?

17 A. The stop, question and frisk, yes.

18 Q. But specifically with respect to the issue of racial  
19 profiling, right?

20 A. Well, both. As indicated in operation 11, racial  
21 profiling, if anybody was stopped based on their race or if the  
22 initial stop was correct.

23 Q. Right. As you point out, operations order 11 specifically  
24 refers to the policy regarding racial profiling, correct?

25 A. Yes.

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D4G9FLO5

Barrelli - direct

1 Q. And this is the auditing procedure that was developed by  
2 the police department following the passage of that operations  
3 order to audit -- to determine whether the department is  
4 complying with the policy against racial profiling, correct?

5 MS. GROSSMAN: Your Honor, we have other witnesses who  
6 are going to talk about broad strokes. This witness is here to  
7 talk about the inspections. It takes so much time to go over  
8 this. We don't need to be here on the weekend if plaintiffs'  
9 counsel can just go to what this witness knows about the ICO.  
10 We have other witnesses who will talk about the big policy.

11 MR. MOORE: That's really a cheap shot, Judge.

12 THE COURT: I don't know. To go over what operation  
13 order 11 is, it refers to the policy regarding racial profiling  
14 is not a good question. We've had that.

15 MR. MOORE: It's right in the document, Judge.

16 THE COURT: I know. And that's why you don't need to  
17 be doing it.

18 MR. MOORE: It was a foundation for a second question.

19 THE COURT: I know. But it all takes time.

20 Ms. Grossman is right. If you would ask the witness what you  
21 need to ask him. I don't need the runup. I've had it.

22 MR. MOORE: I'm spending ten minutes with this  
23 witness. This is my last two questions. I think I'm trying to  
24 speed it up.

25 THE COURT: Doesn't feel like it.

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D4G9FLO5

Barrelli - direct

1 MR. MOORE: I think it's really a cheap shot for her  
2 to get up and say that to you.

3 THE COURT: It doesn't feel that way.

4 MR. MOORE: It feels that way to me.

5 THE COURT: It doesn't matter what it feels to you.

6 I'm the trier of fact and you're stuck with that.

7 MR. MOORE: I understand, Judge. And I'm happy with  
8 that.

9 THE COURT: Well then get with it.

10 MR. MOORE: Can I ask the follow-up question.

11 THE COURT: I don't know until I hear it, Mr. Moore.

12 Q. Are you aware of any other auditing procedure undertaken by  
13 the police department to audit officers' activity with regard  
14 to the issue of racial profiling other than what's contained or  
15 done pursuant to worksheet 802-A, are you aware of any other  
16 auditing procedure?

17 A. No.

18 MR. MOORE: Nothing further, Judge.

19 THE COURT: What did I learn from this witness,  
20 Mr. Moore?

21 MR. MOORE: Pardon?

22 THE COURT: What did I learn from this witness?

23 MR. MOORE: You learned that in the 107th precinct  
24 they consistently failed -- Judge, I could go into more of the  
25 same question that I did with --

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D4G9FLO5 Barrelli - direct

1 THE COURT: No. I just want to know how effective the  
2 witness was. If you can't tell me what new information I  
3 learned from this witness, I suggest you go through the  
4 remaining witnesses and see if I need them. What did I learn  
5 from this witness that was unique?

6 MR. MOORE: You learned what happened in the 107th  
7 precinct. He was the ICO in the 107th precinct.

8 THE COURT: Okay. Fine.

9 MR. MOORE: Since that's one of the precincts  
10 involving a stop in this case, we believe that that would be  
11 something you would want to know.

12 THE COURT: Okay. All right. Ms. Richardson.

13 CROSS-EXAMINATION

14 BY MS. RICHARDSON:

15 Q. Lieutenant Barrelli, what years were you employed by the  
16 NYPD?

17 A. April 25, 1990 to April --

18 THE COURT: 2012.

19 Q. Can you do me a favor and just speak a little clearer into  
20 the microphone?

21 A. Okay.

22 Q. Your last assignment before you retired was as ICO of the  
23 107th precinct, correct?

24 A. Yes.

25 Q. And it's been over a year since you were last on full duty

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D4G9FLO5

Barrelli - cross

1 as --

2 THE COURT: Yes. He said 2012. This is '13. It has  
3 been over a year.4 Q. Do you remember on direct you were asked a few questions  
5 about Plaintiffs' Exhibit 463. I believe that's still in front  
6 of you?

7 A. Yes.

8 Q. And do you recall that Mr. Moore asked you some questions  
9 about how the 107th precinct consistently failed those audits.  
10 Do you remember that?

11 A. I remember the question, yes.

12 MR. MOORE: Actually it was while he was the ICO,  
13 Judge. It wasn't -- it covers the period of time when he  
14 wasn't the ICO.

15 THE COURT: It does, you said?

16 MR. MOORE: I think it does cover the period of time  
17 he wasn't.

18 BY MS. RICHARDSON:

19 Q. I'd like to turn your attention to the third last page of  
20 that document which is the page bearing Bates stamp number  
21 NYC --22 THE COURT: I don't need all that. Just the last four  
23 digits.

24 MS. RICHARDSON: 2189.

25 THE COURT: Okay.

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D4G9FLO5 Barrelli - cross

1 Q. Do you see on here it lists your precinct, the 107th  
2 precinct?

3 A. Yes.

4 Q. And if you follow that line across, do you see what scores  
5 you received on all of those elements of the audit?

6 A. Perfect score of 4.0 on every single column.

7 Q. And does that include the column that reflects officer memo  
8 book entries?

9 A. Yes, it does.

10 THE COURT: This particular one is what time period,  
11 this 2189 document?

12 MS. RICHARDSON: This is 2011.

13 THE COURT: How do I know that?

14 MS. MARTINI: It's at the top.

15 MS. RICHARDSON: At the very top of the page this is  
16 the page ending in 2183.

17 THE COURT: I see. Go back to 2183.

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

19 THE COURT: Anything further?

20 All right. They're done with you.

21 THE WITNESS: Thank you, Judge.

22 (Witness excused)

23 THE COURT: Honestly I just have a suggestion for  
24 you -- these documents were going to be admitted. There wasn't  
25 going to be an objection. You didn't even need a live witness.

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D4G9FLO5 Barrelli - cross

1 The documents were coming in. You could say after they're in:  
2 Your Honor, we'd like you to look at this column on this page.

3 Then they could say: That's fine. Now look at this  
4 column on that page.

5 That would have accomplished the identical thing. We  
6 didn't need the man to come in. The documents were coming in.  
7 That cross-examine was to look at one column on one page. I  
8 didn't need the man for that.

9 MR. MOORE: That's because I shortened my examination  
10 in light of your comments.

11 THE COURT: I understand. If you can do it all from  
12 documents, I don't need the witness. That one really didn't do  
13 much. If you wanted to offer the documents, if they agreed  
14 that they're coming in, just point to the columns, I'll look at  
15 it, and that's the evidence.

16 MR. MOORE: Judge, there's a tension right now because  
17 I know that you're anxious to get this thing moving.

18 THE COURT: Well, sure.

19 MR. MOORE: We're anxious to get it moving too.

20 THE COURT: Sure.

21 MR. MOORE: It is important -- especially, just  
22 listening to Deputy Inspector Ortiz and earlier Esposito how  
23 wonderful the supervision is.

24 THE COURT: Well, yes.

25 MR. MOORE: For us to be able to bring some of these

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D4G9FLO5 Barrelli - cross

1 witnesses on where the supervision hasn't been all that, what  
2 we would consider --

3 THE COURT: As reflected in the marks on the  
4 documents. All I'm saying, if that's all it is --

5 MR. MOORE: To be fair, I didn't just use the document  
6 with Lieutenant Peters. And I would have gone through much the  
7 similar discussion with Lieutenant Barrelli.

8 THE COURT: Most of the time with Peters you pointed  
9 out that he gave entirely different answers at his deposition,  
10 where he always said, "Not that I remember."

11 MR. MOORE: But isn't that --

12 THE COURT: Yes. That was very dramatic.

13 MR. MOORE: It's not dramatic.

14 THE COURT: Well it was dramatic actually. He changed  
15 his testimony entirely, as you pointed out. But anyway.

16 MR. MOORE: Right. So that's all we're trying to do.  
17 We have the burden to show --

18 THE COURT: Yes, I know.

19 MR. MOORE: -- that on the supervisory level.

20 THE COURT: You don't need to be cumulative.

21 MR. CHARNEY: We only have one more ICO and I don't  
22 plan to introduce I don't think any new documents with him.

23 THE COURT: I'm just saying if you're only reading  
24 from the documents you don't need the person live.

25 MR. CHARNEY: No, you're right.

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D4G9FLO5 Barrelli - cross

1 THE COURT: So that takes us to 4:30. On my list  
2 we're one behind.

3 MS. GROSSMAN: Your Honor, we have a witness that is  
4 the third witness that is an ICO, similar to the two. Maybe we  
5 can work out a stipulation.

6 THE COURT: Maybe.

7 MS. GROSSMAN: Rather than --

8 MR. CHARNEY: It's a different precinct, your Honor.

9 THE COURT: Sure, it's a different precinct. But the  
10 documents are coming in. As I said, you can point to the  
11 columns.

12 MR. CHARNEY: I wasn't planning on introducing any  
13 documents. I wasn't even planning on showing any of those  
14 yearly audits to this witness. I was going to ask him about  
15 what he actually did.

16 THE COURT: Okay.

17 MR. CHARNEY: Which I think is testimony.

18 THE COURT: Yes. That's fine.

19 Okay. See you tomorrow.

20 You know what, I also have a request. I'm piling up a  
21 lot of documents that have been handed up during the course of  
22 many examinations. I don't know if you want to sort through  
23 them, put them back in your folders. Because at the end of the  
24 day I'll just need all the documents that are evidence in the  
25 binders, which I'll probably give back -- Mr. Charney, I'll

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D4G9FLO5 Barrelli - cross

1 probably give them back to you and say remove what isn't in and  
2 keep in what is in. These are all duplicates. You might want  
3 to --

4 MS. MARTINI: I can coordinate with Mr. Brazeal and  
5 take whatever exhibits you wouldn't like.

6 THE COURT: I don't want any of them unless there are  
7 deposition transcripts in that pile.

8 THE DEPUTY CLERK: There are a few.

9 THE COURT: Between the two of you, if you can just  
10 sit there a minute while I take a couple short matters.

11 (Adjourned to April 17, 2013 at 10:00 a.m.)  
12  
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	INDEX OF EXAMINATION	Page
1		
2	Examination of:	
3	SEAN GILLESPIE	
4	Direct By Mr. Charney . . . . .	.3431
5	Cross By Ms. Publicker . . . . .	.3441
6	Redirect By Mr. Charney . . . . .	.3463
7	EDWARD ARIAS	
8	Direct By Ms. Martini . . . . .	.3467
9	Cross By Mr. Kunz . . . . .	.3478
10	Redirect By Ms. Martini . . . . .	.3496
11	CHARLES ORTIZ	
12	Direct By Mr. Charney . . . . .	.3498
13	Cross By Ms. Grossman . . . . .	.3562
14	Redirect By Mr. Charney . . . . .	.3578
15	ENNO PETERS	
16	Direct By Mr. Moore . . . . .	.3579
17	Cross By Mr. Kunz . . . . .	.3625
18	CARLO BARRELLI	
19	Direct By Mr. Moore . . . . .	.3629
20	Cross By Ms. Richardson . . . . .	.3637
21		
22		
23		
24		
25		

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PLAINTIFF EXHIBITS

Exhibit No.	Received
214 . . . . .	.3475
215 . . . . .	.3493
81 . . . . .	.3552
282 . . . . .	.3588
58 . . . . .	.3592
61 . . . . .	.3592
459 . . . . .	.3596
84 . . . . .	.3600
460 . . . . .	.3609
461 . . . . .	.3616
62 and 71 . . . . .	.3623
462 . . . . .	.3625
463 . . . . .	.3631
464 . . . . .	.3632
465 . . . . .	.3634

DEFENDANT EXHIBITS

Exhibit No.	Received
Q13 . . . . .	.3456
F5 . . . . .	.3581

