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1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

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2
3 DAVID FLOYD, et al.,3
4 Plaintiffs,4
5 v. 08 CV 1034 (SAS)5
6 CITY OF NEW YORK, et al.,6
7 Defendants.7
8 -----x8
9 New York, N.Y.

9 April 23, 2013

9 10:05 a.m.

10
10 Before:11
11 HON. SHIRA A. SCHEINDLIN,12
12 District Judge

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1 (Trial resumed)

2 JULIE SCHWARTZ, resumed.

3 DIRECT EXAMINATION (Cont'd)

4 BY MS. BORCHETTA:

5 Q. Good morning, Commissioner Schwartz.

6 A. Good morning.

7 MS. BORCHETTA: Your Honor, before I begin the
8 questioning, I just have one administrative item. After
9 reviewing the transcript from yesterday's testimony, I realized
10 that when we had moved to admit Plaintiffs' 112, although the
11 Court overruled the objection to admission, it was never
12 formally said that it was admitted.

13 THE COURT: Right. 112 is admitted.

14 (Plaintiffs' Exhibit 112 received in evidence)

15 MS. BORCHETTA: For the purpose of notice.

16 THE COURT: Right.

17 BY MS. BORCHETTA:

18 Q. Commissioner Schwartz, you testified yesterday regarding
19 the case file review that assistant advocates conduct, correct?

20 A. Yes.

21 Q. In reviewing the case file and determining whether to
22 recommend action on a substantiated CCRB case, assistant
23 advocates to not interview the subject officer, right?

24 A. Correct.

25 Q. But you may use the commanding officer's evaluation to
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Schwartz - direct

1 judge credibility of the officer, right?

2 A. No. As I said yesterday, it's not for that purpose.

3 Q. I am going to refer you to your deposition in the Floyd
4 case. And this morning, for your assistance, I wrote at the
5 top of each of the depositions the name of the case so you can
6 find it.7 Looking at your deposition in the Floyd case, at page
8 243, reading from lines 4 to 23, do you recall giving the
9 following answers to the following questions:10 "Q. Would the recommendation from their supervisor go into
11 their credibility assessment?"

12 A. One second.

13 Q. 243.

14 A. I was on 244. I'm sorry. Thank you.

15 Q. Line 4 to 23.

16 "Q. Would the recommendation from their supervisor go into
17 their credibility assessment?18 "A. It generally goes more to the type of discipline and the
19 appropriate penalty, unless it was that the person cannot be
20 trusted, very low recommend. I would take that into account
21 because the officer, the COs are, really sending me a very
22 important message by saying that.23 "Q. So if they state something specifically into the officer's
24 credibility, you may take that into account?

25 "A. Or even if there were -- was a poor evaluation, I would

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Schwartz - direct

1 use that to judge their credibility. If it was an outstanding
2 evaluation, that may be something that I may consider. But if
3 it were average to good, I would just use it on the other end."

4 Did you give that testimony?

5 A. Yes.

6 Q. And in the talking points prepared by the NYPD regarding
7 the CCRB's 2007 annual report, it was noted that the Department
8 Advocate's Office believes that when an officer is acting in
9 good faith, fairness dictates that that good faith should be
10 considered as mitigation by the CCRB investigator and the panel
11 and should favorably impact the evaluation of the officer's
12 credibility, right?

13 A. For recommendation of the level of discipline.

14 Q. But it says it should be considered --

15 A. I don't know where you're reading. Can I have an
16 opportunity to look?

17 Q. It's on your screen.

18 MS. BORCHETTA: For the record, this is Defendants'
19 W13 that we are looking at.

20 A. For the record, as I said yesterday, just to make it clear,
21 I don't know if this was in response to the report or for the
22 City Council. And it says that, and I think it says in another
23 part, it's to the level of recommendation.

24 Q. You recall testifying yesterday about recidivism?

25 A. Yes.

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Schwartz - direct

1 Q. I want you to assume that an officer has a substantiated
2 CCRB complaint for which you recommend that he receive
3 instructions. OK? If that officer receives a second
4 substantiated complaint for the same conduct, you would
5 recommend the next highest level of discipline, right?
6 A. Not necessarily, but I would not recommend instructions
7 again.

8 Q. Instructions are the lowest form of discipline, right?
9 A. If someone received instructions and they commit the same
10 misconduct again on the same allegation, I would not recommend
11 that they receive instructions again. I can't say that they
12 would definitely get like, say, for example, a command
13 discipline, because what they did the second time could rise to
14 the level of charges and specifications.

15 Q. So you're taking issue with the next highest, right?
16 A. I am just saying I can't say for sure that would be what I
17 would recommend.

18 Q. But you can say for sure that you would not recommend
19 instructions again for an officer who had a second
20 substantiated CCRB complaint for the same conduct?

21 A. If he or she already received instructions on that.

22 Q. But if the officer receives a second substantiated
23 complaint for a different type of conduct, you may again
24 recommend instructions for that officer, right?

25 A. If it's separate, yes, I may.

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Schwartz - direct

1 Q. Do you recall yesterday testifying about your knowledge of
2 how discipline is meted out at the command level?

3 A. That's a really general question. So no, I guess I would
4 have to say no.

5 Q. It's true that you do not have knowledge of how discipline
6 for an improper stop and frisk is meted out at the command
7 level, right?

8 A. I know, to the extent of cases that come through the
9 Department Advocate's Office, what we send back to the command
10 and what is returned to us. We don't close anything out until
11 we get back from the command that what they were instructed to
12 do was done.

13 Q. Is it your testimony that you do have some knowledge of
14 what happened at the command level in terms of meting out
15 discipline in stop and frisk cases?

16 A. If we send a case that involves a stop and frisk with a
17 penalty instruction, and I know that it's done because it will
18 come back from probably the ICO to my office, the Department
19 Advocate's Office, and I will indicate that the penalty was
20 taken or instructions were given. I also get a report, if the
21 person is to go to the police academy or to the legal bureau
22 for instructions, they send it back to us that it was done. So
23 to that extent I know that it was done.

24 Q. But you would agree with me at your deposition in this case
25 you testified that you had no knowledge of how discipline was

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Schwartz - direct

1 meted out with respect to stop and frisks at the command level,
2 right?

3 A. I believe that question was things that did not come
4 through my office.

5 Q. All right. Why don't we look at your deposition and see if
6 it refreshes your memory. At the Floyd deposition, page 51.
7 Are you on page 51?

8 A. Yes.

9 Q. Lines 14 through 19, just read that to yourself.

10 A. It's exactly what I just said to you. That question refers
11 to if a sergeant observes a stop and frisk and what that
12 sergeant does at the command level, not cases that come through
13 the Department Advocate's Office.

14 Q. Reading from page 50 of your deposition in the Floyd case,
15 starting at line 16, through page 51, line 19. Do you recall
16 giving the following testimony:

17 "Q. I understand that does not go to your office. I'm clear
18 on that, very clear about that. My question is whether you
19 have, outside of your daily duties in the Department Advocate's
20 Office, do you have knowledge about the way discipline of
21 improper stop, question and frisks is meted out in other
22 departments other than your own including at the command level?

23 "A. Say that again. That was too compound. I cannot answer
24 the question the way that you phrased it.

25 "Q. Do you have knowledge about how discipline for improper

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Schwartz - direct

1 stop, question and frisks is meted out at the command level?
2 "A. No."

3 You gave that testimony, right?

4 A. I think you need to read the next sentence where they asked
5 me again. I don't know if it doesn't go through my office. I
6 am clear on that. They asked me again about a sergeant that
7 makes an observation about a bad stop and frisk, do I know what
8 that sergeant does? No, I don't. I only know the discipline
9 that comes to the Department Advocate's Office.

10 Q. You are aware that going back to 2002, black people have
11 consistently made up more than 50 percent of the victims in
12 CCRB complaints, right?

13 A. I don't know that off the top of my head.

14 Q. I can show you a document from the 2011 report that I
15 believe you have in front of you, the 2011 CCRB report.

16 This is from Defendants' Exhibit P12 and it is page 8
17 of the 2011 report.

18 You see that in 2011, 56 percent of the victims in
19 CCRB cases were black, correct?

20 A. You need to point me to where you want me to look.

21 That's what the chart says, yes.

22 Q. You're not aware as the department advocate of the fact
23 that every year, going back to at least 2005, black people have
24 represented more than half of the victims in CCRB complaints?

25 A. First of all, you asked me in 2002. I didn't come on to

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Schwartz - direct

1 the job until 2005. So I know -- and I don't know the exact
2 percentage. I know that there is a percentage of them, and I
3 don't know what it has to do with being the department
4 advocate.

5 Q. You're responsible as the department advocate for taking
6 disciplinary actions against officers who are accused of
7 misconduct, correct?

8 A. Correct.

9 Q. You're in charge as the department advocate of prosecuting
10 cases against officers for substantiated CCRB claims, right?

11 A. Correct.

12 Q. My question to you is, as department advocate, you don't
13 feel it's important to know whether in the entirety of your
14 tenure black people have represented more than half of the
15 victims in CCRB complaints?

16 A. I think it's information to be aware of. I don't know if
17 it's important to know in the sense that you're asking me.

18 Q. And you don't know?

19 A. No. You asked me if I knew since 2002. I told you I
20 didn't know.

21 Q. I am asking you now whether you have known since 2005?

22 A. I don't know the exact percentage.

23 THE COURT: She didn't ask an exact percentage. She
24 asked if you knew it was more than 50 percent?

25 THE WITNESS: Yes.

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Schwartz - direct

1 Q. I want to go back to the sample fact pattern briefly that
2 we were looking at yesterday. This is from Plaintiffs' Exhibit
3 111, which is the 2007 CCRB report.

4 Do you recall, Commissioner Schwartz, looking at this
5 example one, Whitestone stop and frisk yesterday?

6 A. Yes.

7 Q. Just looking --

8 A. Can I just find the page, please?

9 Q. It's stamped at the bottom NYC 7701.

10 A. Got it. Thank you.

11 Q. Just looking at this fact pattern, you see that it depicts
12 two black male friends were walking in a predominantly white
13 neighborhood in Queens, right?

14 A. That's what it says in this synopsis, yes.

15 Q. Now, if this complaint had said that fact, two black males
16 walking in a predominantly white neighborhood, and the
17 complaint was that they had done nothing wrong and had been
18 stopped and frisked, you would understand that that complaint
19 might be alleging racial profiling, right?

20 A. I think you're jumping to conclusions.

21 Q. So you would not draw -- you as the department advocate
22 would not believe that that might be an indication of an
23 allegation of racial profiling?

24 A. I think you need more than just that.

25 Q. But even when a complainant does not specifically mention
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Schwartz - direct

1 that he or she believes she was stopped based on race, if there
2 was some indication from the facts that the stop might have
3 been based on race, that would concern you as the department
4 advocate, right?

5 A. In the form of discipline or as a person?

6 Q. As the department advocate.

7 A. There is always a concern if you believe someone is stopped
8 based on their race, based on their sexual orientation, age,
9 creed, national origin.

10 Q. Now, you see every substantiated CCRB case, right?

11 A. Yes.

12 Q. And you know that generally cases do not include an
13 allegation that the police conduct at issue is based on the
14 complainant's race even if the incident might have been based
15 on race, right?

16 A. I don't understand your question.

17 Q. What don't you understand?

18 THE COURT: I actually didn't understand it either.

19 Q. You know that even if a person does not specifically say
20 that he or she believes she was stopped based on race, that
21 race could have been a motivating factor in the incident,
22 right?

23 A. I guess. A lot of things could be motivating factors.

24 Q. But in your experience as the department advocate, don't
25 you understand that usually a person will say, I was wrongfully

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1 stopped for no reason, rather than saying, I was stopped based
2 on my race?

3 A. People give a lot of reasons and no reasons at all for why
4 they are stopped.

5 Q. I am asking you based on your experience as department
6 advocate whether that's your understanding of the way that
7 complaints would come into your office about racial profiling?

8 A. I can't even answer what you just said.

9 Q. You answered it at your Davis deposition so why don't we
10 take a look at that.

11 Looking at your Davis deposition, page 126.

12 THE COURT: What did you want to read?

13 Q. First, let me ask you, my previous question, would it make
14 any difference if it was a complaint about an arrest, meaning
15 that if someone was complaining I was arrested for no reason,
16 that you might understand that to be an allegation based on
17 race?

18 A. Every case is case specific. I can't answer one sentence
19 like that. You look at a whole case file, and if there is
20 something there that appears that maybe the person was stopped
21 for a racial basis, then that's something we would look at.
22 But just because someone says, I have been stopped for no
23 reason, it is not going to trigger automatically that we think
24 that the officer stopped him or her because of their race. We
25 are going to look at the whole case, all the facts, and see

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1 what the issues are.

2 Q. In your experience as department advocate, from seeing
3 every substantiated CCRB complaint, you understand that usually
4 they don't say it's because of my race, usually they say it was
5 for no reason, right?

6 A. There are sometimes when people say I was stopped because
7 of race, and there are sometimes when people say I was stopped
8 for no reason, and there are times when people say I was
9 stopped but I wasn't doing what they said.

10 Q. I am really trying to understand how you are reviewing the
11 substantiated CCRB cases, and in your experience whether you
12 understand that when you're seeing allegations that I did
13 nothing wrong and were stopped or arrested, that you understand
14 that's the way sometimes people are making complaints based on
15 race, right?

16 A. No.

17 Q. So now I am going to read from your Davis deposition, page
18 126, beginning at line 12.

19 "Q. If a civilian makes a complaint that he or she was
20 arrested because of his or her race, who would have
21 jurisdiction of that?"

22 A. Where are you reading from?

23 Q. Page 126.

24 A. You had me at 125 before. What line?

25 Q. 126, line 12.

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1 "Q. If a civilian makes a complaint that he or she was
2 arrested because of his or her race, who would have
3 jurisdiction over that?
4 "A. It depends. I mean, that could be a case that would fall
5 within CCRB. They will say they were arrested for no reason.
6 It is usually not because of my race. I mean, they may add
7 that as part of the fact pattern, but that is not usually the
8 first factor. The first factor is I was doing nothing wrong
9 and I was arrested. If there was some kind of fact pattern
10 that a particular officer was arresting somebody based on race,
11 then CCRB might look into it, but our --"

12 A. "Internal Affairs would surely do a parallel track
13 investigation."

14 Q. That was the end of your answer for that testimony, right?
15 A. No. It goes on at the top of 127.

16 Q. I'm sorry. "But Internal Affairs would surely do a
17 parallel track investigation."

18 A. Yes.

19 Q. So you gave that testimony?

20 A. Yes.

21 Q. Going further down on page 127 to line 12 -- I'm sorry. I
22 think I have to read the whole thing in.

23 Where we left off on 127, line 4:

24 "Q. So that would rise to the level of serious misconduct?

25 "A. It would be something that I know the department would not

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1 want just an outside agency looking at. So we would have most
2 likely the Internal Affairs Bureau. The chief would keep that
3 for himself in his unit and make sure that an investigation was
4 done.

5 "Q. Is that true for all allegations of stops based on race?

6 "A. We don't get stops based on race. The way the cases come
7 in is that I wasn't doing anything wrong and I was stopped."

8 Did you give that testimony?

9 A. If you keep reading, yes.

10 MS. COOKE: The answer continues there. The answer
11 continues on line 16, page 127:

12 "I mean, if there was some kind of -- a lot of people
13 in separate incidents pointing to one officer, then that would
14 be a fact specific case that could be investigated. But the
15 way the cases -- I see all the CCRB cases. I see everything
16 that is substantiated and that is not -- the fact that he
17 stopped me for no reason or he stopped me because I didn't
18 signal and the stop is good but they are rude or whatever the
19 facts are."

20 Your Honor, page 126 to 127, I don't see how that is
21 impeaching what the witness has been testifying to on the stand
22 today.

23 BY MS. BORCHETTA:

24 Q. In your experience, as we have just heard from your
25 testimony in Davis, you don't get stops based on race, you just

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1 get stops where someone says, I simply wasn't doing anything
2 wrong, right?

3 A. CCRB will substantiate a stop if they felt that it didn't
4 rise to the level of reasonable suspicion, what the
5 circumstances are. They don't send over the case in a way that
6 the person was stopped because the officer based the stop
7 solely on race.

8 Q. Given that in your experience people don't specifically
9 mention that they were stopped based on race, and the fact that
10 in your entire tenure as the department advocate black people
11 have represented a majority of those who were victims in CCRB
12 complaints, do you have any concern about determining whether
13 stops are based on race?

14 A. That question -- I am concerned -- of course I am concerned
15 if stops are based on race, but the two qualifying things you
16 put before it have nothing to do with my concern. I am
17 concerned because I wouldn't want members of the service
18 stopping anyone based solely on race. I want them obviously to
19 be doing their job and stopping them for legally sufficient
20 reasons. So while those two factors you mentioned, the overall
21 concern is we wouldn't want members of the service to be doing
22 that.

23 THE COURT: She is just asking you whether you're
24 willing to draw an inference that if more than 50 percent of
25 the complainants are black, and if people say I was stopped for

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1 no reason, she is saying, do you draw any inference that people
2 were stopped because of their race?

3 THE WITNESS: Well, there may be an inference. There
4 are other factors that go into that, the demographics of a
5 community, the demographics of the subjects that commit crimes.
6 So, in general, obviously there could be on the surface an
7 inference, but it needs to be looked at deeper. So taken in a
8 full context, that's how we would look at it.

9 Q. The fact that in the entirety of your tenure as department
10 advocate black people have represented a majority of the
11 victims in CCRB complaints does not give you a concern in and
12 of itself?

13 THE COURT: I think we have covered that. You have
14 asked that question four times. I think I got the answer
15 that's closest to the question you asked. And that's the
16 answer that will stand in the record.

17 Q. As the department advocate, have you ever discussed racial
18 profiling within the department?

19 A. In what context?

20 THE COURT: Any context. Have you discussed that with
21 your staff or with police officers, have you discussed racial
22 profiling?

23 THE WITNESS: In law enforcement activities or in
24 cases --

25 THE COURT: Either. Have you discussed racial

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profiling?

THE WITNESS: Yes.

THE COURT: In what context?

THE WITNESS: Different contexts.

THE COURT: Tell me all of the contexts in which you have discussed racial profiling.

THE WITNESS: There are cases involving law enforcement activity. There are cases that would fall under racial profiling where members of the service within each other may not be treating people appropriately based on race. We have discussed it in general. In preparation for these cases. In many different contexts.

Q. But as of your deposition in the Floyd case in 2009, you had not had any discussions about racial profiling in the department, right?

A. That's a general question, and I don't know how it was asked to me in Floyd. So I can't answer that question.

Q. Why don't you look at your Floyd deposition transcript, at page 33. Are you at page 33, Commissioner?

A. Yes.

Q. Looking at lines 4 through 8 and reading them to yourself.

I will ask it again. At the time of your deposition in August of 2009, you had not had any discussions about racial profiling within the department, right?

A. That's how I answered, yes.

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1 Q. At the time of your deposition in 2009, you had not had any
2 discussions about how to combat racial profiling within the
3 police department, right?

4 A. I'm not an operation unit.

5 Q. My question is whether you had done that.

6 A. That's how I answered that question in 2009.

7 Q. That you had not?

8 A. Yes.

9 Q. And you became the advocate in 2005, right?

10 A. Yes.

11 Q. But as of your 2009 deposition, you had never seen an
12 anti-racial profiling policy in the NYPD, right?

13 A. I had not seen it, correct.

14 Q. The NYPD, to your knowledge, has performance monitoring,
15 right?

16 A. Yes.

17 Q. And the CCRB profile and assessment committee is one
18 monitoring program, right?

19 A. It's not really a monitoring program per se. It's a
20 committee that members who have a certain amount of CCRBs go
21 before it, and as a result, they might end up in monitoring.
22 But it's a committee that makes decisions on how, if someone
23 has a certain amount of CCRBs, there is a qualifier. I believe
24 that it's six CCRBs within five years. Then they can come
25 before the committee and then the committee makes

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- 1 recommendations pertaining to that particular officer.
- 2 Q. The committee makes recommendations concerning monitoring,
- 3 supervision, assignment and training of the NYPD member that is
- 4 being assessed?
- 5 A. Among other things, yes.
- 6 Q. The CCRB profile and assessment committee is a committee of
- 7 NYPD members, right?
- 8 A. Yes.
- 9 Q. Some of the committee members are permanent, right?
- 10 A. Correct.
- 11 Q. And some of them change depending on the member of service
- 12 under review, right?
- 13 A. Depending on who is being profiled, yes.
- 14 Q. The first deputy commissioner is the chair of the
- 15 committee?
- 16 A. Correct.
- 17 Q. IAB always has a presence on the committee, correct?
- 18 A. Correct. The chief of Internal Affairs is there.
- 19 Q. And your office always has someone present at the
- 20 committee, right?
- 21 A. Correct.
- 22 Q. And the CCRB profile and assessment committee meets on a
- 23 quarterly basis, right?
- 24 A. Yes.
- 25 Q. And it's your office that determines which members of the

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1 NYPD will be brought before the committee for review, right?

2 A. We prepare the packages for the meeting.

3 Q. And that means you're determining which members -- well,
4 are you determining which members will be reviewed?

5 A. Yes.

6 Q. You mentioned that a certain number of CCRB complaints can
7 qualify a member of the NYPD for review by the CCRB profile and
8 assessment committee, right?

9 A. Yes.

10 Q. Do you recall the number of CCRBs that can qualify someone?

11 A. I believe -- I always get a little confused. I believe
12 it's six CCRBs, whether they are substantiated or
13 unsubstantiated, within five years.

14 Q. So I will show you what has been marked as Defendants' Z3.
15 You recognize this as the New York City Police Department
16 supervisor's guide on monitoring and assistance programs,
17 right?

18 A. It's an old guide, yes.

19 MS. BORCHETTA: I would move to admit Defendants' Z3.

20 MS. COOKE: No objection.

21 THE COURT: Z3 is received.

22 (Defendants' Exhibit Z3 received in evidence)

23 Q. Turning to the page that is stamped in this exhibit
24 NYC_2_6358. This page is regarding CCRB profile and assessment
25 program and committee, right?

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1 A. Yes.

2 Q. Am I correct that a member of the NYPD can be brought
3 before the CCRB profile and assessment committee if he or she
4 has six or more CCRB complaints in the last five years?

5 A. Yes.

6 Q. And that can be either substantiated or unsubstantiated
7 CCRB complaints, right?

8 A. Yes.

9 Q. And a member of the NYPD can also be brought before the
10 CCRB profile and assessment committee if he or she has two or
11 more substantiated CCRB complaints in the past five years?

12 A. Yes.

13 Q. And a member of the NYPD can be brought before that
14 committee if he or she has three or more CCRB complaints in the
15 past 12 months, right?

16 A. Yes.

17 Q. And that, too, is both substantiated or unsubstantiated
18 complaints, right?

19 A. The third one, yes.

20 Q. But the NYPD members having the number of CCRB complaints
21 that we have just gone over, in the periods of time that we
22 have just gone over, merely qualifies the NYPD member to be
23 brought before the CCRB profile and assessment committee,
24 right?

25 A. Yes.

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D4N8FLO1

Schwartz - direct

1 Q. That person isn't necessarily brought before the CCRB
2 profile and assessment committee, right?

3 A. Correct.

4 Q. And your office has to look back and choose what members
5 will be brought before the committee for review, right?

6 A. Yes.

7 Q. The committee meets on a quarterly basis, right?

8 A. Yes.

9 Q. But not everyone who qualifies for review in that quarter
10 will actually get reviewed, right?

11 A. We do an assessment and we make a decision based on who we
12 think should go forward based on the different criteria.

13 Q. But some people who have qualified won't go up for review,
14 right?

15 A. Correct.

16 Q. Beyond the CCRB profile and assessment committee review,
17 you do not look to see whether an officer who has had a
18 substantiated CCRB complaint is thereafter the subject of
19 unsubstantiated CCRB complaints, right?

20 A. I don't understand your question.

21 Q. Outside of the context of this committee, you don't look
22 after an officer has been the subject of a substantiated CCRB
23 complaint to check whether that officer thereafter is the
24 subject of unsubstantiated CCRB complaints, right?

25 A. I don't understand your question. In what context?

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Schwartz - direct

1 Q. As a matter of course.

2 THE COURT: Just routinely she is saying. Do you
3 routinely go back and check?

4 A. Me in the form of discipline, no. The other parts of the
5 department get notified when people have new CCRB cases.

6 Q. Who gets notified if there is a new CCRB case?

7 A. The command would get notified, sometimes performance
8 monitoring gets notified. There are different places. And we
9 in my office will be checking when we are checking for these
10 quarterly reports.

11 Q. Other than the command -- you mentioned the command and?

12 A. Performance monitoring. Because if you have three
13 unsubstantiated CCRBs, you would fall under I believe level one
14 performance monitoring. So that's another part of the office
15 that's looking.

16 Q. So that's if an officer is under monitoring, right?

17 A. No. To be eligible, for lack of a better word, for
18 monitoring, they are always looking at who has CCRBs and how
19 many. So if the member of the service gets three, whether they
20 are substantiated or not substantiated, in a year, that unit,
21 which is under the employee management division, will know that
22 they have them, and they will then be placed on performance
23 monitoring.

24 Q. Well, they won't necessarily be placed on performance
25 monitoring, right?

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Schwartz - direct

1 A. They are placed on performance monitoring if they get
2 three, whether they are substantiated or unsubstantiated,
3 within a year, level one performance monitoring.

4 Q. But you're saying that wouldn't come up before the CCRB
5 profile and assessment committee?

6 A. It may or may not.

7 Q. You just testified, though, that a member of service who
8 meets the qualifications for CCRB profile and assessment
9 committee isn't necessarily brought before that committee?

10 A. Right.

11 Q. You as the advocate do not keep track of whether every
12 officer who has had a substantiated complaint for which your
13 office issues discipline thereafter has unsubstantiated CCRB
14 complaints, right?

15 A. It would come up in the course of preparing for profile and
16 assessment, which is a unit within my office.

17 Q. I am asking whether you keep track of that?

18 A. It's kept track of in that manner. Do we look at every
19 officer and say, did you do it again? No. But there is
20 another unit that is looking to see who is eligible for that so
21 we are going to see them.

22 Q. One moment.

23 You have never endeavored to determine whether giving
24 instructions on substantiated CCRB complaints has a deterrent
25 effect generally on members of the service, right?

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Schwartz - direct

1 A. I don't understand your question.

2 Q. Have you ever conducted a review -- have you ever
3 endeavored to conduct any kind of examination to
4 determine -- strike that.

5 Have you ever sought to determine whether giving
6 instructions on substantiated CCRB complaints has a deterrent
7 effect on members of the NYPD other than the subject officers?

8 THE COURT: You still don't understand the question?
9 Is it general deterrence?

10 THE WITNESS: I hope it is general deterrence. Have I
11 done a study? I am not an actuary. I hope that it works. I
12 see that it works with our recidivism rate.

13 THE COURT: Anyway the answer is no, nobody has done
14 empirical research to see if it results in general deterrence?

15 THE WITNESS: Correct.

16 Q. In reviewing case files for substantiated CCRB abuse of
17 authority cases involving improper stop and frisks, assistant
18 advocates are not required to review the subject officer's stop
19 and frisk history, right?

20 A. In what context?

21 Q. Any context.

22 A. They will see their substantiated and unsubstantiated
23 CCRBs.

24 Q. But that's not my question. My question is whether in
25 conducting their review of that case file on that subject

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Schwartz - direct

1 officer, assistant advocates are not required to go and look at
2 that officer's stop and frisk activity, right?

3 A. No. That's not exactly correct. They are going to look
4 at -- when we make a decision, they are definitely going to
5 look at any prior substantiated cases, any prior discipline.
6 So if that was a stop and frisk, they are going to be looking
7 at that when reviewing their next case.

8 Q. My question is, regardless of complaints about stop and
9 frisk activity, assistant advocates are required, in a case
10 where an officer is alleged to have conducted an improper stop
11 and frisk, to go out and look at that officer's other stop and
12 frisk activity that wasn't the subject of any complaints?

13 A. Follow the officer? Go out and watch them? I'm not sure
14 what you're asking me.

15 Q. You're aware that officers complete 250s?

16 A. Officers complete 250s, yes.

17 Q. You're aware that 250s are maintained by the NYPD?

18 A. Yes.

19 Q. So the assistant advocate conducting a case file review of
20 an officer who has a substantiated CCRB complaint for an proper
21 stop and frisk is not required to go and look at that officer's
22 other 250s, right?

23 A. I would not direct a department advocate, who is making a
24 decision regarding discipline, to go to a command and pull up
25 250s and look at it unless there was some issue in that

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Schwartz - direct

1 particular case regarding 250s.

2 Q. Similarly, assistant advocates are not required to look at
3 the stop activity of other officers within the same command as
4 the subject officer, right?

5 A. Generally, no, unless that was an issue in the particular
6 case.

7 Q. The NYPD has access to the CCRB database that contains all
8 allegations of misconduct against a member of the police
9 department, right?

10 A. Yes.

11 Q. Does the NYPD itself have a single database that contains
12 all of the allegations of misconduct that have been made
13 against a member of the police department?

14 A. We have access to the CCRB database.

15 Q. My question is whether the NYPD has a database with that
16 information?

17 A. I don't know the answer to that.

18 Q. Does the NYPD, to your knowledge, track the number of civil
19 lawsuits filed against members of the NYPD for alleged unlawful
20 stop and frisks?

21 A. I believe the answer is yes.

22 Q. Where do you believe that that database is maintained or
23 what unit or office?

24 A. I'm not exactly sure. I would guess it's within the deputy
25 commissioner of legal matters.

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Schwartz - direct

1 Q. Does your office ever look at civil lawsuits in determining
2 discipline?

3 A. Sometimes we have cases and there is a parallel civil
4 lawsuit. So, of course, yes, we are going to look at that.
5 And sometimes it becomes relevant. So on a case-by-case basis,
6 yes, we are going to look at it.

7 Q. But you don't routinely look at the database that you just
8 mentioned to see if there are civil lawsuits against an officer
9 for whom you're considering discipline?

10 A. I never said it was a database. You asked me if it was
11 tracked, and I said I believe that DCL tracks it. I don't have
12 access. I know that they look at it. I don't know the
13 context. I don't know how. So I can't really answer it any
14 more than that.

15 Q. Except that you can say you don't look at whatever they are
16 tracking about civil lawsuits?

17 A. Sometimes it becomes relevant and we will reach out and we
18 will ask legal if there is a lawsuit, if they can find the
19 information and assist us.

20 Q. But you don't as a matter of course look at the civil
21 lawsuits filed against members of the NYPD for alleged unlawful
22 stop and frisks that are being tracked by this other office?

23 A. Only if it's relevant to the particular case.

24 Q. Now, you have never determined the number of substantiated
25 stop and frisk CCRB cases for which instructions for the

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Schwartz - direct

1 penalty issued where an officer misunderstood search and
2 seizure law, right?

3 A. Correct.

4 Q. And you have never determined the number of officers
5 subject to CCRB complaints who appear not to understand search
6 and seizure law, right?

7 A. Correct.

8 Q. As the department advocate, you have not had any --
9 A. Can we go back to that? That's not actually true now that
10 I am thinking about it. I'm sorry. Sometimes we see a
11 pattern, so I wouldn't stay track per se, but we have seen
12 patterns where groups of officers, either in a command or in
13 housing, may have all been saying the same thing. So when we
14 notice that, then we reach out and do what the next appropriate
15 steps would be. I'm sorry.

16 Q. But you have never attempted to figure out what number of
17 NYPD officers who were the subject of CCRB complaints related
18 to stop and frisks don't understand search and seizure law?

19 A. The Department Advocate's Office, since we do discipline,
20 we don't do studies like that, so no, we have not.

21 MS. BORCHETTA: Just one moment, your Honor.

22 Q. I think I have just one more question, Commissioner
23 Schwartz.

24 You don't know what percentage of the members of
25 service who qualify for monitoring under the CCRB profile and
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Schwartz - direct

1 assessment committee are not brought before that committee,
2 right?

3 A. No. That's not correct.

4 Q. So what number is that?

5 A. Off the top of my head, I don't know the number. But we
6 take all the eligible candidates and we whittle it down to who
7 we believe should go forward on a quarterly basis.

8 Q. You whittle it down from -- can you tell me an amount that
9 you would whittle it down from?

10 A. Say, for example, in the particular quarter there would be
11 250 members that are eligible. Then we would look at those 250
12 members. I have a whole staff of people that do that. We look
13 at, OK, well this one person -- five of them, they were five
14 years ago, now they are in a command, they are not in the
15 public, so we are going to take that person off the list. So
16 we look at -- try to whittle it down and we try to take the
17 most egregious and the most that are in need of being in front
18 of the committee, and that number could fluctuate any quarter
19 anywhere from 20 to 40 people that go before the committee on a
20 quarterly basis.

21 Q. 20 to 40 people out of how many?

22 A. Starting, approximately, 250.

23 MS. BORCHETTA: No further questions, your Honor.

24 THE COURT: Thank you.

25 Ms. Cooke.

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Schwartz - direct

1 Ms. Cooke, I am going to plead with you not to repeat
2 the whole direct.

3 MS. COOKE: Absolutely, your Honor.

4 CROSS-EXAMINATION

5 BY MS. COOKE:

6 Q. Good morning, Commissioner Schwartz.

7 A. Good morning.

8 Q. You have been providing a lot of testimony about CCRB
9 substantiated investigations, but the department advocate
10 receives substantiated investigations from IAB, internal
11 investigation units, and the CCRB, correct?

12 A. Yes.

13 Q. Approximately how many of the cases closed each year by the
14 Department Advocate's Office are CCRB cases?

15 A. In the last couple of years, we closed -- I would say
16 roughly 2011, 2012, 17 or 1800 cases, and of that,
17 approximately a little over 300, one way or the other each
18 year, were CCRB cases.

19 Q. Substantiated investigations conducted by IAB might involve
20 a stop and frisk, right?

21 A. It's possible. Sometimes it comes to us through the
22 integrity unit.

23 Q. How so?

24 A. IAB has a unit that does integrity tests, which is their
25 group 52. And so part of that integrity test, we get -- I

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Schwartz - cross

1 actually have my CCRB advocates, they handle those cases as
2 well because there is a lot of similarity. So, for example, an
3 undercover would go out, say, pretending that someone was
4 harassing him, and then we would look to see if the officer had
5 the right legal sufficiency to make the stop of the person that
6 was harassing them. Sometimes they write a summons and the
7 summons is improper. So that unit brings a lot of cases that
8 are similar in that nature.

9 Q. So if an officer failed an IAB integrity test in the field,
10 and therefore discipline needs to be imposed, that would come
11 to the Department Advocate's Office?

12 A. Yes.

13 (Continued on next page)

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D4n9flo2

Schwartz - cross

1 Q. Do you know approximately how many officers are assigned to
2 the investigative affairs bureau?

3 A. I believe it's something -- to the internal affairs bureau?

4 THE COURT: You said investigative.

5 MS. COOKE: I'm sorry. Internal affairs.

6 THE WITNESS: There's a number. I think it's over a
7 thousand but then there's also the investigative units so it
8 could be up to two thousand.

9 Q. And when you mentioned in your testimony yesterday that the
10 department advocate's office would do advice and guidance for
11 internal investigative units, that would involve investigators
12 from both the IAB and the investigative units at the borough
13 level?

14 A. Yes.

15 Q. And that could be advice and guidance regarding one of
16 these integrity test fails?

17 A. It could be, yes.

18 Q. Or another issue related to a stop and frisk?

19 A. It could be, yes.

20 Q. But in neither of those instances, with IAB-substantiated
21 investigations or other investigative unit investigations, is
22 the department advocate conducting investigations, correct?

23 A. Correct.

24 Q. Who oversees the investigations conducted at the
25 investigative unit level outside of IAB?

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Schwartz - cross

1 A. Each investigative unit reports to that borough chief. So,
2 for example, housing has a housing investigative unit.

3 However, the chief of internal affairs meets with
4 these units at least twice a year to go over their caseload.
5 So they have almost -- they answer to two chiefs in some ways.
6 Q. And with respect to investigations that are substantiated
7 that require discipline through the department advocate's
8 office that are outside guideline cases investigated at the
9 command, you receive those as well, correct?

10 A. If they rise to the level of, pursuant to the patrol guide
11 for a consult with the advocate's office, then they would come
12 to the department advocate's office.

13 Q. I believe you testified yesterday that a B command
14 discipline is a discipline that would come to the department
15 advocate's office?

16 A. Except for four or five that are enumerated that are not
17 required to have a consult with the department advocate.

18 Q. You testified yesterday that you have, I believe you
19 testified, staff you have that liaison with the CCRB in their
20 investigations; is that correct?

21 A. I don't think I got to talk about that.

22 Q. Oh, you didn't. I'm sorry. You talked about having I
23 guess a captain?

24 A. I have -- right. We have -- I have a lieutenant on-site
25 and two police officers that help facilitate getting documents.

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Schwartz - cross

1 I also have an executive officer who is a captain who
2 is the liaison so that if they have any uniformed questions
3 regarding their cases he can assist them.

4 I also have a senior trial attorney who is a legal
5 liaison that can assist in any cases they have regarding legal
6 issues.

7 Q. You were asked questions yesterday by counsel regarding
8 CCRB attorney-reviewed substantiated cases.

9 Do you recall those questions?

10 A. Yes.

11 Q. You testified that at some point the CCRB had four
12 attorneys and it dropped because of I guess budget; is that
13 correct?

14 A. Yes.

15 Q. And so you aren't aware of how many attorneys the CCRB
16 presently has?

17 A. Now they have a MOU. So they have a large amount of
18 attorneys, but I don't think they work in the function of
19 reviewing cases.

20 Q. How many attorneys do you have in the department advocate's
21 office at the NYPD?

22 A. Approximately 25.

23 Q. And does an attorney conduct a review of each
24 substantiated CCRB investigation file?

25 A. Yes. I have a CCRB team that has a team leader who is a

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Schwartz - cross

1 senior supervisor and about four or five other attorneys, and
2 each one of them reviews a case thoroughly before we discuss
3 it.

4 Q. And what's the experience level or range of experience
5 level of your attorneys in the department advocate's office?

6 A. All of my attorneys are civilian employees of the NYPD.
7 Starting when I came on in 2005 the police commissioner made an
8 effort to move away from uniformed members of the service. So
9 everyone has significant experience. We don't hire anyone that
10 doesn't have prior litigation experience. 91 percent have
11 legal law enforcement, either working for like a Legal Aid or a
12 district attorney's office.

13 Q. You testified yesterday with respect to substantiated CCRB
14 cases that arrive in the department advocate's office and that
15 they sometimes come with a recommendation for a level of
16 disciplinary action, correct?

17 A. That's correct.

18 Q. Have you -- can you identify any apparent logic as to when
19 a case arrives with a recommended level of discipline and when
20 it doesn't from the CCRB?

21 A. It's difficult. Because the CCRB has four separate panels
22 and they meet independently of each other. So cases from one
23 panel may recommend charges and specifications on a fact
24 pattern and the exact same fact pattern could come from another
25 panel and a recommended command discipline. So I take it into

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Schwartz - cross

1 account but I also have to look at which panel it is and who is
2 doing what. So it's not -- their recommendations are not
3 consistent within the agency.

4 Q. And is the department advocate's office concerned with
5 consistency of discipline for similar conduct?

6 A. It's one of the primary things that we're concerned with
7 all the time. When we make decisions on both what the level of
8 discipline should be and the penalty, we have to ensure that
9 we're consistent, that we look at similar situated members of
10 the service. We look at past precedent. And that's how we
11 make our decisions on -- other people that committed -- other
12 members of the service that committed the same misconduct,
13 what, if anything, was the level of discipline and what, if
14 any, penalty did they receive. And that's always the starting
15 point for how we handle our cases.

16 Q. And you testified yesterday with respect to complaints that
17 the CCRB does not substantiate. So those would be exonerated,
18 unfounded or unsubstantiated, correct?

19 A. Yes.

20 Q. And the department advocate's office is aware of those
21 because they remain in an officer's CCRB history, correct?

22 A. Yes.

23 Q. And further the department advocate's office would see
24 unsubstantiated, exonerated or unfounded allegations to the
25 extent they were part of a file which also contained a

D4n9flo2 Schwartz - cross

1 substantiated claim, correct?

2 A. Might.

3 Q. Because the CCRB investigation might have several
4 allegations and the disposition of each could be different,
5 correct?

6 A. Oh, in that case, yes.

7 So if it's all under the same case and, say, CCRB
8 pleads four allegations and then at the end of their
9 investigation they only substantiate one, two are
10 unsubstantiated and one is unfounded, we're definitely going to
11 see all of those within that case.

12 Q. And when your department advocate is reviewing that
13 investigative case file from CCRB, are they considering the
14 facts and the circumstances and the evidence with respect to
15 those other charges?

16 A. Yes.

17 Q. Even though the disposition of those charges for CCRB was
18 not substantiated?

19 A. Yes. For a lot of reasons.

20 Sometimes we're going to look at it. And we may say,
21 you know what, they were wrong they should have substantiated
22 it and we're 'going to draw up our own charges and specs on
23 that.

24 I don't like to do that because that's not really what
25 we're supposed to do. But if it's clear and it's glaring

D4n9flo2 Schwartz - cross

1 sometimes we do that.

2 We're also going to look at it -- sometimes it becomes
3 the credibility of a witness. For example, if CCRB pleads ten
4 allegations where the civilian says -- makes allegations that,
5 you know, serious allegations of force and CCRB either unfound
6 or unsubs all of them and they only sub one thing, it kind of
7 then might go to the credibility of the witness. And we need
8 to look at that when we're assessing the strength of the case.

9 Q. And as you've just testified all of those -- all of an
10 officer's CCRB history is relevant when evaluating that
11 officer's eligibility for either the CCRB profile and
12 assessment committee or the performance monitoring unit,
13 correct?

14 A. Yes. That -- those are separate. And they do -- they
15 trigger different committees or monitoring.

16 Q. Yesterday you were asked questions about cases that were --
17 received a substantiated from the CCRB but were too hard to
18 prove.

19 Do you recall those questions?

20 A. That we took no disciplinary action?

21 Q. Yes.

22 A. Yes.

23 Q. And there was some testimony related to that issue of a
24 case being too hard to prove read from your deposition and you
25 referred to when a board reversed -- a board panel reversed the

D4n9flo2

Schwartz - cross

1 CCRB investigator's unsubstantiated of a case, correct?
2 A. Right.

3 One of the reasons we had an issue -- especially in
4 2007, 2008 -- in not being able to go forward on cases is we --
5 a lot of these cases were what we call board flips where the
6 investigator would unsub or unfound or exonerate the allegation
7 and sometimes by not believing a witness -- for whatever
8 reason -- and then the board would flip on that and
9 substantiate.

10 And what would happen -- what was happening in the
11 trial room was then the respondent's attorneys would call the
12 CCRB investigator to testify basically against the CCRB to say:
13 Well, I didn't find the witness credible or I didn't think
14 this. And then we were almost -- you know, now it becomes a
15 very, very difficult case to try.

16 So we met with them. It came up -- once a year the
17 police commissioner, some of the executive staff, meets with
18 the CCR chairperson plus the board and we discuss these cases.
19 And as a result that number has gone down.

20 So, you know, occasionally the board is right and we
21 still go forward. But they're much harder to prove because we
22 have this added element of their own staff not thinking that
23 the case should be substantiated.

24 Q. Do your advocates in the department advocate's office
25 specialize in any way in the substantiated CCRB cases that they

D4n9flo2

Schwartz - cross

1 review?

2 A. I have three teams within the office. I have one team of
3 attorneys who only handle civilian case, school safety, traffic
4 agents, for example.

5 Then I have a second team that handles the uniformed
6 members of the service for CCRB cases, cases that we receive
7 from the CCRB.

8 And then the third team handles the rest of the cases
9 for uniformed members of the service for any other discipline
10 outside of CCRB.

11 Sometimes they're going to overlap because an officer
12 may have a CCRB at a different disciplinary case. But
13 generally I keep -- you can keep those cases with the CCRB --
14 with the CCRB team.

15 The CCRB team also, as I said before, takes the
16 integrity test cases and the internal affairs force cases from
17 their force unit within the internal affairs bureau.

18 Q. And if an officer were to appear -- had a substantiated
19 CCRB that was reviewed by the department advocate for
20 discipline and then reappeared at a later point with a second
21 substantiated CCRB, would you assign that to the same advocate?

22 A. Totally. Any -- even -- the same applies for all of the
23 teams. So if -- but it makes -- it's something I initiated
24 early on when I got there because you want to make sure the
25 advocate knows the history of this particular officer, knows

D4n9flo2

Schwartz - cross

1 the ins, knows the outs. So it will stay with that advocate
2 throughout.

3 Q. And yesterday you testified with respect to the process
4 following the advocate's review of an investigative file and
5 that the process involved recommending either a level of
6 discipline, or someone unable to prosecute, no disciplinary
7 action recommendation, correct?

8 A. Yes.

9 Q. And that would be the same for a CCRB-substantiated
10 investigation case file or a -- one from IAB or another
11 investigative unit?

12 A. For the most part.

13 The CCRB cases all go, to some extent, through the
14 police commissioner. There are case that's can come from
15 internal affairs. But we don't want to involve the police
16 commissioner because it's clear that it should just be a B
17 command discipline, and we're not going to bother him with
18 those cases so we just do that.

19 For the most part everything is the same.

20 Q. You testified yesterday with respect to the percentage or
21 you were shown charts and testified about the percentage of
22 time that the department advocate's office recommends charges
23 and specifications against officers for misconduct. Do you
24 recall those questions?

25 A. Yes.

D4n9flo2

Schwartz - cross

1 Q. And I guess prior to your arrival in 2005 was there a
2 different approach as to when the department advocate would
3 prefer charges against officers?

4 MS. BORCHETTA: Objection. Foundation for knowledge
5 for that.

6 THE COURT: You said prior to her time. Yes.

7 Q. Are you aware that you changed an approach --

8 A. Yes.

9 Q. -- when you arrived in 2005?

10 THE COURT: What change did you make?

11 THE WITNESS: When I came -- regarding that I made a
12 few changes. I believe that it's much better to do an upfront
13 analysis of a case and make the decision early on. And what I
14 had found, especially in CCRB cases, is that members of the
15 advocate's office were writing the charges and specifications
16 and serving the officer. And then when it came time for trial,
17 there was not enough evidence to go forward and the case would
18 be dismissed.

19 So we reversed that and we do the analysis as soon as
20 we get the case.

21 For a lot of obvious reasons, I didn't think that was
22 the best path to take.

23 We do that also with the internal affairs cases. We
24 do a heavy upfront analysis so that we have -- if we believe
25 there's misconduct and it's proveable, we have what we have.

D4n9flo2

Schwartz - cross

1 And if not, we make that decision early on.

2 Q. Does that mean that the result is charges may be preferred
3 against a fewer number of members of service but that fewer
4 cases are dismissed after filing?

5 A. Yes.

6 My first year in 2005, I believe I dismissed at least
7 63 cases because we couldn't go forward on them. We didn't
8 have the -- for various reasons.

9 So now our dismissal rate is very, very low. I think
10 we dismiss -- I don't even know if we dismissed any in the last
11 few years of our CCRB cases.

12 So it's to avoid that. Because when you write charges
13 and specifications, there's a lot of ramifications for the
14 member of the service because they take on, or they're pending
15 on their CPI. They will not get -- they could -- it could
16 affect their transfer. It could affect getting promoted.

17 So we have to ensure that if we're writing the charges
18 and specifications we have the evidence that we have to prove
19 it. It doesn't benefit anyone to wait until two years down the
20 road and dismiss them.

21 Q. You testified yesterday with respect to information in the
22 CCRB's 2011 annual report. And you were shown charts in there
23 that reflect an increased use of instructions in 2010 and in
24 2011 as a form of discipline.

25 Do you recall that?

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Schwartz - cross

1 A. Yes.

2 Q. And that was so notwithstanding the fact that in or about
3 2008 the CCRB had raised concerns about the increased use of
4 instructions; is that right?5 A. No. I think then they were raising concerns about the
6 cases that we took no disciplinary action, I believe. So a lot
7 of those cases that we took no disciplinary action are now
8 receiving instructions.

9 Q. And with respect --

10 A. -- or I mean the numbers. Not the same kind of cases, but
11 the numbers.12 Q. And with respect to the changes you just discussed about
13 preferring charges and specifications in maybe a fewer number
14 of cases because of the more thorough upfront analysis, are
15 those cases then eligible for other levels of discipline such
16 as command disciplines or instructions?

17 A. Yes.

18 Q. And so is it your belief that some of the increase in the
19 level of discipline of instructions in these years could be
20 attributed to this change you made as the department advocate?

21 A. Yes.

22 Q. Are you familiar with the CCRB's mediation program for a
23 CCRB cases?

24 A. Yes.

25 Q. And have you found that officers who participate in

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mediation are less likely to receive CCRB complaints in the future?

MS. BORCHETTA: Objection. Just to the foundation for her knowledge.

THE COURT: Have you studied that?

THE WITNESS: I haven't studied that but I've been informed of that by the CCRB.

MS. BORCHETTA: Objection to hearsay.

THE COURT: Then it does sound like hearsay.

THE WITNESS: Well it's in the report.

THE COURT: I understand.

Q. Have you reviewed CCRB annual reports that provide information and statistics on the mediation?

A. Yes.

Q. Are there any allegations that the NYPD does not allow an officer to mediate?

A. Yes.

Q. And which allegations might those be?

MS. BORCHETTA: Objection.

THE COURT: I don't understand that question.

MS. BORCHETTA: Yeah.

THE WITNESS: When --

THE COURT: No, you can't answer that. That objection is denied.

Q. Are there allegations of misconduct that are investigated

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Schwartz - cross

1 by CCRB for which the NYPD would not permit an officer to
2 participate in the mediation of the CCRB allegation?
3 A. Yes. If an officer receives an allegation, for example, of
4 offensive language which is where they've made some kind of
5 race or sexual orientation remark that is offensive to a
6 civilian, that is not eligible for mediation because we want to
7 ensure that we have a record of that and it's not something --
8 it's something we want to make sure we know about, that it's
9 fully investigated because it's a serious allegation and --

10 THE COURT: So what actions are eligible for
11 mediation?

12 THE WITNESS: Also I would say very serious force. If
13 there was an allegation of serious force, that would not be
14 eligible.

15 THE COURT: What's eligible?

16 THE WITNESS: Pretty much every other allegation.

17 A threat -- search, a stop, question and frisk, a name
18 and shield -- fail to give a name and shield, courtesy.
19 Courtesy is the primary one where the civilian would say
20 that they felt the officer was rude. And those are very
21 successfully mediated. Because the officer needs to know that
22 you can't talk that way to a civilian.

23 THE COURT: Didn't you say a minute ago offensive
24 language not eligible?

25 THE WITNESS: Offensive language is not eligible.

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Schwartz - cross

1 So if someone is rude and they're short and they're
2 not polite to the member. But if they call them a name, a
3 derogatory name, then it's not eligible.

4 Q. That's the four categories of the CCRB's jurisdiction, D is
5 for courtesy and O is for offensive language?

6 A. Yes.

7 Q. So there's a differentiation between which allegation would
8 fall into which category?

9 A. Yes.

10 Q. How is it that the NYPD's department advocate's office
11 becomes aware of a case -- CCRB offering mediation on a case?

12 A. They immediately contact our unit and say that this is a
13 case that's eligible for mediation. Or they believe is
14 eligible.

15 Then we vet out that particular officer. We look at
16 the offense. We look at the officer's history. We look at the
17 CPI of the officer.

18 And then we respond back that it's someone, that yes,
19 we'll consider; or no, we don't think this particular officer
20 is appropriate for mediation.

21 And then if we say yes, then there's a process within
22 CCRB to move forward on the mediation.

23 Q. And if you say no, then CCRB continues to conduct the full
24 investigation of the allegation?

25 A. Yes.

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Q. You mentioned CPI. What is CPI?

A. Central Personnel Index.

It's where it has your whole history. It shows any discipline that you have. It shows all your assignments. It shows your sick record. How many arrests. What kinds of arrests you've made. It's kind of like your track in the department.

Q. And the department advocate's office has access to that when evaluating substantiated CCRB or other substantiated investigative unit claims?

A. In every case that we evaluate that's part of what goes into the evaluation because it gives us -- there's a wealth of information there.

When we're making a determination at both the level of discipline and the penalty stage, we look at the officer's history to see what kind of officer, what they've done. And that's something that is used in every single case.

Q. Is an officer's CPI also used when assessing -- or determining who is eligible and assessing who will go before the CCRB profile and assessment committee on a quarterly basis?

A. That's part of it. Because we run their CCRB history is the starting point to see who's eligible. Then we will then look at their CPIs because there's going to be a wealth of

information there again to determine if this is someone that should go forward or not.

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Schwartz - cross

1 Clearly if someone has a really bad disciplinary
2 history, this is someone we're going to put forward.

3 Those are all factors that -- someone who is always
4 sick. Well what's going on with this?

5 So all those things go into a lot of decision making
6 that we do.

7 Q. The NYPD engages in a progressive discipline strategy; is
8 that correct?

9 A. That's correct.

10 Q. And you testified about the varying levels of discipline
11 that can be imposed one of which was instructions, correct?

12 A. Yes.

13 Q. And if the instruction -- if the discipline imposed is
14 instructions, who can provide the instructions to the officer
15 on the issue that you've determined is required for discipline?

16 A. It depends on what the allegations are. There's various
17 forms.

18 So if, for example, it's regarding bad stop -- making
19 a bad stop, question and frisk they may go to the legal bureau
20 for training.

21 If it's someone on tactics that they're not applying
22 proper tactics, we're going to send them to the police academy
23 on how to use an asp, for example, to be retrained on that. It
24 depends on what the misconduct is. We've tried --

25 THE COURT: How to use a what?

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Schwartz - cross

1 THE WITNESS: An asp A-S-P. It's the stick, you know.
2 There's training on everything.

3 THE COURT: I just didn't know what it was.

4 THE WITNESS: So it depends on what the misconduct is.
5 We try very hard to match the allegation -- you know, what the
6 substantiated misconduct is to what the necessary training is.

7 Sometimes it could be just meeting with the commanding
8 officer to go over, you know, the proper way to do something.

9 But as the years have gone on we vamped up what the
10 training or the instructions should be.

11 Q. Is that a change that you've made since -- in your time as
12 the deputy commissioner for the department advocate's office?

13 A. Not solely. Made that in conjunction with other units
14 within the department.

15 Q. You testified yesterday that an officer who receives
16 instructions as a level of penalty, that the instructions
17 wouldn't be a discipline that would get to the trial room,
18 correct?

19 A. Correct.

20 Q. But that if a member of service challenged the form of
21 discipline that is a command discipline, those could go to the
22 trial room?

23 A. If they challenge and refuse to accept -- they have the
24 option to accept a command level discipline or not. And if
25 they refuse it, then it's -- then we are -- it's necessary for

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us to write charges and specifications.

So the thought process is when you write -- when you're saying that something should be done at the command level, you have to keep in the back of your mind if this goes to charges and specifications can I prove this in the trial room. Because if not, we've, you know -- if we dismiss the command discipline and just send it out, then we really look foolish. So, you know -- and then word will get out: Don't take the command level discipline because they're just going to dismiss it later.

So it's very important to be consistent and do -- so the evaluation for a CD is the same evaluation, in some areas, that we would make when we're making an evaluation if something should be charges and specifications.

Q. In your time as the deputy commissioner of the department advocate's office, has the discipline for improper memo book entries changed, the eligible discipline?

A. When I first was here it was an A command discipline. A few years ago the police commissioner had it changed to a B level command discipline.

Q. And so B level command discipline will now come through the

department advocate's office for litigation?

A. The memo books can still be done at a command level. That's one of the B command disciplines that's enumerated in

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Schwartz - cross

1 must give the member of the service a B command discipline for
2 failing to keep a memo book, writing in their memo book, losing
3 the memo book.

4 Q. And the B command discipline penalty range is -- what's the
5 range for the B command?

6 A. From warning and admonish to ten vacation days.

7 Q. And if, in fact, the B command discipline for a memo book
8 entry doesn't get adjudicated through the department advocate's
9 office is a record of that discipline imposed maintained
10 somewhere to your knowledge?

11 A. Yes.

12 Q. Where?

13 A. I believe the command keeps a record of all command
14 disciplines that are issued at the command.

15 Q. And would that also go into the officer's CPI?

16 A. Yes.

17 Q. The highest level of discipline is charges and
18 specifications, correct?

19 A. Yes.

20 Q. And that carries with it the most serious penalties up to
21 termination of an officer's --

22 A. Yes.

23 Q. -- employment, correct?

24 And when you draft charges and specifications, are
25 you -- well I guess what is the process by which you do that?

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Schwartz - cross

1 Are you referring to a particular procedure or policy? How do
2 you go about drafting the charges and specifications?
3 A. Well after we do a consult with the -- depending on if it's
4 an investigator who comes in -- at CCRB we don't have the
5 luxury of the investigator coming in. We just get a case
6 folder.

7 After doing a full evaluation of all of the
8 information that we have, we then have checks and balances.
9 The advocate goes to their supervisor and up through the chain
10 of command and they recommend, say, for example, charges and
11 specifications be drafted.

12 They show their supervisors or me or other members of
13 my executive staff how they think the charges should be draft.
14 We approve them. And we write them -- we have the luxury of
15 writing them to conform to the misconduct.

16 So if Officer Jones was out sick without permission --
17 we're not going to -- we might cite that patrol guide section
18 on the bottom, but we're not going to say that he violated
19 patrol guide section such and such. We're going to say Officer
20 Jones was out of his residence while sick.

21 And so that's how we write them. We write them to
22 what -- to match what the misconduct is.

23 Q. You used an example of an officer being out of his
24 residence without permission when out sick. Is writing the
25 charges and specifications to describe the misconduct the same

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Schwartz - cross

1 approach with respect to an unlawful stop allegation or an
2 unlawful arrest or unlawful summons?

3 A. Yes.

4 If we would just write that, you know, Officer Jones
5 made a stop without requisite legal authority. And we're not
6 going to go that he abused his authority and that he did the
7 following. We're just going to write what the actual
8 misconduct is.

9 In the worst case, if you're talking about CCRB, we're
10 going to say that Officer Smith -- we're not going to say that
11 the force was excessive because that's another element we're
12 going to have to prove. But what I'll say is what they did, is
13 Officer Smith hit a person known to the department in the head
14 with their department radio.

15 So we make it as simple as we can because we -- as
16 opposed to the criminal system on how to write charges, I don't
17 have to put intentionally and knowingly. And, you know, an
18 assault -- a domestic assault case, I'm going to just write
19 that they got in a physical confrontation. I don't have to
20 prove the penal law definition of physical injury.

21 So we try to make it as simple and as easy as possible
22 so that if we do need to go to trial we can be successful.

23 Q. There was a memorandum of understanding recently executed
24 with the CCRB and the police department for providing
25 prosecutorial authority for CCRB attorneys at the NYPD's trial

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Schwartz - cross

1 room, correct?

2 A. Yes.

3 Q. And what's the -- what authority does the MOU provide CCRB
4 with respect to the cases they can prosecute?5 A. They can process cases where the board recommends charges
6 and specifications except for there's a paragraph in there that
7 carves out some elements that would not be where they can't, if
8 the person has no disciplinary history, for example, or no CCRB
9 history, then those are cases that they -- if the police
10 commissioner decides charges and specs aren't warranted, we can
11 handle it our own in the department level.12 Q. So if the case were an abuse of authority case from CCRB
13 and the abuse of authority involved an unlawful stop
14 allegation, and the officer didn't meet the exceptions you just
15 described of having no disciplinary history or no CCRBs -- I
16 guess the same thing -- then that could be a case if charges
17 and specifications were recommended by the board that the board
18 could prosecute in the trial room of the department advocate's
19 office?

20 A. I got lost.

21 THE COURT: That was a very long --

22 THE WITNESS: I got lost. I'm sorry.

23 If the --

24 MS. COOKE: I can retry it.

25 Q. If the substantiated CCRB was an abuse of authority

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Schwartz - cross

1 allegation of a stop, an unlawful stop. Under the memorandum
2 of understanding, the CCRB attorney could prosecute that case
3 in the trial room, provided it didn't fall into the exception
4 you just mentioned?

5 A. If the board recommends charges and specifications. If the
6 board recommends something other than that, then it does not go
7 into their purview.

8 Q. And for the cases that the CCRB will be prosecuting in the
9 department's trial room, who will decide the penalty following
10 the prosecution?

11 A. They'll make a recommendation of penalty just like we do.
12 But it will go through the same chain. If it's a negotiated
13 case, it will go to the first deputy commissioner and he will
14 have an ability to weigh in. But ultimately the police
15 commissioner has the final say in penalty.

16 THE COURT: Okay. Let's take our morning recess now.
17 We'll reconvene at quarter to twelve.

18 (Recess)

19 Q. Commissioner Schwartz you testified on direct examination
20 about the CCRB profiling and assessment committee. What
21 happens at the quarterly meetings?

22 A. The person -- there's a packet made on every member that's
23 going to be brought before the committee and then there will be
24 a plan on what are the appropriate steps to be taken and what
25 has already been taken before the meeting.

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Schwartz - cross

1 So, for example, if this officer had -- if it appears
2 this officer should be integrity tested, then that will be part
3 of the plan.

4 Sometimes there will be recommendations that the
5 member be moved to a new command, be moved to a command that
6 doesn't have contact with the public or move to have a
7 supervisor become the sergeant's -- work with the sergeant
8 solely.

9 So whatever the plan is, it will be put into effect.
10 There's various people that will ensure that it gets done.

11 Q. And if the member being profiled at the quarterly meeting
12 is a member assigned to a precinct, will the precinct commander
13 be present at the meeting?

14 A. No. Not -- the commander will have already been appraised
15 and will write an evaluation and a report.

16 But what -- who will usually be there will be the
17 chief of patrol plus that chief for that patrol borough. So if
18 it's patrol borough Brooklyn South, then the chief of patrol
19 borough Brooklyn South will be there as well.

20 Q. But the commander has provided information and the
21 recommendation with respect to that officer in a written form?

22 A. Correct.

23 Q. Prior to the quarterly meeting?

24 A. Yes.

25 Q. Does a member of the employee management division sit on

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Schwartz - cross

1 this committee?

2 A. The chief -- well the deputy commissioner of personnel is
3 there. So I'm not sure -- I can't remember if Inspector Jones
4 is there. But she reports to Deputy Commissioner Wechsler. So
5 he is there. So he would -- through channels, you know, down
6 the command, see that whatever information gets to her is
7 there.

8 MS. BORCHETTA: Objection just to the extent that last
9 statement doesn't seem like she would have personal knowledge
10 of what other people are communicating to other people.

11 THE WITNESS: Well it's his -- it would be his
12 responsibility.

13 THE COURT: Please, please.

14 THE WITNESS: Sorry, sorry.

15 THE COURT: Thank you.

16 Objection sustained on different grounds. It's just
17 simply an incomprehensible answer.

18 So could you pose the question again.

19 You asked: Does a member of the employee management
20 division sit on this committee?

21 I would think the answer is yes or no.

22 THE WITNESS: I can't remember if she's actually there
23 but her --

24 THE COURT: Well then you don't know the answer. You
25 don't know if a member of the employee management division sits

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Schwartz - cross

1 on the committee. Your answer is I don't know.

2 THE WITNESS: Okay.

3 Q. Does the deputy commissioner who the employee management
4 division reports to sit on the committee?

5 A. Yes.

6 Q. Who is that?

7 A. Inspector Jones.

8 THE COURT: I don't think it calls for more than yes.
9 Yes was good.

10 Q. Who was that deputy commissioner?

11 A. Deputy Commissioner Wechsler is the head of the personnel
12 unit, and then Inspector Jones reports to him.

13 Q. And with respect to the plan that is developed at the
14 quarterly CCRB profiling assessment committee meeting, the plan
15 that's developed with respect to that officer, how is that
16 carried out following the meeting?

17 A. There are directives given by the first deputy commissioner
18 to whatever the plan is and -- of what the steps are to be
19 taken to whoever would be responsible for those steps.

20 So if it was an integrity test, then the first deputy
21 commissioner directs the chief of internal affairs to do a
22 integrity test on that member of the service, for example.

23 Q. And if there was something regarding these officers'
24 assignment at the command, similar direction would be made
25 to -- the chief of patrol would be there for the patrol

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Schwartz - cross

1 officer, correct?
2 A. Correct.

3 And that -- also, the patrol borough chief would be
4 there at well.

5 Q. Turning your attention to Defendants' Exhibit Z3 in
6 evidence. It's the supervisor's guide on monitoring assistance
7 programs.

8 You testified on direct examination that the CCRB
9 profiling and assessment committee description is provided in
10 this exhibit. Is the performance monitoring program that you
11 also testified about represented in this exhibit?

12 A. May I have a moment?

13 MS. COOKE: Yes.
14 (Pause)

15 THE WITNESS: Yes.

16 Q. Is there -- could you read the last four digits of the
17 Bates number on that page you're referring?

18 A. 6346.

19 Q. And this performance monitoring unit that's described
20 beginning on Bates stamped page 6346 of Exhibit Z3 that's
21 separate than the CCRB profiling and assessment committee,
22 correct?

23 A. Yes.

24 Q. Directing your attention now to your testimony yesterday
25 regarding -- I guess substantiated cases and discipline for

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Schwartz - cross

1 stop-and-frisks.

2 You testified with respect to DeBour and the DeBour
3 levels of suspicion for stops and frisks, correct?

4 A. Yes.

5 Q. And does the Fourth Amendment also apply when the
6 department advocate's office is analyzing the substantiated
7 unlawful stop claims?

8 A. Yes.

9 Q. And the Fourth Amendment requires reasonable suspicion to
10 detain someone, correct?

11 A. Correct.

12 Q. And the standard for determining whether a stop was legal
13 under the Fourth Amendment is the reasonable person's free to
14 leave test, correct?

15 A. Yes.

16 THE COURT: Is the what?

17 MS. BORCHETTA: Objection.

18 THE COURT: Why are you -- I don't understand the
19 relevance of asking her that question. The law is for the
20 court to decide. The law is well developed. I really don't
21 want to pin -- are you saying in her professional capacity is
22 that what she teaches others?23 MS. COOKE: Is that what she's applying when she's
24 assessing the substantiation of an unlawful stop.

25 THE COURT: That would be a better question.

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Schwartz - cross

1 Is that the standard you're applying when you
2 assess -- say it again.

3 MS. COOKE: The substantiation of an unlawful stop.
4 THE COURT: The substantiation of an unlawful stop.

5 Is that the test you're applying?

6 THE WITNESS: Yes.

7 MS. BORCHETTA: I'm sorry, your Honor.

8 My objection was to what the reasonable person -- she
9 used a phrase for the test that I'm not familiar.

10 THE COURT: A reasonable person would feel free to
11 leave. You're familiar with that. The U.S. Supreme Court.

12 MS. BORCHETTA: The way she phrased it.

13 THE COURT: Decided that all over the place in my last
14 opinion, would a reasonable person feel free to leave. I'm
15 sure you remember it. I'm the only one who can't remember the
16 name right now.

17 MS. COOKE: Mendenhall.

18 THE COURT: Bostick. Florida v. Bostick.

19 Q. Commissioner Schwartz have you ever written charges and
20 specifications for an allegation that an officer made an
21 unlawful stop?

22 A. Yes.

23 Q. Have you ever written charges and specifications for an
24 officer conducting a stop that was improper on the basis of
25 race?

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Schwartz - cross

1 A. We've written charges in law enforcement activity that were
2 done on the basis of race.

3 Q. What law enforcement activity are you referring to?

4 A. I can think off the top of my head of one where an arrest
5 was made where we wrote charges. And I can think of another
6 that during -- during the course of an encounter on the subway
7 where the member made racially negative comments during the
8 stop. So I couldn't say it was based on that but it seemed to
9 be. So we wrote it in the context of what the member said to
10 the parties on the train.

11 Those are the two that come to my mind right away.

12 Q. Have you written charges and specifications for the use of
13 offensive race-based language outside of the law enforcement
14 actions you've just referred to?

15 A. Yes. We've -- well during the course of law enforcement
16 and amongst members of the service to members of the service.
17 We have written them on both circumstances.

18 Q. Under what circumstances do you recall writing the charges
19 and specifications for race-based language -- use of race-based
20 language between members of the service?

21 A. Well I could think of one case off the top of my head where
22 a member of the service said racially inappropriate and
23 derogatory comments to a young female that was an explorer so
24 she kind of fits in civilian and employee, but in either event
25 he was suspended and we wrote charges and specifications.

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Schwartz - cross

1 Q. With respect to the two charges and specifications in two
2 instances you recalled, one being the subway stop on the subway
3 incident and the other with respect to an arrest, what were the
4 results of those disciplinary actions?

5 A. The one with the arrest, that member was found guilty in
6 federal court based on that and so he was terminated as a
7 matter of law.

8 The other officer, she had that case -- another case
9 where she made offensive language over the transit radio, a
10 couple other incidents, she was terminated from the department.

11 Q. You testified on direct examination about the department's
12 policy prohibiting racial profiling. Do you recall those
13 questions?

14 A. Yes.

15 Q. And at the time of your deposition in 2009 were you aware
16 that a member of the service -- if a member of the service were
17 to engage in racial profiling that would be illegal?

18 A. Yes.

19 Q. And at the time of your deposition in 2009 were you aware
20 that you could discipline an officer for such behavior?

21 A. Of course. Yes.

22 Q. Show you Defendants' Exhibit U13 that's in evidence. You
23 testified with respect to this exhibit yesterday. Questions
24 were posed with respect to the rates of discipline imposed by
25 the NYPD each year for substantiated CCRB cases. Do you see

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Schwartz - cross

1 that in 2012, the red?

2 THE COURT: I'm sorry. The blue and the red are
3 blocked -- I forgot what this meant.4 Let me read it. Red is no discipline and blue is
5 discipline?

6 MS. COOKE: Correct.

7 THE COURT: Thank you.

8 Q. Do you see that in 2012 the rate -- the percentage of time
9 that the NYPD did not impose discipline on a substantiated CCRB
10 case increased from 2012?

11 A. Yes -- from 2011, yes.

12 Q. I'm sorry. From 2011?

13 A. Yes.

14 Q. And to what do you attribute that increase in percentage?

15 A. Unfortunately, there were internal problems at the CCRB
16 that we received starting in the second quarter -- second half
17 of the year. We received cases that were beyond the statute of
18 limitations or very close that we were unable to go forward on.
19 So we had an increase of what we call SOL cases. So that's
20 significantly why we had -- we're going to have that problem
21 this year as well.22 Q. Are you referring to -- I don't know how you phrased the
23 issues that the CCRB was having. Is that related to their
24 displacement following super storm Sandy?

25 MS. BORCHETTA: Objection.

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Schwartz - cross

1 THE COURT: I could not make you out. Is that related
2 to what?

3 MS. COOKE: CCRB's displacement following super storm
4 Sandy in the fall of 2012.

5 MS. BORCHETTA: Objection for foundation of her
6 personal knowledge of what was happening within the CCRB.
7 She's already said she doesn't know anything about that.

8 THE COURT: She may know there was displacement in the
9 office due to hurricane Sandy.

10 THE WITNESS: Of course I know because I have staff
11 that's there. So they weren't there. But that was part of it.
12 It started -- I don't know why. Starting in July of 2012 we
13 noticed we were receiving cases that were very close and beyond
14 the statute of limitations. And we contacted them and offered
15 assistance.

16 And then in -- after super storm Sandy, unfortunately,
17 it got worse. And it's continued into the first quarter of
18 2013 that we're receiving cases that are -- that have statute
19 of limitations issues.

20 Q. Are you aware of approximately how many cases of
21 substantiated CCRB investigations you've received in 2013 that
22 have the statute of limitations issue?

23 A. Well for the first quarter we received approximately 119
24 cases -- 119 members of the service. And of those 34 have been
25 either beyond the statute of limitations or close to it.

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Schwartz - cross

1 That's not counting the cases that were pushed through that
2 we've had, like two-and-a-half to three weeks, those case,
3 we --

4 THE COURT: What is your statute of limitations?

5 THE WITNESS: Eighteen months.

6 THE COURT: Where is that found?

7 THE WITNESS: It's in the charter.

8 THE COURT: The city charter?

9 THE WITNESS: Administrative.

10 Q. And you were saying that you did receive some cases at or
11 near the statute of limitations that you were able to push
12 through with and enforce the discipline for those officers for
13 the substantiated claims?

14 A. Yes.

15 Q. But others you have not been able to?

16 A. Thirty-four were either beyond the statute of limitations
17 when we received it or within a few days. And it would be
18 like -- I can remember one we had three days and it was a
19 four-respondent case. There was no way to synthesize it and
20 get everything done, unfortunately, in the time required.

21 Q. Because when you -- you testified yesterday about the
22 process an advocate will go through in reviewing the
23 substantiated CCRB case file. Do you recall those questions?

24 A. Yes.

25 Q. And you were also asked questions yesterday and again today

D4n9flo2

Schwartz - cross

1 about that hypothetical in the 2007 CCRB annual report. I
2 think it was the Whitestone --

3 A. Yes.

4 Q. -- hypothetical. Do you recall that?

5 A. Yes.

6 Q. And you recall I believe yesterday in your testimony that
7 that sounded like an actual CCRB case or similar to an actual
8 CCRB case that you remember receiving, correct?

9 A. It was a vignette in that they wrote -- was part of a case
10 that we had received in the year prior.

11 Q. Do you recall that there were -- I guess you recall that it
12 sounds familiar but were there -- was there information missing
13 from that vignette that would have been available to the
14 advocate reviewing that CCRB investigation file?

15 A. A lot of information was missing.

16 It was just a synopsis slanted in a way to make a
17 point. So it wasn't an objective synopsis. It was a synopsis
18 and it was missing numerous parts, including all the interviews
19 with all the witnesses, which we would listen to as well as
20 read all their notes.

21 Q. Directing your attention to that synopsis which is in
22 Plaintiffs' Exhibit -- Plaintiffs' Exhibit 111, Bates stamp
23 page 7701.

24 A. One second.

25 (Pause)

D4n9flo2

Schwartz - cross

1 THE COURT: What's the question?
2 Q. Do you see the opening paragraph that precedes the example
3 one, the Whitestone stop and frisk?

4 A. Where it says case profiles?

5 Q. Yes.

6 A. One moment.

7 Q. Do you see in that paragraph that the CCRB report indicates
8 that they have identified here atypical examples of stops and
9 frisk?

10 A. One second. The first sentence you mean?

11 THE COURT: Two-thirds of the way down it says, "The
12 board recognizes that the cases are atypical; as shown in the
13 text, the board substantiates fewer than ten percent of all
14 fully investigated cases. However, these examples should add
15 specific detail to the discussion on disciplinary issues."

16 THE WITNESS: Yes. Thank you.

17 Q. Do you see that, that they are atypical?

18 A. Yes.

19 Q. Would you agree with that characterization?

20 MS. BORCHETTA: Objection.

21 THE COURT: What's the basis of objection?

22 MS. BORCHETTA: I don't think it's clear from this --
23 I don't know what the question -- atypical of what? Of all
24 CCRB cases?

25 THE COURT: I suspect that's what it means. Is that

D4n9flo2 Schwartz - cross

1 how you take it?

2 THE WITNESS: I take it that it's atypical of cases
3 that they substantiate.

4 THE COURT: That's your opinion. You really don't
5 know what that author meant by atypical, right?

6 THE WITNESS: Correct.

7 THE COURT: Okay.

8 MS. COOKE: I have no further questions for this
9 witness at this time.

10 THE COURT: Thank you.

11 Ms. Borchetta.

12 REDIRECT EXAMINATION

13 BY MS. BORCHETTA:

14 Q. Commissioner Schwartz do you recall just now giving
15 testimony about B command disciplines being given for memo book
16 entries?

17 A. Yes.

18 Q. But you don't have any personal knowledge of whether, in
19 fact, every officer who is eligible for a B command discipline
20 for a memo book entry actually gets one, right?

21 A. No.

22 Q. You also recall just giving testimony about the memorandum
23 of understanding regarding prosecutions by CCRB?

24 A. Yes.

25 Q. And you testified that under that memorandum of

D4n9flo2

Schwartz - redirect

1 understanding CCRB cannot prosecute cases in which the subject
2 officer has not previously had a substantiated CCRB complaint,
3 right?

4 A. That's not what I said. No.

5 Q. CCRB -- is it not correct that an exception to the MOU are
6 cases in which the subject officer -- I'm sorry. Let me
7 restate it.

8 Is it correct that under the MOU CCRB can only
9 prosecute cases where the subject officer has previously had a
10 CCRB-substantiated complaint?

11 A. That's not correct.

12 Q. So can you explain what the exception with respect to
13 substantiated CCRB complaints that was you just referred to?

14 A. Paragraph two lays out exceptions that if the police
15 commissioner chooses to keep within the department -- to keep
16 within the department he can then tell CCRB that this is not a
17 case they're going to give it to him. But it doesn't mean that
18 they can't do it. It's just if the police commissioner, it
19 states, under the circumstances that if chosen, the department
20 can maintain the case.

21 Q. I'm sorry. I'm going to show you what's previously been
22 admitted into evidence, Plaintiffs' 456 which is the MOU. Can
23 you just point out where you're saying these exceptions are in
24 the MOU.

25 A. Do you want me to just read from it?

D4n9flo2

Schwartz - redirect

1 Q. Just point it out.

2 A. Paragraph two. On the first page.

3 Q. So for the record you're referring to the part of the MOU
4 that provides in part that the police commissioner can
5 determine that the CCRB's prosecution of charges and
6 specifications would be detrimental to the police department,
7 right?

8 A. Yes.

9 Q. And it also goes on to say that such instances are limited
10 to cases in which, among other things, an officer had no
11 disciplinary history or prior substantiated CCRB complaints,
12 right?

13 A. That's one of the elements, yes.

14 Q. And you've previously testified that the number of cases in
15 which an officer does have a second substantiated CCRB
16 complaint are very small, right?

17 A. I don't believe I testified to that. I testified that an
18 officer who receives instructions on an allegation, if they got
19 another instruction, that number I believe is three, since
20 2005.

21 Q. So, do you believe that the number of cases in which a
22 member of the NYPD has a second substantiated CCRB complaint is
23 a large number?

24 A. I don't know what the number is.

25 Q. So you have no idea what that number is?

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Schwartz - redirect

1 A. It wouldn't be fair for me to say it to the Court what it
2 is because I don't know it.

3 Q. Do you have an understanding of whether it's a high number
4 or a low number?

5 A. No.

6 Q. And if the Commissioner Kelly believes that charges and
7 specifications are not appropriate, then the CCRB cannot
8 prosecute charges and specifications, right?

9 A. Applying paragraph two to the MOU.

10 Q. I'm asking whether Commissioner Kelly has ultimate
11 determination of whether charges and specifications will be
12 brought, right?

13 A. It's a work in progress. So I'm not exactly sure if that
14 answer is yes. Have to see how it plays out.

15 Q. If you look at paragraph five of the MOU in your hand right
16 now, are you able to answer my question?

17 A. No.

18 Q. The document speaks for itself.

19 So the CPI. You remember giving testimony about that,
20 right?

21 A. Yes.

22 Q. And the CPI does not include information about
23 unsubstantiated CCRB allegations, right?

24 A. It shouldn't. It may but generally no.

25 Q. You also testified about IAB doing integrity tests. Do you

D4n9flo2

Schwartz - redirect

1 remember that?

2 A. Yes.

3 Q. But you have no personal knowledge of the IAB's integrity
4 tests, right?

5 A. I don't understand your question.

6 Q. Do you have any personal knowledge of the IAB's integrity
7 tests?

8 A. Yes.

9 Q. What is your personal knowledge of that?

10 A. (No response).

11 Q. How do you have personal knowledge of that? It doesn't
12 come through your office, right?13 A. No. They do come through my office. When they're
14 substantiated they come through my office. When they have
15 questions about a certain kind of test, if it's one that
16 they're looking to do and it's -- they may come for advice and
17 guidance. So I have some personal knowledge about -- they're
18 discussed at meetings that I'm at.

19 Q. I'm sorry. Let me cut you off.

20 When you say when they are substantiated, what do you
21 mean?22 A. If a member of the service fails an integrity test and it's
23 substantiated and it's something other than a memo book, then
24 there would be a consult with the investigator from the
25 internal affairs bureau with one of my advocates and it would

D4n9flo2

Schwartz - redirect

1 go through the chain of command on what the appropriate level
2 of discipline is and then again what the penalty should be.

3 Q. How many charges and specifications have you drafted for
4 unlawful stops?

5 A. I don't have -- I don't know the number off the top of my
6 head.

7 Q. Do you not think it's important to know that number?

8 A. No. I have a computer that if I needed to know that number
9 I would run it and I would know it.

10 Q. Do you have an understanding of an approximate number of
11 times that you've drafted charges and specifications up for an
12 unlawful stop?

13 A. Broken down I have -- certain months sometimes it's stops.
14 Sometimes it's both stop and frisk. Sometimes it's a stop
15 frisk and search. So I can't give you a total number on that.

16 THE COURT: But you could if you went back to your
17 computer?

18 THE WITNESS: Yes.

19 THE COURT: So would you like her to go back to her
20 computer and give it to her counsel and you'll accept what the
21 counsel tells you.

22 MS. BORCHETTA: Yes, your Honor.

23 THE COURT: Would you run that so we know -- what was
24 it -- the number of charges and specifications based on either
25 the stop; stop and question; or stop question and frisk. If

D4n9flo2

Schwartz - redirect

1 you have all three separately, break it -- what period of time
2 would you like?

3 MS. BORCHETTA: From 2005 to the present.

4 THE WITNESS: That I can't do.

5 THE COURT: What can you do?

6 THE WITNESS: I could do it 2010. We have a new
7 database system. Before that we -- it wasn't broken down. It
8 was just abuse of authority. And we didn't delineate what the
9 abuse of authority was.

10 THE COURT: Do you still want it? I'm serious. Maybe
11 you don't want it if it's just 2010 to '12.

12 Tell you what. Let Ms. Grossman know or Ms. Cooke
13 know before lunch or just at lunch or after lunch when you have
14 time to confer.

15 MS. BORCHETTA: Thank you, your Honor.

16 Q. You testified about an arrest case for which you recall
17 drafting charges and specifications. Do you recall that?

18 A. Yes.

19 Q. And what were the circumstances of that arrest case that
20 indicated to you that race was a factor?

21 A. The officer was caught on a wire making racially negative
22 comments and speaking -- he was on a wire for something else
23 and he was speaking to his girlfriend and he said something
24 incredibly inappropriate that became -- there was issues again
25 with the arrest and then that became clear that there was a

D4n9flo2

Schwartz - redirect

1 race basis for making the arrest.

2 Q. So it was an explicit racial comment, right?

3 A. Yes.

4 Q. And in the stop case for which you drafted charges and
5 specifications that you were able to recall today, that was
6 also an explicit racial comment, right?

7 A. It wasn't as bad. It was nowhere near as bad as the other
8 one.

9 Q. It was still an explicit racial comment, right?

10 A. It was negative.

11 Q. It was a --

12 A. Offensive.

13 Q. Okay. But it was a racial comment, right?

14 THE COURT: It was not an offensive comment. It was
15 an offensive comment about race.

16 THE WITNESS: Yes.

17 THE COURT: So it related to race.

18 THE WITNESS: Yes.

19 Q. You also testified about the increase of the rate at which
20 the NYPD did not issue discipline in 2012.

21 Do you recall that?

22 A. The increase, yes. As in the chart?

23 THE COURT: Right. We just did that.

24 Q. And you testified that you thought that the increase was in
25 part due to Sandy?

D4n9flo2

Schwartz - redirect

1 A. No. I testified that starting in the second half of the
2 year we noticed we were receiving cases that were beyond the
3 statute of limitations. And then later in the year we received
4 some that were due to super storm Sandy and -- but there also
5 we received in the first quarter of the year a skyrocketing
6 number.

7 (Continued on next page)

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D4N8FLO3

Schwartz - redirect

1 Q. Well, the number that you received with what you're
2 alleging were statute of limitations problems related to Sandy,
3 that number could only have been cases that you received after
4 October of 2012, right?

5 A. Yes.

6 Q. You have previously said that there is some lag time in the
7 result -- in the NYPD's action with respect to cases and the
8 CCRB's action with respect to those same cases?

9 A. I'm not sure what you mean by that.

10 Q. As you said yesterday, you don't get CCRB cases until after
11 CCRB is done with them, right?

12 A. After the board votes on it, then it's sent to the police
13 commissioner.

14 Q. So any cases that are reflected in the NYPD's action -- any
15 cases for which the NYPD's action can be reflected in 2012, the
16 NYPD had to receive some amount of time before the NYPD took
17 any action, right?

18 Let me rephrase that. I think I got it with my
19 previous question. I will withdraw it.

20 What percent of the cases that you received in 2012
21 had a statute of limitations problem?

22 A. I don't know the percent off the top of my head, but I
23 remember starting in July we received more than we usually do.
24 I believe -- we usually get a couple a year, and I know that
25 there was sometime in the summer that we received almost nine.

D4N8FLO3

Schwartz - redirect

1 So that's going to increase the percentage if we only have to
2 close over 300 cases.

3 Q. What percentage of the cases that the NYPD issued no
4 discipline for in 2012 were because of what you are contending
5 is a statute of limitations problem?

6 A. I am not contending. If they come beyond the statute of
7 limitations, they are beyond the statute of limitations.

8 Q. Can you try and answer my question?

9 A. I don't know the percentage. I would have to look and see
10 what the total number are and see at that time what the
11 percentage was.

12 Q. Are you able to determine that number?

13 A. Off the top of my head, no.

14 Q. I am not asking off the top of your head. I am asking
15 whether you're able to determine it so that we can see whether
16 we will demand it.

17 A. We can find out, yes. If you look at how many cases are
18 beyond the statute of limitations, and the total amount closed,
19 you can do the math, and that would be the percentage, and yes,
20 we can get that number.

21 Q. When you're saying beyond the statute of limitations, what
22 do you mean?

23 A. I mean that we receive them greater than 18 months and
24 there was no criminal exception, or we received them with not
25 significant -- with usually less than a week to do a review,

D4N8FLO3

Schwartz - redirect

1 analysis, make a decision, and mete out discipline.

2 MS. BORCHETTA: Your Honor, with that point, we would
3 just like until maybe after the lunch break to decide whether
4 we need to request information to test the veracity of their
5 reasoning for the decline to issue discipline in 2012.

6 THE COURT: We will see what you decide after lunch
7 and what you request and whether it's reasonable and whether
8 it's easy.

9 If you knew now what you would like to request, it
10 might be a matter of just looking in the computer. I don't
11 know what you're thinking about.

12 Q. Would it just be a matter of looking into your computer to
13 determine what number went beyond the statute of limitations in
14 2012?

15 A. I would have to do a run.

16 THE COURT: You could find out how many are due to a
17 statute of limitations problem? That would be just one run?

18 THE WITNESS: Yes.

19 THE COURT: That would not be burdensome?

20 THE WITNESS: For 2012, no.

21 MS. BORCHETTA: One moment, your Honor.

22 No further questions. Thank you.

23 THE COURT: Anything further for this witness?

24 MS. COOKE: No, your Honor.

25 THE COURT: Thank you. They will be in touch with you

D4N8FLO3 Schwartz - redirect

1 for a potential follow-up.

2 Who is your next witness?

3 MR. CHARNEY: Chief Mary Cronin.

4 MARY C. CRONIN,

5 called as a witness by the plaintiffs,
6 having been duly sworn, testified as follows:

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

9 THE WITNESS: Mary C. Cronin, C-R-O-N-I-N.

10 DIRECT EXAMINATION

11 BY MR. CHARNEY:

12 Q. Good afternoon. It's Chief Cronin?

13 A. Yes, it is.

14 Q. Good afternoon, Chief?

15 A. Good afternoon.

16 Q. You joined the NYPD in 1979, is that right?

17 A. That's correct.

18 Q. In March of 2001, you became the executive officer of the
19 quality assurance division?

20 A. That is correct.

21 Q. And I will refer to that as QAD today, OK?

22 A. Thank you.

23 Q. When you were the executive officer of QAD, the commanding
24 officer was Chief Peter Cassidy, is that right?

25 A. Yes.

D4N8FLO3

Cronin - direct

1 Q. And in May of 2006, you actually became the commanding
2 officer of QAD?

3 A. Yes.

4 Q. As the commanding officer of QAD, you report to Deputy
5 Commissioner Michael Farrell, is that right?

6 A. That's correct.

7 Q. And Deputy Commissioner Farrell is the deputy commissioner
8 of strategic initiatives, right?

9 A. Yes.

10 Q. Now, QAD is responsible for -- one of the things you're
11 responsible for is evaluating compliance with NYPD policies and
12 procedures through various evaluation processes, correct?

13 A. Yes.

14 Q. When I say policies and procedures, you understand that to
15 include patrol guide sections, right?

16 A. Yes.

17 Q. As well as operations orders?

18 A. Correct.

19 Q. There's other types of orders and procedures that would
20 fall under that as well, correct?

21 A. Correct.

22 Q. Would one of those policies and procedures that you
23 evaluate compliance with be the patrol guide section 212-11
24 which deals with stop, question and frisk?

25 A. Yes.

D4N8FLO3

Cronin - direct

1 MR. CHARNEY: If we can pull up what has been
2 previously admitted into evidence as Exhibit 98, Plaintiffs'
3 Exhibit 98.

4 Q. Do you recognize this document, Chief?

5 A. Yes, I do.

6 Q. So this would be patrol guide section 212-11, correct?

7 A. Correct.

8 Q. Is it correct that QAD conducts an annual audit of all the
9 enforcement commands in the police department to evaluate
10 officer compliance with this particular patrol guide section?

11 A. Yes.

12 Q. Is that audit procedure what is often referred to as the
13 worksheet 802?

14 A. Yes.

15 Q. Worksheet 802, which we are going to take a look at in a
16 second, is it correct that that is used both by QAD to do its
17 annual citywide audit and it's also used by each of the
18 individual commands to do their own self-inspections?

19 A. The command, yes, except the command does it monthly.

20 Q. But the same form is used, in other words, the same form is
21 used by both the commands for their monthly self-inspections
22 and by QAD for their annual citywide audit, correct?

23 A. Correct.

24 Q. Now, I also want to show you what has been previously
25 admitted as Plaintiffs' Exhibit 184.

D4N8FLO3

Cronin - direct

1 Actually, while we are pulling that up, when I use the
2 term self-inspection, is it correct that a self-inspection is
3 something that a command -- in other words, it's a procedure
4 where a command is evaluating its own officers' compliance with
5 a particular NYPD procedure, right?

6 A. That is correct.

7 Q. Do you recognize this document, Plaintiffs' Exhibit 184?

8 A. Yes.

9 Q. Can you tell me what this document is?

10 A. This is the department's policy regarding racial profiling.

11 Q. This is actually an operations order, correct?

12 A. That is correct.

13 Q. So is this one of the operations orders that the QAD also
14 evaluates compliance with?

15 A. Correct.

16 Q. Now, I want to show you a document that is marked as, this
17 is previously marked as Plaintiffs' Exhibit 350.

18 Do you recognize this document?

19 A. Yes.

20 Q. What is this document?

21 A. This is an Operations Order 11, Series 02.

22 Q. Going back to Exhibit 184 that we had on the screen, does
23 the document you have in your hand, does that refer to the
24 operations order that we were just looking at?

25 Let me bring it up on the screen here.

D4N8FLO3

Cronin - direct

1 Does that document you have in your hand correspond to
2 that operations order that's Exhibit 184?

3 A. Correct.

4 Q. So the document --

5 MR. CHARNEY: First of all, I would move for the
6 admission of Plaintiffs' Exhibit 350.

7 MS. GROSSMAN: No objection. It's a finest message.
8 I don't know if it was clear.

9 THE COURT: The number again?

10 MR. CHARNEY: Plaintiffs' 350.

11 THE COURT: 350 received.

12 (Plaintiffs' Exhibit 350 received in evidence)

13 Q. I am going to put this on the screen for a second.

14 As Ms. Grossman correctly pointed out, this document
15 is what is known as a finest message, correct?

16 A. Correct.

17 Q. Is it fair to say this is kind of like a memorandum that
18 goes out to various members of the police department describing
19 a new policy or procedure that may have been put in place?

20 A. Yes.

21 Q. So this particular finest message, which is dated December
22 26, 2002, this finest message refers to that operations order
23 we were just looking at regarding racial profiling, right?

24 A. Correct.

25 Q. Now, this particular finest message, it talks about -- I

D4N8FLO3

Cronin - direct

1 guess in the first paragraph it talks about when officers are
2 required to fill out a stop, question and frisk report
3 worksheet. And that's known as the UF-250 form, right?

4 A. Correct.

5 Q. Then it talks about how stop and frisk encounters and other
6 police initiated enforcement actions have to be based on
7 standards required by the Fourth Amendment. Do you see that?

8 A. Correct.

9 Q. Then in the second paragraph, this refers to specific
10 self-inspection protocols that commands are required to
11 establish to ensure compliance with that operations order we
12 were just looking at, right?

13 A. I'm sorry?

14 Q. In paragraph 2 here, it says that all commands are required
15 to establish a self-inspection protocol within their command to
16 ensure compliance with the contents of that order, meaning this
17 operations order 11, Series 2. Do you see that?

18 A. Yes, I do.

19 Q. And then it says that two new self-inspections have been
20 created by quality assurance division to assist commands in
21 documenting compliance, right?

22 A. Correct.

23 Q. So one of them is that self-inspection 802, which we
24 mentioned earlier, right?

25 A. Correct.

D4N8FLO3

Cronin - direct

1 Q. And the other one is what is known as the self-inspection
2 802-A, right?

3 A. Correct.

4 Q. So is it correct that in December of 2002, quality
5 assurance -- first of all, you were in the quality assurance
6 division at that point, right?

7 A. Yes, I was.

8 Q. Is it correct that at that point the quality assurance
9 division developed two self-inspection protocols to monitor
10 compliance with the NYPD's racial profiling policy?

11 A. Yes.

12 Q. And those two would be the worksheet 802 and the worksheet
13 802-A, correct?

14 A. Correct.

15 Q. And those are, in fact, the only two self-inspections that
16 are done at the precinct level to monitoring compliance with
17 the racial profiling policy, correct?

18 A. Not necessarily. You also have 803 which has the activity
19 log entries, and there is a small component of the UF-250s in
20 that.

21 Q. I am going to hand you --

22 A. But that wasn't established until after 2002.

23 Q. I understand. It was established in 2008, correct?

24 A. Correct.

25 Q. Now, you remember being deposed in March of 2010?

D4N8FLO3

Cronin - direct

1 A. Yes.
2 Q. And you swore to tell the truth at that deposition, right?
3 A. Absolutely.
4 Q. I want to see if you could turn to page 60, line 24. Just
5 let me know when you're ready.
6 A. I'm ready.
7 Q. Do you remember being asked this question and giving this
8 answer:
9 "Q. So am I correct to say that the only two self-inspections
10 that QAD has created to monitor compliance with the racial
11 profiling policy are 802 and 802-A, is that correct?"
12 A. That is correct.
13 "A. That's correct."
14 Q. So the only two are the 802 and 802-A, right?
15 A. Correct.
16 Q. Now, I want to show you another -- first of all, both the
17 802 and the 802-A went into effect in 2003, is that right?
18 A. I believe so.
19 Q. I want to show you another document that has been
20 previously admitted. This is Plaintiffs' Exhibit 114.
21 Do you recognize this document, Chief?
22 We can blow it up. Do you recognize this document?
23 A. No.
24 Q. Let me ask you this. Do you recall that one of the other
25 reasons -- one of the other events, I guess, that related to

D4N8FLO3

Cronin - direct

1 the implementation of the 802 and the 802-A was the settlement
2 in the Daniels v. City of New York case? Do you recall that?

3 A. Yes.

4 Q. This document, which has been admitted in evidence already,
5 is the settlement in that case. So I want to go to, I believe
6 it's page 6. Actually, let's go to the bottom of page 5.

7 Do you see here at the bottom it says "supervision and
8 monitoring," right?

9 A. Yes.

10 Q. Then it says, "The NYPD quality assurance division --"
11 which is QAD -- "has developed protocols necessary to integrate
12 review of stop, question and frisk practices into its existing
13 audit cycle of NYPD commands, including determinations as to
14 what material shall be reviewed and what standards shall be
15 applied. Municipal defendants have provided class counsel with
16 an audit outline that includes these protocols. QAD shall
17 conduct audits that, at a minimum, address the following
18 issues:

19 "a. Whether and to what extent documents (i.e.,
20 UF-250s, officer activity logs) that have been filled out by
21 officers to record stop, question and frisk activity have been
22 completed in accordance with NYPD regulations; and

23 "b. Whether and to what extent the audited stop,
24 question and frisk activity is based upon reasonable suspicion
25 as reflected in the UF-250 forms."

D4N8FLO3

Cronin - direct

- 1 Do you see that?
- 2 A. Yes.
- 3 Q. So is it correct that the audits that QAD is conducting to
4 assess these two questions are the 802 and the 802-A?
- 5 A. Correct.
- 6 Q. I want to show you what has been marked as Plaintiffs'
7 Exhibit 71.
- 8 Chief, do you recognize this document?
- 9 A. Excuse me?
- 10 Q. Do you recognize this document?
- 11 A. Yes, I do.
- 12 Q. Is this a copy of the worksheet 802?
- 13 A. 802, yes.
- 14 Q. This is the worksheet 802 that is currently used for both
15 the self-inspections in the commands, as well as for the QAD
16 annual stop and frisk audit?
- 17 A. It's not the current one. I see 2003 up there.
- 18 Q. Is there any information that's on the current version
19 that's in use that's not on this form?
- 20 A. Do you have the current form that I can look at?
- 21 Q. This is the only one that we were provided with. Do you
22 remember what year it was changed?
- 23 A. If you give me a few minutes, I will let you know as far as
24 the form.
- 25 Q. You know what, maybe to assist you, do you have any reason

D4N8FLO3

Cronin - direct

1 to think it was changed more recently as 2009?

2 A. No.

3 Q. So maybe, if I can show you -- I am going to show you
4 another document. This will actually help us. This is
5 Defendants' C6.

6 I am going to show you Defendants' C6. Looking at
7 this, this is the same form, right, that I just showed you?

8 A. Correct.

9 Q. This is one that was filled out by the 28th Precinct in
10 July of 2009, is that right?

11 A. Yes.

12 Q. So do you have any reason to think that since July 2009 the
13 form has been changed?

14 A. No. The form hasn't been changed. However, now that we
15 have better computers, the top where it would say reference and
16 things like that, the officers, if they are looking at it on
17 the computer, it's highlighted so they can see the exact thing,
18 what the reference is. But it would be, in essence, the same
19 thing.

20 Q. Going back to Exhibit 71, is it fair to say that, other
21 than the highlighting of the reference section, everything else
22 about Exhibit 71 is still currently being used by the police
23 department when the 802 is conducted?

24 A. I believe so.

25 MR. CHARNEY: So I would move for the admission of

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1 Plaintiffs' Exhibit 71, your Honor.
2 MR. MOORE: I think it's already in evidence.
3 MR. CHARNEY: Oh, OK.
4 It is in evidence.
5 I am going to put exhibit 71 up on the screen here.
6 Q. This is the worksheet 802. I think you mentioned that all
7 of the enforcement commands are supposed to conduct this
8 self-inspection each month, correct?
9 A. Correct.
10 Q. By enforcement commands, you understand that to mean the
11 precincts?
12 A. Yes.
13 Q. The police service areas?
14 A. Housing, yes.
15 Q. The transit districts?
16 A. Correct.
17 Q. The organized crime control bureaus?
18 A. Correct.
19 Q. The borough task forces?
20 A. Correct.
21 Q. The borough anticrime units?
22 A. Correct.
23 Q. Am I leaving anything out?
24 A. I don't think so.
25 Q. I just wanted to make sure.

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Cronin - direct

1 Now, looking at this form, at the top, obviously, they
2 write the dates that the evaluation was done. So that would be
3 the month and the year, right?

4 Actually, I'm sorry. That would be the actual date
5 that the self-inspection was done on, right?

6 A. The date that it's being conducted.

7 Q. Then the period evaluated would be the month and the year?

8 A. Right. Of what they were looking at.

9 Q. Then here would be the rank of the person in the command
10 that's actually conducting the self-inspection, right?

11 A. Correct.

12 Q. And then their name and their signature, right?

13 A. Correct.

14 Q. Then this is, I guess, the person who is going to review
15 what this evaluator did, review the form to make sure it was
16 filled out correctly?

17 A. Correct.

18 Q. And they would put their rank and their name?

19 A. Correct.

20 Q. Then here are the choices that a command has in terms of
21 how they rate their officers' performance on this particular
22 self-inspection, right?

23 A. Correct.

24 Q. And you said that on the current version of the form, this
25 section here has been highlighted, you mean bolded?

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Cronin - direct

- 1 A. No. See where it says "reference"? It would be bolded.
2 Q. Just right here?
3 A. I believe that's correct, and that's for the computer.
4 Q. Then this text is still the same on the current version?
5 A. I believe so.
6 Q. So this section here, it's fair to say this describes when
7 officers are required to fill out stop, question and frisk
8 worksheets, right?
9 A. Correct.
10 Q. And then it also mentions that officers are required to
11 make an activity log entry about the stop, right?
12 A. Correct.
13 Q. So then we get into the items that are being evaluated
14 here, right?
15 So the first item is that the reviewer is checking to
16 see whether there is a stop, question and frisk report
17 worksheet binder with photocopies of the 250s at the desk in
18 the precinct, right?
19 A. Yes.
20 Q. That's simply they mark yes or no, right?
21 A. Correct.
22 Q. Then the next item looks at whether or not the binder has
23 what is called a stop, question and frisk index cover sheet?
24 A. Correct.
25 THE COURT: We really don't need to ask her any

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Cronin - direct

1 questions. You're reading me the form. That's fine. You can
2 do that. But don't bother to ask her if that's correct.
3 That's what it says.

4 Q. What I am actually most concerned about is number 4 --
5 well, starting with number 4.

6 So the way this self-inspection works, right, and you
7 can tell me if I am wrong, is each month the reviewer will look
8 at 25 completed 250s in that command, right?

9 A. Correct.

10 Q. Then in addition to that, they are going to look at the
11 activity log entries for the last five of those 25 250s, right?

12 A. Correct.

13 Q. Other than that information, the reviewer is not going to
14 look at any other information when conducting this
15 self-inspection, right?

16 A. No.

17 Q. Meaning, no, they are not going to look at anything else?

18 A. Correct.

19 Q. So they are not going to actually sit down with the
20 officers who filled out these 250s and interview them, right?

21 A. That I wouldn't know because these are the command level
22 ones.

23 Q. According to this worksheet, right, and the items on here,
24 there is nothing that indicates that that's one of the things
25 that will be happening here in this self-inspection?

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1 A. No. But the commands are allowed to change them, alter
2 them, as long as they have the necessary information.

3 Q. But you don't have any personal knowledge as to whether, in
4 fact, in the various commands the self-inspections include
5 interviews with the officers who completed the 25 250s, right?

6 A. No, I don't have any personal knowledge.

7 Q. QAD has not issued any directives that commands should do
8 that, right?

9 A. No.

10 Q. So in terms of the review of the 25 250s and the five
11 activity logs, starting at C is where the -- I'm sorry. Item C
12 states that one of the things that's being looked at is whether
13 or not all the captions on the 250 form are completed, right?

14 A. Correct.

15 Q. And then on the third page of the document, there is a
16 worksheet, right?

17 This is in fact the worksheet that the reviewer is
18 going to fill out when they conduct the self-inspection, right?

19 A. Correct.

20 Q. So, basically, what they are doing for each of the 25 250s
21 is simply going through each of these items and answering yes
22 or no for each of these, right?

23 A. Yes.

24 Q. So looking at C, you said they are going to answer a yes or
25 no whether all the captions are filled out correctly. And then

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1 they are going to answer -- for some of the specific captions,
2 they are also going to look at it and say, did they note the
3 sex, did they note the race, and so forth, right?

4 A. Correct.

5 Q. If we can go back to Plaintiffs' Exhibit 114 on the screen,
6 this is the Daniels settlement. You recall that, according to
7 this settlement, the QAD audits are supposed to assess whether
8 and to what extent the audited stop, question and frisk
9 activity is based upon reasonable suspicion as reflected on the
10 250 form?

11 A. Correct.

12 Q. And you had testified that the audits that QAD does to
13 assess that question are the 802 and the 802-A, correct?

14 A. Correct.

15 Q. My question to you is, according to the 802, there is no
16 item on here that mentions reasonable suspicion, is there?

17 A. No.

18 Q. But it's your testimony that the 802 does assess whether or
19 not the 25 stops that are reviewed here were based on
20 reasonable suspicion?

21 A. Yes.

22 THE COURT: How is that assessment made then?

23 THE WITNESS: If you see where it says crimes
24 suspected and you put down the crime, it says felony or
25 misdemeanor?

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1 THE COURT: I can't.

2 THE WITNESS: It's C-1.

3 THE COURT: I see it. OK.

4 THE WITNESS: You have felony or misdemeanor
5 suspected. You're putting the actual crime, you're just not
6 saying felony or misdemeanor. You will be saying burglary or
7 petit larceny.

8 See C-2, where it says circumstances which led to the
9 stop. You're going to look to see what did they put in the
10 check off box, as far as the circumstances. So we correlate
11 with the felony or the misdemeanor and then the circumstances
12 which led to the stop.

13 THE COURT: If it said a certain misdemeanor and then
14 it said furtive movements, you would know that that was
15 reasonable suspicion?

16 THE WITNESS: Well, furtive movement raises the level
17 to reasonable suspicion.

18 THE COURT: If that was all that was in column C-2,
19 that would be satisfactory?

20 THE WITNESS: Yes.

21 MR. CHARNEY: That was actually my next question. You
22 asked the exact question I was going to ask.

23 Q. So is it fair to say that as long as there is a felony, a
24 specific felony or misdemeanor listed on the form and that
25 there is one or more boxes checked off in the stop

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Cronin - direct

1 circumstances section, that would be enough to establish for
2 purposes of this review that the stop was based on reasonable
3 suspicion?

4 A. Yes.

5 THE COURT: Then if the answer was yes to was person
6 frisked, let's say it's yes, would you know whether that was
7 reasonable to do?

8 THE WITNESS: Based on, if it was a felony, a
9 burglary, they said furtive movement or they said they had
10 burglary tools, the person was frisked -- and there is another
11 caption because you're looking at the actual 250. When you're
12 doing this, you're looking at the actual 250 form. So that
13 box, was person frisked, did you find anything, was the person
14 searched, and that would be on that. So you really have to
15 look at the 250 form along with this. You can't just look at
16 one without the other.

17 Q. Let's pull up Plaintiffs' Exhibit 74, which is already in
18 evidence, which is the 250 form.

19 We already talked about the section, specify which
20 felony, and then we talked about the circumstances which led to
21 the stop.

22 Now, I wanted to follow up on her Honor's question
23 about the frisk. So going down, I guess it's the second page
24 actually, there is a section on the second page of the 250, and
25 if we can rotate this. You see on the top there it does say

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1 was person frisked, right?

2 A. Correct.

3 Q. Is it your testimony that if the officer checked yes, and
4 then checked at least one box underneath that for the reason
5 for the frisk, that would satisfy the reviewer who is doing the
6 802 self-inspection that this frisk was lawful?

7 A. Yes.

8 THE COURT: Again, if the person checked yes and
9 furtive movements, the reviewer would say that was a reason to
10 conduct the frisk?

11 THE WITNESS: Yes.

12 THE COURT: With that, we will take our luncheon
13 recess and reconvene at 5 after 2.

14 (Luncheon recess)

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AFTERNOON SESSION
2:05 p.m.

3 MARY CRONIN, resumed.

4 BY MR. CHARNEY:

5 Q. Good afternoon, Chief Cronin.

6 A. Good afternoon.

7 Q. Before we broke for lunch, we were talking about the
8 worksheet 802 self-inspection, and we were going through each
9 of the items just to get clarification on how each of these
10 items is assessed. And I think when we had stopped, we were
11 talking about the item where the reviewer is reviewing the
12 section of the 250 form where frisk was either checked yes or
13 no, and then the reasons for the frisk.

14 I wanted to then ask you about the next item on the
15 worksheet, which I am going to pull up on the elmo here, which
16 is item C-4, was person searched?

17 And similarly, in order to satisfy that item of the
18 self-inspection, in other words, in order for the reviewer to
19 mark yes for that item, the 250 form, if search was checked
20 yes, as long as the officer also checked off one of the reasons
21 for the search, that would be enough to satisfy the reviewer
22 that that item was also done correctly, right?

23 A. Yes.

24 Q. Then I want to ask you about item D here, which is
25 reviewing supervisor's captions, name, tax number and command

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Cronin - direct

1 and signature.

2 If we can go back to Exhibit 74, which was the UF-250
3 form and go to the second page.4 So looking here at the bottom, is it true that item D
5 on the worksheet 802 refers to this section in the bottom
6 right-hand corner where it says "reviewed by"?

7 A. Yes.

8 Q. So in order for that item on the worksheet 802, item D, in
9 order for the reviewer to mark yes for that item, as long as
10 those four pieces of information on the 250 form, in other
11 words, as long as the name, the tax ID number, the signature
12 and the command are filled in by the supervisor who is
13 reviewing this, that would be enough to satisfy that item on
14 the self-inspection, right?

15 A. Yes.

16 Q. Now, the worksheet 802 does not assess whether the
17 reviewing supervisor discussed the 250 form with the officer
18 who completed it, right?

19 A. No.

20 Q. In fact, QAD does not have any audit procedure to monitor
21 whether supervisors are in fact discussing completed UF-250s
22 with officers, right?

23 A. No.

24 Q. Then, finally, we have the activity log entry item on the
25 worksheet 802. And again, this item looks at five of the

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Cronin - direct

- 1 25 -- the activity log entries for five of the 25 stops that
2 are reviewed, right?
3 A. Correct.
4 Q. And in order to get a yes for this, in other words, yes
5 that the activity log entry was made -- first of all, there has
6 to be an entry matching the stop, right?
7 A. Correct.
8 Q. And that entry has to include the name and the pedigree
9 information of the person stopped, right?
10 A. It doesn't necessarily have to have the name.
11 Q. OK. But it has to have pedigree information, like age and
12 gender and race?
13 A. Correct.
14 Q. And the activity log entry should have the location of the
15 stop, right?
16 A. Yes.
17 Q. And it has to have some information about the reasons for
18 the stop, right?
19 A. Yes.
20 Q. But the only information it needs to have about the reasons
21 for the stop is the same information that would be on the 250,
22 right?
23 A. Correct.
24 Q. Nothing else?
25 A. They could have more.

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Cronin - direct

1 Q. But it doesn't have to?

2 A. No.

3 Q. So I want to show you, we were looking at Exhibit C6,
4 although I don't think I ever admitted it into evidence.

5 Do you have it in front of you? It's the worksheet
6 for the 28th Precinct. I thought I gave you a copy.

7 A. 7889?

8 Q. Yes. Do you have that in front of you?

9 A. Yes, I do.

10 MR. CHARNEY: I would move to admit Defendants'
11 Exhibit C6.

12 MS. GROSSMAN: No objection.

13 THE COURT: C6 received.

14 (Defendants' Exhibit C6 received in evidence)

15 Q. Just real quick, so this is a completed worksheet 802
16 self-inspection for the 28th Precinct for July of 2009, right?

17 A. Yes.

18 Q. Looking at it, you have it in front of you, the front and
19 the back is filled out. Then the third page is the worksheet
20 with all the items, right?

21 A. Correct.

22 Q. Looking at this and based on your own knowledge of the
23 self-inspection procedures, you would agree that this
24 self-inspection was done correctly, right?

25 A. Well, let me just see. For me? This would not have been

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1 done correctly.
2 Q. Go ahead.

3 A. Where it says activity log, it says, yes, there was one,
4 but it was improper. I think that's what it's saying improper.
5 Then the second one, yes, but it's improper. I am not sure
6 what the third one is. I don't know what that says. And then
7 the other, no and no. I would assume that that means they
8 didn't have an activity log. So as far as I'm concerned, just
9 in that section. But overall, they have down good. As far as
10 I am concerned, that wouldn't be a good. That would be needs
11 improvement.

12 Q. So the conclusion that the reviewer made that this
13 self-inspection showed good performance, you disagree with
14 that?

15 A. I disagree.

16 Q. In terms of what they wrote for activity log entry, where
17 they wrote "yes, improper," what is wrong with writing that?
18 What should they have written?

19 A. They said no. That's not wrong based on what they are
20 saying. They are saying, yes, they had an entry. However,
21 they felt it was improper. They could mean anything by that.
22 I don't have their activity log. It could mean they don't have
23 enough information.

24 Q. Well, let me ask you this. When a self-inspection is done
25 and it's completed and this worksheet is filled out, the

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Cronin - direct

1 command is not required to attach the activity logs to the
2 worksheet, right?

3 A. No. But they have the numbers so they can look that up.

4 Q. Are you saying that you would expect that the reviewer
5 actually write on this worksheet what they thought was improper
6 about the activity log?

7 A. They could always use another piece of paper. But,
8 unfortunately, the reviewer never signed it. So I don't know
9 who reviewed it.

10 Q. On page 1, isn't there a signature at the top?

11 A. That's the one who evaluated it. There is no signature or
12 name, on mine anyway, of the reviewer.

13 Q. I'm sorry. By reviewer, you mean the superior officer who
14 would have reviewed what the evaluator did when they filled out
15 this worksheet?

16 A. Correct.

17 Q. Do we know looking at this whether the person that wrote
18 improper was the reviewer or the evaluator?

19 A. I would have to assume.

20 THE COURT: Which would you assume?

21 THE WITNESS: I would assume it was the evaluator
22 since there is no reviewer.

23 Q. So I guess just going back to my question, the procedures
24 for this doing this self-inspection did not require that the
25 reviewer or the evaluator write anything in this column other

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Cronin - direct

1 than yes or no, right?
2 A. I'm sorry. Could you say that again?
3 Q. The procedures that QAD has developed for conducting this
4 self-inspection do not require that the person doing the
5 self-inspection write anything other than yes or no in this
6 column, right?
7 A. Correct. But they can write, or they can use an additional
8 sheet of paper and write what they'd like.
9 Q. But that's not required?
10 A. No, it's not required.
11 Q. I think you have already -- this is what you're getting at.
12 The problem is, if all they have to write is yes or no, you
13 can't tell by looking at the worksheet what about the activity
14 log entry was insufficient, right?
15 A. Correct.
16 Q. You couldn't tell if it's because they didn't write the
17 reasons for the stop, right?
18 A. No. However, if I was the reviewer and it was my command,
19 I would want to see the activity logs, and I would like to see
20 the 250s that they did on it.
21 Q. You would like to see them when you were conducting the
22 self-inspection?
23 A. If I was the reviewer, I would like to see what they said
24 was improper or why they put a yes or no, and whatever the
25 third one is.

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Cronin - direct

1 Q. So then I wanted to ask you, sticking with the 802, I think
2 you mentioned earlier that the 802 is also used not only for
3 the commands to do their own self-inspections, but it's used by
4 QAD when QAD audits each command's stop and frisk activity once
5 a year, right?

6 A. Correct.

7 Q. The only difference between what QAD does in the annual
8 audit and what the commands do in their monthly
9 self-inspections is that when it comes to those activity log
10 entries, the five entries, QAD is actually going to look at the
11 5th, 10th, 15th, 20th and 25th entry as opposed to the last
12 five, right?

13 A. Correct.

14 Q. Other than that, the way that QAD does the 802 is exactly
15 the same as the way the commands do it, right?

16 A. Except -- yes, except that we would have the activity logs,
17 photocopies of them.

18 Q. So you would attach the photocopies to the --

19 A. To the worksheets.

20 Q. But otherwise, the way you do the audit and the information
21 you're reviewing in that audit is the same information that the
22 command is reviewing in the self-inspection, right?

23 A. Correct.

24 Q. And when QAD does this audit once a year of each precinct
25 and each PSA and each other enforcement command, each of those

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1 commands is going to receive a score for their performance on
2 the audit, right?

3 A. Correct.

4 Q. To calculate that score, what QAD does is the first thing
5 you do is you score each of the items on the audit on a scale
6 of 1 to 4, right?

7 A. Correct.

8 Q. With 4 being the highest, correct?

9 A. That's correct.

10 Q. And 1 being the lowest, right?

11 A. Correct.

12 Q. It's correct that any score below 3 is considered failing
13 that item of the audit, right?

14 A. That is correct.

15 Q. And then after you have scored each of the items on a scale
16 of 1 to 4, you add up all of those numbers and divide by nine
17 to get the overall score for that command on the audit?

18 A. Correct.

19 Q. So the overall score is also going to be on a scale of 1 to
20 4, right?

21 A. Correct.

22 Q. Let me just show you, this is Plaintiffs' Exhibit 62.
23 Do you recognize this document?

24 A. Yes. This is the rating parameters.

25 Q. So these are the parameters that QAD uses to score each

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Cronin - direct

1 command's performance on the annual stop and frisk audit?

2 A. Correct.

3 MR. CHARNEY: I would move for admission of
4 Plaintiffs' Exhibit 62.

5 MS. GROSSMAN: No objection.

6 THE COURT: 62 is received.

7 (Plaintiff's Exhibit 62 received in evidence)

8 Q. Let me put this up here.

9 So each of the columns on here corresponds to each of
10 those items we were looking at on the worksheet 802, right?

11 A. Correct.

12 Q. So then the way that the scoring is done is, you see the
13 ratings go from 1 to 4, and each rating corresponds to a
14 certain number of errors that would occur or could occur when
15 QAD is doing the evaluation. So that if on item A there were
16 more than five errors in the 25 250s that were being reviewed,
17 that command would get a 1?

18 A. Correct.

19 (Continued on next page)

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Cronin - direct

1 Q. So for the less errors they got, the higher their score may
2 be?

3 A. Correct.

4 Q. And that's true going across here. I want to look at
5 specifically the activity log entry item. So the way that
6 would work is if there were errors in three to five of the
7 activity log entries, they could get a one. If there were two
8 errors only, they would get a two. If there was one error they
9 would get a three. And then no errors they would get a four,
10 right?

11 A. Correct.

12 Can I just -- the error is for one memo book activity
13 log. So each book --

14 Q. Yes. Got it.

15 So that's a good point to clarify. So in other words
16 by three errors it would mean in three of the five activity
17 logs that were being reviewed there was at least one error?

18 A. Correct.

19 Q. Thank you for that clarification.

20 So then after QAB conducts this evaluation of each
21 individual command QAB puts out what's called an evaluation
22 report for each of the commands, right?

23 A. Correct.

24 Q. And that evaluation report has the score that that command
25 got on the audit, right?

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Cronin - direct

1 A. Correct.

2 Q. And then it also has some details about what deficiencies
3 were noted in the audit, right?

4 A. Correct.

5 Q. I'm going to show you what's been marked as Plaintiffs'
6 Exhibit 43. It's actually a portion of that exhibit. This is
7 Plaintiffs' Exhibit 3. Bates numbers 643 -- NYC_26432 through
8 NYC_26438. I'm going to hand this to you.

9 Chief Cronin, do you recognize this document?

10 A. It would be the document that we would give to the command
11 upon completion of the evaluation.

12 Q. And looking at this document, am I correct that this would
13 be the QAB's evaluation report for the stop-and-frisk audit for
14 2008 for the 28th precinct?

15 A. Yes. But there's three other areas that would be evaluated
16 at the same time.

17 Q. In other words at the same time that you do the
18 stop-and-frisk audit you might be auditing some other areas
19 that may be unrelated to stop and frisk?

20 A. Correct.

21 Q. But this particular document refers to the stop-and-frisk
22 audit of the 28th precinct for 2008, right?

23 A. Correct.

24 MR. CHARNEY: I would move for the admission of
25 Plaintiffs' Exhibit 48, the Bates numbers --

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Cronin - direct

1 MR. MOORE: It's already in evidence.
2 THE COURT: It's a part of an exhibit.
3 MR. MOORE: The part that he just referred to is an
4 exhibit. It was entered through Diaz.
5 MR. CHARNEY: Because that was a deposition
6 designation. Sorry about that.
7 THE COURT: I see. Okay.
8 MR. CHARNEY: Well then I guess we'll look at it.
9 Q. So the cover page is a memo that actually -- is this a memo
10 that comes from you?
11 A. It's an evaluation report.
12 Q. But just the cover page I guess where it says from
13 commanding officer quality assurance division to deputy
14 commissioner strategic initiative, is that something that you
15 wrote or --
16 A. Yes.
17 Q. And then at the bottom it actually has the score on the
18 audit for the 28th precinct, right?
19 A. Yes.
20 Q. And so the overall score for the 28th precinct for 2008
21 on the stop-and-frisk audit is actually below passing, right?
22 A. Correct.
23 Q. And then just going to the next page, this is the section
24 of the evaluation report where you actually -- QAD will discuss
25 in detail what deficiencies were noted; is that right?

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Cronin - direct

- 1 A. Yes.
- 2 Q. And if we see here -- there's a lot of them but I wanted to
- 3 ask you about -- actually going on to the next page, 6435. It
- 4 says five of the five activity logs examined were missing
- 5 information detailing the circumstances of the stop.
- 6 Do you see that?
- 7 A. Yes.
- 8 Q. So, is it correct that on that particular item of the
- 9 audit, the activity log entry, the 28th precinct would have
- 10 gotten a score of one?
- 11 A. Correct.
- 12 Q. Then the other thing that QAD does each year with respect
- 13 to these annual audits is you put out a report that summarizes
- 14 the results on the audit for all of the commands, right?
- 15 A. Could you say that again. The summary?
- 16 Q. Yes. You put -- each year you put out a summary of the
- 17 results of the audit for all of the commands, right?
- 18 A. The numerical numbers?
- 19 Q. Yes.
- 20 A. Yes.
- 21 Q. Sorry. The numerical numbers.
- 22 I'm going to show you -- I think this is actually
- 23 already in evidence. Plaintiffs' Exhibit 95. If we can pull
- 24 it up.
- 25 So looking at this exhibit, is this the -- for 2008

D4n9f1o4

Cronin - direct

1 the summary of the numerical results on the stop-and-frisk
2 audit for all the commands in the New York police department?

3 A. Yes.

4 Q. And so I guess the first page it summarizes the results --
5 we can blow it up a little bit.

6 So on the left-hand side looks like the first page
7 summarizes the results for each of the patrol boroughs, right.
8 There's eight patrol boroughs, right?

9 A. I'm sorry. Yes.

10 THE COURT: It's hard for me to read at the top. I
11 can't really make it out.

12 MR. CHARNEY: Let's blow it up.

13 THE COURT: Because it's shaded. I see the word
14 "rating" and the word "totals." That I can see. So that's the
15 average rating.

16 MR. CHARNEY: For that borough.

17 THE COURT: Like Manhattan South, the average rating
18 is what? Is it 3.1 or 3.8 or 3.2? I can't tell what A, B and
19 C are.

20 MR. CHARNEY: A with correspond to item A on the
21 audit. Remember there was A through D. So B would correspond
22 to item B on the audit. C and so forth.

23 If we keep going across to the right, we have actually
24 the numbers of I guess how many of the UF 250 forms, right, had
25 the sex of the person stopped indicated, how many didn't; how

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Cronin - direct

1 many had the race and not the race?

2 THE COURT: Right.

3 MR. CHARNEY: If we continue going across, we get to
4 the item C1 on the audit, right, which was whether the caption
5 specified which felony.

6 C2 whether or not they checked off the circumstances
7 of the stop.

8 THE COURT: I get it. The really low grade is the
9 activity log.

10 MR. CHARNEY: Yeah.

11 And then the last rating is just the overall score on
12 the audit.

13 If we can then blow it back out because I want to ask
14 one more question.

15 Q. The first page it's fair to say has kind of the average
16 performance for the patrol boroughs, right? That's one of the
17 things that's on the first page?

18 A. Yes.

19 Q. Then it has the performance of the entire patrol services
20 bureau, right?

21 A. Right. That's patrol service bureau.

22 THE COURT: I see that. Then transit and housing and
23 OCCB. But the bottomline is, look, this column on activity
24 log, everybody flunked.

25 THE WITNESS: Yes.

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Cronin - direct

1 MR. CHARNEY: Except transit for some reason and
2 housing.

3 THE WITNESS: Housing and transit.

4 THE COURT: Except housing and transit, okay.

5 Q. Then I just wanted to go to the third page. I want to make
6 sure -- I want to verify something on the third page.

7 So these are the scores for the individual precincts
8 in Manhattan North, right?

9 A. Correct.

10 Q. An so one of those precincts is the 28th precinct, right?

11 A. Correct.

12 Q. I just want to verify. The scores that you see there in
13 the 28th precinct, those correspond to the scores we were
14 just looking at on the Exhibit 43, the evaluation report?

15 A. I don't have the rating but looking at it I would say yes.

16 MR. CHARNEY: I can just really quickly put this back
17 up.

18 Let me go back to the ELMO real quick. Looking at
19 Exhibit 43.

20 So you see it said 2.8 as the overall score?

21 THE WITNESS: Yes. Correct.

22 Q. It's correct that this score is the score that's then
23 inputted into that summary chart, right?

24 A. Correct.

25 Q. So now I want to ask you about the 802-A that was the other

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1 worksheet we mentioned.

2 Again, going back to Exhibit 350, which was the finest
3 message.

4 The 802 and the 802-A are the two self-inspections
5 that QAD developed to monitor compliance with the department's
6 racial profiling policy, right?

7 A. Correct.

8 Q. Now I want to show you -- this has been marked as
9 Plaintiffs' Exhibit 58.

10 Do you recognize this document?

11 A. Yes, I do.

12 Q. Is this a -- this is the worksheet, 802-A, that the
13 commands fill out when they do that self-inspection?

14 A. Correct.

15 MR. CHARNEY: I would move for the admission of
16 Plaintiffs' Exhibit 58.

17 MS. GROSSMAN: No objection.

18 THE COURT: 58 is received.

19 (Plaintiffs' Exhibit 58 received in evidence)
20 Q. Now, this -- again this self-inspection is done every month
21 by the commands, right?

22 A. That is correct.

23 Q. And the purpose of this self-inspection is to review five
24 self-initiated arrests done in that command during that month,
25 right?

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Cronin - direct

1 A. Yes. By five different officers.

2 Q. By five different officers.

3 And by self-initiated you mean arrests that are not
4 done in response to a call for service or a complaint filed by
5 a civilian, right?

6 A. Correct.

7 Q. In other words, it would be an arrest that was the result
8 of an officer doing proactive enforcement activity and
9 observing illegal activity and then making an arrest resulting
10 from their own observations, right?

11 A. Correct.

12 Q. And in addition if, in fact, the arrest was the result of a
13 stop and frisk, the stop-and-frisk paperwork would also be
14 reviewed as part of the self-inspection, right?

15 A. Correct.

16 Q. So, in order to conduct this particular self-inspection --
17 well, first of all, the self-inspection is supposed to be
18 conducted by either the command's integrity control officer or
19 assistant integrity control officer, right?

20 A. That is correct.

21 Q. Although I get -- okay.

22 So in doing this evaluation, the integrity control
23 officer or assistant integrity control officer would review the
24 five arrest reports corresponding to those self-initiated
25 arrests, right?

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Cronin - direct

- 1 A. Correct.
- 2 Q. And if there was a 250 that went with that arrest report,
- 3 they would review that, right?
- 4 A. Correct.
- 5 Q. And that's it, right? Those are the only documents they
- 6 would review as part of this self-inspection, right?
- 7 A. Well they could always look at more but that's what's
- 8 required, yes.
- 9 Q. Now, when they do that review, again, they're supposed to
- 10 be -- it's your testimony that this review is supposed to
- 11 evaluate whether those arrests comply with the department's
- 12 racial profiling policy, right?
- 13 A. Correct.
- 14 Q. Now, down here on the self-inspection they would list the
- 15 dates of each of those five arrests, right?
- 16 A. Correct.
- 17 Q. The arrest report number?
- 18 A. Correct.
- 19 Q. The arresting officer, right?
- 20 A. Yes.
- 21 Q. And I guess the charge that the person was arrested for,
- 22 right?
- 23 A. Yes.
- 24 Q. And then here they could list if there was a deficiency on
- 25 that arrest report, right?

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Cronin - direct

1 A. Yes.

2 Q. Now, one of those deficiencies, is it true, that one of
3 those deficiencies could be that if the arrest was the result
4 of a stop and frisk but there is no 250 associated with that
5 arrest, that would be one of those deficiencies, right?

6 A. Yes.

7 Q. And, in fact, the prior version of this worksheet, correct,
8 the 802-A, the prior version actually had a specific item here
9 that specifically referred to, you know, whether or not the 250
10 was included or not, right?11 MS. GROSSMAN: Objection. That's not been
12 established. This is the form that --

13 MR. CHARNEY: I'm asking if a prior --

14 MS. GROSSMAN: There was no prior version. This is
15 the one.16 MR. CHARNEY: Well I will show that Ms. Grossman is
17 incorrect if you want me to.18 THE COURT: You don't need to have conversation with
19 counsel.

20 Do you know of any prior version of this form?

21 THE WITNESS: Yes.

22 THE COURT: You do. Okay.

23 Q. Do you recall that the prior version did have an item here
24 that specifically referred to whether or not the 250 that went
25 along with the arrest was included?

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Cronin - direct

- 1 A. Yes, it was there.
2 Q. But it got removed, right?
3 A. Well it was because they were getting confused the
4 officers -- whoever was doing the report, they got confused.
5 When they saw that the UF 250 was on there, they assumed that
6 everything should have a UF 250. So deficiency noted would
7 note that the UF 250 was missing.
8 Q. Now other than a missing 250, what other deficiencies would
9 or should be noted on this worksheet 802-A?
10 A. What other deficiencies?
11 Q. Yeah.
12 A. If a lot of times the officers do too small statement
13 and --
14 Q. I see.
15 A. It wouldn't articulate it as well unless you have the 250
16 with it.
17 Q. So that would be another example?
18 A. Yes.
19 Q. Now, similar to the 802, this particular self-inspection,
20 the 802-A, does not require that the reviewer speak to the
21 officers who made the arrests, right?
22 A. Correct.
23 Q. And it does not even require that the reviewer review the
24 activity log entries that the officer made for the arrest,
25 right?

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Cronin - direct

1 A. Correct.

2 Q. Now, unlike the 802, QAD itself doesn't do its own annual
3 evaluation using the 802-A, right?

4 A. We don't do an annual one, no.

5 Q. In fact, the only thing that QAD does with respect to the
6 802-A is you review -- and I don't know if this is an annual or
7 biannual thing -- but you only review whether or not the
8 commands are themselves doing the 802-A, right?

9 A. Correct. But we look at what they've done and we will make
10 our comments. We will get their arrest report. We will get
11 what they are looking at.

12 Q. And, in fact, when you do that, when you do this review of
13 what they do, how they do the 802-A, that review does not
14 include the borough anticrime units, right?

15 A. Correct.

16 Q. Are you aware that the borough anticrime units, that many
17 of the officers that were assigned to the borough anticrime
18 units came from the former street crimes units?

19 A. Are they assigned from street crime units?

20 Q. In other words, you're aware that the street crime units
21 were dissolved, right?

22 A. Correct.

23 Q. You're aware that many of the officers from those units
24 were reassigned to the borough crime units?

25 A. I wouldn't know where they were assigned.

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Cronin - direct

1 Q. I want to show you what's been previously marked as
2 Plaintiffs' Exhibit 89.

3 Do you recognize this document, Chief?

4 A. No.

5 Q. Well let me just ask you a question.

6 You notice that this is a memo from December 2002 from
7 Deputy Commissioner Farell to the chief of department, right?

8 A. Correct.

9 Q. And you see that it outlines the procedures for doing the
10 802 and the 802-A self-inspections, right?

11 A. (No response).

12 Q. Take your time. I didn't know that you --

13 (Pause)

14 A. Okay.

15 Q. And these -- am I correct that these -- this memo
16 accurately sets forth the procedures for the work -- the
17 self-inspections, the 802 and the 802-A -- oh, yeah, take your
18 time.

19 A. Second page.

20 (Pause)

21 MS. GROSSMAN: If Mr. Charney wants to offer it as an
22 exhibit we have no problem.

23 MR. CHARNEY: I just wanted to make sure it was --
24 okay. So I move for the admission of Plaintiffs' Exhibit 89.

25 THE COURT: 89 is received.

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Cronin - direct

(Plaintiffs' Exhibit 89 received in evidence)

1 MR. CHARNEY: Thank you, Ms. Grossman.

2 Q. Let me ask you real quick about page two of this document
3 which is Bates numbered NYC 37891.4 So you see paragraph three here? It says police
5 initiated enforcement?

6 A. Yes.

7 Q. And it talks about a second self-inspection, the 802-A.

8 So is it fair to say that this paragraph and then this
9 paragraph here, those paragraphs set forth the -- very
10 generally the -- how the 802-A self-inspection is supposed to
11 work?

12 A. Yes.

13 Q. And so it's consistent with what we said earlier. It talks
14 about reviewing the last five arrest reports resulting from
15 self-initiated arrests, right?16 A. It's just listing about the five different officers, but
17 yes.18 Q. And other than reviewing those reports, the procedures
19 don't call for review of any other activity, officer activity
20 for that month, right?

21 A. Correct.

22 Q. I want to show you another document. This is Plaintiffs'
23 Exhibit 73.

24 Before I do that, actually -- so you were an executive

25

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Cronin - direct

1 officer in the quality assurance division in 2002, correct?

2 A. Correct.

3 Q. And so you, as part of your job, you did review some of the
4 drafts of the procedures for the 802 and the 802-A
5 self-inspections?

6 A. Correct.

7 Q. So Exhibit 73, which I've handed you, is a memo dated
8 November 6, 2002 and it's from the commanding officer of QAD
9 which at the time was Inspector Cassidy, right?

10 A. Correct.

11 O. And it's to Deputy Commissioner Farrell, right?

12 A. Correct.

13 Q. And you see on the second page -- I'm sorry. Again,
14 looking at both pages is it fair to say that this document sets
15 forth those procedures for the 802 and the 802-A
16 self-inspection that we saw -- or that we see in Exhibit 89 on
17 the screen?

18 A. Page one does.

19 Q. And then what about page two on the back?

20 A Give me two minutes.

21 No. No page two is different.

22 Q. It's different. But it does set forth certain procedures
23 for the 802-A, right?

24 MS. GROSSMAN: Objection.

25 THE WITNESS: No because -- sorry.

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Cronin - direct

1 THE COURT: Do you want to object or you want her to
2 answer? She can correct it if it's wrong. It seems like it's
3 not an objection, really. It's a question and she --

4 MS. GROSSMAN: It's a characterization as to a
5 procedure.

6 THE COURT: She's going to I think -- I think it's
7 best to overrule the objection. So let's hear what you were
8 going to say.

9 THE WITNESS: I was going say B --

10 Q. I understand.

11 THE COURT: I don't. You're speaking to each other
12 now. What?

13 THE WITNESS: It says ICO. And it tells you what the
14 ICO is going to do.

15 THE COURT: One second still.

16 THE WITNESS: It says it will monitor these runs to
17 ensure that -- they are monitored by radio runs.

18 THE COURT: Yes.

19 THE WITNESS: I don't remember that ever being a part
20 of it.

21 MR. CHARNEY: Your Honor, I just want to get this into
22 evidence and then ask her about that exact issue.

23 MS. GROSSMAN: We would object to offering this into
24 evidence because it doesn't represent police department
25 procedure.

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Cronin - direct

1 MR. CHARNEY: But it's a draft of a memo from the CO
2 of the QAD to the deputy commissioner to teach initiatives. We
3 would argue it's a statement of the party opponent. He's a
4 very high ranking official.

5 THE COURT: She can certainly identify the author.

6 Who is the author again?

7 MR. CHARNEY: Peter Cassidy.

8 THE COURT: Do you know who Peter Cassidy is?

9 THE WITNESS: Yes.

10 THE COURT: Who is Peter Cassidy?

11 THE WITNESS: He was the commanding officer at the
12 time of the quality assurance division.

13 THE COURT: At when was he the commanding officer?

14 THE WITNESS: I don't know when he started but I took
15 over for him in 2006.

16 THE COURT: And the date of this?

17 MR. CHARNEY: 2002.

18 THE COURT: That's a long time ago.

19 So in 2002 he authored this document. That's what we
20 know.

21 So, yes, it's a statement. It's an eleven-year-old
22 statement, but sobeit. It's a statement of a party opponent
23 I'll allow it.

24 MS. GROSSMAN: It's not anything in terms of a
25 statement of a party opponent. It was not a final agency

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Cronin - direct

1 action.

2 THE COURT: I realize it was not a final agency
3 action. It was a draft. But it was founded within the files.

4 MR. CHARNEY: Yes.

5 THE COURT: Was it sent?

6 MR. CHARNEY: It was produced by the city of New York.

7 THE COURT: Sure. Do we know if it was sent to the
8 recipient?9 MR. CHARNEY: Well it's -- I mean it's a draft written
10 by Commissioner Cassidy. I don't know if it was ever received
11 by Commissioner Farell.

12 THE COURT: But it was addressed to him?

13 MR. CHARNEY: Yes.

14 THE COURT: As a draft?

15 MR. CHARNEY: Yes.

16 THE COURT: I would allow it. It still is a
17 statement. I understand it's a draft. I understand it's not a
18 final agency action.19 This is the case that we're trying. It doesn't matter
20 if it's a draft. He sent it, one high ranking officer to
21 another. But I understand it's a draft. Okay.

22 BY MR. CHARNEY:

23 Q. So actually, Chief, I wanted to ask you about that exact
24 point you were making.

25 With respect to what's written in this memo about the

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Cronin - direct

1 802-A self-inspection, in this draft it looks like there are
2 actually two items listed here, right?

3 A. Correct.

4 Q. And in the version that we were looking at in Exhibit 89
5 there was only one item, right?

6 A. Correct.

7 Q. And in the version we were looking at in Exhibit 89 there
8 was just item A, correct?

9 A. Correct.

10 Q. And item A, again, is the review of the five self-initiated
11 arrest reports for the month by five different officers, right?

12 A. Correct.

13 Q. In this version there is a second item and is it correct
14 that in the final version of the procedures for the 802-A
15 self-inspection this item was not included, right?

16 A. It's not in there.

17 Q. Okay. Do you know why this item was not included?

18 A. I have no idea.

19 Q. Let me just say for the record that second item is that
20 "The ICO or the assistant ICO will respond to and observe
21 officers' actions at five radio runs where police initiated
22 enforcement is likely. They will monitor these runs to ensure
23 that any actions taken are based on the standards required by
24 the Fourth Amendment of the U.S. Constitution or other
25 applicable law. Particular attention will be paid to those

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Cronin - direct

1 incidents requiring the preparation of a stop, question and
2 frisk report."

3 So just to verify. This particular procedure was not
4 made a part of the 802-A self-inspection when it went into
5 effect, right?

6 A. It's not a part of it. No.

7 Q. And it's never been part of it, right?

8 A. Not to my knowledge.

9 Q. Okay. Now, you mentioned that going back to the --
10 sorry -- to the 802-A itself, the worksheet. This is Exhibit
11 58. You had mentioned that when the reviewer is noting the
12 deficiencies, one deficiency that should be noted is that if an
13 arrest report does not articulate I guess the basis for -- is
14 it fair to say the probable cause for the arrest?

15 A. Yes.

16 Q. And just also to be clear when the self-inspection is
17 conducted by the command, the ICO or the assistant ICO is
18 supposed to attach to this worksheet the five arrest reports
19 that were reviewed, correct?

20 A. Correct. Any UF 250s.

21 Q. And any 250s that go along with it, right?

22 A. Yes, correct.

23 Q. So I want to look at an example of a completed 802-A. This
24 is Plaintiffs' Exhibit 58.

25 Sorry, your Honor. Can I have a minute, your Honor?

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Cronin - direct

1 (Pause)
2 Sorry about that. I think I got it cleared up now.
3 Yes. Here it is. Okay.
4 This is actually Plaintiffs' Exhibit -- nevermind. I
5 can't seem to find it.
6 So let me move on then. Now you were -- Chief you
7 were working in the police department in 1999, correct?
8 A. Correct.
9 Q. And the commissioner at the time of the police department
10 was Howard Safir?
11 A. Howard Safir, right.
12 Q. Do you recall that Commissioner Safir testified at a city
13 council hearing, the public safety committee, in April of 1999?
14 A. I don't remember.
15 Q. Do you recall him ever discussing either in a city council
16 hearing or with anyone in the NYPD that you're aware of, the
17 issue of whether audits of stop-and-frisk paperwork could
18 determine whether or not stops were based on reasonable
19 suspicion?
20 A. No.
21 Q. Now you said that what the QAD does do with respect to the
22 802-A is that you review how the commands do the 802-As
23 themselves, right?
24 A. Correct.
25 Q. And in doing that review you're going to review this

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1 worksheet, right?

2 A. Correct.

3 Q. And then you're going to review the five arrest reports

4 that are attached?

5 A. Correct.

6 Q. And then if there are any 250s attached you're going to

7 review those too, right?

8 A. Correct.

9 Q. And then the reviewer from QAD is going to fill out this

10 side of the worksheet?

11 A. Yes.

12 Q. And these are the items that he or she will be filling out?

13 A. Correct.

14 Q. Now when you review these 802 self-inspection -- 802-A

15 self-inspections, the QAD reviewer is not going to actually

16 speak to anyone in the command, right?

17 A. Correct.

18 Q. I want to show you what's been marked as Plaintiffs'

19 Exhibit 61.

20 A. Can I just clarify something.

21 They won't talk to anyone in regards to who did the

22 report but before they leave they always speak to a supervisor

23 and explain to them what errors they found on the report.

24 Q. Got it. Okay. Well that's helpful. But when they are

25 actually reviewing the five arrest reports, they are not going

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Cronin - direct

1 to speak to any of the officers who filled them out, right?

2 A. That's correct.

3 Q. And is it your testimony that in doing this review QAD is
4 looking to see if the arrest reports articulate the probable
5 cause for the arrest?

6 A. Yes.

7 Q. And are they also looking at the 250s to see if the 250s
8 establish reasonable suspicion?

9 A. Yes.

10 Q. And in doing that second item, again, they are looking --
11 do they do it the same way they do it when they review the 250s
12 for the 802?

13 A. As far as looking for the reasonable suspicion --

14 Q. Yeah.

15 A. Yes.

16 Q. You know what, I'll skip Exhibit 61.

17 Is, again, each QAD review -- a score is given to that
18 particular command?

19 A. Yes.

20 Q. Oh, that's good. So Exhibit 61 is already in evidence. I
21 don't have to find it. Can we pull it up on the screen.

22 So this is Exhibit 61. Are these the parameters that
23 QAD will use to score each command on that -- when they review
24 the command for the 802-A self-inspection?

25 A. Yes.

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Cronin - direct

- 1 Q. And in terms of item A, the maximum number of
2 discrepancies, what is meant by discrepancy?
3 A. Could you point that out. I'm sorry.
4 Q. Down the bottom.
5 A. We're it says maximum number of discrepancies is five.
6 Less than five police initiated arrests for the month, indicate
7 so on the report. They could have five arrest reports but if
8 they're not police initiated it does not count.
9 Q. So other than that, other than the fact that the arrest
10 reports are not police initiated is there anything else that's
11 being evaluated in item A there?
12 A. No.
13 Q. And then item B, number of LBS reports with incomplete,
14 improper entries. What does that mean?
15 A. If we see that they didn't put a complete detailed entry
16 regarding the narrative -- you know the narrative on the online
17 book which would describe the arrest -- if we didn't feel it
18 was complete, that's where it would go.
19 Q. Got it. That's actually very helpful.
20 So I did actually want to ask you then about a
21 particular 802-A that I wanted us to look at.
22 I'm going to ask you then about the activity log
23 entries again that we talked about at the beginning. So as we
24 saw with the 2008 audit, the summary, the table, there's a
25 problem or there was a problem at least in 2008 with officers

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1 failing to enter stop and frisks into their activity logs,
2 right?
3 A. Correct.
4 Q. And, in fact, if you -- and the stop-and-frisk audit that
5 QAD does started in 2003, right?
6 A. Correct.
7 Q. And you've done it every year since then, right?
8 A. Correct.
9 Q. So, it's been done ten times since 2003, right?
10 A. Eleven but okay.
11 Q. It's been done every year from 2003 through 2012, right?
12 A. Correct.
13 Q. And isn't it true that in each of those years the citywide
14 average on the activity log entry item on the stop-and-frisk
15 audit was below passing?
16 A. Yes.
17 Q. And the reason for this, in your view, right, is that there
18 continues to be a disconnect with officers and their activity
19 logs, right?
20 A. Correct.
21 Q. And this disconnect is not unique to just stop and frisk
22 entries, is it?
23 A. No.
24 Q. It's true for a lot of activities that officers are
25 supposed to be documenting in their activity log, right?

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Cronin - direct

1 A. Correct.

2 Q. And the reason you think this is a problem is because
3 officers often have to go to court or be interviewed by CCRB or
4 internal affairs about incidents they may have been involved in
5 and without activity log entries it's hard to sometimes figure
6 out what exactly happened during these incidents, right?

7 A. That is correct.

8 Q. And so as a result of this ongoing problem QAD came up with
9 an additional self-inspection procedure, right?

10 A. Correct.

11 Q. And that's worksheet 803 which you referred to a little
12 earlier, right?

13 A. Correct.

14 Q. I am going to come back to that but I was able to locate
15 Exhibit 68 so I actually want to ask you about Exhibit 68.

16 Looking at Exhibit 68, this is an example of a
17 completed worksheet 802-A, right?

18 A. Correct.

19 THE COURT: Is this one in evidence already?

20 MR. CHARNEY: Not yet. I was going to --

21 THE COURT: Just curious if I'm looking at it -- hold
22 on. Are you going to object to it?

23 MS. GROSSMAN: No. I'm not going to.

24 THE COURT: So 68 is received.

25 (Plaintiffs' Exhibit 68 received in evidence)

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Cronin - direct

1 Q. So this is a completed worksheet 802-A. It's for
2 July 2008, right?
3 A. Yes.
4 Q. And this is for the Queens South. It says S/U and then it
5 says ACU and BAC, right?
6 A. Okay.

7 THE COURT: What does all that mean? Do you know?

8 THE WITNESS: I don't know. I know what patrol
9 borough Queens South is.

10 THE COURT: Patrol borough Queens South is the PBQS.
11 The rest you don't know.

12 Q. So you don't know if BAC is --

13 THE COURT: She doesn't know what S/U is either.

14 MR. CHARNEY: I understand.

15 I was going to ask her if she knows what ACU --

16 Q. Do you know what ACU stands for?

17 A. Just assuming anticrime unit.

18 Q. Do you know what BAC would stand for?

19 A. No.

20 Q. But this could be anticrime unit? We don't know.

21 A. It could be.

22 Q. So this could be the worksheet 802 for the Queens South
23 borough anticrime unit?

24 A. It could be.

25 Q. So looking at this, going down they've listed the five

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Cronin - direct

1 self-initiated arrests that were reviewed, right?

2 A. Yes.

3 Q. And obviously they've redacted the specific arrest numbers
4 and officers because we -- that stuff is confidential.

5 These would be the charges that were involved, the
6 criminal charges involved in each of these arrests, right?

7 A. Correct.

8 Q. And then here it looks like the reviewer said there were no
9 deficiencies in any of these forms, right?

10 A. That's what he's saying -- he or she.

11 Q. Got it. And then in terms of action taken, he or she took
12 no action because there were no deficiencies, right?

13 A. According to them, yes.

14 Q. So then I want to ask you actually about -- and then
15 attached we actually have the arrest reports themselves, right?

16 A. Yes.

17 Q. So I wanted to show you -- I guess going to page --
18 unfortunately the Bates numbers are cut off on these. I don't
19 know why.

20 I guess going to the second arrest report, the one
21 that says arrest location southwest corner Baisley Boulevard at
22 157th Street, right?

23 Do you see that one?

24 A. Yes.

25 Q. And so earlier you said that in order to determine if this

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1 arrest report properly articulated the basis for the arrest,
2 you would look at the details; is that right?

3 A. The details.

4 And in this case there is a UF 250 prepared. You
5 would look at the UF 250.

6 Q. So the details on the arrest report say -- the Bates number
7 actually just for the record is NYC_213829.

8 The details say at time, place of occurrence above
9 perp was in possession of marijuana in public view.

10 Do you see that?

11 A. Yes.

12 Q. In your view is that a sufficient enough detail to
13 articulate the basis for this arrest?

14 A. No.

15 Q. So, in other words, the ICO should have noted a deficiency
16 for this particular arrest report, right?

17 A. Correct.

18 Q. And then as you mentioned there was a stop and frisk --

19 THE COURT: I'm sorry. I think I missed that last
20 exchange. What was deficient about it?

21 MR. CHARNEY: The details.

22 THE WITNESS: The narrative.

23 THE COURT: Wait. I have to understand. I may have
24 lost concentration. You're saying the details. It says the
25 time and place the above perp was in possession of marijuana in

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1 public view. That's not enough detail?

2 THE WITNESS: Police initiated. So I'd like to know

3 if the officer personally observed it.

4 THE COURT: Anything else that's deficient about it?

5 THE WITNESS: If it says officer personally observed

6 the possession of marijuana in public view, I'd be fine with

7 that.

8 THE COURT: I see. So that's all that's deficient?

9 THE WITNESS: Right.

10 THE COURT: Thank you.

11 Q. And you said that another -- that there was a stop and

12 frisk associated with this arrest?

13 A. Yes. It says stop, frisk, yes. And then the serial

14 number.

15 Q. So you would expect to see a UF 250 included with this

16 arrest report, right?

17 A. Yes.

18 Q. If we go to the next page. That's the end of the arrest

19 report. And then if we turn the page, there's nothing on the

20 back. And then we just have the next arrest report.

21 So, there doesn't appear to be a UF 250 attached here,

22 right?

23 A. Not with this one, no.

24 THE COURT: I'm sorry. Your answer?

25 THE WITNESS: Not with this. There's no 250 attached

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1 here, no.

2 THE COURT: Is there anything on the form that tells
3 you that? Or it's just not here in court, it's not on the
4 screen? Does the form alert you?

5 THE WITNESS: See form where it says deficiencies, no.

6 THE COURT: Over here?

7 MR. CHARNEY: Let me do that here.

8 THE COURT: Go ahead.

9 THE WITNESS: Where it says deficiencies, yes or no.
10 That's where you would note if there was no UF 250 on it,
11 because.

12 THE COURT: No. No. Maybe you don't understand my
13 question. You said there is no 250 attached. Right?

14 THE WITNESS: Yes.

15 THE COURT: I'm saying is that because the copy
16 Mr. Charney has doesn't have it, or can you tell from the form?

17 THE WITNESS: No. I can't tell from the form.

18 THE COURT: Theoretically that didn't get stapled, but
19 you don't know?

20 THE WITNESS: I don't know.

21 THE COURT: I understand that it's not here. It was
22 given to you that way. I do understand that. I wanted to know
23 if she can tell that from the form.

24 MR. CHARNEY: No. You're right.

25 Q. Let me ask you a follow-up question to her Honor's question

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1 which is when these self-inspections were done is it your
2 understanding that in the command they will physically fill out
3 the piece of paper which is the worksheet and then physically
4 staple the associated reports to that self-inspection. Is that
5 how they're supposed to do it?

6 A. Yes. And then it goes in a folder with the month and year.

7 Q. So there wouldn't be like a computerized version of this
8 that had all of those documents together, right?

9 A. No.

10 Q. So, is it your testimony that if QAD had been reviewing
11 this particular self-inspection you would have found that this
12 particular command, which may or may not be the Queens south
13 borough anticrime unit, had done a deficient self-inspection?

14 A. Not necessarily. If there was the UF -- if they had a
15 UF 250 there, then that would -- they would have a few
16 deficiencies but it wouldn't be horrendous.

17 Q. But you would have -- you would have noted, for example,
18 that they had -- they had missed that deficiency in the arrest
19 report where the details were not sufficient, right?

20 A. Correct.

21 Q. Because on the self-inspection itself the ICO didn't note
22 any deficiencies, right?

23 A. That's correct.

24 Q. So isn't it correct that he or she made a mistake because
25 he or she should have noted a deficiency for that particular

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Cronin - direct

1 arrest report?

2 A. In my opinion, yes.

3 Q. Now, if we assume, again, just for the sake of my question
4 that this was, in fact, the Queens south borough anticrime
5 unit, QAD never would have seen this self-inspection, right?

6 A. Correct.

7 Q. So then going back to the 803, the next self-inspection.
8 You mentioned that in response to this ongoing problem with
9 officers failing to make activity log entries about a lot of
10 their different kinds of activity, QAD came up with a new
11 self-inspection called the worksheet 803, correct?

12 A. That is correct.

13 Q. And this worksheet was first developed in 2005, correct?

14 A. No it wasn't developed in 2005. It was a draft in 2005.

15 Q. So a draft was created in 2005, right?

16 A. Correct.

17 Q. It's fair to say that in 2005 QAD was already aware that
18 there was an ongoing problem with officers failing to document
19 activities in their activity logs, right?

20 A. Yes.

21 Q. And is it fair to say that QAD felt at that point it was a
22 serious enough problem to come up with a new self-inspection?

23 A. Yes.

24 Q. But the draft was first made in 2005. But the
25 self-inspection did not go into effect for three more years,

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1 right?
2 A. That's correct.
3 Q. And the reason for that is because the draft was handed
4 over to internal affairs, right?
5 A. It was given to internal affairs, yes.
6 Q. And they sat on it for three years, right?
7 MS. GROSSMAN: Objection.
8 THE WITNESS: I wouldn't say they sat on it.
9 MS. GROSSMAN: Objection.
10 THE COURT: She wouldn't agree to that.
11 MR. CHARNEY: She can answer it.
12 Q. So you don't agree with that?
13 A. No, I don't.
14 Q. Did they respond? Did they provide any response or
15 comments to QAD during those three years?
16 A. There was a lieutenant that they were in contact with from
17 QAD every once in a while they would call.
18 Q. With comments about this particular worksheet?
19 A. Yes, that they were still looking at it.
20 Q. And so they looked at it for three years?
21 A. I can't answer you that.
22 Q. But the bottomline is, is from the time the draft was given
23 to IAB to the time that it went into effect three years passed,
24 right?
25 A. Yes.

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Cronin - direct

1 Q. And the only reason it did go into effect, right, is
2 because in 2008 you happened to find it in a pending pile,
3 right?

4 A. Correct.

5 Q. And at that point you took the initiative and you gave it
6 to the Deputy Commissioner Farell and then it was put in
7 effect, right?

8 A. Yes.

9 Q. Now the worksheet 803 is a self-inspection that each
10 command does quarterly, right?

11 A. Correct.

12 Q. So that's every three months, right?

13 A. Yes.

14 Q. And in this self-inspection the commands are looking at
15 activity log entries not only for stop and frisk, right?

16 A. Correct.

17 Q. They're looking at activity log entries for arrests, right?

18 A. Yes.

19 Q. Different kinds of summonses?

20 A. Yes.

21 Q. And different other kinds of NYPD reports, right?

22 A. Yes.

23 Q. Now stop and frisk entries are one of the items that's
24 reviewed on the 803, right?

25 A. Yes, it is.

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Cronin - direct

1 Q. And for this particular item the command is only reviewing
2 three activity log entries each quarter, right?

3 A. Three per section.

4 Q. Yeah. For stop and frisk they're going to review three
5 activity log entries for three separate stop and frisks?

6 A. For three separate officers.

7 Q. Yes.

8 A. Yes.

9 Q. Now, in terms of the standard that they're using to assess
10 the adequacy of these entries, isn't it true that they're using
11 the same standards that they would use when they look at the
12 activity log entries for the 802 self-inspection, right?

13 A. Yes.

14 Q. Was there any discussion in QAD that this portion of the
15 803, the portion that deals with stop and frisk activity log
16 entries, is that in any way redundant with the 802?

17 A. No. We saw that there was a problem with the activity logs
18 and sort of wanted to reinforce it in another area. So it's
19 another way of reinforcing it.

20 Q. But you're doing it the same way, right, in terms of stop
21 and frisk? You're evaluating it the exact same way?

22 A. Yes. But you're looking at more times of it.

23 Q. Well you're looking at twelve more stops per year, right?

24 A. Per command, yes.

25 Q. Now the worksheet 803 was officially put into effect in

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1 March of 2008, right?

2 A. I believe so.

3 Q. And later in 2008 QAD did an audit of all the commands to
4 figure out which self-inspections they were actually
5 conducting, right?

6 A. Correct.

7 Q. And didn't you find that as of the end of 2008 31 of the --
8 I'm sorry 31 commands in the NYPD were still not conducting the
9 803 self-inspection?

10 A. I believe that's it.

11 Q. And, again, this concerned you, correct?

12 A. Yes.

13 Q. Because we're talking about a problem with activity logs
14 that had been going on for a number of years, right?

15 A. Yes.

16 Q. I want to show you Exhibit 27 -- I'm sorry not Exhibit 27.
17 This is actually Plaintiffs' Exhibit 488. This was an exhibit
18 that was shown to Chief Cronin at her deposition and I believe
19 both parties have agreed that they would show exhibits to the
20 chief that had been shown to her at her deposition.

21 MR. MOORE: What exhibit number?

22 MR. CHARNEY: 488.

23 I also wanted to show you Plaintiffs' Exhibit 490
24 which is also an exhibit that was shown to Chief Cronin at her
25 deposition.

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1 THE COURT: I'm sorry. What did you just give --
2 MR. CHARNEY: Plaintiffs' 489 and 490.
3 THE COURT: They both have exhibit numbers?
4 MR. CHARNEY: Yes. I would move for the admission of
5 both of these exhibits.
6 MS. GROSSMAN: I think it's 488 and 490.
7 MR. CHARNEY: I'm sorry. 488 and 490. I apologize.
8 I would move for the admission of Plaintiffs' 488 and 490.
9 MS. GROSSMAN: No objection.
10 THE COURT: Both are received, 488 and 490.
11 (Plaintiffs' Exhibits 488 and 490 received in
12 evidence)
13 Q. I actually wanted to turn to 490 first. Did you have a
14 chance to look at that one?
15 A. Okay.
16 Q. You had a chance to look at that?
17 MS. GROSSMAN: Your Honor, of course we're accepting
18 that this was admitted. This was not known to us that this
19 witness was going to be shown. Had we, we would have shown the
20 exhibit to the witness before today so we wouldn't take the
21 time. So I'm just noting that.
22 MR. CHARNEY: Your Honor, just so the record is clear
23 Ms. Grossman -- defense counsel e-mailed us and said they were
24 planning to use any exhibit that had been shown to the Chief
25 Cronin at her deposition. This was shown to Chief Cronin at

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1 her deposition.

2 THE COURT: Okay.
3 THE WITNESS: Okay.

4 Q. So you've had a chance to look at 490?
5 A. Yes. 490.

6 Q. Is it fair to say that this is a report that was done on --
7 for QAD's audit of the 43rd precinct. And the audit I'm
8 talking about is the audit that looked at whether or not the
9 43rd precinct was doing all of the mandated self-inspections?

10 THE COURT: Just a quick question. Which is the 43rd,
11 which patrol?

12 THE WITNESS: Bronx.

13 MR. CHARNEY: Just for your Honor's --

14 THE COURT: I see. Deputy Inspector Ortiz. I
15 remember.

16 MR. CHARNEY: The other thing I would point out this
17 is where plaintiff David Floyd was stopped.

18 Q. So this -- is it fair to say, Inspector Cronin --

19 MS. GROSSMAN: This is not actually an 803.

20 MR. CHARNEY: I know.

21 MS. GROSSMAN: I just want you to know, as you're
22 looking at this, this is a different kind of audit. To the
23 extent that it implies, given the sequence of the offering of
24 the exhibit that it's an 803 audit, I just want the record to
25 be clear it's not. It's a different kind of audit.

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Cronin - direct

1 THE COURT: Okay. The witness is best able to tell me
2 that. You can't testify.

3 Is this an 803 audit?

4 THE WITNESS: No. This is a different audit. It's
5 responsibility for maintenance of records which is 800.

6 THE COURT: Okay. Thank you.

7 Q. But what this audit is, just so everybody is clear, is it's
8 an audit where QAD is looking at each command to make sure
9 they're doing all of the mandated self-inspections they're
10 supposed to be doing, right?

11 A. Correct.

12 Q. And that would include the self-inspection known as the
13 803, right?

14 A. Correct.

15 Q. And that would include the self-inspection known as the
16 802, correct?

17 A. Correct.

18 Q. And that would include the self-inspection known as the
19 802-A, correct?

20 A. Correct.

21 Q. So I want to look at I guess it's page Bates number
22 NYC_211454.

23 A. Yes.

24 Q. Do you see there it says mandated self-inspections
25 compliance?

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Cronin - direct

- 1 A. Correct.
- 2 Q. And it says 17 of the 18 mandated self-inspections were
3 being completed as required, for a 94 percent compliance rate?
- 4 A. Yes.
- 5 Q. Activity logs was not included?
- 6 A. Correct.
- 7 Q. And activity logs is the 803, right?
- 8 A. Correct. And that's when it first came out.
- 9 THE COURT: I'm sorry. That's when?
- 10 THE WITNESS: That's when we first rolled it out, so
11 to speak, the 803.
- 12 THE COURT: That being you're giving me a date?
- 13 THE WITNESS: Around that date. It's when it was
14 first --
- 15 THE COURT: What's the date again?
- 16 THE WITNESS: That's in 2009.
- 17 THE COURT: Okay.
- 18 THE WITNESS: When the commands get them, it usually
19 takes a while for them to be rotated in.
- 20 THE COURT: Okay.
- 21 Q. You testified earlier that the 803 went into effect in
22 March of '08?
- 23 A. '08. We give the commands time to implement them.
- 24 Q. Isn't this -- this audit is being done in April of 2009?
- 25 A. Correct.

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Cronin - direct

1 Q. So at that point in time?

2 THE COURT: That's 13 months after the rollout.

3 THE WITNESS: No. No. I understand.

4 And it was, as you saw, it's 17 out of the 18
5 mandated, that they got the 94 percent.

6 Q. No. No. I understand that. I just wanted to make sure
7 that what this report is telling us is that there was a delay,
8 significant delay in the 43rd precinct's implementation of
9 the 803 self-inspection?

10 A. Yes.

11 Q. I want to go back -- this, again, going back to what we
12 looked at before, which was Exhibit 95, which was the audit,
13 the stop-and-frisk audit for 2008.

14 If we can go to -- I think it's going to be page five
15 of this document. I'm sorry. Page four. I apologize. If we
16 can blow it up here and then go across. This has the audit
17 results, the stop -- I'm sorry. Go back.

18 This has the audit results on the annual
19 stop-and-frisk audit for 2008 for all of the precincts in the
20 Bronx, right?

21 THE COURT: More importantly it has the 43rd?

22 MR. CHARNEY: Yes. 43rd.

23 Q. So if we go across to the activity log entry item, the
24 43rd precinct got the lowest possible score you could get on
25 the audit, right?

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Cronin - direct

1 A. Yes.

2 Q. So in QAD's view, the 43rd precinct was doing especially
3 badly when it came to activity log entries that officers were
4 supposed to make in their activity logs?

5 A. Well on this audit, yes.

6 Q. I want to then look at another exhibit which is already in
7 evidence.8 THE COURT: When you say especially badly. Yes, but
9 not compared to other precincts?

10 MR. CHARNEY: No.

11 THE COURT: Many of them were doing badly.

12 MR. CHARNEY: But the 43rd --

13 THE COURT: Many of the other precincts also got the
14 1.0.

15 THE WITNESS: Yes.

16 Q. But the 43rd precinct got as badly as one could do on
17 this audit?

18 A. Yes.

19 THE COURT: It's the lowest score.

20 THE WITNESS: Yes, it is.

21 MR. CHARNEY: So that's 2008.

22 Q. Let's look at Exhibit 69 which is also in evidence.

23 This is the 2009 audit results.

24 THE COURT: Do you have a hard copy?

25 MR. CHARNEY: We have it on the computer. It's just

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Cronin - direct

1 that I thought we admitted this through Inspector Ortiz because
2 I know it showed him.

3 THE COURT: In any event, I don't assume there would
4 be an objection to this kind of report.

5 Is there, Ms. Grossman?

6 MS. GROSSMAN: No, your Honor.

7 I mean, frankly, when I get on to put on exhibits, I
8 plan on putting one exhibit with everything in one place so
9 that it's easier for the court.

10 THE COURT: There is no objection to 69. So it's
11 received.

12 (Plaintiffs' Exhibit 69 received in evidence)

13 Q. So again -- first of all, let's look at the first page.

14 So this is the 2009 QAD stop-and-frisk audit for all
15 the commands, right?

16 A. Yes.

17 Q. And then again going to page four. And again looking at
18 the 43rd precinct, the item activity log, they got a two,
19 right?

20 A. Yes.

21 Q. So again they failed, right?

22 A. They failed but they improved from 2008.

23 Q. Well we can look at 2010 and 2011.

24 THE COURT: Also, it was the best precinct in the
25 Bronx, right?

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Cronin - direct

1 MR. CHARNEY: The best precinct in the Bronx.
2 THE COURT: Everybody else got a one, right?
3 THE WITNESS: Yes.
4 Q. So but in 2008 and 2009 they failed that item, right?
5 A. Yes, they did.
6 Q. And would you have any -- I mean I could show you all ten
7 years but I don't want to keep us here, you know, overnight.
8 So would you dispute that they actually have failed that item
9 for every single year you've done the audit?
10 A. I'm assuming your numbers are correct so I would say yes.
11 (Continued on next page)
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Cronin - direct

1 Q. Now, going back to the fact that 31 commands delayed
2 implementing the 803 and you said that that caused QAD concern.
3 Did QAD then go ahead and create a separate audit
4 where you, meaning QAD, was actually going to go in on your own
5 and independently look at activity logs in each of the
6 commands?

7 A. You lost me. Do we do an 803? Yes.

8 THE COURT: I got lost.

9 Q. Let me break it down.

10 What we were talking about before was the command
11 self-inspections, in other words, where each command does its
12 own 803 self-inspection, right?

13 A. Correct.

14 Q. And we talked about how there was a delay in several
15 commands in implementing this particular self-inspection,
16 right?

17 A. Correct.

18 Q. So QAD was rightfully concerned about that, right?

19 A. Correct.

20 Q. And so what you did in response is you created your own
21 citywide audit, right, where QAD would go into each command and
22 do the 803 itself, right?

23 A. Yes.

24 Q. Do you do that once a year?

25 A. We have been doing it once a year, yes.

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Cronin - direct

1 Q. And the first time you did it was in 2010, correct?

2 A. Yes.

3 Q. I want to show you what has been marked as Plaintiffs'
4 Exhibit 489.

5 MR. CHARNEY: And this was another exhibit which was
6 shown to Chief Cronin at her deposition.

7 I would move for the admission of this document. This
8 is Plaintiffs' Exhibit 489.

9 MS. GROSSMAN: No objection.

10 THE COURT: 489 is received.

11 (Plaintiffs' Exhibit 489 received in evidence)

12 Q. I will give the chief a chance to look at it first.

13 A. OK.

14 Q. Have you had a chance to review this one?

15 A. Yes.

16 Q. So is it fair to say that this is a report on QAD's 803-A
17 audit of the 43rd Precinct for 2010?

18 A. This is the lieutenant synopsis. This would go directly to
19 the lieutenant in that command. We would also do our own
20 report.

21 Q. But it says at the top here, "Precinct evaluation team
22 leader," right?

23 A. Correct.

24 Q. And that's a QAD staff person?

25 A. Yes.

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Cronin - direct

1 Q. Is it fair to say that this document reports the results of
2 QAD's 803 audit of the 43rd Precinct for 2010?

3 A. Yes.

4 Q. And again, before I ask you about this, is this audit also
5 scored on a 1 to 4 scale?

6 A. Yes, it is.

7 Q. So looking at the page NYC 18650, you see here it says 1.5,
8 right?

9 A. Yes.

10 Q. Is it fair to say that for 2010, the 43rd Precinct failed
11 the 803 audit that QAD did?

12 A. Yes.

13 Q. Then going to page 18652, this says, "Stop, question and
14 frisk report."

15 So is this the portion of the 803 audit where QAD
16 reviews activity log entries that would go with a UF-250 form?

17 A. I'm sorry. Say it again.

18 Q. This particular portion of the 803 audit, is this the
19 portion that refers to activity log entries for stop and
20 frisks?

21 A. Yes.

22 Q. So you see here that a sample was taken from the stop,
23 question and frisk report cover sheet to identify two preparing
24 officers assigned to the command. Their activity logs were
25 reviewed with the following results noted. It has their names

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Cronin - direct

- 1 and badge numbers and the dates of those stops, right?
2 A. Correct.
3 Q. Then the UF-250 report numbers?
4 A. Yes.
5 Q. Then it says, none of the two logs listed the pedigree of
6 the person stopped, right?
7 A. Correct.
8 Q. And none of the two logs listed details of the
9 circumstances of the stop, right?
10 A. Correct.
11 Q. So it's fair to say that, with respect to the stop,
12 question and frisk portion of the 803 audit, the 43rd Precinct
13 failed that portion?
14 A. Yes.
15 Q. So now I want to ask you about a couple of other audits
16 that QAD does.
17 One of those is an audit that you referred at your
18 deposition to as the RAND audit. Are you familiar with that?
19 A. Yes.
20 Q. That's an audit that QAD put in place in 2008, correct?
21 A. Correct.
22 Q. And that audit was in response to one of the
23 recommendations in the RAND report, correct?
24 A. Correct.
25 Q. And that recommendation was that the police department

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Cronin - direct

1 should create an audit to determine if officers are in fact
2 filling out UF-250s every time they make a stop and frisk,
3 right?

4 A. Yes. Correct.

5 Q. So it wasn't an audit that was created to assess whether
6 stops were based on reasonable suspicion, right?

7 A. No. It was to see, if they were stopped, if a UF-250 was
8 prepared.

9 Q. And that audit involves looking at a certain sample of
10 radio runs from a specific sample of precincts, right?

11 A. Correct.

12 Q. And determining whether any of those radio runs involved a
13 situation that would have led to a stop and frisk, right?

14 A. Yes. Specific radio runs are the crimes in progress.

15 Q. And so you look at the crimes in progress radio runs,
16 correct?

17 A. Correct.

18 Q. And then QAD determines by listening to those radio runs
19 which of those radio runs involved a stop, question and frisk?

20 A. You listen to the actual transmission.

21 Q. Yes.

22 A. Yes.

23 Q. Once you determine which of those radio runs resulted in a
24 stop, question and frisk, you check the UF-250s from that
25 particular command to see if a UF-250 was in fact done, right?

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Cronin - direct

1 A. Correct.

2 Q. And that's essentially what the audit entails, right?

3 A. Correct.

4 Q. Now, you're aware that -- first of all, this audit only
5 looks at stops that were done pursuant to a radio run, right?

6 A. I'm sorry?

7 Q. In other words, the stops -- well, actually, this might
8 help. Let's go back to Exhibit 74. If we go back to the first
9 page.10 So you would agree with me that -- let me blow it up a
11 little bit. You see on the top section of the UF-250 there is
12 a section that says radio run Sprint number?

13 A. Yes.

14 Q. You would agree with me that one of the pieces of
15 information that a UF-250 captures is whether or not the stop
16 was done in response a radio run, right?

17 A. Correct.

18 Q. So my question about the RAND audit is, the stops that QAD
19 were looking at were only stops that were done in response to
20 radio runs, right?

21 A. You would listen to the radio runs, yes.

22 Q. In other words, if a stop was completely self-initiated and
23 not done in response to a radio run, that wouldn't be covered
24 by the RAND audit, right?

25 A. They could put it over during that time period, we would

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Cronin - direct

1 listen to it.

2 THE COURT: Say that again.

3 THE WITNESS: In other words, if --

4 THE COURT: Just say what you said again.

5 All right. Go ahead. Explain.

6 THE WITNESS: If a radio run came over, you listen for
7 a longer period of time, if a job came over with a description.
8 So you're going to be listening for a longer period of time.
9 Then you might hear an hour later that the officers had someone
10 stopped.

11 THE COURT: That's not his question.

12 He said the only ones that were audited were stops
13 based on radio run information.

14 THE WITNESS: Yes.

15 Q. In other words, a stop and frisk that was completely
16 self-initiated, in other words, not done in response to a call
17 or a 911 or a radio run, but just something that an officer
18 observed on the street on their own and made a stop in response
19 to, that wouldn't be covered by this RAND audit, right?

20 A. No.

21 Q. Are you aware that less than a third of all stops that are
22 done by police officers in New York City every year are in
23 response to radio runs?

24 A. No.

25 Q. No one ever told you that?

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Cronin - direct

1 A. They could have, but I'm not good with stats.
2 Q. So that's the RAND audit. I wanted to then ask you finally
3 about an audit that QAD put in place I think in 2011, and I am
4 going to refer to it as the quarterly stop and frisk survey.
5 Do you know what I am talking about?

6 A. Yes.

7 Q. Let me just ask you, this particular audit is an audit
8 that's done by QAD once every three months, right?

9 A. Correct.

10 Q. And the audit involves focusing -- the audit looks at three
11 specific NYPD precincts, right?

12 A. Correct.

13 Q. And those are precincts that have been identified as having
14 large increases in stop and frisk activity as compared to the
15 same time period in the prior year, right?

16 A. Correct.

17 MS. GROSSMAN: I think there was confusion in the
18 question. First it was a survey and then there was a question
19 about an audit. I believe there is confusion.

20 MR. CHARNEY: Let me ask the chief.

21 Q. Should I call it a survey or an audit?

22 A. For this one it would be a survey.

23 Q. So the survey that QAD does is a survey of three specific
24 precincts that have been identified as having significant
25 increase in stop and frisk activity as compared to the same

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Cronin - direct

1 time period in the preceding year, right?

2 A. Yes.

3 Q. And these precincts are identified by OMAP, is that
4 correct?

5 A. That's correct.

6 Q. And then what QAD does is -- let me actually show you a
7 document. It will help us get through this.8 I am going to hand you what has been previously marked
9 as Defendants' Exhibit B11. It's pretty thick.

10 MR. CHARNEY: I have a copy for defense counsel.

11 Q. I know this is very long.

12 THE COURT: What is this?

13 MR. CHARNEY: This is Defendants' B11.

14 THE COURT: What is it?

15 MR. CHARNEY: It's a couple of things. It's a series
16 of documents. It has results from these quarterly surveys, it
17 has the survey methodology, and it has a series of QAD reports.

18 THE COURT: It was produced as one document?

19 MR. CHARNEY: I wanted to offer it as an exhibit.

20 THE COURT: Ms. Grossman, it is a city document.

21 MS. GROSSMAN: I have no objection.

22 THE COURT: B11 received.

23 (Defendants' Exhibit B11 received in evidence)

24 Q. Let's turn to, I guess it's NYC_2_27700. At the top of the
25 page it says, "Quarterly UF-250 methodology," correct?

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Cronin - direct

1 A. Correct.

2 Q. I want to talk through this because this is a little bit
3 confusing and hopefully we can all understand it.

4 So this methodology actually sets out two parts to the
5 survey, right, it has a part A and a part B?

6 A. Part A and part B, that was the first time we did it, and
7 part A after that we just continued with B.

8 Q. That answered my question. So ever since that first
9 quarterly survey, since then, QAD has only been doing part B,
10 right?

11 A. Correct.

12 Q. So let's focus on part B then.

13 The first survey was done in the first quarter of
14 2011?

15 A. I believe so, yes.

16 Q. So part B says, and I guess for this particular quarter,
17 first quarter 2011, these were the three precincts you looked
18 at?

19 A. Yes.

20 Q. And those were precincts that had been identified as having
21 significant increases in the number of stops they had done as
22 compared to the first quarter 2010, right?

23 A. Correct.

24 Q. And again, we see the 43rd Precinct is one of those, right?

25 A. Correct.

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Cronin - direct

1 Q. So it says, "This review included a three day period in
2 March 2011. The special projects team visited each command
3 during roll calls on March 8, 2011 to retrieve activity log
4 entries from members of service who issued a UF-250 on March 3,
5 2011 through March 5, 2011," right?

6 A. Correct.

7 Q. So is the way that this particular survey works that once
8 the three precincts are identified, QAD will go in and pick a
9 three day period in that particular quarter and look at all the
10 250s that were done during that three day period in that
11 precinct?

12 A. What we will do is look at the roll calls when we go there,
13 because we want their activity logs. So in order to get their
14 activity logs, they have to physically be there. So we will
15 look at the 250s, and we try to match them up with who is
16 there, and that's the number that we arrive at.

17 Q. Got it. So you will then look at all the 250s for which
18 you can get ahold of the activity log for the officer who did
19 that 250?

20 A. Correct.

21 Q. So then once you have the 250s and the associated activity
22 logs, that's when you do the survey, right?

23 A. That's when we go back and do the survey, yes.

24 Q. And again, for this particular audit, you're just looking
25 at the completed 250s and the activity log entries, right?

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Cronin - direct

1 A. Correct.

2 Q. If we go ahead then, I want to look at the actual paperwork
3 that's generated by QAD for this audit.4 I want to look, first of all, at the first quarter
5 2011.6 Looking at this, this is Bates number 27740. So is
7 this document, it says 43rd Precinct UF-250. Is this a
8 document that QAD creates?

9 A. Yes.

10 Q. So is it fair to say that this document summarizes QAD's
11 findings based on their review of the 43rd Precinct when they
12 did that survey in the first quarter of 2011?

13 A. Yes.

14 Q. And so if we go through here, these are the different items
15 that QAD was looking at, right?

16 A. Correct.

17 Q. So the first is, you want to figure out how many of the
18 stops that you looked at resulted from a radio run, right?

19 A. Correct.

20 Q. Actually, the first thing you look at is how many 250s you
21 reviewed, right?

22 A. Yes.

23 Q. So you looked at 48 for the 43rd Precinct, right?

24 A. Correct.

25 Q. But only one of them was in response to a radio run, right?

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Cronin - direct

- 1 A. Correct.
2 Q. Then here there is a breakdown of what the different
3 suspected crimes were, right?
4 A. Yes.
5 Q. So trespass was the most common, right?
6 A. Yes.
7 Q. And then criminal possession of a weapon was the second
8 most common, right?
9 A. Yes.
10 Q. And then there are only three robberies, right?
11 A. Correct.
12 Q. OK. Then CPS, that's criminal possession of stolen
13 property?
14 A. Yes.
15 Q. This is criminal possession of marijuana?
16 A. Yes.
17 Q. And this is grand larceny?
18 A. Grand larceny auto.
19 Q. So out of all of these, out of the 48, there were only
20 three that would be categorized as a violent felony, right?
21 A. Well, GLAs can get violent also.
22 Q. They can be, but based on just looking at the suspected
23 crime itself, you can't tell that, right?
24 A. No.
25 Q. And then this tells you -- does this tell you how the

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Cronin - direct

1 person stopped identified themselves or how the officer
2 identified themselves?

3 A. How the person was identified.

4 Q. So 34 of the 48 identified themselves with a photo ID, 13
5 did it verbally, and I guess one person didn't identify
6 themselves?

7 A. No. The unknown means it wasn't filled in.

8 Q. They didn't fill in that portion of the 250?

9 A. Correct.

10 Q. So this says, "In all instances the circumstances which led
11 to the stop was completed and was in direct correlation to the
12 crime suspected."

13 A. Yes.

14 Q. By that, do you mean that QAD made a determination that the
15 stop factors that were checked off on the 250 matched the
16 suspected crime?

17 A. Yes.

18 Q. We are going to come back to that one.

19 There is more information here. It tells you how many
20 times an arrest was made during these stops, how many times a
21 summons was issued.

22 And then here it says, in 19 instances an activity log
23 entry was made. So that's 19 out of 48 of these stops had an
24 activity log entry?

25 A. Correct.

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Cronin - direct

1 Q. And then it says, 15 some type of reference was made. Is
2 that 15 of these 19 or is that 15 separately?

3 A. 15 of them had partial.

4 Q. And then --

5 THE COURT: Wait. I don't understand.

6 So 19 out of the 48 was an entry in the activity log?

7 THE WITNESS: 19 instances an entry was made, an
8 activity log entry was made.

9 THE COURT: Then you said 15 there was also an entry
10 in the activity log.

11 THE WITNESS: It was partial. The first one is a
12 complete entry. The second one is a partial. And the third
13 one is no entry.

14 Q. I think this might be her Honor's question too. Does the
15 19 in which there was an entry made, does that include these
16 15?

17 THE COURT: She said no.

18 You're really saying that in 34 of these, something
19 was written in the log?

20 THE WITNESS: Yes.

21 THE COURT: But for 15 of those, the something must
22 have been very inadequate?

23 THE WITNESS: Most of the time the UF-250 was
24 prepared.

25 THE COURT: They don't put any details of the stop in

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Cronin - direct

1 the activity log, which they should?

2 THE WITNESS: Yes.

3 Q. Here it says, "In all instances a supervisor reviewed the
4 stop, question and frisk report. The sample revealed in
5 general UF-250s are prepared by different police officers and
6 reviewed by different supervisors."7 THE COURT: What does that mean different police
8 officers?9 THE WITNESS: We wanted to make sure the same police
10 officers weren't writing the 250s, and we wanted to make sure
11 that there were different supervisors.12 THE COURT: Supervisors I understand. But the police
13 officer is not the one who did the stop?14 THE WITNESS: They did the stop, but we wanted to see
15 if we had different ones. We wanted to see how many different
16 ones there were.

17 THE COURT: You didn't want five from one officer?

18 THE WITNESS: Correct. Maybe we didn't phrase it
19 correctly, but that's what me mean.

20 THE COURT: I have got it.

21 Q. I want to ask you about the bullet -- actually, let's just
22 finish.23 Going on to the next page, "In no instance did a
24 person refuse to ID themselves. In all instances a computer
25 generated index cover sheet was in compliance with finest

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Cronin - direct

1 message."

2 Can you tell me what this last bullet means?

3 A. Compliance with the computer generated index? It came out
4 a while ago during that time, there were certain things that
5 could not be put on the index regarding the stop frisk, and we
6 wanted to ensure that it wasn't on. So even though they have a
7 computer program that will not let you put the information
8 correctly in, we just check it to make sure the computer is
9 working the way it is supposed to be working.10 Q. I wanted to ask you again about this particular bullet
11 point here. "In all instances the circumstances which led to
12 the stop was completed and was in direct correlation to the
13 crime suspected."14 Is it your testimony that the QAD reviewer by looking
15 at the 250 form can determine that the circumstances which were
16 checked off correspond to the suspected crime?

17 A. Yes.

18 Q. Without any additional information?

19 A. Well, they are also looking at the activity log.

20 Q. But you testified earlier that the activity log entries
21 simply has to have the same information about the reasons for
22 the stop that would be on the 250, right?

23 A. Correct.

24 Q. So I guess looking at that, let's take an example. You're
25 saying that looking at the 250, a reviewer can determine if the

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Cronin - direct

1 box or boxes checked match up to the suspected crime?

2 A. Correct.

3 Q. Now, it's fair to say that some of these boxes apply to
4 every and any crime, right?

5 A. I guess.

6 THE COURT: For example, furtive movements, is that a
7 particular crime?

8 THE WITNESS: No.

9 THE COURT: It could apply to any crime?

10 THE WITNESS: Exactly.

11 THE COURT: The person just seemed suspicious.

12 THE WITNESS: Correct.

13 Q. Couldn't clothing commonly worn in commission of a crime,
14 couldn't that also apply to any crime?

15 A. It can.

16 Q. So let me ask you about -- then let me show you the next
17 page, which this is 27742. So now we are looking at, again for
18 the 43rd Precinct, the results of the survey for March 2011.

19 So is it fair to say that for each of the precincts
20 that you survey, you produce a table like this, which I guess
21 corresponds to each of those bullet points that we just looked
22 at, right?

23 A. Yes. For the survey?

24 Q. Yes.

25 A. Yes.

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Cronin - direct

1 Q. So you're looking at whether or not there was a radio run,
2 whether or not an activity log entry was made, what the
3 suspected crime was on the 250, how long the stop lasted, how
4 the person was ID'd, right?

5 A. Correct.

6 Q. The circumstances that they checked off --

7 A. Yes.

8 Q. -- for the stop, whether an arrest was made?

9 A. Yes.

10 Q. Whether a summons was issued?

11 A. Yes.

12 Q. And then this summons offense, what does that mean?

13 A. If they had a summons, you would put what the summons was.

14 Q. I guess I missed the other one. Arrest offense would be
15 the same.

16 Then this one, additional circumstances and factors,
17 that corresponds to the section on side two of the 250 where
18 you can check off additional reasons for the stop?

19 A. Yes.

20 Q. Then additional reports prepared, is that something that's
21 also noted on a UF-250 form?

22 A. I believe they have a spot for you to put the 61 number.

23 Q. Then this would be the name of the officer who prepared the
24 250, right?

25 A. Correct.

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Cronin - direct

- 1 Q. The supervisor that reviewed it?
- 2 A. Correct.
- 3 Q. And then this says, "Supervisor on scene for refusal to
- 4 ID."
- 5 A. Yes.
- 6 Q. Is that something that is noted on the UF-250 form?
- 7 A. Yes.
- 8 Q. Does this refer to a situation where an officer is making a
- 9 stop, he asks the civilian to ID themselves, and they refuse?
- 10 A. Yes.
- 11 Q. So you want to know if in those situations a supervisor
- 12 comes to the scene to address that situation?
- 13 A. We don't keep the person on the scene. We tell them to let
- 14 the person go and inform the supervisor that the person
- 15 refused, and the supervisor would come to the scene. But we
- 16 don't hold the person.
- 17 Q. Got it. But I guess what you're trying to assess here is
- 18 whether or not supervisors arrive on the scene in situations
- 19 where a person has refused to ID themselves and they have been
- 20 released?
- 21 A. Correct.
- 22 Q. Why is it that QAD is interested in that information?
- 23 A. It was that whole caption, if you look at the 250, it's all
- 24 together. It has refuse ID, how ID'd, and then, when they
- 25 refuse, it's got the other caption. So that's why we look at

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1 it. It's all part of that one caption.

2 Q. There's a lot of captions on the 250 that aren't covered

3 here?

4 A. That's one section, how identified.

5 Q. So it goes along with how the person identified themselves?

6 A. Yes. It's in that one section.

7 Q. How come this survey doesn't look at whether somebody got

8 frisked or not?

9 A. This was just done so that we can do the sample for the

10 entire increase of the precincts, and this is the way we did

11 it.

12 Q. But QAD wasn't interested in knowing whether these

13 precincts that were doing more stops were frisking people

14 during those stops?

15 A. It's not that we weren't interested, but this is the way we

16 did it.

17 Q. I am trying to figure out why you did it this way.

18 A. We thought it was a good report. So that's why we did it.

19 Q. My question to you is, why did you not include frisk

20 information in this survey?

21 A. There is no reason.

22 Q. OK. Was it your decision to include each of these

23 categories?

24 A. Yes.

25 Q. But you can't tell us why you chose not to include frisk?

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- 1 A. I didn't even consider it.
- 2 Q. You didn't include searches either?
- 3 A. No.
- 4 Q. Or use of force, right?
- 5 A. No.
- 6 Q. So let me ask you about -- before I get into that, is it
7 your position that this particular survey assesses whether or
8 not the stops that are recorded on the 250s that you review,
9 whether or not those stops are based on reasonable suspicion?
- 10 A. Yes.
- 11 Q. But again, the only thing you're reviewing here are the
12 250s and the activity log entries?
- 13 A. Right.
- 14 Q. So let me ask you about this particular stop here that's
15 recorded here. It says 3871, right?
- 16 A. OK.
- 17 Q. It looks like the suspected crime is criminal trespass,
18 right?
- 19 A. Yes.
- 20 Q. And the reason given for the stop is furtive movements,
21 right?
- 22 A. Correct.
- 23 Q. There is nothing else listed in this particular field, just
24 furtive movements, right?
- 25 A. Yes.

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Cronin - direct

1 Q. Then going over here to additional circumstances, going
2 down, there is also nothing listed, right?

3 A. Correct.

4 Q. So the only reason given on the UF-250 for this particular
5 stop is furtive movements, correct?

6 A. Correct.

7 Q. But is it correct that QAD determined that this particular
8 stop was based on reasonable suspicion?

9 A. Yes.

10 THE COURT: How did you make that determination?

11 THE WITNESS: If it had furtive movement, furtive
12 movement to us rises to the level to reasonable suspicion.

13 THE COURT: Of criminal trespass, is that the crime?
14 That tells you reasonable suspicion of criminal trespass?

15 THE WITNESS: Yes.

16 Q. Now, I have another question about -- this is 27745. And
17 again, we are still looking at the UF-250s for the 43rd
18 Precinct.

19 So here I want to look at this particular one here.

20 So the suspected crime was robbery, right?

21 A. Correct.

22 Q. And the reason given for the stop is fits description,
23 right?

24 A. Yes.

25 Q. There are no additional circumstances, right?

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Cronin - direct

- 1 A. Correct.
2 Q. Then going over here, there was no radio run, right?
3 A. Correct.
4 Q. So did that give -- how can you determine -- can you
5 determine from the information here what the source of the
6 description that the officer had was?
7 A. No. But my officers would be looking at the 250 and it
8 would say fits description and it would say the robbery.
9 Q. I guess my question is, a description has to come from
10 somewhere, right?
11 A. Or they could have known it from a robbery pattern that
12 they received at roll call.
13 Q. Isn't robbery pattern one of the circumstances that an
14 officer can check off under additional circumstances?
15 A. Yes.
16 Q. But that wasn't checked off here, right?
17 A. No.
18 MS. GROSSMAN: Can you just tell me which page you're
19 on?
20 MR. CHARNEY: 27745.
21 Q. But that robbery pattern wasn't checked off on here, right?
22 A. I guess not.
23 Q. Again, there is no radio run that we know of because they
24 didn't check off radio run?
25 A. Correct.

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Cronin - direct

1 Q. So based on the information on the 250, the reviewer
2 wouldn't know if in fact there was a description, right?

3 A. Correct.

4 Q. But again, QAD was comfortable that this stop was based on
5 reasonable suspicion?

6 A. Yes.

7 Q. Then going over here, I just wanted to note for the record
8 that the reviewer is Sergeant Kelly. So he is the sergeant
9 that actually signed off on this 250, right?

10 A. Yes.

11 MR. CHARNEY: Your Honor, if you recall, Sergeant
12 Kelly testified earlier in this case. He is an anticrime
13 sergeant in the 43rd Precinct.

14 Q. So this particular survey, this quarterly survey has been
15 done each quarter since 2011, right?

16 A. Correct.

17 Q. I am almost done. I wanted to look briefly at one more
18 example. This is going to be the same survey for the first
19 quarter of 2012.

20 Actually, let me show you this, 27810.

21 This is a memo dated June 8, 2012. It is memo from
22 you, correct?

23 A. Yes.

24 Q. It's to Commissioner Farrell?

25 A. Yes.

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Cronin - direct

1 Q. The subject of it is the survey results for the first
2 quarter of 2012, right?

3 A. Correct.

4 Q. The three precincts that you looked at for this survey are
5 the 34th, the 48th, and the 100th?

6 A. Right.

7 Q. Is that correct?

8 A. Yes.

9 Q. So then for the 34th Precinct, you looked at a sample of 38
10 250s and activity logs?

11 A. Yes.

12 Q. For the 48th Precinct, you looked at 33 250s?

13 A. Correct.

14 Q. And for the 100th Precinct, you looked at 31, right?

15 A. Correct.

16 Q. So then let me ask you, I am going to ask you about the
17 results here.

18 Turning to page NYC 27813.

19 These are the results on that survey for the 34th
20 Precinct, right?

21 A. What page?

22 Q. 27813. I just wanted to ask, this page summarizes the
23 results on the survey for the 34th Precinct, right?

24 A. Yes.

25 Q. Now, I want to go down here to this bullet point here. It

D4N8FLO5 Cronin - direct
1 says, "In all instances the circumstances which led to the stop
2 was completed," right?
3 A. Yes.
4 Q. But this doesn't say, and they all corresponded to the
5 suspected crime, right?
6 A. I see that.
7 Q. Is that a change to the way you have done the survey?
8 A. No. It was probably a typo.
9 Q. Do you know whether or not this survey result also found
10 that all of the circumstances correlated with the suspected
11 crimes?
12 A. Yes.
13 Q. OK. I am almost done here. I have a couple of more
14 questions.
15 So looking at two more pages forward, 27815, and
16 again, this is the results for the 34th Precinct for the first
17 quarter of 2012.
18 So again, here we have the suspected crime is criminal
19 possession of a weapon, right?
20 A. Yes.
21 Q. And the stop circumstance checked off on the form was
22 furtive movements, right?
23 A. Yes.
24 Q. And there were no additional circumstances checked off,
25 right?

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Cronin - direct

- 1 A. Correct.
- 2 Q. But QAD determined that this stop was based on reasonable
3 suspicion?
- 4 A. Yes.
- 5 Q. And then 27 -- I'm sorry. Before I get there, let me go to
6 27817, and I apologize for these staples. These are the
7 results for the 48th Precinct for this survey, right?
- 8 A. Correct.
- 9 Q. And again, we have in this bullet point, "In all instances
10 the circumstances which led to the stop was completed," right?
- 11 A. Correct.
- 12 Q. And again, it's missing that sentence about the that they
13 all correlated to the suspected crime?
- 14 A. Correct.
- 15 Q. So looking at the first one, the suspected crime is again
16 assault, right?
- 17 A. Correct.
- 18 Q. And the reason given on the 250 for the stop was furtive
19 movements, right?
- 20 A. Yes.
- 21 Q. But no additional circumstances were indicated, right, for
22 this first one?
- 23 A. The first one? Correct.
- 24 Q. But again, QAD determined that this stop was based on
25 reasonable suspicion, right?

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Cronin - direct

1 A. Correct. It was also a return on warrant when they stopped
2 him.

3 Q. But that's something that was discovered after the stop was
4 made, right?

5 A. Correct.

6 Q. Finally, I just want to review real quick to make sure I
7 have covered everything. I just want to run through real quick
8 the audits that --

9 MR. CHARNEY: If we can pull back up Plaintiffs'
10 Exhibit 114.

11 I am almost done, your Honor.

12 THE COURT: You have said it four times.

13 Q. This is the Daniels settlement. Do you remember one of the
14 things QAD was charged with doing under this settlement was
15 conducting audits that at a minimum address whether and to what
16 extent the audited stop, question and frisk activity is based
17 upon reasonable suspicion as reflected in the UF-250 forms?

18 A. Correct.

19 Q. So the audits that QAD does that covers stop and frisk are
20 the 802, correct?

21 A. Correct.

22 Q. The 802-A?

23 A. Correct.

24 Q. And then would we include these quarterly surveys?

25 A. No. It's a survey, not an audit.

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Cronin - direct

1 Q. So the two audits you do are the 802 and the 802-A?
2 A. Correct.
3 Q. Those are the only two that you do to address whether or
4 not stop, question and frisk activity is based upon reasonable
5 suspicion, right?

6 A. Correct.
7 MR. CHARNEY: One minute.
8 No further questions, your Honor.
9 THE COURT: All right. Ms. Grossman.
10 MS. GROSSMAN: Just give me a minute to set up.
11 THE COURT: Sure.

12 CROSS-EXAMINATION

13 BY MS. GROSSMAN:

14 Q. Good afternoon.

15 A. Good afternoon.

16 Q. You briefly discussed your background a little bit earlier
17 today. So I just wanted to just have you explain to the Court
18 your various positions briefly with the police department since
19 you began in 1979, very briefly.

20 A. Police officer in the 70; sergeant in the 66; lieutenant in
21 the 71; captain, executive officer of the 68; captain,
22 executive officer of the 78; and then I went on to quality
23 assurance as XO and CO.

24 Q. When did you become promoted to assistant chief?

25 A. I'm just a deputy chief. But thank you. That would have

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Cronin - cross

1 been in 2010 July.

2 Q. Referring to Defendants' Exhibit G6, this is a compilation
3 of audits that were done for the 802 audits. Do you see that?

4 A. There is nothing on the screen.

5 Q. Do you not have G6? I can give you a copy.

6 A. I'm sorry. I don't think I have a G6.

7 Q. I have it.

8 Let's start with the first page on the exhibit that
9 represents the first quarter for 2003. Do you see that?

10 A. Yes, I do.

11 Q. And then moving on to Bates number 60015.

12 THE COURT: Sorry. They are not legible in my copy.

13 The first few are legible. What number did you say?

14 MS. GROSSMAN: It's Bates number 60015.

15 THE COURT: Miraculously, that one is legible.

16 Q. That represents the audit for 2004 first quarter, correct?

17 A. Correct.

18 Q. And then moving on to Bates number 60029, that represents
19 2005 fourth quarter, right?

20 A. Yes.

21 Q. And then moving on to 0767 --

22 THE COURT: 0767?

23 MS. GROSSMAN: 0767.

24 THE WITNESS: It goes a different way now.

25 THE COURT: She seems to know where that is.

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Cronin - cross

1 MS. GROSSMAN: NYC_2_ and then the last three numbers
2 are 767.

3 THE COURT: I don't have it.

4 THE WITNESS: Would you like mine?

5 THE COURT: I wouldn't. I would like to figure out
6 where it is. It's in front of me. I just have to find it.
7 0767.

8 I found 0772. Would it be somewhere in that vicinity?

9 MS. GROSSMAN: It's probably a few pages before then.
10 I am looking for 767.

11 THE COURT: All right.

12 Q. That's 2006 fourth quarter?

13 A. Correct.

14 MS. GROSSMAN: Your Honor, I could just for the record
15 indicate the Bates numbers of the years so that it's easy when
16 you look through it. We don't have to look through it together
17 now. But what I do want to show is a demonstrative exhibit
18 that summarizes the audits that will make it a little easier to
19 understand the audits.

20 THE COURT: That's fine.

21 MR. CHARNEY: No objection.

22 MS. GROSSMAN: We provided a copy to plaintiffs'
23 counsel.

24 MR. CHARNEY: No objection.

25 MS. GROSSMAN: So just for the record, what we will do

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1 is I will just indicate the Bates number so we know where to
2 look.

3 THE COURT: I don't have to find them right now?

4 MS. GROSSMAN: You don't have to find them right now.
5 And then I am going to show you a demonstrative exhibit which
6 shows the results.

7 THE COURT: Got it.

8 BY MS. GROSSMAN:

9 Q. We have NYC_2_0000767. That's 2006 fourth quarter.
10 Then we move on to NYC 00004287. That is 2007 third
11 quarter, is that right?

12 A. Yes.

13 Q. Then moving on to NYC 00004305, that's 2008 third quarter?

14 A. Yes.

15 Q. And moving on to NYC_2_00018524. That is 2009 third
16 quarter?

17 A. I have -- OK. Yes, it is.

18 Q. Moving on to NYC_2_00021741. That is 2010 third quarter?

19 A. Yes.

20 Q. And then moving on to NYC_2_00022183. That's 2011 fourth
21 quarter?

22 A. Yes.

23 Q. And finally, moving on to NYC_2_00027856. That's 2012
24 third quarter, right?

25 A. Correct.

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Cronin - cross

1 Q. That's all for 802?

2 A. Correct.

3 Q. Referring to, I think for identification we will call it
4 Defendants' Exhibit E14. I am going to show you a
5 demonstrative exhibit.

6 So referring to Defendants' Exhibit E14, can you tell
7 us what this is?

8 A. What this is, as you had mentioned, from 2003 to 2012, we
9 put all of the commands that we evaluated in 802.

10 We then put the number of commands that had an average
11 failing rate in activity logs. We start in 2003 with 88, and
12 then 2012 there is an improvement with only 56.

13 Q. So this is a document that you prepared?

14 A. Yes. I'm sorry.

15 Q. That's OK.

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

17 MR. CHARNEY: It's a demonstrative.

18 THE COURT: Do you have any objection as a
19 demonstrative?

20 MR. CHARNEY: No. That's fine.

21 THE COURT: What is the exhibit number?

22 MS. GROSSMAN: Defendants' E14.

23 THE COURT: E14, which is a demonstrative, it's a
24 compilation under rule 1006, is accepted in evidence as a
25 summary exhibit.

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Cronin - cross

(Defendants' Exhibit E14 received in evidence)

1 Q. So would you be able to explain to the Court what the
2 information represents?

3 So looking at 2003 first quarter. Looking at the
4 overall average rating area for 2003, do you see on the right
5 overall average area rating has 3.1?

6 A. Yes.

7 Q. And that represents the total citywide average pass rate?
8 A. Yes.

9 Q. And then when you move on to 2004 first quarter, you see an
10 improvement to 3.4?

11 A. Correct.

12 Q. And then you see the continued trend all the way through to
13 2012 third quarter, correct?

14 A. Correct.

15 Q. At the very end, you see a total overall rating of 34,
16 correct?

17 A. 3.4, yes.

18 Q. 3.4. Sorry.

19 Now, looking at the citywide activity log entry
20 rating, at the top it says, "Citywide A/L entry rating," that
21 represents the activity log rating, correct?

22 A. Yes.

23 Q. Again, you see the trend from 2003 all the way through 2012
24 third quarter, correct?

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Cronin - cross

1 A. Correct.

2 Q. And you see, again, not a pass rate, but it is an
3 improvement over time, correct?

4 A. Yes, it is.

5 THE COURT: Sometimes it went down. It's not a
6 consistent trend up.

7 THE WITNESS: From 2010 we were very encouraged.

8 THE COURT: I see the last three. I am just saying
9 2008 third quarter was 2.5 and 2009 third quarter was 1.6. So
10 it's not a consistent up.

11 MR. MOORE: Just for clarification, the activity log
12 entries are for all commands, not just patrol service bureau?

13 THE WITNESS: This is citywide.

14 THE COURT: Everything.

15 Q. Now, looking right next to year, you see there is a table
16 here, number of commands evaluated, right?

17 A. Yes.

18 Q. So the numbers underneath the number of commands evaluated
19 represent all the commands in the city that have been
20 evaluated, right?

21 A. Correct.

22 Q. Then looking to this particular column, number of commands
23 with an overall area failure --

24 THE COURT: What is an overall area failure?

25 Q. I just wanted you to explain to the Court what that means.

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Cronin - cross

1 A. That would be the overall area failure is the failure with
2 the activity logs. So that's the number of commands that
3 failed the activity log entry.

4 THE COURT: Are you sure --

5 THE WITNESS: No. I take that back.

6 Number 48, that one is the overall failure. So
7 instead of getting a 4 or a 3, for that whole area, they would
8 gotten below a 3.

9 THE COURT: What whole area?

10 THE WITNESS: The entire evaluation. It's not just
11 that one area. In other words, the total of the nine, they
12 failed that whole total.

13 Q. So this number, this category represents the entire audit?

14 A. Correct.

15 Q. And activity log is a component of the audit?

16 A. Correct.

17 Q. So this is the number of commands that failed in 2003, and
18 then you see for each year the number of commands that failed,
19 right?

20 A. Correct.

21 Q. So as you continue all the way down to 2012 third quarter,
22 what you have is a total of two commands have failed the
23 overall stop, question and frisk 802 audit, right?

24 A. Correct.

25 Q. Now, moving over to the right-hand side, where you see the

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Cronin - cross

1 yellow portion of the demonstrative exhibit?

2 A. Yes.

3 Q. Do you see here it says number of proper activity log
4 entries and then to the right of that it has number of improper
5 activity log entries?

6 A. Correct.

7 Q. Can you explain what these numbers mean underneath this
8 column?9 A. The first one with the proper activity log, we look at the
10 five activity logs. You can fail when you have more than two
11 errors -- two activity logs not being completed, you can fail
12 with more than two. So we broke it down so that you would see
13 that you had some -- even though they might have failed the
14 area, they did have the entries. So these are the commands
15 that have the activity log entries. So you had 208 proper
16 entries and then you had 362 improper.17 Q. So then the percentage underneath is the percentage of the
18 total number of activity logs that were evaluated?19 A. The 36 is the proper amount of entries and 64 is the
20 improper.21 THE COURT: So looking at the last one, the third
22 quarter of 2012, if two thirds were proper, how come the
23 overall grade is still failing? 2.6 is still a failure.

24 THE WITNESS: Anything under 3 is a failure.

25 THE COURT: That's what I am saying. 2.6 is still a

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Cronin - cross

1 failure.

2 THE WITNESS: Correct.

3 THE COURT: Yet two thirds of them were proper.

4 THE WITNESS: You only need 3 to pass. So it would be
5 4/10ths when you do the math. So if a few more commands had
6 passed, they would have gotten a 3.

7 THE COURT: I don't think I am being clear.

8 If two-thirds were done properly and one third was
9 improper, would you not have expected a higher score than 2.6?

10 THE WITNESS: No. I wish.

11 THE COURT: OK. In other words, you have to get up to
12 maybe three quarters or 80 percent proper before you're going
13 to get 3?

14 THE WITNESS: Yes.

15 MS. GROSSMAN: That's what we wanted to show on this
16 demonstrative exhibit, your Honor.17 THE COURT: Well, that takes us to 4:30 for today.
18 There is probably no point in starting a new topic. You're not
19 nearly done?

20 MS. GROSSMAN: No, I'm not.

21 THE COURT: So you know you have to come back tomorrow
22 at 10.23 MS. BORCHETTA: We had an application related to a
24 witness the city scheduling to testify on Thursday. It sort of
25 just came to our attention, and we want to be able to avoid

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1 wasting resources with respect to preparing for that testimony.

2 THE COURT: You can step down. You're all set.

3 MS. BORCHETTA: This relates to Officer Kha Dang that
4 the city has scheduled to testify on Thursday.

5 THE COURT: I have the revised schedule. I brought it
6 to court.

7 I have got it. Go ahead.

8 MS. BORCHETTA: He is a police officer in the 88th
9 Precinct.

10 THE COURT: Right.

11 MS. BORCHETTA: Our application is, to the extent that
12 we learned yesterday that the city expects their examination of
13 this officer to go for about an hour and 20 minutes, our
14 understanding of this officer's testimony, he didn't witness a
15 stop and he was identified through discovery in this case as
16 someone who was a high stopper in one quarter of 2009, meaning
17 that he stopped a high number of black people in that quarter.
18 We put him on through deposition designation. And the city did
19 not object to those designations but is still calling him live.

20 Obviously, the city is entitled to question this
21 witness if they want to do so live. But when we realized that
22 they anticipated an hour and 20 minutes for someone who to us
23 appeared to be limited, we took a look at the exhibits that
24 they had designated for him a few days ago and realized that
25 one is an exhibit with 127 UF-250s that this officer completed,

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1 and it raised a concern for us, that we were trying to resolve
2 with the city but weren't able to, that they were trying to go
3 through all of these 250s to establish the legality of each of
4 these 250s. We don't believe that that would be appropriate
5 because we weren't able to question the people who were stopped
6 in those instances and it would just be this officer's
7 testimony. So we would just seek to limit -- not preclude that
8 exhibit, but limit their questioning so that they cannot go
9 through each of these 127 stops in order to suggest the
10 legality of those stops.

11 MS. GROSSMAN: First of all, we are, in an abundance
12 of caution, trying to identify exhibits that might be used.
13 Given the speed at which we are trying to get all the witnesses
14 out there and identify exhibits, we in an abundance of caution
15 wanted to give the plaintiffs the universe that we might select
16 from. I mean, the plaintiffs looked at a 200-page exhibit.
17 They only looked at a few pages. So we don't expect to go
18 through all of these stops. So that's not what we are
19 expecting to do. I just wanted to respond to that.

20 THE COURT: She wants me to preclude you from doing
21 that. In other words, do you intend to try to cover a number
22 of these stops?

23 MS. GROSSMAN: I am not 100 percent sure until we meet
24 with the witness and establish what it is that we are going to
25 develop. This is all happening so fast.

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1 THE COURT: I understand.
2 MS. GROSSMAN: We need a little indulgence.
3 THE COURT: It's not a matter of indulgence. It's a
4 matter of notice to the plaintiff so they know what to prepare.
5 Because they are saying, by the same token that you have often
6 complained that one side's stop story is heard, they would want
7 to identify who was stopped for the stops that you're going to
8 cover and see if they can identify that person who was stopped
9 so there could be two sides to the stop. It's an argument you
10 have made many times about trying to get two sides of every
11 stop if possible, right? You have made an argument. We don't
12 know the officers. You're only hearing one side of the stop.
13 All they are saying is here you know which stops you might be
14 covering. They would want an opportunity to look at those
15 UF-250s and look at who was stopped and consider finding them.

16 MS. GROSSMAN: I think they have all the stops.

17 THE COURT: How many people did you say?

18 MS. BORCHETTA: 127 people.

19 THE COURT: They are not going to find 127 people. If
20 you tell them, we intend to go over four stops, and these are
21 the four, they might look at that. They can't in anticipation
22 go find 127 people. That's just not right.

23 MS. BORCHETTA: The names have been redacted.

24 THE COURT: That's true too. I don't know what you
25 can do even if they told you the four. What would you do if

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1 they told you we are only going to cover the following four
2 stops?

3 MS. BORCHETTA: We actually believe that -- first of
4 all, we don't think we would be able to find those people at
5 this juncture, which is one of the reasons why we don't think
6 that they should be allowed to use these stops.

7 THE COURT: To cover any of the stops?

8 MS. BORCHETTA: To cover the constitutionality or
9 whether these stops were legal.

10 THE COURT: Why is this person being called?

11 MS. GROSSMAN: The plaintiffs wanted to get the
12 discovery of a person identified as making a very large number
13 of stops, as Ms. Borchetta said, of many black people. And so
14 if the plaintiffs are going to use the total number of stops
15 that this officer made, we need to be able to rebut that and
16 whatever inferences the plaintiffs are going to ask this Court
17 to draw from the mere number of the 250s that this officer
18 prepared and the number of stops that were made. So we do need
19 the opportunity to develop that testimony, how we believe we
20 need to rebut whatever it is that the plaintiffs have put out
21 there.

22 MS. BORCHETTA: That brings up an important relevancy
23 point here. We have put on the deposition designations already
24 that we want from this witness. Those do not go to the
25 legality of the stops. It goes merely to how this officer was

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1 supervised and certain practices for monitoring that officer's
2 activity. We did not put on deposition testimony about the
3 legality of all of those 127 stops, and they stipulated -- or
4 any of them, and they stipulated, they being the city,
5 stipulated in a joint pretrial order as a fact that this person
6 was a high stopper. But, again, the evidence we are seeking to
7 use, and it is evidence that we have designated for him, is
8 about the practices.

9 THE COURT: I understand what you're seeking to use,
10 and I understand what you have designated. So I suppose your
11 argument is there is no need for the rebuttal that Ms. Grossman
12 described because you're not making the argument that concerns
13 her. You're not going to argue that from this high number of
14 stops that shows that he didn't have reasonable suspicion to
15 make the stop. You're not going to make a reasonable suspicion
16 argument at all.

17 MS. BORCHETTA: That's correct.

18 THE COURT: So there is nothing to rebut in terms of
19 reasonable suspicion because they are not going to claim that
20 his stops lacked reasonable suspicion.

21 (Continued on next page)

22
23
24
25

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1 MS. GROSSMAN: There's a lot of quota evidence that
2 the plaintiffs have developed that officers are going out there
3 getting numbers for numbers' sake. We need to be able to
4 defend that.

5 MS. BORCHETTA: Not doing it for that purpose.

6 MS. GROSSMAN: But whatever you're using the totality
7 of activity for, we are entitled to say that whatever number of
8 stops that were made by this particular officer is not pursuant
9 to a quota. Isn't because they're doing numbers for numbers'
10 sake. And that they're getting -- they're unduly influenced in
11 terms of the activity they engage in when they are out in the
12 command.

13 THE COURT: But he can say all that without the
14 specifics of the stops.

15 MS. GROSSMAN: How do you prove that?

16 You have to accept the mere statement of an officer
17 who says I won't do that?

18 THE COURT: Possibly. Something called credibility.

19 I mean one side says I felt pressure to make stops for
20 stops' sake. The one side says I didn't feel any such
21 pressure. That sounds like credibility. But to start running
22 through 127 stops to justify each one is based on reasonable
23 suspicion when they haven't raised the quality of the stops at
24 all but merely the manner in which each supervisor monitored.

25 MS. GROSSMAN: First, having a stipulation that the

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1 stops are legal and they have no problem with that.

2 THE COURT: What?

3 MS. GROSSMAN: If they can say.

4 THE COURT: I don't think you're going -- you're
5 serious, you're going to get any such stipulation because
6 nobody has investigated one way or another these 127 stops.

7 MS. GROSSMAN: Well, your Honor, let me just say that
8 I don't believe -- I think at most we're going to use maybe no
9 more than four to six stops.

10 THE COURT: Fine.

11 MS. GROSSMAN: So that should.

12 THE COURT: Why don't you identify those four to six
13 before he takes the stand. So at least you can look at the
14 UF 250 on those four to six without any investigation who was
15 stopped and see what you might be able to do just by looking at
16 the UF 250.

17 MS. BORCHETTA: I'd only raise that the class member
18 witnesses were precluded from testifying about the number of
19 times that they had been stopped.

20 THE COURT: I don't know. Many of them said so. Many
21 of them said that this was not the first time. I was stopped
22 several times before this.

23 MS. BORCHETTA: Right. But there was specific
24 limitations on their testimony about the number of times that
25 they had been stopped, specifically because -- and we can

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1 provide the court with the transcript cites for that because it
2 was with motions in limine made by the city.

3 THE COURT: It may be. But they all seemed to tell me
4 they had been stopped multiple times.

5 MS. BORCHETTA: But they couldn't say, for example,
6 I've been stopped a hundred times in my life. And the reason
7 for that was this court's ruling based on the city's
8 protestations that the city wouldn't have an opportunity to
9 test the veracity of whether those other stops were or were not
10 legal. Because it was a summary statement that assumed their
11 illegality. And they wouldn't be able to test that they were,
12 in fact, legal.

13 And here we have the same problem. We have only these
14 250s. And again we do appreciate that it will be narrowed, and
15 that will help us to substantially. But we still think that
16 it's problematic that we don't know these people's names. We
17 are only finding out now that they're intending to use them to
18 show legality of the stops. We had no opportunity --

19 THE COURT: The purpose of the four or six you might
20 use, that's not the officers saying the details of those stops
21 in an effort to show that each one was based on reasonable
22 suspicion?

23 MS. GROSSMAN: I think what the officer should be free
24 to be able to testify to is what his understanding of
25 reasonable suspicion was, and this is how he documented it in

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1 the 250s. There's a lot of questioning about the way the forms
2 are fill out.

3 THE COURT: What years are these stops?

4 MS. BORCHETTA: 2009. Third quarter.

5 MS. GROSSMAN: That's when the plaintiffs asked for
6 that period of time.

7 THE COURT: No. I'm only curious because four years
8 ago he can remember the details of the stop beyond the 250.
9 That would be remarkable in view of what I've been hearing here
10 from other officers.

11 In any event, I can't really rule this way. I'd like
12 her to identify the four to six she might wish to use. Alert
13 you to what they are before this person testifies. You look at
14 the UF 250s. You see what you can do with them. And I'll have
15 to hear argument again because I'm really working in a vacuum.

16 I'm not terribly keen on this. This person can select
17 four or six, describe the details and say they're all based on
18 reasonable suspicion. What does that mean about the other 123?
19 Then she'd say if you're going to say that, then what do you
20 want us to do, talk about all 127? I couldn't infer that if
21 four to six are good, that means the other 123 are. So it's a
22 confusing argument anyway.

23 But I'm not inviting her to do 127. Just like you
24 can't do four-and-a-half million. That's always been a problem
25 here. You cannot put on four-and-a-half million stops in

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1 evidence.

2 MS. BORCHETTA: If I just understand the Court's
3 ruling then.

4 THE COURT: It's not really a ruling. It's a
5 preliminary request -- preliminary order that she has to
6 identify the four to six she intends to use. You pull the
7 250s. You look at them. See after that what arguments, if
8 any, you wish to make. Or it can be out of the woods here and
9 move on.

10 MS. BORCHETTA: If we could have notification of that
11 tonight so we have some time.

12 THE COURT: I don't know if she has to meet with the
13 witness first. I can't say it will be tonight.

14 MS. BORCHETTA: By close of business tomorrow then?

15 THE COURT: That sounds fair. That's Wednesday.

16 Mr. Moore, what is it?

17 MR. MOORE: Judge, we expected Mr. Reiter to testify
18 today. He's up here from Georgia. And I just wanted to get an
19 idea -- he'll stay over for tomorrow. But I just wanted to get
20 an idea of how much longer this witness will be because he will
21 be the next witness.

22 THE COURT: He will be the next witness. Do you have
23 any idea how long your cross of the chief will be?

24 MS. GROSSMAN: Frankly, if the plaintiffs have no
25 objection to all the demonstrative exhibits I plan on using

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1 that I provided to the plaintiff I think it would facilitate.

2 THE COURT: She's here. Why can't we interrupt her
3 and take him first? Why don't we do that?

4 MR. MOORE: I think it would be helpful for him to
5 listen to her because she's talking about an area that he would
6 be testifying to, the auditing. That's why I just want to get
7 a sense.

8 THE COURT: He could read today's transcript and get
9 the same.

10 MR. MOORE: He's in the courtroom. He's been
11 listening to it.

12 THE COURT: He's heard enough. It's bound to be
13 repetitive now.

14 I'm serious we've heard essentially what she did. We
15 know what she did. We know the procedures. Now it's just more
16 statistics.

17 MR. MOORE: I'm happy to call him when she's done. I
18 just wanted to get a general sense of when that would be.

19 I'll ask them and see if they can give it to me.

20 THE COURT: Do you have any idea how long you'd be on
21 cross?

22 MS. GROSSMAN: I can't imagine it would be more than
23 an hour.

24 MR. MOORE: That's fine.

25 MS. GROSSMAN: If I do go a little bit beyond.

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1 MR. MOORE: The other issue with respect to
2 Mr. Reiter, of course is the city has suggested they want to
3 make redactions to his report which we intend to introduce as
4 an exhibit.

5 THE COURT: I think I asked Ms. Publicker to do
6 some --

7 MS. PUBLICKER: Yes. I sent a highlighted version of
8 the report last night to plaintiffs, including some preliminary
9 suggestions for redactions.

10 THE COURT: Did you meet and confer on those?

11 MR. MOORE: We haven't met and conferred.

12 I can tell you that other than with respect to the
13 section that discusses some legal cases, which I don't think
14 would be a problem with you anyway, but out of an excess of
15 caution we would be willing to take that portion out. But
16 other than that we wouldn't agree to any other redactions, so.
17 Because I think it goes to -- they don't -- they're not legal
18 conclusions. They just go to his opinion, so.

19 MS. PUBLICKER: Your Honor, if I may.

20 I did make an additional two sets of redactions last
21 night to the report, in addition to the legal conclusions,
22 being that plaintiffs' expert made statements regarding the
23 motive or intent, for example, of the NYPD stating that in his
24 opinion their intention was, which I believe your Honor has
25 previously ruled on in the Pension Committee cases to be an

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1 inappropriate statement --

2 THE COURT: Every case is different. The context of
3 the Pension Committee may not apply here at all. I didn't rule
4 that here. I don't remember the context of why I ruled that
5 there.

6 MS. PUBLICKER: Your Honor, as I mentioned yesterday,
7 I believe that they could be just preliminary suggestions for
8 redactions that we would finalize after Mr. Reiter has
9 testified. You've made rulings on which portions of his
10 opinion you'd allow in. And only then would we submit a
11 redacted version of the report based on your in-court rulings.

12 MR. MOORE: I don't understand because we would
13 qualify him and then introduce his exhibit and then he would
14 presume -- hopefully you would admit it, and then he would
15 testify based upon some of the things he's said in his opinion.

16 So I don't understand how we could do it after he
17 testifies.

18 THE COURT: I guess she needs to physically put the
19 report in evidence for the record so it's part of the record of
20 this case in perpetuity and potentially for appeal. She wants
21 to get a redacted version in the record.

22 But Mr. Moore's point is still the same. Can he ask
23 the witness: And in your opinion what was the intent?

24 So you're saying you need a ruling on this issue of
25 intent. But it wasn't very fair to raise it at quarter to five

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1 tonight. You cited a ten-year-old case of mine. I got to go
2 find out why I held that there, whether it applies here.
3 That's not giving me any time to do the work.

4 MR. MOORE: They've had this report for --

5 THE COURT: That's what I mean. What are you supposed
6 to do bring it back in a week so I can do the research?

7 MS. PUBLICKER: We did raise this in the motion in
8 limine.

9 THE COURT: If you raised it precisely that he
10 shouldn't be allowed to testify as to intent I would have ruled
11 then.

12 MS. PUBLICKER: Your Honor actually made part of this
13 suggestion at the time of the January 4 motion in limine
14 conference, stating that you didn't want to see the report at
15 that time because you wanted to see what he said and the
16 provisional sort of --

17 THE COURT: Did you ever tell me that one of your
18 objections was that he gave an opinion as to the intent of the
19 NYPD? I think it's the first time I've heard that.

20 MR. MOORE: It's the first time --

21 THE COURT: The first time I heard the word "intent,"
22 the first time I heard Pension Committee case. It puts me in a
23 bad spot at quarter to five on Tuesday.

24 MS. PUBLICKER: I apologize. I don't recall the exact
25 language.

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1 THE COURT: I don't think you raised this issue. I
2 would have recalled intent. I would have recalled Pension
3 Committee. I'm sorry. I can't work that way. So either --
4 what do you want him to do, fly back to Georgia and fly back a
5 week from now? Or too late, too little and he gets to say
6 about intent. I don't have time to research it tonight. I
7 really don't. I don't think this was presented to me, not in
8 briefs, not orally. Generally, yes, there were things you
9 objected to with the report. You said certain things were
10 legal conclusions that should be redacted. But it's
11 inappropriate for him to opine on intent, I think this is the
12 first time I've ever heard that.

13 MS. PUBLICKER: I believe it might have been captured
14 by the factual conclusions; that he's reaching conclusions
15 about the ultimate issue that should be determined by the trier
16 of fact.

17 MR. MOORE: Judge, as I've said, we would agree to
18 redact the portion where he does discuss some cases.

19 THE COURT: I know. You've said that. I heard.

20 MR. MOORE: So that leaves about three lines out of
21 the 37-page report that they've identified, at least in the
22 copy I have, which I don't think go to intent. They may be
23 strong opinions about --

24 THE COURT: So you don't intend to ask him a question
25 straight out: What is your opinion as to the intent?

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1 MR. MOORE: Absolutely not.

2 THE COURT: Then we don't seem to have this problem.
3 He's not going to call for the expert's opinion on the intent
4 of the police department in taking these actions.

5 MS. PUBLICKER: Well then I don't understand why it
6 should belong in the report.

7 THE COURT: I don't know. You're down to apparently
8 three lines. You're three lines apart.

9 MR. MOORE: I don't understand.

10 THE COURT: I don't know what the three lines are. If
11 you tell me, then I'm going to know, and it defeats the purpose
12 of redaction. That is the awkward position I'm in. If I look
13 at those three lines, I have seen them. I'd like not to see
14 them.

15 MR. MOORE: Let me suggest.

16 THE COURT: If I shouldn't see them, I'd like not to
17 see them. If I should see them, then I should see them.

18 MR. MOORE: Let me suggest I'll have a conversation
19 after court with the city and see if we can -- see if I can at
20 least understand what their objection is because I don't
21 understand -- I don't see how they get intent out of what
22 they --

23 THE COURT: Okay. See you tomorrow at 10:00.

24 (Adjourned to April 24, 2013 at 10:00 a.m.)

25

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