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1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 DAVID FLOYD, et al.,

4 Plaintiffs,

5 v.

08 CV 1034(SAS)

6 CITY OF NEW YORK, et al.,

7 Defendants.

8 -----x

New York, N.Y.
April 24, 2013
10:00 a.m.

10 Before:

11 HON. SHIRA A. SCHEINDLIN,

12 District Judge

13 APPEARANCES

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

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

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

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APPEARANCES (Cont'd)

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

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1 MARY C. CRONIN, resumed.

2 THE COURT: Please be seated.

3 CROSS-EXAMINATION

4 BY MS. GROSSMAN:

5 Q. Good morning.

6 A. Good morning.

7 Q. So, Chief, let's just briefly summarize the nature of the
8 audits from what we discussed yesterday.

9 You have your annual 802 QAD citywide audit of 250s
10 where QAD pulls 25 UF 250s for the time period at issue and
11 they look at five activity logs, right?

12 A. Correct.

13 Q. And you have monthly command 802 UF 250 self-inspections of
14 UF 250s where the commands monthly look at 25 UF 250s and five
15 activity logs, right?

16 A. Correct.

17 Q. And QAD looks at the monthly command 802 UF 250s when they
18 do the audits for the responsibility of maintenance of records,
19 right? That's audit number 800?

20 A. Correct.

21 Q. And we looked at the demonstrative yesterday regarding 2003
22 through 2012 regarding the overall ratings and activity log
23 ratings, right?

24 A. Correct.

25 Q. Now I want to turn to a demonstrative that summarizes the
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1 802 QAD audit broken down by bureau. That would be Defendants'
2 Exhibit F14.

3 THE COURT: Did we admit that yesterday?

4 MS. GROSSMAN: We did not.

5 THE COURT: It's another summary exhibit? 2006. Any
6 objection?

7 MR. CHARNEY: No.

8 THE COURT: Okay. F14 is received as a summary
9 exhibit.

10 (Defendants' Exhibit F14 received in evidence)

11 Q. Chief, can you explain to the court what this summary
12 exhibit shows.

13 A. What this shows is the results of all our audits from 2003
14 to 2012.

15 Q. And so looking at the very top here it has UF 250 audit
16 average summary ratings, right?

17 A. Yes.

18 Q. You see the caption, it's at the very top, it has: A,
19 listed on coversheet; B, photocopy --

20 THE COURT: Don't read them all. We see.

21 Q. So this corresponds with the actual audit sheet that the
22 evaluators are supposed to fill out at the commands and what
23 the QAD evaluators are supposed to fill out?

24 THE COURT: Didn't we go over these yesterday?

25 MS. GROSSMAN: We went over a different summary. This

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1 is just broken down with the captions just to show the trends
2 over time and it's a summary of all the audits and it makes it
3 easier.

4 THE COURT: I thought I saw this yesterday.

5 Q. And so when you -- this is the citywide, on the first page?

6 THE COURT: Actually I know I saw this page yesterday.
7 But okay. Go ahead. The citywide and then.

8 MS. GROSSMAN: And then what we have here, when you go
9 to the next page, it then breaks it down by patrol service
10 bureau from 2003 to 2012.

11 THE COURT: Yes. And then housing.

12 MS. GROSSMAN: Correct.

13 THE COURT: And then OCCB. And then borough.

14 MS. GROSSMAN: That's right. That's all I just wanted
15 to explain to your Honor.

16 THE COURT: Okay.

17 Q. Now moving on to the demonstrative that we're going to show
18 as Defendants' Exhibit G14.

19 MS. GROSSMAN: We can move to admit G14.

20 MR. CHARNEY: No objection.

21 THE COURT: G14 is received.

22 (Defendants' Exhibit G14 received in evidence)

23 Q. Looking at G14, can you explain what this demonstrative
24 shows.

25 A. What this is, is from 2003 to 2012 the audits broken out as
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1 far as the commands evaluated. And then it would be the total
2 amount of the commands with satisfactory ratings and the
3 passing rate percentage from 2003 to 2012.

4 THE COURT: Well it's only one quarter per year. How
5 did you select which quarter? It's not always the third. I
6 noticed the last bunch of years, it's the third quarter. But
7 earlier it's the first, the fourth.

8 THE WITNESS: Correct.

9 THE COURT: Who selected which quarter to put in the
10 summary?

11 THE WITNESS: In the beginning we would try to do
12 different months. And then as we got down our audits, we
13 realized it would be better for us to do it the same time every
14 year.

15 THE COURT: Right. So who selected?

16 THE WITNESS: From --

17 THE COURT: The first and the fourth and the fourth
18 and the third.

19 THE WITNESS: Well from 2006 I selected them.

20 THE COURT: From 2006 on?

21 THE WITNESS: On. I selected that quarter.

22 THE COURT: Well who selected for three, four, and
23 five.

24 THE WITNESS: That would have been Peter Cassidy.

25 THE COURT: Was it selected at the time or -- in other
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1 words, was this prepared last week and selected?

2 THE WITNESS: No. No. No. This is as a result of
3 these audits.

4 THE COURT: Right. But picking which quarter, or
5 which audit? Because it says third audit or second audit.

6 THE WITNESS: When it says first audit, that's the
7 first.

8 THE COURT: I see. That's just the --

9 THE WITNESS: Just the number.

10 THE COURT: I see. So somebody selected one-quarter
11 back at the time?

12 THE WITNESS: Correct.

13 THE COURT: So there is no selection now?

14 THE WITNESS: No.

15 THE COURT: Okay. Got it.

16 Q. So looking at the first column you have total commands
17 evaluated. So just, for example, in 2003 first quarter there's
18 a parenthetical underneath that says the first audit.

19 That's the first audit that was done of this 802,
20 right?

21 A. Correct.

22 Q. And so then to the right you have total commands evaluated.
23 That represents what's obvious, is all the total commands
24 evaluated, right?

25 A. Correct.

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1 Q. And then to the right you have the total commands with
2 satisfactory or above rating which numbers 82?

3 A. Correct.

4 Q. And that would be a rating of 3.0 or above?

5 A. That's correct.

6 Q. And then you then have a percentage rate with that passing
7 rate represents percentage which is 63 percent?

8 A. Correct.

9 Q. And that represents all commands that have passed?

10 A. Correct.

11 Q. And so then moving down you can see, I think that it's
12 self-explanatory.

13 And then as you move down to 2012, third quarter,
14 which is the tenth audit that's been done since 2003, you have
15 121 commands evaluated, right?

16 A. Correct.

17 Q. And then total commands with above satisfactory or above
18 rating is 119?

19 A. Correct.

20 Q. And then represents a 98 percent citywide pass rate?

21 A. Correct.

22 Q. Now moving on we also have monthly command 802-A police
23 initiated enforcement self-inspections?

24 THE COURT: I'm sorry?

25 MS. GROSSMAN: The 802-A, your Honor. We talked about
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1 that yesterday. Which is the 802-A police initiated
2 enforcement self-inspections. And that's where the commands
3 look at the last five police initiated arrests and determine
4 whether the 250s should have been done; and if so, whether they
5 were done, right?

6 THE WITNESS: Correct.

7 Q. And then those audits are done by QAD every 16 months or
8 so, right?

9 A. Approximately, yes.

10 Q. And QAD has done about six of these citywide audits since
11 2003, right?

12 A. Correct.

13 Q. And the highest number of commands citywide that has ever
14 failed has been about six, right?

15 A. Correct.

16 Q. And in 2007 there were no failures, right?

17 A. Correct.

18 Q. Let me show you a demonstrative which is Defendants'
19 Exhibit H14.

20 So this is a demonstrative that just represents the
21 testimony you just gave, police initiated 802-A. And we see
22 the years on the left that those audits were done, right?

23 A. Correct.

24 Q. And then the number of commands evaluated under that
25 category?

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1 A. Correct.

2 Q. And then the number of passed, right?

3 A. Correct.

4 MS. GROSSMAN: And so I think that's self-explanatory,
5 your Honor.

6 I just wanted to put that in for the Court's
7 reference. Thank you.

8 Q. So now moving on to the annual 803 QAD audits. That's of
9 the activity logs, right?

10 A. Correct.

11 Q. And that's where QAD looks at activity logs for several
12 required areas of activity including two logs related to the
13 250 stop, question and frisk form, right?

14 A. Correct.

15 Q. And the monthly command's 803 monthly activity log
16 self-inspection where the command looks at activity logs for UF
17 250 stop-and-frisk documentation occurs for three officers,
18 right?

19 A. That's correct.

20 Q. And QAD also looks at the monthly command's 803 monthly
21 activity log when they do the 800 responsibility for
22 maintenance of records review, right?

23 A. Correct.

24 Q. So basically it's -- QAD goes in just to see that the
25 self-inspections are being done?

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1 A. Correct.

2 Q. And now moving to our demonstrative exhibit I14.

3 MS. GROSSMAN: Your Honor, I just want to make sure
4 H14 is admitted.

5 THE COURT: No. You hadn't moved to admit it.

6 MS. GROSSMAN: I move to admit H14.

7 THE COURT: Any objection?

8 MR. CHARNEY: No objection.

9 THE COURT: H14 is admitted.

10 MS. GROSSMAN: And I also move to admit I14.

11 THE COURT: Again, any objection?

12 MR. CHARNEY: No objection.

13 THE COURT: I14 is also received.

14 (Defendants' Exhibits H14 and I14 received in
15 evidence)

16 Q. So as the caption shows activity log for the 803 audit
17 shows the overall ratings passing, right?

18 A. Correct.

19 Q. And so it's broken down on the left with patrol services
20 bureau, housing transit, OCCB and then citywide, right?

21 A. Correct.

22 Q. And so we have starting at 2010 is when this audit began,
23 right?

24 A. Correct.

25 Q. And so you see that 2 of the -- in 2010 looking at patrol

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- 1 service bureau, 2 of the 84 passed the activity log audit,
2 right?
3 A. Correct.
4 Q. And then when you move on to 2013 to the right, you see 46
5 of the 84 passed the activity log audit, right?
6 A. Correct.
7 Q. For a pass rate of about 55 percent?
8 A. Correct.
9 Q. And then looking citywide you have in 2010, 20 of the 122
10 commands audited passed the activity log audit, right?
11 A. Correct.
12 Q. And that's a pass rate of 16 percent?
13 A. Yes.
14 Q. And then you move over to 2013 and you have 70 of 108
15 passed that audit, right?
16 A. Correct.
17 Q. And that's for a pass rate of about 65 percent?
18 A. That's correct.
19 Q. And then just to summarize from yesterday you also have the
20 annual RAND audit of radio runs where QAD looks at about four
21 commands per year to determine if 250s are completed in
22 connection with radio runs that are likely to result in stop
23 and frisks, right?
24 A. Correct.
25 Q. And that we talked about yesterday that was referring to
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1 Exhibit C11 which is already in evidence.

2 So, since 2011 QAD has been conducting these quarterly
3 250 surveys where QAD looks at a number of 250s and all related
4 activity logs in the three commands with the highest percent
5 increase in 250s compared to the same period in the prior year?

6 A. Correct.

7 Q. Now, I'm going to move on now to the Daniels stipulation.
8 Plaintiffs' Exhibit 114.

9 Do you have that before you?

10 A. What number?

11 Q. Now looking at paragraph A and B there is no requirement in
12 paragraphs A or B that frisks or searches that result from 250s
13 be audited, right?

14 A. Correct.

15 Q. But in the QAD audits that are conducted frisks and
16 searches are captured on the form and audited, right?

17 A. Correct.

18 MS. GROSSMAN: Your Honor, I think Defendants' Exhibit
19 C11 was not in evidence and I just wanted to make sure that we
20 admit it.

21 MR. CHARNEY: What's not in evidence?

22 MS. GROSSMAN: Defendants' Exhibit C11.

23 THE COURT: What is C11?

24 MR. CHARNEY: I think it's the RAND audits that we
25 talked about yesterday.

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1 MS. GROSSMAN: That we talked about extensively
2 yesterday.

3 MR. CHARNEY: The audits of the radio runs to see if
4 250s are being filled out.

5 I don't have any objection.

6 THE COURT: C11 is received.

7 (Defendants' Exhibit C11 received in evidence)

8 Q. Now moving on to when a command fails an audit, what kind
9 of notification is provided to the command to let them know
10 that deficiency.

11 Is it the practice of QAD to notify commands when they
12 fail an audit?

13 A. Yes.

14 Q. And when a command fails -- passes an overall audit but
15 fails one aspect of an audit, is it always the practice of QAD
16 to notify commands that it has failed just a portion of an
17 audit?

18 A. I'm sorry. Say that again.

19 Q. If -- we know that in the 802 we have various categories,
20 various aspects of the audits that are looked at, right?

21 A. Correct.

22 Q. And there are -- under the activity logs we see that there
23 has been a consistent failure in the activity logs --

24 A. Yes.

25 Q. -- entry, right?

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Cronin - cross

1 A. Correct.

2 Q. But when you look at the overall stop, question and frisk
3 audit there is an overall pass rate by the commands, right?

4 A. Correct.

5 Q. And so when the QAD normally notifies commands that they
6 have -- when a command has passed the overall audit but has
7 failed one component of it, has it been the practice of QAD to
8 notify commands of the deficiency?

9 A. No.

10 Q. But there came a time when, in light of the consistent
11 failure in passing the activity log component of the stop,
12 question and frisk audit that the QAD did decide to notify
13 commands about these deficiencies, right?

14 A. Correct.

15 Q. And when -- did that happen back -- late in 2008?

16 A. Correct.

17 Q. And how come that was done?

18 A. That was done because of the fact that the commands were
19 failing that particular area, the activity log. We decided
20 we'd like to stress that area and let them know that yes you
21 passed overall however you're deficient in the activity log
22 portion.

23 Q. Now when QAD sends -- I'm going to call these notices
24 deficiency notices. Is that okay?

25 A. Yes.

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1 Q. So when QAD sends a deficiency notice to the command is the
2 command required to respond to that notice?

3 A. Yes.

4 Q. And can you explain what is expected when a command
5 responds?

6 A. When a command responds it's usually going up the chain of
7 command.

8 So if I, for instance, have a command that has failed
9 they will respond back to their borough commander, explaining
10 to the borough commander the steps that they are taking to
11 correct the deficiency.

12 From there it would again go to different -- up the
13 chain of command. And then it would come to me, telling me
14 that they are going to correct those deficiencies and the steps
15 that they're taking to correct them.

16 Q. And are those deficiencies set forth in writing?

17 A. Yes, they are. It's a report that comes back.

18 Q. And are these deficiency notices sent up and down the chain
19 of command anytime a command fails?

20 A. Yes.

21 Do you want me to explain to you?

22 Q. Sure.

23 A. It would go first to Commissioner Farell, who would sign
24 off on endorsement.

25 Then it would go to chief of department.

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1 From there it would go to the bureau head; whether it
2 be patrol, housing, transit, then down to the borough
3 commander, and then down to the precinct commander.

4 Q. Now yesterday plaintiffs referred to Plaintiffs' Exhibit
5 44. I think that's already in evidence.

6 And referring to Bates number 18560 to 18575.

7 MR. MOORE: What exhibit was that?

8 MS. GROSSMAN: 44.

9 Q. I believe that it was referred to by plaintiffs' counsel
10 yesterday but it might not have been offered into evidence so
11 I'm going to take this opportunity to ask that it be admitted.

12 MR. CHARNEY: What is it?

13 MS. GROSSMAN: Plaintiffs' Exhibit 44.

14 MR. CHARNEY: What is it?

15 MS. GROSSMAN: It's the January 8, 2010.

16 MR. CHARNEY: No, I didn't show. I showed the Queens
17 South. I don't think I showed that one.

18 MS. GROSSMAN: Okay.

19 MR. CHARNEY: But I don't have a problem with
20 admitting it.

21 MS. GROSSMAN: Okay.

22 MR. CHARNEY: Do you have an extra copy?

23 MS. GROSSMAN: I don't right now.

24 MR. CHARNEY: Would you mind if we pull it up on the
25 screen so we can look at it.

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1 MS. GROSSMAN: We'll get one.

2 Q. Showing you what's been marked as Plaintiffs' Exhibit 44.

3 THE COURT: Is this already in evidence?

4 MR. CHARNEY: No.

5 THE COURT: No?

6 MR. CHARNEY: We don't have any objection.

7 THE COURT: You wish to move it?

8 MS. GROSSMAN: Yes.

9 THE COURT: 44 is received.

10 (Plaintiffs' Exhibit 44 received in evidence)

11 Q. Looking at Bates number NYC_2_00018560 through 18575, is
12 this an example of the deficiency memo that we were just
13 talking about that's sent up and down the chain of command?

14 A. This is the evaluation and then, yes, it will be the --
15 could you just tell me the Bates number I'm still trying to --

16 Q. It's the front page 18560.

17 THE COURT: Through 575 is what she's saying.

18 THE WITNESS: Okay. Yes.

19 Q. So now looking at 18570, we see that's a memo that's dated
20 February 4, 2010?

21 A. Correct.

22 Q. And that's from the commanding officer patrol borough
23 Manhattan North, right?

24 A. That's correct.

25 Q. And it's to the chief of patrol?

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Cronin - cross

1 A. Yes.

2 Q. And then this is the results of the evaluation of the audit
3 of Manhattan North anticrime, right?

4 A. This is his response, yes.

5 Q. And so looking -- and this is a response to the deficiency
6 notice that was sent, right?

7 A. Correct.

8 Q. And so looking at -- let's turn back to the results of the
9 audit on page 18561, the very top it says stop, question and
10 frisk report. And you see that at the very top stop, question
11 and frisk received an overall rating of 3.7, right?

12 A. That's correct.

13 Q. And then looking on to the second page that 18562 it says
14 right here three of the five activity logs examined were
15 missing information detailing the circumstances of the stop for
16 the stop, question and frisk report worksheet prepared, right?

17 A. Correct.

18 Q. So that means that the command would have received a
19 fail -- failing rating on the audit for activity logs, right?

20 A. That's correct.

21 Q. And that would be reflected in the corresponding QAD
22 results that we've been looking at over the past few days,
23 right?

24 A. Yes.

25 Q. And so now in response, can you explain -- we see here on
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1 paragraph two some of the responses and steps that the commands
2 are trying to take to remediate the problem, right?

3 A. Yes.

4 Q. And so one of the steps taken is that the commanding
5 officer is going to have -- the commanding officer and the
6 administrative crime lieutenant, the anticrime lieutenant is
7 going to conduct individual training sessions with each
8 sergeant assigned to anticrime, right?

9 A. That's correct.

10 Q. And then the sergeants were also directed to instruct
11 members of the service on the importance of documenting the
12 stops or the stop as the first measure to correct the situation
13 and continue to address this at roll call, right?

14 A. Yes.

15 Q. And the supervisors were further directed to inspect
16 activity logs daily to make certain that the activity log
17 entries were made, right?

18 A. Correct.

19 Q. And then another step that this commanding officer wanted
20 to take was that the training sergeant would conduct training
21 with the four anticrime teams assigned to that command, right?

22 A. Correct.

23 Q. And then another step is that the anticrime lieutenant is
24 supposed to be inspecting the sergeants' and officers' activity
25 logs for proper entries, right?

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Cronin - cross

1 A. Correct.

2 Q. And then there was also -- go down further -- it says the
3 ICO, the integrity control officer, will conduct a random
4 sampling of ten percent of the stop, question and frisk reports
5 generated within the next four weeks and looking at the related
6 activity logs to ensure that this problem would be corrected,
7 right?

8 A. Yes.

9 Q. And so now if you look to the following year's audit it
10 appears as if the command received a higher rating in the
11 activity logs, right?

12 A. That's correct.

13 Q. They received a 3.0 in their activity log rating, right?

14 A. Correct.

15 MR. CHARNEY: Where is that? Is that an exhibit?

16 MS. GROSSMAN: Yes. We'll show you.

17 MR. MOORE: She's testifying here, Judge. I mean the
18 question --

19 THE COURT: Look she's getting a yes response so the
20 witness is affirming the question. What does it matter? As
21 long as it's there, I mean.

22 MR. CHARNEY: We need to see it because I'm going to
23 object to that question unless we can see.

24 THE COURT: Where does it show that change?

25 MS. GROSSMAN: I'm going to get that to you.

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Cronin - cross

1 THE COURT: Okay.

2 Q. Now looking at exhibit -- Defendants' Exhibit G6.

3 THE COURT: This is where you're going to show?

4 MS. GROSSMAN: Yes.

5 MR. CHARNEY: Put it up on the screen.

6 MS. GROSSMAN: I will show it in a second. I want to
7 get the actual page number.

8 So looking at Defendants' Exhibit G6, this is at Bates
9 number NYC_2_00021753.

10 You see here.

11 MR. CHARNEY: What command is that?

12 THE COURT: We're going to find out. Hold on.

13 MS. GROSSMAN: Borough crime.

14 MR. CHARNEY: What year?

15 MS. GROSSMAN: I will show you.

16 So this is Manhattan North borough crime shows a 3.0.

17 And I will refer you to the Bates number.

18 MR. CHARNEY: What year is this?

19 MS. GROSSMAN: Yes, I'll tell you.

20 THE COURT: We're going to find that out. Give her a
21 minute, please, Mr. Charney, instead of interrupting.

22 MS. GROSSMAN: So now we know it's 2010.

23 THE COURT: Where is that -- where is the 2010?

24 MS. GROSSMAN: Right here.

25 THE COURT: Okay.

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Cronin - cross

1 MS. GROSSMAN: This is Bates number NYC_2_00021741.
2 I'm just showing you that this is the year 2010.
3 THE COURT: I'm having trouble finding it again now.
4 MS. GROSSMAN: That's 2010. Then if you now flip over
5 to 21753.
6 MR. CHARNEY: That's the same year?
7 MS. GROSSMAN: If you want me to flip.
8 THE COURT: Go ahead.
9 MS. GROSSMAN: We keep flipping. And then we get to
10 21.
11 THE COURT: Okay.
12 Q. So then you see Manhattan North borough crime has a 3.0 in
13 the activity log, correct?
14 A. Correct.
15 Q. And that shows that the steps undertaken in some way
16 remediated some of the problems in that particular command,
17 right?
18 A. Yes.
19 MR. CHARNEY: Objection, your Honor. Calls for
20 speculation.
21 THE COURT: Well cause and effect are not always
22 proved by one figure. If you took -- you took the chart down
23 but I noticed some of the commands still had a 1.0.
24 MS. GROSSMAN: Yes.
25 THE COURT: So I mean the efforts may have been
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1 effective in one command and not at another command.

2 MS. GROSSMAN: That's right.

3 THE COURT: I guess I should say to the chief: That's
4 right, right?

5 THE WITNESS: Correct.

6 THE COURT: Okay.

7 Q. But these kinds of deficiency memos are sent up and down
8 the chain of command and many of the commands are required to
9 report back on the plans that they are taking to remediate the
10 problem, right?

11 A. Correct.

12 Q. And as we've looked at various, the charts, you've seen an
13 overall increase in the ratings on the activity log entries,
14 right?

15 A. That's correct.

16 Q. And do you recall that the borough commanding officer who
17 implemented these changes was Chief Phil Banks?

18 A. Yes.

19 Q. And he's now the new chief of department, right?

20 A. Correct.

21 Q. Now from your knowledge of the various types of memos that
22 come back to you through the chain of command concerning the
23 steps that some of the commands take to remediate these
24 problems, what are some of the steps that the commands have
25 undertaken?

D4o9flol Cronin - cross

1 A. (No response).

2 Q. In addition to what we just talked about?

3 A. Basically they'll do the same as far as training is
4 concerned. They'll have their first line supervisors become
5 more actively involved as far as looking at their activity
6 logs. And they'll have the platoon commanders also reviewing
7 the officers' activity logs. And they'll do different other
8 methods of looking at it. And the borough commanders get more
9 actively involved. And they will come into commands and look
10 at it.

11 Q. So now let me just refer to Plaintiffs' Exhibit 80. Show
12 you Plaintiffs' Exhibit 80.

13 THE COURT: This is a plaintiffs' exhibit. So do you
14 object to its --

15 MR. CHARNEY: No, your Honor.

16 MS. GROSSMAN: We can move to admit.

17 THE COURT: 80 is received.

18 (Plaintiffs' Exhibit 80 received in evidence)

19 THE COURT: This is a document from the commanding
20 officer of patrol borough Manhattan North to the chief of
21 patrol dated June 3, 2011. It has to do with maintenance of
22 records for stop, question and frisk, right?

23 THE WITNESS: Yes.

24 THE COURT: In the 28th precinct?

25 THE WITNESS: Correct.

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D4o9flol Cronin - cross

1 MR. CHARNEY: Your Honor I'm going to object to this
2 witness testifying about this document because it's a document
3 from the patrol borough Manhattan North --

4 THE COURT: I just said that. She didn't write it.
5 She didn't receive it. I understand that. But you didn't
6 object to it being in evidence.

7 MR. CHARNEY: I object to her testifying about it.

8 THE COURT: I can read from it. Anybody can read from
9 it. It's in evidence.

10 MR. CHARNEY: No. That's fine.

11 THE COURT: What part do you want to read if any,
12 Ms. Grossman?

13 Q. Are memos like this the type of memos that will be sent up
14 the chain of command to your office?

15 A. Correct.

16 Q. So is it fair to say that if this command failed any aspect
17 of the audit that at some point in time QAD would receive a
18 memo like this?

19 A. That's correct.

20 Q. And indeed probably receive this particular memo even
21 though you might not specifically remember today?

22 MR. CHARNEY: Objection, your Honor. This didn't go
23 to her.

24 THE COURT: This particular piece of paper didn't but
25 she says she is notified of all failures.

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D4o9flol

Cronin - cross

1 THE WITNESS: Can I explain what happens, is when you
2 do the chain of command?
3 THE COURT: You get notice of all failures?
4 THE WITNESS: Yes. I would get this in my package.
5 THE COURT: You wanted to explain what.
6 THE WITNESS: When it goes up and down the chain of
7 command, every piece of paperwork is attached. So at the end
8 you get a nice thick pile of everybody's -- the reports going
9 back up and down and that would come to QAD.
10 THE COURT: But in particular you certainly know of
11 every failure?
12 THE WITNESS: Yes.
13 THE COURT: Okay.
14 Q. And you also know of the steps that the commands expect
15 to -- their plan to remediate the problem, right?
16 A. Correct.
17 Q. And so referring to NYC_ 2_0000213 -- sorry.
18 THE COURT: 21837.
19 MS. GROSSMAN: Correct. I'm sorry, your Honor.
20 Q. Looking at paragraph 4?
21 THE COURT: Paragraph numbered 4.
22 MS. GROSSMAN: Yes.
23 Q. There's a reference at the first bullet point that, "Four
24 police officers found to have made incomplete activity log
25 entries have been entered into the minor violation log and have

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D4o9flol Cronin - cross

1 been personally instructed regarding the importance of properly
2 documenting stops in their activity logs in accordance with the
3 patrol guide procedure 212-08," right?

4 A. Correct.

5 Q. So that's one of the steps that some of the commands have
6 taken to try remediate this problem with the activity logs,
7 right?

8 A. Correct.

9 Q. And you've seen that step taken in many of the
10 communications to QAD about the steps that these commands are
11 going to be taking, right?

12 A. That's correct.

13 Q. And then further down it says that, "Twelve officers have
14 been placed in the minor violations log for improperly prepared
15 UF 250 reports," right?

16 A. Correct.

17 Q. And so that's also consistent with steps that have been
18 taken by other commands who have failed in certain aspects of
19 the audits, right?

20 A. Correct.

21 Q. And then moving on down "Stop, question and frisk report
22 worksheets have been incorporated into a self-inspection as
23 well as continuous command level training to ensure accuracy."

24 We've talked about that. That's a typical response
25 from the commands, right?

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D4o9flol Cronin - cross

1 A. Yes.

2 Q. And now paragraph 5. That's yet another layer where the
3 patrol borough Manhattan North borough commander is
4 communicating to all the precincts in patrol borough Manhattan
5 North that they expect people to be filling out these activity
6 logs as well, right?

7 A. Correct.

8 Q. Then finally moving to paragraph six, "The patrol borough
9 Manhattan North administrative review unit will be directed to
10 conduct an audit in the areas of stop, question and frisk
11 reports as well," right?

12 A. Correct.

13 Q. That's another layer to what QAD does and what the commands
14 do, right?

15 A. Yes.

16 Q. And so this particular audit -- this particular memo is
17 from William Morris, right?

18 A. Correct.

19 Q. And he's the borough commanding officer of patrol borough
20 Manhattan North?

21 A. Yes.

22 Q. And this memo is referring to a difficulty that the 28th
23 precinct was having, right?

24 A. Yes.

25 Q. So now turning to the type of discipline that an officer

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D4o9flol Cronin - cross

1 can receive if they fail to prepare an activity log, are
2 officers subject to discipline for omitted entries in their
3 activity logs?

4 MR. CHARNEY: Objection, your Honor. This is not a
5 witness who is testifying about discipline. We had
6 Ms. Schwartz here yesterday.

7 THE COURT: We spent a lot of time with Ms. Schwartz.

8 MR. CHARNEY: This is the quality assurance.

9 THE COURT: I know exactly who this chief is. It does
10 seem to me it's a cumulative and repetitive question. We don't
11 need it. We know those officers were subject to discipline.
12 We don't know they're always disciplined, but we know they're
13 subject to it.

14 MS. GROSSMAN: Your Honor, I'd like to then offer --
15 I'm not sure if we admitted Defendants' Exhibit G13 which is
16 the November 12, 2009 revision to the patrol guide violations
17 subject to command discipline. So I would just like to admit
18 that in evidence as Defendants' Exhibit G13.

19 MR. CHARNEY: I wouldn't have an objection as long as
20 she's not going to ask the witness questions about it.

21 MS. GROSSMAN: Well, your Honor, this witness is here
22 to talk -- is looking at audits and wants to look at the way
23 the commands are responding to the deficiencies. So whether or
24 not the command disciplines are happening, the fact is that the
25 commands are notifying this witness about the steps that they

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D4o9flol Cronin - cross

1 are going to be taking to remediate the problem. That's all
2 this is about.

3 MR. CHARNEY: Your Honor, there have been several
4 precinct and borough commanders who have testified and will
5 testify in this case. They can be asked about the steps that
6 they take to remediate these problems. This witness will not
7 have --

8 THE COURT: I certainly don't need the same question
9 twice. Here's the deal. If you ask her, don't ask anybody
10 else or else wait for those people who are actually
11 implementing the steps. I don't want to do it twice.

12 MS. GROSSMAN: This is not --

13 THE COURT: Do you want to admit the exhibit?

14 MS. GROSSMAN: Yes.

15 THE COURT: Fine. What is it?

16 MS. GROSSMAN: G13.

17 THE COURT: G13 is received.

18 (Defendants' Exhibit G13 received in evidence)

19 MS. GROSSMAN: Sorry, your Honor.

20 (Pause)

21 THE COURT: This is the document, this is the revision
22 that was just admitted?

23 MS. GROSSMAN: Yes.

24 THE COURT: I don't think there's anything to ask her
25 about this. What do you want -- I hope you're not going to.

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D4o9flol Cronin - cross

1 MS. GROSSMAN: No. I just wanted to get the --

2 THE COURT: Piece of paper in?

3 MS. GROSSMAN: Yes.

4 THE COURT: So what's next for her?

5 Q. Now is there -- did you also come to learn that before --
6 when the audits were first started, the 802 audits, who was
7 responsible for conducting the 802 self-inspections?

8 A. That would be in the command usually a sergeant or a
9 lieutenant.

10 Q. And did there come a time that that responsibility fell to
11 the executive officer?

12 A. Yes.

13 Q. And do you remember when that was?

14 A. I believe 2011.

15 Q. And I'm going to show you what's been marked as Exhibit --
16 Defendants' Exhibit Z4.

17 MS. GROSSMAN: I would move to admit Z4.

18 MR. CHARNEY: I think it's already in evidence so no
19 objection.

20 MS. GROSSMAN: Is it. Okay.

21 THE WITNESS: I'm sorry. It's the 12th.

22 Q. Now do you have an understanding as to why the executive
23 officer is now required to personally conduct the
24 self-inspections?

25 A. Yes. Well it adds another layer. It would be the

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D4o9flol Cronin - cross

1 executive officer which could be a captain or could be above
2 the captain that should be doing the document as opposed to a
3 sergeant or a lieutenant.

4 Q. Now referring -- I'm going to move on to Defendants'
5 Exhibit L11. And this is a memo from the deputy commissioner
6 of strategic initiatives dated January 23, 2009.

7 Now referring to Defendants' Exhibit L11, what is this
8 document?

9 A. This is from me to deputy commissioner of strategic
10 initiatives in regards to the analysis of the citywide audits.

11 MS. GROSSMAN: I move to admit, your Honor.

12 MR. CHARNEY: No objection.

13 THE COURT: All right. L11 is received.

14 (Defendant's Exhibit L11 received in evidence)

15 Q. What was the purpose of this memo?

16 A. Overall the audits are done well. However, what we found
17 in our audits was that the required activity logs regarding the
18 preparation of the worksheets still wasn't there. So we felt
19 that we needed to do a strong measure as far as getting it out
20 there, that they have to prepare their activity logs. So we
21 requested through Commissioner Farell that there be another
22 step and that would be on the other side.

23 Q. Sure.

24 A. That's first endorsement that would be going out to
25 everyone. And that is to the office of the department --

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D4o9flol Cronin - cross

1 deputy commissioner of training. We are requesting that more
2 training would be done on a precinct level. And this way that
3 everyone would know. And retraining, which is what the
4 sergeants and the lieutenants go to every year, and the command
5 level training, and at impact. We wanted to make sure that it
6 was driven home about the activity log entries.

7 Q. And was the additional training done?

8 A. Yes. To my knowledge, yes.

9 Q. Now what does QAD do to try to ensure compliance with the
10 activity log guidelines?

11 A. As far as the steps that we take?

12 Q. Yes.

13 A. We provide a lot of training. When there are different
14 promotions, sergeants, lieutenants and captains, we will go to
15 those classes and we will explain to them how to do the
16 activity logs, how to do the different self-inspections, etc.

17 We also when we're at the command, when we complete
18 the audit, before my team leaves they will explain what the
19 deficiencies are and give them suggestions on how to correct
20 it.

21 Q. Now, turning back to Defendants' Exhibit B11 which is in
22 evidence. This is the summary -- the stop, question and frisk
23 survey summary that we talked about yesterday?

24 A. Yes.

25 Q. Can you just explain how this came into being.

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D4o9flol Cronin - cross

1 A. I'm sorry?

2 Q. How did this --

3 A. I don't see B11.

4 Q. Let me give you a copy.

5 Can you explain how this came to be.

6 A. This is just another survey as far as we wanted to -- it's
7 a survey. It's not an evaluation.

8 We just wanted to see -- what this is is the three
9 commands within the city that have the highest increase from
10 let's say 2011 the same time period to 2012. We would look at
11 those three commands that have the highest increase in 250
12 activity and just look at it as far as how they received it.
13 We look at different aspects of it. And we would compare it to
14 the activity log entries. So we're looking at both the 250s
15 and the activity log entries.

16 Q. Now was your focus on the accuracy and completeness of the
17 UF 250 form?

18 A. It was one of the areas but not as heavy as looking at the
19 activity log entries.

20 Q. So the focus was more on the activity log entries?

21 A. Actually it's both. However, we were really trying to find
22 if they're complying with the activity log entries.

23 Q. So how is it that the survey does a more in depth -- takes
24 a more in depth look at the activity logs as compared to
25 yearly?

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D4o9flol Cronin - cross

1 MR. CHARNEY: Objection. I don't think she ever
2 testified that it did take a more in depth look.

3 Q. Well do you have an understanding that this survey takes a
4 more in depth look at the activity logs.

5 A. What we do is we're looking at more activity logs. And we
6 grab the activity logs and compare it to the 250s. So there
7 will be no specific numbers that we're looking at because we go
8 to the roll calls and grab as many activity logs as we can
9 grab. And it's another layer for us to ensure that they're
10 complying with the activity log entries.

11 MS. GROSSMAN: I'm wrapping up, your Honor.

12 Q. Now moving on to another topic. Do the borough commanding
13 officers contact you regarding QAD reports?

14 A. Yes. Some of them do, yes.

15 Q. And when the new commanders are assigned to a new command
16 do they come to QAD so that a member of the executive staff can
17 go over how the commands are done in the past?

18 A. Yes. It's a requirement that they come to QAD to get a
19 review of how the commands have done in the past.

20 Q. And are there suggestions made about how to deal with
21 deficiencies that have been observed by QAD?

22 A. Yes. And we also, when we -- when there's evaluation and a
23 command does not do well, one of my XO's will call that command
24 and speak to the commanding officer, or I will call them myself
25 and speak to them and give them suggestions.

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D4o9flol Cronin - cross

1 Q. Now does QAD also audit courtesy professionalism and
2 respect in the police department?

3 A. Yes.

4 Q. How does the QAD -- how does QAD do that?

5 A. We do it in different ways. Through phonecalls, through
6 actually going out and we have people that portray complainants
7 and people out in the area and see how the officers interact
8 with people.

9 Q. And if QAD notes particular deficiencies, is that
10 communicated up and down the chain of command?

11 A. Yes. A report is generated along with the recording of the
12 actual encounter.

13 MS. GROSSMAN: May I have just a minute?

14 (Pause)

15 Q. Now, does your -- you're aware that the patrol guide
16 requires that the precinct take a complaint about an officer's
17 behavior or provide complainants with the numbers for CCRB,
18 right?

19 A. Correct.

20 Q. And is one aspect of your auditing protocol to test that
21 that indeed is happening?

22 A. Yes. The CPR unit tests that.

23 THE COURT: What does that stand for?

24 THE WITNESS: CCRB?

25 THE COURT: I thought you said CPR.

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D4o9flol Cronin - cross

1 THE WITNESS: I'm sorry. CPR. Courtesy
2 professionalism respect team.

3 Q. So how is it that the -- how does QAD conduct these tests
4 to see that officers in the commands are indeed taking a
5 complaint from a civilian?

6 A. They will make a phonecall. They will go in person. And
7 they will -- give a scenario. There will be a third party, as
8 a third party, saying that it was a traffic stop or some sort
9 of encounter, the officer was rude, the officer was nasty and
10 they would like to make a CCRB. They won't say CCRB. They
11 will say they'd like to make a complaint against the officer.

12 And then we grade to see how, number one, the officer
13 interacts with the person and if they give the correct
14 information as far as the CCRB number or how to file a CCRB,
15 those steps.

16 MS. GROSSMAN: I have no further questions.

17 THE COURT: All right. Redirect.

18 MR. CHARNEY: Thank you.

19 REDIRECT EXAMINATION

20 BY MR. CHARNEY:

21 Q. Good morning, Chief?

22 A. Good morning.

23 MR. CHARNEY: Before I start with my redirect I
24 actually wanted to -- I neglected yesterday to admit several of
25 the QAD documents into evidence that I think if your Honor

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D4o9flol Cronin - redirect

1 would permit me we should admit. I think we can do them all at
2 once. It's essentially each of the annual audit reports, those
3 charts for each of the years. Some of them are already
4 admitted that I think -- I wanted to get all of them into
5 evidence.

6 THE COURT: Can you just show the whole.

7 MS. GROSSMAN: I think that's what G6 is, it's all of
8 them.

9 MR. CHARNEY: Is that a summary.

10 THE COURT: Could you talk to each other for a minute.
11 Take a look.

12 (Pause)

13 MR. CHARNEY: Let me just make sure, then I wouldn't
14 have to put them all in.

15 Well then I don't need to do that.

16 So then let me -- thank you, Ms. Grossman.

17 BY MR. CHARNEY:

18 Q. I wanted to ask you, first of all, Chief, about Defendants'
19 Exhibit Z4 which you were just shown on your -- when
20 Ms. Grossman was asking the questions.

21 This is the order that revised the patrol guide so
22 that now the executive officer is the one conducting the 802
23 self-inspections, right?

24 A. Yes.

25 Q. Other than that change -- in other words, other than

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D4o9flol Cronin - redirect

1 changing the person in each command that does the
2 self-inspection, there were no other changes to the
3 self-inspection itself that you know of, right?

4 A. No.

5 Q. Ms. Grossman also asked you about this courtesy,
6 professionalism and respect audit that QAD does?

7 A. Yes.

8 Q. Is that something you do quarterly, annually?

9 A. Not to confuse you any more, that's a report that is done
10 weekly. We're constantly out there. It's not a set number of
11 tests. And yes, we do have quarterly findings, and then an
12 annual finding, but it's not done like you're talking about.

13 (Continued on next page)

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D408FLO2 Cronin - redirect

1 Q. All right. Now, doesn't QAD also audit the crime complaint
2 reports to assess whether crimes are being downgraded?

3 MS. GROSSMAN: Objection, your Honor. This is beyond
4 the scope of cross or my direct and it's not relevant to the
5 case, and these were motions in limine that we had discussed.

6 MR. CHARNEY: I am not going to ask her about the
7 results of those audits. I just want to ask about the
8 methodology. I am not interested in whether or not crimes are
9 being downgraded.

10 THE COURT: You just want to ask whether QAD does it?

11 MR. CHARNEY: Does it, and how do they do it, what do
12 they look at?

13 THE COURT: I am going to allow it over objection.

14 Go ahead.

15 Q. When you do those audits, isn't one of the things that QAD
16 does is speak to some of the complainants who filed complaint
17 reports, isn't that part of that audit?

18 A. Yes.

19 Q. But when you do the annual stop, question and frisk audit,
20 QAD does not go out and speak to any of the people who are
21 stopped by police, right?

22 A. No.

23 Q. Ms. Grossman also asked you a lot of questions about, when
24 a deficiency is noted on the stop and frisk audit, how the
25 notice of that deficiency goes up and down the chain of

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D408FLO2 Cronin - redirect

1 command. Do you recall that?

2 A. Yes.

3 Q. You said that starting in 2008, QAD would notify borough
4 and precinct commanders of deficiencies in one or more items of
5 the audit even if that command passed the overall audit, right?

6 A. I believe it was late 2008.

7 Q. So it would be fair to say that since late 2008, precinct
8 and borough commanders, whose commands are failing the activity
9 log entry portion of the annual audit, have been put on notice
10 about that failure, right?

11 A. Correct.

12 Q. And since late 2008, those borough commanders and precinct
13 commanders have been expected to take corrective action to
14 address those failures, right?

15 A. Correct.

16 Q. I guess looking at G6, is it correct that this notification
17 about failing one item on the audit, even if the command
18 otherwise passed it, is it fair to say that that notification
19 began with the 2008 audit?

20 A. No. You're saying about the activity log, the deficiency
21 there? That started at the end of 2008 in the endorsement.

22 Q. OK. I guess my question is, would that have gone out with
23 the results of the 2008 audit?

24 A. Correct.

25 Q. I want to look at the 2008 audit really quickly just to

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D408FLO2

Cronin - redirect

- 1 see. This is Defendants' Exhibit G6, and I am looking at Bates
2 number --
- 3 THE COURT: Just a minute. Do I have G6 up here?
4 MS. GROSSMAN: You should, but I can give you another
5 copy.
- 6 THE COURT: No. It should be in the pile.
7 Q. This is Bates number --
8 THE COURT: I have it. What Bates number?
9 Q. This is Bates number NYC 4308.
10 MS. GROSSMAN: Can you say that again?
11 MR. CHARNEY: NYC 4308.
12 THE COURT: One second.
13 Q. This is the 2008 audit. I am looking particularly at the
14 patrol borough Bronx. I am looking at the precincts.
15 THE COURT: Do you have 4308?
16 THE WITNESS: No, but I am looking on the screen.
17 Q. This is patrol borough Bronx. I wanted to look
18 specifically again at the activity log entry item, which is the
19 one second, and I apologize for the dark --
20 THE COURT: Second from the end?
21 Q. Second from the end. If you see there, it looks like every
22 precinct in the Bronx failed that item and the overall score
23 for average for the Bronx was 1.2, right?
24 A. Correct.
25 Q. And the only one that got above a 1 was the 40 Precinct,

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D408FLO2 Cronin - redirect
1 right?

2 MS. GROSSMAN: And the 44.

3 Q. I'm sorry. You're right. And the 44.

4 THE COURT: Anyway, you see that?

5 THE WITNESS: Yes, I do.

6 Q. Is it fair to say that when the 2008 audit results went
7 out, the borough commander for the Bronx and each of the
8 commanders of each of these precincts were notified that they
9 had failed the activity log entry portion of the audit?

10 A. No, no. As I said, it went out late in 2008. So, in other
11 words, it's done quarterly. So the first few commands that
12 would have been done, and the next batch, it's done every three
13 months. So the first month might not have gotten it. The
14 second month definitely didn't get it. It's toward the end of
15 the evaluation period. Not every command would have gotten
16 notified. The evaluations go out weekly. It's not given out
17 at one time. So, in other words, it happened late 2008. So
18 not all of the commands, if they were evaluated prior to it
19 going out, they would not have been notified.

20 Q. So some of them got notified in 2008?

21 A. Correct.

22 Q. Would it be safe to say that by the time the 2009 audit was
23 done, all of them would have been notified if they had failed?

24 A. No. Only the ones -- as I said, the endorsement went out
25 towards the end of the evaluation. So if you're doing eight

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D408FLO2 Cronin - redirect

1 commands a week, the first few commands wouldn't get it. It
2 was towards the end that would have gotten it.

3 Q. I understand for the 2008. My question is, if in 2009,
4 when the 2009 audit was done, if the commands failed the
5 activity log entry portion of the 2009 audit, would all
6 commands who failed that portion have received notice of that?

7 A. Yes.

8 Q. Would it be fair to say that all commands that received
9 notice of having failed the activity log portion of the 2009
10 audit would have been expected to take corrective action to
11 address that?

12 A. Yes.

13 Q. So, again, as we see here for 2008, it looks like every
14 precinct in the Bronx failed the activity log entry portion of
15 the stop and frisk QAD audit.

16 Then going forward, I want to look at 2009. So now I
17 am going ahead in Exhibit G6 to page NYC_2_18527.

18 THE COURT: Is that before the other one?

19 MR. CHARNEY: It should be after it, your Honor,
20 because it's 2009.

21 THE COURT: 18527. I have got it.

22 Do you have it?

23 THE WITNESS: I have it on the screen.

24 Q. So now we are looking at 2009. And again, you see activity
25 log entries, it looks like, again, all of the precincts in the

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D408FLO2 Cronin - redirect

1 Bronx failed it and only one of them got above a 1, right?

2 A. Correct.

3 Q. And the borough wide average is 1.1, right?

4 A. Correct.

5 Q. It's fair to say that the Bronx did worse in 2009 than it
6 did in 2008 on this particular item, right?

7 A. Correct.

8 Q. Is it your testimony that at least some of these precincts
9 did receive notice of their failure on the 2008 activity log
10 entry portion?

11 A. Some would have.

12 Q. So that's 2009. I actually wanted to look specifically at,
13 since we looked at this yesterday, the 43rd Precinct.

14 So the 43rd Precinct got a 2 in 2009, but that's still
15 failing, right?

16 A. Yes, it is.

17 Q. So in 2009, the 43rd Precinct would have received notice
18 that they had failed this item of the audit, correct?

19 A. Yes.

20 Q. So they would have been expected to take corrective action?

21 A. Yes.

22 Q. So then let's look at 2010, which is going ahead a few
23 pages.

24 So now I am at page NYC_2_21744.

25 THE COURT: Is that also going to be forward?

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D408FLO2 Cronin - redirect

1 MR. CHARNEY: Yes. That's going to be forward.

2 THE COURT: I have it.

3 Q. Now we are looking at the 2010 audit results, and again for
4 patrol borough Bronx. And one of the precincts definitely
5 improved, the 50th Precinct?

6 A. Yes, the 50.

7 Q. Good for them.

8 But the rest of them failed. And the 43rd Precinct
9 went back down to a 1, right?

10 A. That's correct.

11 Q. So is it fair to say -- I guess again the 43rd Precinct,
12 based on these results, had not corrected the problem, right?

13 A. Yes.

14 THE COURT: And it does seem that the Bronx is behind
15 the city average, right?

16 THE WITNESS: Yes.

17 Q. Just to make sure, just to double-check, the borough
18 commander, the commander of this entire borough would have
19 received notification in 2009 that all of his precincts had
20 failed this portion of the audit, right?

21 A. This is 2010? Yes.

22 Q. So he would have been, he or she would have been expected
23 to take corrective action to address the problems in all of the
24 precincts, right?

25 A. Correct.

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1 Q. But again, the average score for the Bronx was well below
2 passing, right?

3 A. Yes.

4 Q. And then let's look at 2011, which I am going ahead again
5 to page NYC_2_22186. This is it again forward in the document.

6 THE COURT: I have it.

7 Q. So we are looking at the Bronx now for 2011. And again,
8 the 43rd Precinct only got a 1, right?

9 A. Yes.

10 Q. And again, the borough overall only got a 1.4, right?

11 A. Yes.

12 Q. And it looks like only one precinct passed, the 45th,
13 right?

14 A. Correct.

15 Q. So it's fair to say that the Bronx patrol borough, based on
16 these results, was still not addressing the problem with the
17 activity logs, right?

18 A. Correct.

19 THE COURT: Again, it was well below the city average,
20 right?

21 THE WITNESS: Yes.

22 THE COURT: Even the precinct that was doing well, the
23 50, falls way back to 2.0?

24 THE WITNESS: Yes.

25 Q. Now, finally, I want to look at 2012, which is going to be

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D408FLO2 Cronin - redirect
1 NYC_2_27859.

2 This is the 2012. That's the most recent audit that
3 QAD did for stop and frisk, right?

4 A. That's correct.

5 Q. Again we see that all except one precinct, which this time
6 it's the 46th, all the other precincts failed, right?

7 A. That's correct.

8 Q. And yet again the 43rd Precinct got a 1, right?

9 A. That's correct.

10 Q. And the overall average for the Bronx was 1.3, right?

11 A. Correct.

12 Q. Which, as her Honor pointed out, is well below the city
13 average, right?

14 A. Correct.

15 Q. Is it fair to say that the Bronx has not adequately
16 addressed, based on these results, has not adequately addressed
17 the problem with officers failing to document stop and frisk in
18 their activity logs?

19 A. Yes.

20 Q. Let me just move on then real quick.

21 Now, you mentioned that these quarterly surveys that
22 we looked at yesterday and Ms. Grossman asked you about today,
23 Exhibit B11, you said those are a more in-depth look at the
24 activity logs?

25 A. I said they looked at the activity logs, more of them.

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1 Q. But the actual depth of the review of each individual
2 activity log, that's the same as under the 802, right?

3 A. Correct.

4 MR. CHARNEY: One minute, your Honor.

5 Can we pull Exhibit 114 back up on the screen? This
6 is already admitted in evidence. This is my last question.
7 And go to page 6.

8 Again, if we can blow it up a little bit.

9 Q. Ms. Grossman had asked you about the paragraphs A and B,
10 and she had said that the Daniels settlement did not require
11 QAD to audit frisks. But looking at paragraph B, doesn't
12 paragraph B say that QAD should be auditing stop, question and
13 frisk activity?

14 A. Yes.

15 Q. In fact, the 802 self-inspection does look at the frisk
16 portion of the UF-250s, right?

17 A. Yes.

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

19 MS. GROSSMAN: A couple more.

20 RECROSS-EXAMINATION

21 BY MS. GROSSMAN:

22 Q. So Mr. Charney just asked you about the Bronx continuing to
23 fail in the activity log portion of the audits, right?

24 A. Correct.

25 Q. As we saw yesterday, looking at Defendants' Exhibit E14,

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D408FLO2 Cronin - recross

1 when a command receives a 67 percent in the activity log
2 entries, that's still considered a fail, right?

3 A. Correct.

4 Q. Now, Mr. Charney asked you about the methodologies used in
5 another type of audit where you make phone calls to some
6 individuals or some civilians?

7 A. Correct.

8 Q. In connection with those phone calls, have you in your
9 experience heard whether the people who are called are
10 cooperative with the police?

11 A. Most times, as far as they would like to get their
12 complaint number and provide information.

13 Q. So do you have any reason to believe that individuals who
14 actually been stopped by officers would be any more cooperative
15 or less cooperative if they were called in connection with the
16 stop, question and frisk audits?

17 A. I wouldn't know; however, I don't think they would be as
18 cooperative.

19 Q. How come?

20 A. That encounter they might not feel is a positive encounter.

21 THE COURT: You say you feel they might not be as
22 cooperative?

23 THE WITNESS: I don't know because --

24 MR. CHARNEY: I move to strike.

25 THE COURT: You don't know because you haven't done

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D408FLO2 Cronin - recross

1 it. Objection sustained. I won't have what might happen.

2 Q. When you're doing the audits that Mr. Charney asked you
3 about concerning complaints, that's when an individual has gone
4 to the police because they needed police assistance?

5 A. Correct.

6 Q. And they have reported a complaint with the police, right?

7 A. Yes.

8 Q. Because they have been victimized by someone, right?

9 A. Correct.

10 Q. Now, in the context of stop, that is not the scenario
11 that's equivalent to when you call an individual who has filed
12 a complaint.

13 MR. CHARNEY: Objection as to form. I don't
14 understand the question.

15 THE COURT: I agree. I frankly you're doing much too
16 much talking and the witness is doing none. Basically, that
17 means you're giving her the answer, and it's speculative
18 anyway. You're giving her your theory of why the people would
19 not be as responsive. That's not right. So objection is
20 sustained.

21 MS. GROSSMAN: No further questions.

22 THE COURT: Anything further?

23 MR. CHARNEY: No.

24 THE COURT: They are done with you. Thank you.

25 If I have got this right, is Ms. Patel doing the

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D408FLO2 Cronin - recross

1 questioning of the next witness?

2 MR. MOORE: I am.

3 THE COURT: She asked us to wait for her.

4 MR. CHARNEY: I think she is second chairing.

5 THE COURT: She didn't want us to start without her.

6 We will just have to take an earlier recess and start
7 now instead of 11:30, which will make the rest of the morning a
8 little longer, but we will do it and we will reconvene in 15
9 minutes, at 25 of 12.

10 (Recess)

11 MR. MOORE: The plaintiffs call Lou Reiter as our next
12 witness.

13 LOU REITER,

14 called as a witness by the plaintiffs

15 having been duly sworn, testified as follows:

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

18 THE WITNESS: My name Lou, L-O-U, Reiter, R-E-I-T-E-R.

19 DIRECT EXAMINATION

20 BY MR. MOORE:

21 Q. Good morning, Mr. Reiter.

22 A. Good morning.

23 Q. Where do you live?

24 A. I live in Jasper, Georgia, which is north of Atlanta.

25 Q. You have been retained by the plaintiffs in this case to

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D408FLO2 Reiter - direct

1 testify as an expert, correct?

2 A. I have.

3 Q. What is the subject matter on which you're going to
4 testify, which you seek to testify?

5 A. Police practices.

6 Q. In what areas?

7 A. In this particular case, we are looking at really
8 supervision, agency oversight of certain aspects of what the
9 patrol officers are doing, and then, lastly, the issue of
10 administrative investigations, or in this case, either those
11 done by OCD and the IRS unit or CCRB.

12 Q. Are you currently employed?

13 A. I am.

14 Q. What is your employment, your current employment?

15 A. I am a self-employed police consultant.

16 Q. Do you work under a name of a business?

17 A. Well, I call myself Lou Reiter & Associates, yes.

18 Q. How long have you been the principal in that business?

19 A. 31 years now.

20 Q. What type of services does Lou Reiter & Associates provide?

21 A. Well, I provide three areas really and have through that
22 time. The first is police training; the second are police
23 agency audits, internal audits; and the last is litigation work
24 exclusively in the civil arena.

25 In the training capacity, currently I have been doing,

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1 last several years, at least two training programs a month, and
2 my training normally looks at internal affairs handling citizen
3 complaints, police employee discipline, and liability
4 management. And most of them I will do is two and a half days,
5 and I will get people coming from around the country.

6 Q. Who is the audience that you're training?

7 A. They are all police practitioners, and it adds up to about,
8 the last couple of years, about 1500 a year, from federal,
9 state, county, municipal agencies, just about anywhere in the
10 country. I sometimes do a five-day seminar as well.

11 In the area of agency audits, you get involved in
12 those for a myriad of ways. One large one that I have done
13 since 1996 has been custom and practice investigations of
14 agencies that are done by the U.S. Department of Justice. And
15 I have worked as their consultant on six of those
16 investigations. And then I have worked for the city, who was
17 being investigated, on two other occasions.

18 Q. In terms of the audits, what size of police departments
19 have you been involved with?

20 A. Well, the smallest has been a little three-person
21 department in Shalimar, Florida, and the largest was 39,000,
22 which was NYPD. Most of them, though, really fall in the range
23 of about 50 to 300, where the bulk of police agencies are in
24 that area.

25 Q. Is there a percentage of police departments in the country

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1 what that consultation was?

2 A. Can I clarify? I did one audit, but then I have also done
3 some work directly with NYPD in the past.

4 Q. Tell us what your experience has been with the NYPD.

5 A. Back in 1978, I came out here twice to the police
6 department and gave a presentation, each time to 50 command
7 officers, they were captains, deputy inspectors, inspectors, on
8 alternative patrol strategies. At that time, law enforcement
9 was involved in team policing, kind of like community oriented
10 policing today. And I did that in conjunction with the
11 commissioner from Boston at the time, Joe Jordan, and also an
12 assistant superintendent from Chicago, and I forgot his name.

13 After that I was hired, about six years ago now, to
14 look at a shooting case that they had by the law department. I
15 only consulted with them on that case.

16 Q. You were retained by the law department of the City of New
17 York to consult on a case?

18 A. I was, yes.

19 Then the other audit was for the U.S. Attorney in
20 Brooklyn, the Eastern District of New York, when they were
21 looking at aspects of NYPD operations.

22 Q. You also mentioned a third aspect of your work which is
23 litigation services. Can you tell us a little bit about that?

24 A. It's basically working with attorney firms, both plaintiff
25 and defense.

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D408FLO2

Reiter - direct

1 Q. You have testified for both plaintiffs and defendants over
2 the years?

3 A. I have.

4 THE COURT: These would be individual litigations,
5 like one plaintiff suing the department, that kind of thing?

6 THE WITNESS: A civil trial. I have been in some
7 other class actions as well.

8 THE COURT: Some class and some individual usually
9 against a police department?

10 THE WITNESS: About two-thirds of the time I work for
11 plaintiffs who are suing the police department, about a third
12 of the time I am working for the police department who are
13 defending themselves.

14 Q. Over this period of time, how many cases do you estimate
15 you have been involved in?

16 A. Over a thousand.

17 Q. How many times have you testified in court?

18 A. Roughly, over 200, split pretty much 50 percent federal
19 level, 50 percent state level.

20 Q. The areas you provided litigation services in are what
21 areas of police work?

22 A. Use of force, use of deadly force. Back when vehicle
23 operations was a litigated area, I did some of that. I have
24 done supervisory issues, a lot of them dealing with the
25 adequacy of the citizen complaint and the police discipline

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1 THE WITNESS: A single stop case.

2 THE COURT: It went to trial?

3 THE WITNESS: It did. It was a bench trial.

4 Q. Can you tell the Court what your education is?

5 A. I languished for years it seemed like at UCLA in political
6 science, and I ended up getting a bachelor of science in public
7 management.

8 Q. From what university?

9 A. From Pepperdine University, but not the white palace on the
10 hill in Malibu, it was the old one downtown.

11 Then I did some graduate work, but didn't get a
12 degree, from University of Southern California. But I did go
13 to a one year managerial policy institute, which was the
14 certificate program at University of Southern California.

15 Q. What was that management institute, what was that focused
16 on?

17 A. It was really on how to run an organization. They were
18 gratuitous and gave two spots to the LAPD.

19 Q. You were a member of the LAPD at the time?

20 A. I was. But really the other participants were CEOs and
21 CFOs and COOs from various corporations in the Los Angeles
22 area.

23 Q. Do you have any law enforcement experience?

24 A. I do.

25 Q. What is that?

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D408FLO2 Reiter - direct

1 A. Well, other than a consultant, I was an active member of
2 the Los Angeles police department for 20 years.

3 THE COURT: You mean as a member of the service, you
4 were a cop?

5 THE WITNESS: I was. I started off just a street cop.

6 THE COURT: Then where --

7 THE WITNESS: I had 22 different assignments. I
8 became a sergeant, lieutenant, captain, commander, and then I
9 was one of the seven deputy chiefs of police when I left.
10 Q. So when you retired, you were a deputy chief in the Los
11 Angeles police department?

12 A. I was. There it's a two star rank.

13 Q. Can you tell us what the different jobs were that you held,
14 just generally, as a member of the Los Angeles police
15 department?

16 A. Well, of course, I was a beat cop and a sergeant for the
17 first five years, but 70 percent of my time dealt with
18 uniformed activities at all different ranks, up through deputy
19 chief in fact. One of the assignments as deputy chief, I was
20 in charge of the western quadrant, which had about 1500
21 officers.

22 Q. You would have had 1500 officers under your supervision as
23 an area commander?

24 A. Yes, four geographic stations, kind of like the precincts
25 here in NYPD.

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D408FLO2

Reiter - direct

1 The other 30 percent dealt with either training or in
2 internal affairs, or the job I really enjoyed, which was
3 personnel and training bureau, which covered the areas of
4 training, employee relations, behavioral science services,
5 personnel, recruitment and selection. We were under a consent
6 decree to increase the hiring of females and minorities. Then
7 I was the chairperson of the use of force review board. That
8 was the last assignment, last two years I was on the job.
9 Q. What year did you retire from the Los Angeles police
10 department?
11 A. 1981.
12 Q. During your time as a police officer or a sergeant or at
13 any time in the LAPD, did you become familiar with the tactic
14 known as stop and frisk?
15 A. I did, even before Terry. I joined in '61. Terry didn't
16 come out till '68. But, yes, the normal stop and frisk of
17 suspicious persons.
18 Q. As a police officer, you engaged in stop and frisks,
19 correct?
20 A. Yes, all the time.
21 Q. As a sergeant, were you ever called upon to supervise
22 officers who were engaged in stop and frisk?
23 A. Yes.
24 Q. During your time as a police officer or sergeant in the
25 LAPD, were you called upon to document your stop and frisk

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D408FLO2 Reiter - direct

1 irrelevant and hearsay.

2 THE COURT: Why are you introducing the report? We
3 haven't usually done that. I don't do that in most of my
4 trials. I hear the expert. I take the testimony.

5 MR. MOORE: Did you not do that with Professor Fagan?

6 THE COURT: I don't remember.

7 MR. CHARNEY: I thought we did.

8 THE COURT: It may be. I don't remember. Maybe there
9 was no objection.

10 MS. GROSSMAN: The parties agreed to putting both
11 expert reports in because it had complicated statistical
12 information.

13 THE COURT: Ms. Grossman said both parties agreed to
14 put in both sides' experts of statistical material, a lot of
15 tables, a lot of figures, difficult to follow.

16 MR. MOORE: It's just that we went through this
17 process to modify it for the city, and we took out parts that
18 were objectionable. They understood we were going to move its
19 admission.

20 MS. PUBLICKER: The city never consented to the
21 admission of this document.

22 THE COURT: Why was all the time spent redacting?

23 MS. PUBLICKER: In anticipation if the Court overruled
24 the city's objection to the admission.

25 MS. GROSSMAN: It also helped figure out what the

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D408FLO2 Reiter - direct

1 several things. Did you recall at the time every area that you
2 have done consultation with respect to police training and
3 management when you answered that question earlier?

4 A. Oh, no. It was a general overview.

5 Q. Can you refer to page 1 of your report and see if that
6 refreshes your recollection as to the areas that you have been
7 involved in in law enforcement training?

8 A. Well, there are some that I didn't cover.

9 Q. Do you recall now that you have been involved in
10 consultation with police training and management with respect
11 to supervisory techniques?

12 A. I have.

13 Q. With respect to liability management?

14 A. Yes.

15 Q. Policy and procedure development?

16 A. Correct.

17 Q. Investigative procedures and supervision?

18 A. True.

19 Q. OK. With respect to audits, do you recall all the areas in
20 which you have been involved in audits?

21 A. I thought I had covered most of them. I will see.

22 MS. PUBLICKER: The witness is reading from his report
23 at this time.

24 THE COURT: I think he wants to make sure that his
25 recollection is the same as his testimony. In other words, if

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1 he needs to look at the report to see if he left out a category
2 or two, he can. This is kind of form over substance. This is
3 a nonjury trial. I know it's all in the report. I don't want
4 to waste time.

5 MR. MOORE: That's why I wanted to do it. I thought
6 it would speed the process.

7 THE COURT: I understand that, and I have said no.

8 Anyway, you have looked at the report. Are there some
9 more areas you should add?

10 THE WITNESS: No, your Honor.

11 Q. Now, you were asked to review some documents and materials
12 in this case, correct?

13 A. Yes.

14 Q. Can you tell us what those materials were?

15 A. Yes.

16 Q. What were they?

17 A. I looked at the second amended complaint. I looked at the
18 RAND Corporation study that was done, the Daniels stipulation,
19 the New York attorney general's report of 1999. I reviewed 46
20 different depositions that were taken in this case.

21 Q. Those are all listed in your report, correct?

22 A. They are.

23 Q. OK.

24 A. I looked at CCRB investigations, some of those, and also
25 several years of their statistical summaries. I looked at a

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D408FLO2 Reiter - direct

1 A. I have.

2 Q. Can you recall whose trial testimony you have reviewed
3 prior to your testimony today?

4 A. Well, ten witnesses: Chief Esposito, Deputy Chief Marino,
5 Inspector Mauriello, Officer Polanco, Officer Serrano,
6 Professor Silverman, Sergeant Hegney, Inspector McAleer,
7 Officer Moran, Executive Director Joan Thompson. And then I
8 sat in on the testimony of Chief Cronin.

9 Q. You reviewed all these materials and reviewed that
10 testimony or reviewed deposition testimony in the formulation
11 of your opinion and the preparation of your report, correct?

12 A. Yes.

13 Q. And that includes numerous NYPD training materials,
14 correct?

15 MS. GROSSMAN: It looks like aside from the report
16 there are some other documents the witness is looking at.

17 THE COURT: What other documents are you looking at?

18 THE WITNESS: I have some notes that I made for my
19 trial testimony.

20 MS. GROSSMAN: Can we have a copy? He is looking at
21 this to refresh his memory, and we should have a copy.

22 THE COURT: You're right. He brought his notes up
23 there. If he is consulting his notes, then they are entitled
24 to it.

25 MR. MOORE: I have no problem with it if they want to
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D408FLO2

Reiter - direct

1 allowing newly assigned graduates from the police academy to
2 operate the stop, question and frisk practice without normal
3 oversight of the field training officer program and concept.
4 These stop, question and frisk encounters are even more
5 susceptible to improper usage when field officers feel
6 compelled to produce specific numbers, knowing that there will
7 be little, if any, critical review of the substance or
8 documentation of these stop, question and frisk encounters.
9 These opinions have been derived from my review of police
10 department produced reports and deposition transcripts."

11 MS. GROSSMAN: I would object and move to strike
12 because that's exactly what you're here to conclude, in terms
13 of looking at the totality of the evidence and making that
14 determination based on the evidence presented.

15 THE COURT: Overruled.

16 Go ahead.

17 (Continued on next page)

18
19
20
21
22
23
24
25

D4o9flo3 Reiter - direct

1 an operational policy.

2 Q. And would you agree that if there is an operational policy
3 that's contrary to the official directives that that undermines
4 or undercuts the ability of the supervisor to do an adequate
5 job?

6 MS. PUBLICKER: Objection, your Honor. Leading the
7 witness.

8 THE COURT: That was leading.

9 What is the result of this operational policy and how
10 it differs from the official policy?

11 THE WITNESS: Well many officers will then operate,
12 cut corners, do things contrary to the way they were trained
13 because it's more efficient and it could end up with helping
14 them do the job quicker or easier without going through the
15 specific methodology that is designed to insure that they do
16 the job properly.

17 So some officers then can engage in misconduct and
18 can, after a period of time when they're never held
19 accountable, that now becomes the standard care in that field
20 task that these officers may do.

21 Q. Now, you're familiar with stop, question and frisk
22 activities, correct?

23 A. Yes.

24 Q. And do you consider it an important part of police work?

25 A. It's an essential tool, yes.

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D4o9flo3 Reiter - direct

1 Q. And based on your experience as an expert in the field,
2 what do you believe is necessary for proper supervisory review
3 of stop, question and frisk activities?

4 A. Several things.

5 Now one thing you have to recognize most field
6 supervisors, with rare exceptions, are not on the scene when a
7 lot of these occur. If they are, they're there -- if they
8 don't become personally involved in the incident, then they're
9 there to monitor and insure the officer is conducting him or
10 herself properly.

11 Contrary to that, most supervisors aren't there. So
12 the only other way they can do it is -- there's several. One
13 they have to look at the documentations that are produced by
14 the officers and make a determination: Are they properly
15 documenting what their activities were?

16 The field supervisor could also do a biopsy of an
17 encounter. I mean he could call back a person. Or if someone
18 is stopped, he could come up to the person and ask the person
19 their point of view, what they thought about it. He could talk
20 to the officers about what they thought was helpful, what was
21 not helpful.

22 So that's what the supervisor's job is to do, is to
23 trust the people in the field but audit and monitor what
24 they're doing to insure that they are doing it consistent with
25 the written policies and the training.

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D4o9flo3 Reiter - direct

1 Q. Based on your review of the materials and your experience
2 and training, do you have an opinion as to whether there's an
3 adequate level of supervisory review in the New York City
4 Police Department concerning stop, question and frisk activity?

5 THE COURT: At what time? There's a long period that
6 we're covering here.

7 At what time?

8 MR. MOORE: I sorry. I didn't hear.

9 THE COURT: I said at what time. We're covering a
10 long period of time in this case. At what time are you asking
11 that question?

12 MR. MOORE: Well, you reviewed -- I'll --

13 Q. You reviewed materials with respect to the operations of
14 stop, question, frisk activities of the police department from
15 the year 2003 to 2012, correct?

16 MS. PUBLICKER: Objection, your Honor. His expert
17 report is based on materials up until I believe 2010. So any
18 opinion following that date I believe would be improper.

19 MR. MOORE: No. Because he said he listened to trial
20 testimony here and he reviewed some of the trial testimony so I
21 think -- the reason I said up until -- well actually up until
22 the present is because he's -- as any expert would do, he's
23 reviewed the trial testimony that's been given before your
24 Honor.

25 THE COURT: Right. The testimony.

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D4o9flo3

Reiter - direct

1 But have you also looked at some of the exhibits that
2 have been received in evidence here? Because we've had
3 exhibits that have taken us more current in terms of amended
4 policies.

5 THE WITNESS: Your Honor, as best I could but I
6 couldn't really see it by the movement on the screen. So not
7 intimately.

8 MS. PUBLICKER: Your Honor, additionally, I believe
9 it's Rule 26(e)(3). I could be wrong on the last number.

10 If he is updating his opinion based on new materials
11 or a new opinion, then defendants are entitled to notice of
12 that.

13 THE COURT: If it's a new opinion. It may be simply a
14 consistent opinion. So let's just see.

15 Up until 2010 what was your opinion as to the -- tell
16 me if I've got this correct but basically the quality of the
17 supervision. Is that the shorthand way --

18 MR. MOORE: That's fine, Judge.

19 THE COURT: The quality of supervision of stop,
20 question and frisk activity.

21 THE WITNESS: Actually it goes beyond what you were
22 saying because it goes back to '98 because that was the
23 documents.

24 THE COURT: So from '98 to 2010 what is your opinion
25 of the quality of the supervision of stop, question and frisk

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D4o9flo3 Reiter - direct

1 failure of proper supervisory review in the NYPD concerning
2 stop, question and frisk activities?

3 A. Well, of course, one of the things is even before I heard
4 Chief Cronin's testimony is that the biggest disparity is how
5 the 250s are used, the UF 250s are used and the requirement for
6 specific particularized articulation to be in the officers'
7 memo book. And you know from the materials that I've looked at
8 as well as the testimony of Chief Cronin, the department has
9 continued to fail in the area particularly of the memo books.

10 And I took some notice -- and of course this gets into
11 my oversight, the second opinion as well. But from all of the
12 deposition testimony and from what I looked at in some of the
13 CCRB investigations, there's a consistent failure of the
14 officers to fully use the 250 as it was designed but, more
15 importantly, to put down the narrative that would then support
16 any reasonable officer's development of reasonable suspicion.

17 THE COURT: You mean put down the narrative in the
18 memo book?

19 THE WITNESS: In the memo book, yes, your Honor.

20 Q. You're familiar with the way in which the UF 250 captures
21 information with respect to stop and frisk, right?

22 A. I am.

23 Q. It's primarily a check-off form, correct?

24 A. It's a very extensive one. It's a great crib sheet for an
25 officer to remind the officer what he needs to put in his memo

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D4o9flo3 Reiter - direct

1 book.

2 Q. In more detail?

3 A. In more detail. But it gives him the key points. It's
4 like a crib sheet.

5 THE COURT: You are fully familiar with the form is
6 all he's saying.

7 THE WITNESS: I am, your Honor.

8 MS. GROSSMAN: Your Honor, just so we are clear about
9 the time period that this witness is testifying about. As long
10 as it's just up until 2010, I just object to this reference to
11 building -- leaving in what he observed at testimony, what he
12 looked at. It's so vague. I don't think it's appropriate
13 given that we haven't had notice.

14 THE COURT: Overruled. Go ahead.

15 Q. Given your knowledge of what the UF 250 form is, how
16 important is it in your opinion as a law enforcement person,
17 the NYPD's performance with respect to the activity logs?

18 A. Well the activity log is really the key. The activity log
19 is really the police report. It gives the specific series of
20 observations that the officer had to develop the reasonable
21 suspicion, to then have the encounter with the citizen, which
22 might then lead to, you know, a frisk or a search.

23 So, without reasonable articulation in the memo book
24 the 250 alone is not adequate. I mean even Chief Esposito in
25 his deposition as well as his trial testimony said you can't

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D4o9flo3 Reiter - direct

1 that would be adequate.

2 That goes contrary to all of the training materials,
3 all of the policy, all of the legal bulletins. And he's the
4 top dog in the police department.

5 Q. And if he's not doing it, what does that mean to you as a
6 police practices expert?

7 MS. PUBLICKER: Objection, your Honor. I think that's
8 a confusing and ambiguous question.

9 THE COURT: Well what, for a simpler way to put it,
10 what is the import of that testimony to you in terms of
11 supervisory control?

12 THE WITNESS: The main thing, your Honor, is the fact
13 that he's not supporting and not giving credence to all of the
14 written materials. And the written materials are fairly
15 adequate. But he's saying you can do it differently. You can
16 engage in what's occurring out there which is this operational
17 area which has created these systemic deficiencies.

18 Q. Now, you also mentioned that in formulating your opinion
19 with respect to supervisory review that you relied on audits
20 that were done by QAD of officers' performance in filling out
21 memo book entries.

22 Is that what you relied on as well?

23 A. Yes.

24 Q. And at the time of your report you were provided with QAD
25 reports that went from 2003 -- 2001 to 2009, correct?

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D4o9flo3

Reiter - direct

1 Anyway the patrol services bureau did not get a
2 passing grade in any of these years, right?

3 THE WITNESS: They didn't. They got an F -- maybe a D
4 in the last two years.

5 THE COURT: I think the testimony was failure was
6 anything under 3.0.

7 MR. MOORE: That's correct, Judge.

8 Q. As a police practices expert and applying generally
9 accepted police practices to your work, what does the failure
10 of the NYPD's patrol service bureau, what does the failure in
11 this audit say to you as an expert?

12 A. What it says to me is the operational way memo books are
13 used in the field is contrary to all of the training -- all of
14 the written training and all of the policy and that the
15 supervisors are not holding their officers accountable for it.

16 And more importantly, which is really significant, is
17 that nobody has done anything about it to correct this problem.
18 It's like everybody sticks their head in the sand and hopes
19 that passing memo up through the chain of command and back down
20 will somehow change it. And you have to actually change the
21 operational policy that's occurring in the field before this is
22 going to change.

23 And you need to really look down at the supervisors
24 who are in a position to supposedly look at that on an ongoing
25 regular basis and hold them accountable, not just ding an

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(212) 805-0300

D4o9flo3 Reiter - direct

1 officer every now and then.

2 Q. In addition to the other materials you've mentioned, did
3 you rely at all on what you learned either from Chief Cronin's
4 deposition or her testimony in formulating your opinion that
5 there's a failure of supervisory review with respect to stop,
6 question and frisk in the New York City Police Department?

7 A. I did.

8 Q. And what did you rely on -- what do you recall her saying
9 that you relied on in formulating your opinion?

10 A. Well one of the things that struck me most was yesterday in
11 her testimony was when she was asked specific questions
12 about --

13 MS. GROSSMAN: Your Honor, again, I mean this is
14 outside the scope of the report. If he wants to tether his
15 opinion to the report. It's just we're not on notice of any
16 further opinion about this. He's reading from notes that we
17 still haven't had a chance to look at. It just doesn't seem
18 fair.

19 MR. MOORE: Judge, I don't know how it couldn't be
20 fair. An expert can sit in and listen, as their expert has
21 done with Jeffrey Fagan, their experts were in court listening
22 to what they were saying, listening to the testimony. An
23 expert can come into court and listen to the testimony,
24 particularly if it's relevant to his opinion, and comment on
25 it. I don't think I have to revise the report from yesterday

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D4o9flo3 Reiter - direct

1 Okay.

2 BY MR. MOORE:

3 Q. Based upon your knowledge of the 250 form, just that alone,
4 would relying on that to determine whether there is reasonable
5 suspicion for a stop satisfy generally accepted police
6 practices?

7 A. In my opinion absolutely not.

8 THE COURT: For the purpose of quality review is that
9 what you're saying?

10 THE WITNESS: No. For the purpose of establishing
11 what was the specific reasonable suspicion in the mind of the
12 officer making the stop. I mean a furtive movement -- you have
13 to describe that more. What kind of furtive movement are you
14 talking about? It's a good guide to say -- I've got to
15 describe it.

16 THE COURT: Yes. But I still say that's all for the
17 purpose of looking back at the stop and evaluating it from a
18 quality perspective? It's got nothing to do with making the
19 stop on the street. It's to look back from a quality control
20 perspective to see whether the stops were good, right?

21 THE WITNESS: Yes, your Honor.

22 THE COURT: That's all I'm trying to say.

23 THE WITNESS: Yes. That's true.

24 MR. MOORE: Thank you, Judge.

25 THE COURT: So it's a backward-looking tool. The

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D4o9flo3

Reiter - direct

1 of form that is in existence in the police department, the
2 UF 250, based on that alone, to conclude that there is
3 reasonable suspicion, just using that form alone?

4 A. No. I don't see how a reasonable supervisor could do that.

5 Q. And why is that?

6 A. Well because it doesn't give any particularized
7 observations on the part of the officer.

8 THE COURT: It can. It has a narrative portion,
9 right?

10 THE WITNESS: No. Actually the 250 doesn't.

11 I have seen the latest one where they can put a little
12 line in there.

13 THE COURT: Right.

14 THE WITNESS: I've never seen that filled out on any
15 of them that I've looked at; plus, it's so compressed I'm not
16 sure you could write it.

17 THE COURT: I think we call them text strings. There
18 are many that are filled out. They have been analyzed.

19 I'm just asking you, now that I've reminded you of
20 that, did you not see some with text strings?

21 THE WITNESS: I saw exemplars. I did not see the
22 actual 250 that had that on the 250. But I did see exemplars
23 that indicated you could put it in there.

24 THE COURT: How many actual 250s have you looked at?

25 THE WITNESS: Actually not very many. Probably half
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D4o9flo3 Reiter - direct

1 dozen at the most.

2 THE COURT: Okay.

3 Q. The actual -- let me show you what's been marked
4 Plaintiffs' Exhibit 85.

5 THE COURT: Do you recognize this as the 250?

6 THE WITNESS: Yes, your Honor.

7 MS. PUBLICKER: Your Honor, I would just note that
8 this is not the most recent version of the 250.

9 THE COURT: Can we put up -- it doesn't matter to me
10 but can we put up the more recent version?

11 MS. PUBLICKER: The only issue I believe the most
12 recent version was adopted after Mr. Reiter's report.

13 MR. MOORE: So then they're going to object to me
14 using it.

15 THE COURT: I don't care. Do they both have a space
16 where one could write words?

17 MS. PUBLICKER: Yes.

18 THE COURT: Just show him the space.

19 MR. MOORE: That's all I wanted to use it for.

20 THE COURT: Me too. I wanted to see that portion.

21 Q. Direct your attention -- this is the UF 250 form that
22 you're familiar with, correct?

23 A. Yes.

24 Q. And directing your attention to the box: What were
25 circumstances which led to stop.

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D4o9flo3 Reiter - direct

1 Do you see that?

2 A. I do.

3 Q. And there's a section there that says: Other reasonable
4 suspicion of criminal activity, and it says specify?

5 A. Yes.

6 Q. Right above that it says, suspicious bulge object. And
7 then it says describe in brackets.

8 Do you see that?

9 A. I do.

10 Q. There is some space below that which presumably some
11 details will be entered into it, correct?

12 A. Could be, yes.

13 Q. Is that the kind -- is this the kind of form that you
14 believe would be adequate in your experience as a police
15 professional to capture the particulars or the pertinent
16 details of the circumstances which led to the stop of an
17 individual?

18 A. No.

19 THE COURT: Is that what the memo book entry would
20 accomplish if it was done right?

21 THE WITNESS: That's correct.

22 And that's what the guidance in all the training and
23 the policy says why it's used.

24 Q. It could also be captured by a form that provided an actual
25 narrative section of the stop-and-frisk report, correct?

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(212) 805-0300

D4o9flo3 Reiter - direct

1 A. Yes. They used to have that back in the '90s.

2 MR. MOORE: One second, Judge. I just want to show
3 him the old one.

4 Judge you recall that the old form was admitted into
5 evidence. I don't have the number.

6 Q. But can you recognize this document, Mr. Reiter, we'll get
7 the number.

8 MR. MOORE: It's Exhibit 449, Judge.

9 A. Yes.

10 Q. Is this the old form, the old UF 250 form that the NYPD
11 used to use?

12 A. Yes.

13 Q. And there's a section up there says, Factors which caused
14 officer to reasonably suspect person stopped.

15 Do you see that?

16 A. I do.

17 Q. And that's where a narrative of the facts of the stop would
18 be written down by the officer, right?

19 A. Yes.

20 Q. And when you were in the Los Angeles police department did
21 you have a form similar to this?

22 A. This was very much similar except the backside was all --
23 where you put the narrative. But the rest of the front is
24 pretty much the same, yes.

25 Q. And so -- to your knowledge does the Los Angeles police

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D4o9flo3

Reiter - direct

1 department still use that kind of a form to capture the
2 circumstances of the stop, a form that has a narrative portion
3 to it?

4 A. You know I've been gone over 30 years. I absolutely don't
5 know.

6 Q. When you left was that -- was that what they were doing?

7 A. Like I said earlier, we had gone to a new ticket book form.

8 Q. Okay.

9 A. And I'm not that knowledgeable about it.

10 Q. Did you also rely, in formulating your opinion about
11 whether there was a failure of supervisory review, did you rely
12 on the testimony of any integrity control officers in this
13 case?

14 A. I did. I believe I reviewed three of them.

15 Q. Do you remember their names?

16 A. Well I'm going to have to look at my --

17 Q. Can you?

18 MR. MOORE: Can he look at his report, Judge?

19 THE COURT: Certainly.

20 THE WITNESS: Lieutenant Barrelli, Lieutenant
21 Palmieri, and Lieutenant Peters. And that was from their
22 deposition testimony.

23 Q. What did you learn from looking at that testimony that was
24 part of your -- part of your opinion that there was a failure
25 of supervisory review?

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D4o9flo3 Reiter - direct

1 the 250 form.

2 Q. Did you also rely, in formulating your opinion, on the
3 testimony given at deposition by Deputy Inspector Charles Ortiz
4 who is the commanding officer of the 43rd precinct?

5 A. I did.

6 Q. And what did you rely on that he said that helped -- that
7 was part of your process of formulating your opinion?

8 A. (No response).

9 Q. Do you recall?

10 A. If I look at my notes?

11 This is a very data driven case. There was a lot of
12 information.

13 Q. I understand that.

14 A. Yes. And he basically said that he checks for whether the
15 boxes are checked. And his testimony was that he doesn't
16 compare the 250s to the memo books.

17 Q. Was there any testimony he gave about QAD audits that you
18 relied on?

19 A. Okay. Without going to my report.

20 Q. Look at your report. Look at paragraph 26.

21 THE COURT: What page is that?

22 MR. MOORE: Page 14.

23 THE WITNESS: Yes. That refreshes my memory.

24 THE COURT: All right. And now?

25 THE WITNESS: And what he said is he doesn't compare

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(212) 805-0300

D4o9flo3 Reiter - direct

1 the 250s to the memo books and he basically said if all the
2 boxes are filled out, that means it's a reasonable stop in his
3 position.

4 Q. What about the QAD?

5 MS. PUBLICKER: If I may, he stated he's looking at
6 his report. And he stated that Inspector Ortiz doesn't compare
7 the 250. But the report actually says usually doesn't compare.

8 THE COURT: Okay. Thank you.

9 Please just go on. It's not worth this.

10 MR. MOORE: They don't want the report in but now
11 they're reading from it.

12 THE COURT: Don't worry about it.

13 Q. Was there anything about, you recall from looking at that
14 paragraph, with respect to his awareness of QAD audits?

15 A. Yes.

16 Q. And what was that?

17 A. He indicated that there was a -- the reports indicated
18 there was a recurring deficiency that the officers weren't
19 complying with the requirement to put the memo -- information
20 in the memo books. He was aware of that.

21 Q. He was aware of it, correct?

22 A. Yes.

23 Q. Did you also rely in formulating your opinion with respect
24 to that there was a lack of supervisory review with respect to
25 stop and frisk in the New York City Police Department on any of

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D4o9flo3 Reiter - direct

1 the testimony you reviewed from Assistant Chief Diaz?

2 A. I did. There were two particular areas.

3 THE COURT: Was that deposition testimony?

4 THE WITNESS: It was deposition testimony. Yes, your
5 Honor.

6 THE COURT: Okay.

7 Q. And what were those areas?

8 A. One was he said that if there was an arrest made and there
9 was no 250, he had someone within his station complete a 250.
10 And he tried to convey that message to the other precincts as a
11 method to ensure that they had 250s then that corresponded to
12 all the arrests.

13 In addition, he indicated that he never examined the
14 memo books of his officers.

15 Q. And did he say anything about whether the reviewers ever go
16 back to determine whether there was reasonable suspicion?

17 A. I don't recall.

18 THE COURT: Okay. Let's pick up there at 5 after 2
19 and take our recess. Now the city is entitled to a copy of
20 those notes. He was referring to them. Make a photocopy.

21 MR. MOORE: Let me just say, Judge, having to do this
22 the way I'm doing it is necessitated by the fact that they're
23 not taking the report. It would go much smoother --

24 THE COURT: I thank you for your help, Mr. Moore.
25 (Luncheon recess)

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(212) 805-0300

D4o9flo3

Reiter - direct
AFTERNOON SESSION

2:11 p.m.

1
2
3 MS. GROSSMAN: Your Honor I just wanted to note we
4 just got a copy of the document that the witness was using.
5 And we haven't -- we just got it a few minutes ago and we
6 haven't had a chance to really review this. It appears to be
7 an outline of Mr. Moore's questions and some answers to some of
8 the questions in here.

9 MR. MOORE: That's not what it is.

10 THE COURT: So what?

11 MR. MOORE: So what.

12 MS. GROSSMAN: I'm just saying we haven't had a chance
13 to -- we haven't had a chance to look it over.

14 THE COURT: So what? I don't understand the
15 connection between your not having had a chance to review it
16 and what.

17 MS. GROSSMAN: Just having an opportunity to cross
18 this witness on it and inquire further, so.

19 THE COURT: Well you're not up to cross-examination
20 yet.

21 Go ahead.

22 DIRECT EXAMINATION CONTINUED

23 BY MR. MOORE:

24 Q. Good afternoon, Mr. Reiter.

25 A. Good afternoon.

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D4o9flo3

Reiter - direct

1 Q. Now with respect to the issue of supervisory review, you
2 also reviewed the depositions of field level officers as well
3 as supervisors, correct?

4 A. I did.

5 Q. Based upon your review of all the materials that you've
6 looked at and given your background and experience, can you
7 summarize the ways in which you believe the NYPD fails to
8 adequately supervise stop, question and frisk activity?

9 A. Yes.

10 Q. Why don't you do that.

11 A. Well I enumerated for myself four different points.

12 One in my opinion the 250 does not provide sufficient
13 information where any reasonable supervisor looking at that
14 alone could make a determination on the reasonableness of the
15 stop.

16 The second point. From my review of the depositions,
17 as well as the depositions of Connolly and Farrell and Chief
18 Cronin, the only really review is done whether the boxes are
19 all filled out and there is no substantive review to look at
20 the propriety of the stop beyond whether all the boxes are
21 filled out.

22 The others -- third point is that officers
23 consistently failed to use the memo book, which is really like
24 the police report. It really identifies the specific
25 articulated reasons for the officer's suspicion to be aroused.

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D4o9flo3

Reiter - direct

1 And that has consistently been shown that they aren't
2 comporting with the training or the policies or generally
3 accepted police practice.

4 Lastly, the supervisory review of the memo book
5 appears to be inconsistent. But even when they do that,
6 there's not a substantive review to make a determination
7 whether the level of reasonable suspicion was made. There is
8 no indication that I have seen where any supervisor, has, in
9 fact, interviewed the officers to maybe have them further
10 elaborate or clarify. There is no indication that that
11 supervisor or anybody has ever made an attempt to do a callback
12 to the person stopped to make a determination what their point
13 of view. Otherwise, you're only getting one side of the story.
14 Q. So, in a situation where there's a UF 250 completed and
15 there would be -- and there was a memo book entry that you
16 believe would be sufficient to set forth the details of a stop,
17 would that be the end of the process for you from a supervisory
18 standpoint?

19 A. No. From a couple of points. One is you still have to
20 talk to the officer. Because that gives you an opportunity to
21 discuss what they put down in their book, what they did on the
22 250.

23 THE COURT: Can I interrupt you with a question. I
24 know -- I'm listening to the answer but I think this
25 interruption is worth it.

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D4o9flo3

Reiter - direct

1 This case involves four-and-a-half million stops. Are
2 you saying that this should be is a spot check or
3 four-and-a-half million times the officers should be
4 interviewed, the person stopped should be interviewed? Do you
5 think this should be every stop or on a spot check basis?
6 Which one are you telling me?

7 THE WITNESS: No, your Honor. Certainly not
8 four-and-a-half million. We don't do that even on calls for
9 service. But what they should be done is on a spot check and
10 particularly with officers whom you may have to give some
11 direction or supervision to.

12 THE COURT: I just wanted to clarify that. I know I
13 interrupted you in the middle. If you can get back where you
14 were, that's fine. If not, try again.

15 You were thinking on a spot check basis?

16 THE WITNESS: Oh, yes, absolutely.

17 THE COURT: Okay.

18 Q. Do you recall where you were?

19 THE COURT: Probably not.

20 THE WITNESS: You know, you were talking about --

21 THE COURT: I have your last answer. You said a
22 couple of points. One is you still have to talk to the officer
23 because that gives you an opportunity to discuss what they put
24 down in their book, what they did on their 250. Then I
25 interrupted you.

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D4o9flo3

Reiter - direct

1 THE WITNESS: Right. One of the big problems with the
2 way this system operates is the officer, at night, goes home
3 with the police report. That doesn't happen to my knowledge
4 anywhere else in the country.

5 THE COURT: Goes home with what?

6 THE WITNESS: With the police report. The
7 articulation of the -- all the factors that the officer used in
8 making the stop and making --

9 THE COURT: Who goes home with that?

10 THE WITNESS: I'm sorry?

11 THE COURT: Who goes home with that?

12 THE WITNESS: The officer. Because he takes his memo
13 book.

14 THE COURT: I see.

15 THE WITNESS: And that's the police report.
16 Everywhere else the officer has to file the police report
17 normally before the end of tour of duty. So it can be in the
18 files, be accessed by anyone. They can go through whatever
19 system they've got.

20 THE COURT: So you find it unique in New York that the
21 officer takes the book home?

22 THE WITNESS: I --

23 MS. PUBLICKER: I also object that this is not in his
24 expert report, anything about the memo book being brought home.
25 This is a new opinion.

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D4o9flo3

Reiter - direct

1 THE COURT: It's not an opinion. Apparently it's a
2 fact. It's in the memo book, and the memo book travels with
3 the officer.
4 Is that what you're saying?
5 THE WITNESS: Yes, your Honor.
6 THE COURT: I don't think --
7 THE WITNESS: He might leave it in his locker.
8 THE COURT: But it's in his possession?
9 THE WITNESS: Yes.
10 THE COURT: It's not a filed separate piece of paper
11 called an accident report or a police report?
12 THE WITNESS: No, it's not.
13 THE COURT: It's the memo book.
14 THE WITNESS: And I don't know of any other agency
15 that does that.
16 MR. MOORE: And it was testified to in his deposition.
17 THE COURT: And what?
18 MR. MOORE: And it was testified to in his deposition.
19 MS. PUBLICKER: Could you point me to the page.
20 MR. MOORE: No.
21 MS. PUBLICKER: Because he didn't discuss it.
22 Q. Now, the deficiencies that you found with respect to the
23 way that the NYPD documents or supervises officers with respect
24 to stop and frisk, do you consider those to be simple
25 oversights or do you believe they are something more than that?

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D4o9flo3

Reiter - direct

1 Q. Now, you mentioned the 1999 report of the Office of the
2 Attorney General. You've reviewed that document, correct?

3 A. I did.

4 Q. And what in that report was most significant to you with
5 respect to this issue of agency oversight that you're talking
6 about?

7 A. They initially looked at 175,000 stops occurring in 1998.
8 But then in conjunction, I believe it was with John Jay, one of
9 the universities, they looked at 15,000 of the actual stop,
10 question and frisk reports. And that was the old one where
11 they're -- which you showed me earlier that had spots for the
12 officers to put in a narrative.

13 Q. Right.

14 A. And they evaluated those. And what they found was that,
15 evaluating that 15 percent of those on the basis of the
16 narrative the officer gave, it was legally insufficient.

17 THE COURT: I don't think that was at all responsive
18 to the question. That answer should be stricken. That's not
19 what you asked.

20 You asked him about the oversight agencies. What
21 stood out for you in that report with respect to oversight
22 agencies. Not the conclusions of the report. Because I wasn't
23 taking those for their substance anyway. I was taking them for
24 the notice they gave to the police department. But your
25 question was directed to oversight.

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D4o9flo3

Reiter - direct

1 MR. MOORE: Let me rephrase the question, Judge.

2 THE COURT: All right. I'm striking the last answer.
3 I do not consider it responsive to the question you asked at
4 all.

5 MR. MOORE: That's why I want to maybe clean up the
6 question a little bit.

7 THE COURT: We'll see.

8 Q. What about the Attorney General's report was significant to
9 you in terms of indicating to you that the police department,
10 despite being on notice of deficiencies, was not responding to
11 it?

12 A. (No response).

13 Q. Or let me phrase it this way.

14 THE COURT: I thought that was pretty clear.

15 Is there anything in the report?

16 THE WITNESS: That's not what I got from the report,
17 your Honor.

18 THE COURT: Was there anything in the report that
19 shows lack of response? That's what he's saying. Lack of
20 response to a problem.

21 THE WITNESS: Other than what occurred after the fact
22 that nothing has changed. But it was not specific to
23 oversight. They identified the problem with the way the
24 officers identified the narrative laying out the reasonable
25 suspicion articulation.

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1 Q. So even in circumstances back then when there was a form
2 that actually captured a narrative, are you saying there was a
3 deficiency in how they were reporting on those forms?

4 A. That's what that study found, yes.

5 Q. And you mentioned fifteen percent. What was that fifteen
6 percent?

7 A. Of the 15,000 they looked at, 15 percent were found that
8 the narrative on the form did not lay out legal sufficiency for
9 reasonable suspicion for the stop. And another, just under
10 24,000 --

11 Q. 24,000 or 24 percent?

12 A. 24 percent was not adequate to make a determination whether
13 there was any legal sufficiency for the stop.

14 MS. GROSSMAN: Your Honor, just I object.

15 THE COURT: Right. Because I think I took that report
16 solely for the notice it gave to the department of what that
17 report perceived to be a problem, not for the truth of it. So
18 I don't take it, that fifteen percent of the stops didn't have
19 reasonable suspicion or 24 percent couldn't be determined.

20 But the bottomline is the department, through this
21 report, was put on notice of the deficiencies in the form of
22 that UF 250 and being able to evaluate reasonable suspicion.

23 Is that it?

24 THE WITNESS: Yes, your Honor.

25 THE COURT: Thank you.

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1 Q. You also mentioned the RAND report as something that would
2 have put the police department on notice of the lack of
3 oversight, correct?

4 A. Yes.

5 Q. And you recall that RAND made certain recommendations that
6 go to that issue?

7 A. Yes.

8 Q. And what about those recommendations do you believe, in
9 your opinion, demonstrates notice of a deficiency with respect
10 to New York City Police Department with regard to the stop,
11 question and frisk practices?

12 MS. GROSSMAN: Your Honor, I don't know that --
13 Professor Fagan testified. So I don't know that this witness
14 is here to testify about what Professor Fagan said about the
15 study.

16 THE COURT: Just one second.

17 It does seem to me it's cumulative. You're simply
18 asking him what deficiencies did the RAND study point out.

19 Is that what you asked in simple words, what
20 deficiencies did the RAND study point out?

21 MR. MOORE: I'm saying I think that's part of it. But
22 it also goes to, as a police practice expert, his testimony
23 will be that the department was put on notice from, at least
24 the recommendations in RAND, that there were deficiencies.

25 THE COURT: That's just what I said. What

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D4o9flo3 Reiter - direct

1 deficiencies did the RAND study identify?

2 Your question is very long. But that's the question.

3 What deficiencies?

4 MR. MOORE: I have that problem, Judge.

5 THE COURT: You what?

6 MR. MOORE: I said I have that problem.

7 THE COURT: You do.

8 What deficiencies did the RAND studies highlight or
9 provide notice of?

10 THE WITNESS: I noted six of them, your Honor.

11 And the first one that they should -- officers who
12 make a stop, question and frisk should tell the people why
13 they're being stopped.

14 THE COURT: Tell them what while --

15 THE WITNESS: Why they're being stopped.

16 The second one that the police department should
17 review the boroughs who had the largest racial disparities.

18 MS. GROSSMAN: Your Honor, these are recommendations.

19 THE COURT: These are the ones -- these are the things
20 in the RAND report that this witness believes were the most
21 important to put the department on notice of deficiencies. So
22 I take it for that purpose.

23 Go ahead. Number two was they should look at the
24 boroughs that had the highest, what?

25 THE WITNESS: Racial disparities in the stop outcomes.

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1 THE COURT: Go ahead.

2 THE WITNESS: The third one that they indicated the
3 250s should be revised to give more opportunity to explain if
4 any force was used.

5 The fourth, the new officers should be fully
6 conversant with the stop, question and frisk documentation and
7 how it was used and it's supposed to be used.

8 And the fifth one. The PD should consider modifying
9 the manner in which they do the audits of the 250.

10 And lastly, they said that the police department
11 should identify, flag, and investigate officers with
12 out-of-the-ordinary stop patterns.

13 Q. With respect to that last one, was there any evidence that
14 you learned in the course of the case that the police
15 department actually did any of that in terms of identifying,
16 flagging, investigating officers with out-of-ordinary stop
17 patterns?

18 A. To a degree. I think Chief Cronin did talk about that
19 particularly with her latest study that she did in 2011.

20 Q. But before that, at the point in which you issued your
21 expert opinion, was there any evidence of that being done?

22 A. I was not aware of it.

23 Q. With respect to the modifying the 250s to capture use of
24 force information. You're aware, are you not, that that was
25 done at some point?

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D4o9flo3 Reiter - direct

1 A. I am.

2 MS. PUBLICKER: What exhibit are you --

3 MR. MOORE: 74.

4 Q. Can you focus on the portion about the use of force.

5 Now you see the portion on this form that deals with
6 the question of was physical force used.

7 Do you see that?

8 A. I do.

9 Q. And then there's another box that says reason for force
10 used?

11 Do you see that?

12 A. Yes.

13 Q. Now from a police practices standpoint, given your
14 experience, do you have any issues with the way the box, if
15 physical force was used, collects information?

16 A. If this is the only report that collects that information,
17 yes, it doesn't even begin to scratch the surface on what would
18 be recommended by all the DOJ consent decrees, by the model
19 policies of the International Association of Chiefs of Police,
20 or the policies that I have designed for 14 state insurance
21 risk pools.

22 Q. And that's because of why?

23 A. Well because -- I mean a baton and pepper spray. Let's
24 just look at that. Every other department requires it to be a
25 full investigation, a full separate report where it can be

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D4o9flo3

Reiter - direct

1 analyzed then by not only supervisors but in that case by a
2 training department, by the review -- people who are assigned
3 to review use of force. It's got to have an indication whether
4 photographs were taken.

5 (Continued on next page)

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Reiter - direct

1 MS. PUBLICKER: Your Honor, this exhibit came out
2 after Mr. Reiter's testimony and his expert report in this
3 case. So his opinion about the sufficiency of this section,
4 about the reason for force used, is a new opinion beyond the
5 scope of his expert report and should be stricken.

6 THE COURT: What did the prior one have?

7 MS. PUBLICKER: It didn't have that reason for force
8 used.

9 THE COURT: That's even worse.

10 MR. MOORE: Actually, Judge, if we can put it on the
11 elmo, this is the prior form from 2002. You look at the box
12 there, it says, "If physical force was used, indicate type."

13 Q. That part hasn't changed, right? Right, Mr. Reiter?

14 A. That's true.

15 Q. So your comments with respect to that, even the 2002 form,
16 would be the same, that it doesn't meet generally accepted
17 police practices?

18 MS. PUBLICKER: He does not have an opinion about that
19 in the report. If you would like to point me to the paragraph
20 in the report where he talks about the sufficiency of those
21 boxes, I am happy to take a look. He did not talk about the
22 sufficiency of the 250 form to capture use of force data in his
23 report or at his deposition.

24 THE COURT: But he talked about in general terms the
25 sufficiency of the form in tracking stop, question and frisk

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D408FLO4 Reiter - direct

1 activity, didn't he?

2 MS. PUBLICKER: However, now he is talking about other
3 ways that police departments track use of force, which was not
4 in his expert report.

5 THE COURT: I think it's all the same. I think the
6 report is talking about the lack of detail that can be used to
7 look back and determine whether any action was justified,
8 whether the stop, question, frisk or the force. That's what I
9 heard from his testimony. It's all the same.

10 Is that not right, there is not enough detail in the
11 narrative to evaluate the action?

12 THE WITNESS: Yes.

13 THE COURT: It's one opinion that's been consistent in
14 any part of the form, whether it's the stop, the question, the
15 frisk, the force, or anything else.

16 MS. GROSSMAN: This case isn't about force.

17 THE COURT: That's exactly my point. The form, in his
18 opinion, is inadequate in every way because it doesn't provide
19 enough detail to evaluate later whether the activity was
20 appropriate, the activity, whether it's stop, question, frisk
21 or force. Look, the force question is on this SQF form.

22 MS. GROSSMAN: We are talking about the opinion --

23 THE COURT: I am not debating it. I am allowing it.
24 Go ahead.

25 BY MR. MOORE:

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D408FLO4

Reiter - direct

1 THE COURT: OK.

2 A. "Administrative investigations alleging improper police
3 conduct when stopping persons pursuant to the NYPD's stop,
4 question and frisk practices. These forms of administrative
5 investigations -- CCRB, IAB or OCD -- as reflected from the
6 deposition transcripts and review of plaintiff complaint
7 investigations, are perfunctory and done in a manner to conceal
8 any meaningful oversight function. The performance of this
9 vital area of police control and oversight by the police
10 department, both internally and by the Civilian Complaint
11 Review Board, is contrary to reasonable and the generally
12 accepted police practices. The failure to administer
13 reasonable timely discipline simply undercuts any individual
14 and agency remedial outcomes and would do little to curtail the
15 effect of an operational policy that differs from formal policy
16 and training. Any reasonable officer in an agency with such
17 deficient administrative investigation practices would believe
18 they likely would not be held for misconduct and abuse of
19 authority when improperly or unreasonably using the stop,
20 question and frisk practices of the agency."

21 Q. What facts did you rely on and what information did you
22 rely on in reaching that third opinion?

23 A. I relied on the testimony of Ms. Joan Thompson, who was the
24 executive director of CCRB. I looked at some of their summary
25 reports. Also, the deposition of, I believe it's Inspector

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D408FLO4 Reiter - direct

1 Helen McAleer, who is in charge of the investigative review
2 section of the Office of the Chief of the Department. And then
3 I reviewed three actual investigations, two that were done at
4 the IRS level and two that were done by CCRB, involving
5 officers who were involved in this litigation.

6 Q. That was of the investigation involving the David Ourlicht
7 complaint?

8 A. Yes.

9 Q. What do you recall about that investigation?

10 A. I'm going to have to go to my notes. Because when you do
11 an audit of an administrative investigation, it's very specific
12 and labor data intensive. Can I do that?

13 Q. With permission of the Court.

14 THE COURT: Yes. That's fine.

15 A. In the Ourlicht case, this complaint was initially made to
16 CCRB, and he complained of an improper stop, question and
17 frisk, racial profiling, and an improper summons. That was
18 referred to the Office of the Chief of the Department, contrary
19 to CCRB's policy, because it fits under an abuse of authority.
20 So it's one of those four categories that you look at. But
21 they sent it up there. It was assigned then to the
22 investigative review section, and it was farmed out or
23 delegated out to the precinct where the officers who were
24 involved in the incident. And this involved an Officer Moran.
25 And it was assigned to Sergeant Hegney who was his immediate

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D408FLO4 Reiter - direct
1 supervisor.

2 The first problem I have with it is that was something
3 that should have been kept within CCRB because it's within
4 their mission statement and it's within the guidelines that
5 were testified to by Ms. Thompson.

6 The second area is the investigation by Sergeant
7 Hegney, in my opinion, was really just -- was not a meaningful
8 investigation. It was simply two pages. In that case, he said
9 he spoke with some woman, who identified herself as
10 Mrs. Ourlicht, but there is no indication that he knew who that
11 was. So you really can't draw any credibility determination if
12 you do it by the phone. In addition to that, he said he talked
13 to Officer Moran. Officer Moran says he was not talked to by
14 Sergeant Hegney.

15 Two other officers responded to the scene, I think
16 it's Ruggiero and --

17 Q. Officer Eddie?

18 A. Officer Eddie. Both of them acknowledged that they were
19 not talked to by Sergeant Hegney as well, yet they responded to
20 the backup on the part of the officer.

21 There was no memo entry by Eddie nor Ruggiero of their
22 backup in their memo book or their activity log.

23 The other thing, Sergeant Hegney acknowledged in his
24 deposition that he in fact gave more weight to the testimony of
25 Officer Moran than he did to any information he received either

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D408FLO4 Reiter - direct

1 A. The other thing that surprised me because of this, because
2 of the allegation, is that not only Ms. Thompson but Inspector
3 McAleer both said the department has no code for racial
4 profiling. So there is no way for the department to computer
5 access to determine how many complaints include allegations of
6 potential racial profiling.

7 Q. I want to show you Plaintiffs' Exhibit 250 that was
8 introduced into evidence, which is the stop, question and frisk
9 form for the Ourlicht stop.

10 MS. PUBLICKER: I would note this is not one of the
11 exhibits listed by Mr. Moore for this witness.

12 MR. MOORE: Not to my knowledge.

13 Judge, this is a form that's been used widely
14 throughout the trial. I don't know how they could not
15 anticipate --

16 THE COURT: Why are you answering it? She made a
17 statement for the record. That's that.

18 Q. The note on the form is that it's Sergeant Hegney who
19 reviewed the 250 report, correct?

20 A. Yes.

21 Q. With respect to the memo book of Officer Moran, which is
22 Plaintiffs' Exhibit 249 --

23 MS. PUBLICKER: Also, which was not identified by Mr.
24 Moore.

25 THE COURT: It doesn't need to be. It's in evidence.

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D408FLO4 Reiter - direct

1 Mr. Moore can read it. I can read it. Anything in evidence is
2 in the record. There is really no question. Did you notice
3 the last one, he had no question for him. He put it up on the
4 screen and read from the document.

5 Q. Do you recognize this as memo book entry of --

6 THE COURT: It doesn't matter if he recognizes it. It
7 is the memo book entry of Officer Moran. And it says? You
8 read it. It's in evidence.

9 Q. On the third page, at 1450 hours, it says, "Male stopped,
10 164th and 85th, suspicious bulge, 93Q." And then there is some
11 serial number.

12 In your judgment, does that kind of an entry in a memo
13 book satisfy generally accepted police practices with respect
14 to documenting stop, question and frisk activity in a police
15 department?

16 A. Not in respect to the bulge. You have to be more
17 descriptive saying what the bulge is.

18 Q. That's all it says about the actual substance of the stop,
19 correct?

20 A. It does.

21 Q. You also indicated that you reviewed the complaint made by
22 Deon Dennis?

23 A. I did.

24 Q. Can you tell us about that?

25 A. Yes. This was the complaint, he was stopped by Officers

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D408FLO4 Reiter - direct

1 MS. PUBLICKER: Yes, your Honor.

2 THE COURT: The stop itself was testified to by, I
3 suppose it was Dennis and Salmeron.

4 MS. PUBLICKER: And Pichardo.

5 THE COURT: Not from his summary.

6 Anyway, where are we?

7 MR. MOORE: He was interrupted for the second time.

8 BY MR. MOORE:

9 Q. Were you going to finish talking about this particular
10 complaint?

11 A. Only that all of these deficiencies show that it's another
12 example where they don't even scratch the surface on what would
13 be a reasonable investigation of an allegation of misconduct
14 coming from a citizen.

15 Q. You, of course, didn't look at hundreds of thousands of OCD
16 complaints, right?

17 A. I did not.

18 Q. You were asked to look at the complaints regarding some of
19 the plaintiffs in this case and you did that, correct?

20 A. I did.

21 Q. You're forming your opinion based upon that, correct?

22 A. Yes.

23 Q. Let me ask you one question. With respect to
24 administrative investigations of misconduct, if it begins on
25 one basis, but other misconduct is noted in the course of the

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D408FLO4 Reiter - direct

1 A. No, it's not.

2 Q. How would you describe that audit?

3 A. It analyzes the paper and that's as far as it goes.
4 Because there is no discussion with the officers. There is no
5 discussion with the sergeant who might have approved it. Even
6 when you get to the depositions of Mr. Connolly and
7 Mr. Farrell, who were the head of QAD, they said all they do is
8 look at the adequacy of the 250.

9 Q. They look at whether the boxes are properly checked?

10 A. Yes.

11 MR. MOORE: Nothing further at this point. Thank you.

12 THE COURT: Ms. Publicker.

13 CROSS-EXAMINATION

14 BY MS. PUBLICKER:

15 Q. Good afternoon, Mr. Reiter.

16 A. Good afternoon.

17 Q. The document you were reading from earlier, that appears to
18 be an outline of questions from Mr. Moore, is that correct?

19 MR. MOORE: Object to that.

20 THE COURT: I will allow.

21 That's what it is, right?

22 A. I did it. I summarized what I thought my testimony should
23 be, and I gave it to Mr. Moore.

24 MR. MOORE: So it wasn't questions from Mr. Moore.
25 That was my objection.

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D408FLO4

Reiter - cross

1 THE COURT: The answer is what it is. You heard it.

2 Q. Whose handwriting is on this?

3 A. Mine.

4 Q. Throughout?

5 A. Yes.

6 Q. You left LAPD over 30 years ago, is that correct?

7 A. True.

8 Q. The last few years that you were at the LAPD, you weren't
9 out on the street, right?

10 A. Not on a regular basis.

11 Q. Were you out on the street on a regular basis when you were
12 a captain?

13 A. Not on a regular. I would ride with the officers one night
14 a week up to the month I left. But, no, that was not my
15 assignment.

16 Q. So it's been at least 40 years since you were out on the
17 street on a regular basis?

18 A. Probably.

19 Q. You have never attended a training or a course on the topic
20 of stop, question and frisk as a student, have you?

21 A. Certainly not recently. I know it was part of my basic
22 training, but that was back in 1961.

23 Q. You have never conducted a training or a course on the
24 topic of stop, question and frisk, have you?

25 A. I have not.

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D408FLO4

Reiter - cross

- 1 Q. You do conduct trainings on the subject of police
2 supervision as it relates to administrative investigations, is
3 that right?
4 A. Yes.
5 Q. But you haven't conducted a training course on the issue of
6 generic or regular supervision since the 1990s, right?
7 A. That's true.
8 Q. You have only testified in two other cases involving the
9 NYPD, right?
10 A. Yes.
11 Q. By testified, I mean you gave deposition testimony in those
12 cases, right?
13 A. Yes.
14 Q. You have never testified at trial in a case involving the
15 NYPD, have you?
16 A. No.
17 Q. In both of the cases you testified in, you testified
18 against the NYPD, correct?
19 A. Yes.
20 Q. One was from the 1980s?
21 A. Either 80s or early 90s, yes.
22 Q. And that involved police enforcement activities during a
23 block party?
24 A. A July 4th block party. I think down on Avenue of the
25 Americas.

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D408FLO4 Reiter - cross

1 Q. So I am going to direct your attention to page 20, starting
2 at line 13.

3 "Q. Have you ever been qualified as an expert in any court in
4 New York State?

5 "A. I don't think I have testified in New York.

6 "Q. Have you ever been qualified by a court in New York State
7 as an expert witness in a case involving the New York Police
8 Department?

9 "A. Well, if I haven't testified, it would be no."

10 Do you recall being asked those questions and giving
11 those answers?

12 A. I do.

13 Q. You have never testified as an expert in the policy of
14 stop, question and frisk, have you?

15 A. No, I haven't.

16 Q. And you have never provided an expert opinion in a case
17 where a plaintiff claimed that he or she was stopped by the
18 police solely because of their race or ethnic background, have
19 you?

20 A. That's correct. I don't get into those racial profiling
21 cases.

22 Q. You have never worked for the NYPD, have you?

23 A. Other than what I testified to, no.

24 THE COURT: Which was what? I forgot.

25 THE WITNESS: The two training programs and when they
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D408FLO4

Reiter - cross

1 hired me on a shooting case back, I want to say it was '05
2 possibly.

3 THE COURT: You did work as an expert for them?

4 THE WITNESS: I worked as a consultant for them. And
5 they tried the case without using experts, yes.

6 THE COURT: But you were retained on that particular
7 case as a consultant?

8 THE WITNESS: I was, and they paid me.

9 Q. In the past, you have gone out with NYPD officers for
10 observation, correct?

11 A. Many years ago -- well, in this one case, yes. So that
12 would have been '05. But back in '78, we did, we went up
13 through the 41st, 42nd, the 6th, the 9th, and we did go out
14 with anticrime people.

15 Q. I believe you said that at the time you believed that
16 Harlem was a, quote unquote, cesspool, is that correct?

17 MR. MOORE: Object to the form.

18 THE COURT: What is the wrong with the form?

19 MR. MOORE: I would object to everything about that
20 question. I think it's irrelevant.

21 THE COURT: You object on the grounds of relevance?

22 MR. MOORE: Yes.

23 THE COURT: I will allow it.

24 A. That's what the anticrime people told me. In fact, they
25 took me into a heroin shooting den, but that was the time --

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D408FLO4

Reiter - cross

1 you have to remember that was after the Knapp Commission and
2 anticrime wasn't allowed to make narcotic arrests; they were
3 gun arrests. I had never experienced walking into a shooting
4 gallery for heroin where people are nodding off and still got
5 the needle in their arm and the tourniquet around their arm.

6 Q. So you did call Harlem a cesspool at your deposition, did
7 you not?

8 A. I believe I referred that that's what they referred to it
9 as.

10 Q. I am going to direct your attention to page 55 of your
11 deposition, line 1 -- 56. I'm sorry.

12 "Q. Have you ever gone out with NYPD officers for observation?

13 "A. I have in the past.

14 "Q. When did you do that?

15 "A. I did that when I was here in the mid-70s, where we took
16 some tours with an anticrime unit. That was a hoot. Up in
17 Harlem, and then down in the 9th district when it was really a
18 cesspool, the 6th district precinct -- the 6th Precinct."

19 Did you give that answer to that question?

20 MR. MOORE: He is not referring to Harlem. He is
21 actually referring to the 9th district.

22 THE COURT: Where is that district?

23 THE WITNESS: The 9th Precinct was just to the east of
24 the 6th, which is Greenwich Village. And that was when they
25 had all these vacant apartment buildings and people were

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D408FLO4 Reiter - cross

1 stealing electricity off of the power poles and bringing it
2 into the rooms, and they were just like a bunch of squatters.
3 It was depressing.

4 Q. So you were referring to the East Village as a cesspool?

5 A. The 9th Precinct. If that's the East Village, yes.

6 Q. And you claim to have audited the NYPD, correct?

7 A. Working with the U.S. attorney in Brooklyn, yes.

8 Q. So you were never hired by the NYPD as an auditor, right?

9 A. Correct, I was not.

10 Q. Your work with the Eastern District with the Department of
11 Justice was actually about the CCRB, wasn't it?

12 MR. MOORE: I don't know how much he can testify about
13 what he was doing with the Department of Justice.

14 THE COURT: He will stop when he has to.

15 Right now the question was? Say it again.

16 Q. You did not work with the DOJ about the NYPD, it was about
17 the CCRB, was it not?

18 THE COURT: If he can answer, he should.

19 It had to do with the CCRB, right?

20 A. It was the use of force and the reporting of use of force,
21 other than firearm discharges, and the way that CCRB responded
22 to those allegations of use of force.

23 Q. So it was really an audit of the CCRB?

24 MR. MOORE: Object to the form.

25 THE COURT: I will allow it.

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D408FLO4

Reiter - cross

1 Is that what it really was, an audit of the CCRB
2 activity?

3 A. It was how they investigated it, but it also looked at the
4 whole reporting issue on use of force, which is within the
5 purview of the police department. But the primary focus was
6 how did CCRB investigate allegations alleging unnecessary use
7 of force.

8 Q. You never made any final recommendations in that case, did
9 you?

10 A. I didn't.

11 Q. Because the U.S. Attorney's Office decided not to continue
12 the investigation?

13 A. I don't know what they decided. The case just stopped. I
14 don't know what the decision was.

15 Q. I am going to direct you to page 31, line 4 to 8.

16 "Q. Are you aware of the results of the investigation?

17 "A. It didn't go anywhere. Well, the U.S. attorney and the
18 Department of Justice elected not to continue their
19 investigation."

20 Do you recall giving that answer to that question?

21 MR. MOORE: I think that's what he testified to.

22 THE COURT: It sounds consistent.

23 MS. PUBLICKER: He said he was not sure what had
24 happened. At his deposition he said he knew.

25 THE COURT: He said they elected not to continue. I

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D408FLO4 Reiter - cross

1 don't know that he knows anything more than that.

2 MS. PUBLICKER: That's all I am looking for.

3 THE COURT: I think it's the same. It didn't go
4 anywhere. They didn't continue. He doesn't know why.

5 Q. Aside from that case, you haven't actually worked with the
6 NYPD besides -- strike that.

7 Besides the work you did in the 1970s, the shooting
8 case in 2005, and this investigation of CCRB, you haven't
9 worked with the NYPD in any other capacity, have you?

10 A. No.

11 Q. Mr. Moore asked you questions a little earlier about the
12 RAND report. Do you remember that?

13 A. I do.

14 Q. You reached conclusions in this case by relying on the RAND
15 report?

16 A. I did.

17 Q. You believe that the NYPD should have done more to follow
18 the RAND report's conclusions, correct?

19 A. Yes.

20 Q. And you listed six of these recommendations made by RAND to
21 the NYPD, right?

22 A. I did.

23 Q. So the first one was that the NYPD should explain to
24 pedestrians why they were stopped, right?

25 A. Yes.

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D408FLO4 Reiter - cross

1 Q. Part of that recommendation from RAND was that officers
2 should give out cards when they stop citizens, right?

3 A. Yes.

4 Q. And you believe that should be done?

5 A. I think that's one of many reasonable responses. It's not
6 unreasonable.

7 Q. But at the time of your report and deposition, you could
8 not identify a single law enforcement agency in the country
9 that did that, correct?

10 A. Correct.

11 Q. And there are not any CALEA standards on that issue, right?

12 A. True.

13 Q. And the International Association of Chiefs of Police, or
14 IACP, they also have no standards on that issue, correct?

15 A. True.

16 Q. And whether an officer explains the reason for the stop to
17 the individual, that has nothing to do with whether the stop
18 was lawful, correct?

19 A. True.

20 Q. Are you aware of the testimony of any class member
21 witnesses in this case about whether they were told why they
22 were stopped?

23 A. No.

24 Q. Are you aware that every single class member witness
25 recounted at least one stop where the officers told them why

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D408FLO4 Reiter - cross

1 they were stopped?

2 MR. MOORE: Object to the form.

3 A. I'm not aware of that.

4 Q. And that in one case an officer actually played the radio
5 run with the description of the individual three times to try
6 to explain why the individual was stopped?

7 MR. MOORE: He said he is not aware of any --

8 THE COURT: She said, "Are you aware that every single
9 class member recounted at least one stop where the officers
10 told them why they were stopped?" And he said, "I'm not aware
11 of that." And then she went to a specific incident.

12 Do you remember the last question?

13 THE WITNESS: I do.

14 A. I am not aware of that.

15 Q. Would any of that information change your opinion in any
16 way?

17 A. No.

18 MR. MOORE: About what?

19 THE COURT: People should be told why they were
20 stopped. If these named plaintiffs, if all of them were told,
21 that wouldn't change his opinion as a practice recommendation.

22 Q. One of the other recommendations from RAND was to
23 incorporate greater information regarding use of force in the
24 UF-250 form?

25 A. Yes.

D408FLO4 Reiter - cross

1 Q. And your report was done in 2010, right?

2 A. Yes.

3 Q. You never updated your report?

4 A. No.

5 Q. Mr. Moore showed you today a new UF-250 form that was
6 altered in 2011 to include additional data regarding reasons
7 for the use of force, correct?

8 A. He did.

9 Q. So does seeing that new form change your opinion about
10 whether or not the NYPD complied with that RAND recommendation
11 in any way?

12 THE COURT: Do you remember what choices it gave in
13 the box for the reasons for force?

14 THE WITNESS: I do, your Honor.

15 A. It doesn't change my opinion. It still doesn't even
16 scratch the surface on what generally accepted police practices
17 are for reporting use of force.

18 Q. Are you aware that use of force is documented in other
19 forms, not the 250?

20 A. I know that if there is not a stop, question and frisk, at
21 least back in '99 there used to be some indication on the
22 online booking form that force was used. But that was one of
23 the things that we specifically looked at.

24 Q. Are you aware that if an individual is injured that IAB is
25 called and responds to the scene?

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D408FLO4

Reiter - cross

1 MR. MOORE: IAB?

2 THE COURT: Is that what you said?

3 MS. PUBLICKER: Yes.

4 A. I don't have any up-to-date information on that.

5 Q. There is another recommendation from RAND that involved
6 ensuring that the NYPD conduct additional training to ensure
7 that officers are fully conversant with stop, question and
8 frisk documentation, correct?

9 A. Yes.

10 Q. So are you aware that the NYPD has taken efforts since 2010
11 to update and improve training regarding stop, question and
12 frisk documentation?

13 A. Only what I read in depositions and what I heard Chief
14 Cronin talk about, but I haven't seen any actual. All the
15 training material I looked at, written material, were all prior
16 to or up to 2009. I haven't seen anything since that time.

17 Q. So you're not aware of new Rodman's Neck training which
18 specifically focused on 250 forms and memo book entries?

19 A. I'm not.

20 Q. Are you aware that interim orders of the NYPD were altered
21 and adopted to clarify stop and frisk encounters in
22 documentation required?

23 MR. MOORE: Object to the form of that.

24 THE COURT: You just interrupted. I didn't hear the
25 whole question.

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D408FLO4

Reiter - cross

1 She is just saying, are you aware of interim orders?

2 THE WITNESS: From Chief Cronin's testimony here in
3 trial, she indicated that there had been recommendations made
4 to training.

5 THE COURT: The question is about interim orders. Are
6 you familiar with the interim orders?

7 THE WITNESS: I am not.

8 THE COURT: The recent interim orders?

9 THE WITNESS: I am not.

10 Q. So would learning that there has been new training and new
11 orders alter your opinion in any way?

12 A. Well, it might, but then you would have to look at the
13 outcome performance. And from the chart that I have seen, the
14 whole issue of memo books, there is still a 1 -- well, maybe
15 they are 2.4 now. So the outcome performance objective hasn't
16 been met. So if there has been training, that's wonderful, but
17 I didn't have a problem with the training they had before. The
18 written material that I looked at from the academy, and the
19 lesson plans and the policies up through '09, in my opinion,
20 were acceptable. I didn't have a problem with that to begin
21 with.

22 Q. So RAND also recommended modifying the audits conducted on
23 the 250 form, correct?

24 A. That was one of the recommendations.

25 Q. Are you aware that the protocols for those QAD audits were

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D408FLO4 Reiter - cross

1 laid down in the Daniels settlement?

2 MR. MOORE: I think that misstates the Daniels
3 settlement.

4 THE COURT: Are you aware of any such thing?

5 A. I am aware that the Daniels settlement required QAD to do
6 specific kinds of audits, including the reasonableness of the
7 stop, yes.

8 Q. One of the RAND recommendations was specifically that the
9 NYPD look at radio transmissions where a stop was likely to
10 occur and to audit those radio transmissions to find out if a
11 250 was filled out, correct?

12 A. Yes.

13 Q. You said you listened to Chief Cronin's testimony, correct?

14 A. I did.

15 Q. So you're aware that the NYPD did adopt a RAND audit which
16 looked at radio runs to determine whether a 250 was prepared,
17 correct?

18 A. I think that part of her audit, yes, they do these checks
19 as part of her QAD program, and that's what she referred to in
20 her testimony. I believe, however, those were more toward
21 whether the CPR was being followed or whether persons who had
22 calls for service were satisfied with the service. I don't
23 recall her saying specifically that they responded to radio
24 calls where there may be a 250 done and made a determination
25 there. I just don't recall that.

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D408FLO4 Reiter - cross

1 Q. So you believe that the CPR audit was the same as the
2 Sprint report RAND audit?

3 A. No.

4 Q. So you do understand that QAD listens to radio
5 transmissions for a certain period of time, and they listen to
6 hear if there is a run that may result in a stop. They then
7 look to see if 250s were prepared for that stop. Are you aware
8 of that?

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

10 A. No.

11 THE COURT: What is wrong with the form?

12 MR. MOORE: It was very complicated.

13 THE COURT: Yes. It was complicated. It's true. He
14 seems to have understood it. He said no.

15 Q. Assuming that information to be accurate, would that change
16 your opinion about whether the NYPD has followed through on
17 that RAND recommendation?

18 A. It could. I'd have to look at that.

19 Q. To date you haven't looked at that, correct?

20 A. I'm not aware that that's even being done.

21 Q. The RAND Corporation's final recommendation was to flag
22 officers with out of the ordinary stop activity, correct?

23 A. Yes.

24 Q. Did you read or listen to Commissioner McGuire's testimony
25 in this case?

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D408FLO4 Reiter - cross

1 A. I don't believe I did.

2 Q. So are you aware that the NYPD did use RAND's methodology
3 in 2007 to try and identify officers with out of the ordinary
4 stop patterns?

5 A. No.

6 Q. So then you're not aware that when they ran that test, they
7 did not identify any, quote unquote, over-stoppers?

8 A. That surprises me, but no, I'm not aware of that.

9 Q. If you learned that, would that change your opinion in any
10 way?

11 A. I don't know.

12 Q. But it might?

13 A. Sure.

14 Q. You have been a CALEA assessor since 1984?

15 A. Yes.

16 Q. You said you have done two assessments?

17 A. Yes.

18 Q. When were those assessments?

19 A. I think the first was mid-90s, and it was a small agency
20 Northfield, Illinois, a suburb of Chicago. The other was
21 Newark, Delaware, which was about a 150 person agency, and that
22 was right around 2000.

23 Q. CALEA assessors go out and review the practices of police
24 departments to see if those departments comply with CALEA
25 standards, is that correct?

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D408FLO4

Reiter - cross

- 1 A. Yes.
- 2 Q. And CALEA has hundreds of standards, right?
- 3 A. Well, they pared it down. Originally it was 960. I think
- 4 they are down to about 420.
- 5 Q. And the assessment process includes two steps, right?
- 6 A. Yes.
- 7 Q. So the first step is that the assessor reviews the written
- 8 policy?
- 9 A. The written policy and also the proffers or documents that
- 10 demonstrates that the policy is being followed, yes.
- 11 Q. Then the second step is the assessor goes out into the
- 12 field to see that the police agencies are actually implementing
- 13 those written policies?
- 14 A. Correct.
- 15 Q. And CALEA has two different categories of standards, right,
- 16 mandatory and other than mandatory?
- 17 A. Correct.
- 18 Q. And you refer to those as M and O?
- 19 A. Yes.
- 20 Q. CALEA allows for differences in standards for agencies
- 21 based on the size of the agency, right?
- 22 A. They do.
- 23 Q. To be CALEA certified, agencies must have certain mandatory
- 24 policies?
- 25 A. Yes.

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D408FLO4 Reiter - cross

- 1 Q. But they can pick from the other than mandatory policies,
2 right?
3 A. Yes.
4 Q. And the types of standards that fall under mandatory
5 include having a written manual?
6 A. Yes.
7 Q. And the NYPD has a written manual, right?
8 A. They do, a very large one.
9 Q. And it's mandatory to have a citizen complaint process?
10 A. Yes.
11 Q. And the NYPD has a citizen complaint process?
12 A. Yes.
13 Q. And it's mandatory to have an internal affairs process,
14 right?
15 A. Yes.
16 Q. And the NYPD has an internal affairs process?
17 A. Correct.
18 Q. And it's mandatory to have training standards, right?
19 A. Yes.
20 Q. And the NYPD has training standards?
21 A. They do.
22 Q. As part of your work in this case, Mr. Reiter, you have
23 reviewed NYPD training materials, right?
24 A. The written ones up to '09, I did.
25 Q. So you looked at training materials with regard to stop,

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D408FLO4 Reiter - cross

1 question and frisk specifically?

2 A. I did.

3 Q. And your report did not identify any deficiencies with
4 regards to those training materials, right?

5 A. True.

6 Q. CALEA assesses training academies, right?

7 A. They do.

8 Q. And the purpose is to determine whether a police agency's
9 training academy meets CALEA standards?

10 A. Yes.

11 Q. In your opinion, a CALEA accredited training facility would
12 meet generally accepted practices, right?

13 A. Yes.

14 MR. MOORE: For what?

15 MS. PUBLICKER: For training.

16 Q. And you testified that you are now aware that the NYPD's
17 training academy was CALEA accredited, is that correct?

18 A. Yes.

19 Q. Are you aware they were first accredited in 2006?

20 A. I'm not sure when it was, but that would probably be true.
21 Probably Jim Fyfe was the forerunner that got them accredited
22 because he was one of the commissioners of CALEA.

23 Q. He, unfortunately, passed away before they got the
24 certification, but he was part of that.

25 The training facility was reaccredited in 2009, right?

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D408FLO4 Reiter - cross

1 A. I will take your word for it.

2 Q. And again in 2012?

3 A. Again, I will take your word for it.

4 Q. But at the time you drafted your expert report, you were
5 not aware of whether the NYPD's training academy was CALEA
6 certified, right?

7 A. True.

8 Q. To determine if an agency is CALEA accredited, all you have
9 to do is look at their Web site, right?

10 A. Yes.

11 Q. You have done that in other cases as an expert, right?

12 A. Some cases I have.

13 Q. But you did not do that here?

14 A. I did not.

15 Q. At the time you drafted your report, you knew that New York
16 State had its own accreditation process for training
17 facilities, right?

18 A. It was my understanding they have an accreditation process,
19 period. So not just training standards, but the police
20 department could be certified by the state.

21 Q. But you were not aware at the time of your report whether
22 the NYPD training facility was accredited by the state?

23 MR. MOORE: He is not raising questions about the
24 training. So I think all of this testimony is irrelevant.

25 THE COURT: I will allow it.

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D408FLO4

Reiter - cross

1 Did you know it was accredited, the training?

2 THE WITNESS: With the state body, no.

3 Q. But the NYPD is accredited by the state. Have you since
4 learned that?

5 A. No, but I will take your word for it.

6 Q. Not every major police department in the U.S. has a CALEA
7 accredited training facility, right?

8 A. That's very true.

9 Q. To your knowledge, the Chicago police department is not
10 CALEA accredited?

11 THE COURT: That is getting far afield. We have
12 talked enough about the training facility being accredited.

13 Q. You believe that the NYPD imposes quotas on officers with
14 regard to stops, right?

15 A. No.

16 Q. You don't believe that?

17 A. I don't know one way or another. I really have no opinion
18 on whether -- I know there have been some officers who have
19 said they believe or felt pressured to produce numbers
20 regardless of whether it's proper policing that they do. But I
21 don't know that there are quotas and have no opinion on that.

22 (Continued on next page)

23

24

25

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D4o9flo5

Reiter - cross

1 THE WITNESS: I don't know where they came from, your
2 Honor.

3 THE COURT: Okay. How recently did you look at the
4 transcripts?

5 THE WITNESS: I looked at those prior to doing my
6 report. So it would have been back in '09 after I became
7 involved in this case and before I did my report in 2010.

8 THE COURT: Okay.

9 Q. You also chose to rely on the deposition testimony of three
10 officers with regard to quotas and productivity goals?

11 A. I read those, yes.

12 You know I'm not here to make a credibility
13 determination. I read not only their depositions but their
14 trial transcripts. They believed they were pressured. And
15 they believed that there was no constraints put on how they
16 made these numbers. I don't know the truth of it.

17 Q. Well, you said you read the trial transcripts but isn't it
18 correct that Officer Blakely never testified at trial?

19 A. No. He didn't. It was Polanco and --

20 Q. Pichardo?

21 MR. MOORE: Serrano.

22 THE COURT: What was the other name you mentioned?

23 MR. MOORE: Serrano.

24 THE WITNESS: And Serrano.

25 It was Polanco I recall specifically. And Serrano,
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D4o9flo5

Reiter - cross

1 yes.

2 Q. However you never knew about Officer Serrano at the time of
3 your expert report, did you?

4 A. Correct. I did not.

5 Well I may have reviewed his deposition. I can look
6 at his deposition.

7 Q. He did not have his deposition taken.

8 MS. PUBLICKER: I understand I am testifying, your
9 Honor.

10 MR. MOORE: We'll stipulate to that.

11 THE COURT: Okay.

12 THE WITNESS: Then I didn't review it.

13 Q. So Officer Serrano played no part in your opinions in your
14 expert report; is that correct?15 THE COURT: Well I don't know if there were tapes
16 though. Were there Serrano tapes?17 MR. MOORE: No, Judge. He didn't become known
18 until --

19 THE COURT: No tapes. No testimony.

20 So you couldn't have relied on Serrano, right?

21 THE WITNESS: That's correct, your Honor.

22 Q. And when you reviewed the depositions of Officers Blakely,
23 Pichardo and Polanco at the time you wrote your expert report
24 did you consider the assignments those officers held at the
25 time of the alleged quotas?

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(212) 805-0300

D4o9flo5

Reiter - cross

1 A. No.

2 Q. Did you consider the level of stop activity reported by
3 other officers in the same command?

4 A. No.

5 Q. Were you aware of any precinct conditions that existed at
6 the time that Officers Blakely Pichardo and Polanco were
7 allegedly subject to a quota or productivity goal?

8 A. No.

9 Q. So I believe just a minute ago you acknowledged that in
10 certain circumstances performance goals are consistent with
11 proper practice, right?

12 A. I did.

13 Q. And you believe that the determination about whether a
14 quota or productivity goal complies with generally accepted
15 practices depends on the task of the officer, right?16 MR. MOORE: I'm sorry. I didn't hear -- can you read
17 the question back.

18 THE COURT: One second. He means the reporter.

19 (Record read)

20 THE WITNESS: Sure. That would be a factor to
21 consider. I mean officers working in the station, he's not
22 going to have any performance goals. If he's working gang unit
23 you would expect certain kinds of activities versus someone who
24 is working traffic control. So, of course, that's true.

25 Q. And you believe there are a myriad of other examples where

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D4o9flo5 Reiter - cross

1 productivity goals would be appropriate, right?

2 MR. MOORE: Objection.

3 THE COURT: Sustained. Would you rephrase that.

4 Q. You've just listed two examples of an officer on a gang
5 squad or an officer doing traffic control and you believe that
6 there could be standard performance goals that would be
7 appropriate for those officers, correct?

8 A. Yes.

9 Q. And you believe that there are many other types of
10 assignments that officers could have where a quota or
11 productivity goal would be appropriate, right?

12 MR. MOORE: Same objection, Judge. She took out many.

13 THE COURT: Not just that.

14 Is a quota and a productivity goal, are they
15 identical?

16 THE WITNESS: It depends. It depends on how it's
17 projected by the person saying you've got to give me this many
18 numbers or you're not -- we put you out here for eight, ten
19 hours a day, we expect you to do certain tasks. And the only
20 way for me to do if you're doing those tasks is if you give me
21 some paper that demonstrates that you are, in fact, doing them.

22 So, really, the quota or productivity depends on the
23 perception of the person you're forcing it on and the
24 constraints that the supervisor would put on the officer to
25 make sure that, hey, I'm not telling you to do anything that's

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D4o9flo5 Reiter - cross

1 Are these consistent with the task? Are these consistent with
2 the law on top of that?

3 MS. PUBLICKER: Thank you.

4 Q. You don't know of any other city in the country that has
5 memo books, right?

6 A. No. I'm not aware of it.

7 Q. But you talked about generally accepted practices regarding
8 memo books earlier, right?

9 A. You'd have to put it in -- remind me what context.

10 Q. So when Mr. Moore was asking you about whether it was
11 appropriate -- what was an appropriate memo book activity and I
12 believe you stated that it was not generally accepted
13 practice -- yes, Mr. Moore?

14 MR. MOORE: I'm just waiting you for you to finish so
15 I can object.

16 MS. PUBLICKER: And you said that that was not in
17 accord with generally accepted practices. What were you
18 comparing that to?

19 MR. MOORE: Judge.

20 THE COURT: The question has gotten kind of long and
21 complicated. Could you try it again.

22 MS. PUBLICKER: I understand.

23 Q. So, again, so you don't know of any other cities that have
24 memo books?

25 THE COURT: That we have. He answered that.

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D4o9flo5 Reiter - cross

1 Q. And your report states that you reviewed the memo books of
2 officers involved in the stops of Floyd, Dennis, and Ourlicht;
3 is that right?

4 THE COURT: You looked at the memo book entries for
5 those?

6 THE WITNESS: I did. And the redacted one of
7 Salmeron.

8 Q. And you found those memo books to be deficient because the
9 notations establish reasonable suspicion?

10 A. Yes.

11 Q. Did you also review the 250s that the officers who made
12 those stops filled out?

13 A. When there was a 250, I did.

14 Q. So which ones were those?

15 A. Got to go back to my report.

16 Q. Yes, please.

17 A. One was in Floyd. In the Ourlicht. There was none in
18 Dennison. And there was none in the redacted complaint of
19 Salmeron. So there were two.

20 Q. And I believe you've criticized officers for issuing a
21 disorderly conduct summons to Ourlicht because the memo book
22 did not contain the prima facie evidence of that offense; is
23 that right?

24 MR. MOORE: Object to the form.

25 THE WITNESS: Actually I --

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(212) 805-0300

D4o9flo5

Reiter - cross

1 THE COURT: Wait one second. Let me rule on the
2 objection.

3 MR. MOORE: And I think it misstates his testimony.

4 THE COURT: I'll read it out loud. You criticized
5 officers for issuing a disorderly conduct summons to Ourlicht
6 because the memo book did not contain the prima facie evidence
7 of that offense.

8 Is that right?

9 I'll allow that question.

10 THE WITNESS: That was not the only reason. I just
11 questioned the legality of the disorderly conduct in two of the
12 cases here because whatever the outburst was, was directed
13 directly to the officer and the terminology. And we know back
14 from 1979, the Houston case, police officers -- peace can't be
15 disturbed. So if you're going to, in fact, charge someone with
16 disorderly conduct and the community has become alarmed, you've
17 got to have someone with -- who was the victim? The police
18 officer can't be the victim.

19 So you have to say if people were coming out of their
20 homes, what building did they come out of? Get a name from
21 someone.

22 So what I objected to was not just that it wasn't in
23 the memo book but that it was an improper arrest based on
24 generally accepted practice as well as the law.

25 Q. But you did object to the memo book not having the prima

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D4o9flo5 Reiter - cross

1 facie evidence of disorderly conduct, correct?

2 A. I did.

3 Q. Are you aware of a single prosecution being based on a memo
4 book entry alone?

5 MR. MOORE: Object to that, Judge. So far afield now.

6 THE COURT: Yes. That's very far afield. I have to
7 sustain an objection to that.

8 Q. You acknowledge in your report that the purpose of
9 supplementing a 250 form with a memo book entry is to assist
10 the officer in recalling details to support the seizure of the
11 citizen, correct?

12 A. Yes.

13 Q. But isn't it true that many officers can recall the details
14 of an encounter with a limited memo book entry?

15 A. I'm always amazed at recall or lack of recall of officers.

16 Q. So you would agree that even a detailed memo book entry is
17 no guarantee that an officer will remember an incident, right?

18 A. That's very true.

19 Q. And when you said that generally NYPD memo book entries for
20 stops did not comport with generally accepted practices, you
21 weren't comparing the memo book practice to any other city in
22 the country, right?

23 A. I was referring to the documentation of a police
24 interaction with a citizen as to what is generally accepted.
25 And when you get to other cities -- and whether -- even if you

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D4o9flo5

Reiter - cross

1 want to look at the consent decrees of Pittsburgh and of
2 Montgomery County, Maryland, they all require now actually a
3 report that delineates in great specificity what combination or
4 what issues the officer looked at in making a determination of
5 reasonable suspicion.

6 Q. So talking about other cities, when you say that your
7 opinions are based on generally accepted practices in the
8 policing field, what do you mean?

9 A. Well there is no one book to go to with law enforcement.
10 So what you really have to do is look at the body of knowledge.
11 And, of course, the foundation of that are the court rulings,
12 whether they're state courts and certainly the Supreme Court
13 gets into a lot of law enforcement. And then you look at the
14 practices of agencies that have been developed from critical
15 incident investigations where things occurred that shouldn't
16 have occurred. You look at the standards of care in framing.
17 You look at textbooks by noted persons in the field. You look
18 at periodicals that are written by actual practitioners.
19 That's that body of knowledge that, in my opinion, constitutes
20 this generally accepted police practice.

21 Q. And these generally practices are not found in any
22 treatise, right?

23 MR. MOORE: I think he just testified.

24 THE COURT: At least not in any one treatise.

25 MS. PUBLICKER: In any one treatise.

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D4o9flo5

Reiter - cross

1 THE WITNESS: That's true. Police experts wouldn't
2 have a job if that were true.

3 Q. You did not review the guidelines or policies of any other
4 law enforcement agency in reaching your conclusions in this
5 case, did you?

6 A. No, I did not.

7 Q. And according to you, other police agencies document stop,
8 question and frisk on their own internal forms, right?

9 A. Yes.

10 Q. But at the time of your deposition you could not recall the
11 specifics of any form except for the City of Pittsburgh, right?

12 A. That's true.

13 Q. And even in Pittsburgh the best you could recall was that
14 there was litigation that required more information to be
15 required on that form, right?

16 A. That's true.

17 Q. And you can't recall any other police department whose
18 stop, question and frisk forms you've seen over the years
19 except for Pittsburgh's, right?

20 A. No. I have seen a lot of them. But they've been embodied,
21 like I said, in other cases that I've been involved in or when
22 I do audits of agencies. I've been in a car when an officer,
23 in fact, is putting that information into his computer. I have
24 seen the forms that they use because most departments now use
25 an automated system. I have not seen many pen and pencil forms

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D4o9flo5 Reiter - cross

1 on stop, question and frisk.

2 Q. Well at the time of your deposition you testified that you
3 could not specifically recall which departments' forms you had
4 seen besides Pittsburgh, right?

5 MR. MOORE: Page and line number, please.

6 MS. PUBLICKER: 73, 22.

7 MR. MOORE: Judge, right before he talks what he just
8 said about Pittsburgh.

9 MS. PUBLICKER: My question was other than Pittsburgh.

10 MR. MOORE: That's not what the deposition question
11 that she wants to use goes to so.

12 MS. PUBLICKER:

13 "Q. And you said that you've seen some of these over the
14 years. Can you specifically recall which departments you have
15 seen?

16 "A. No."

17 Do you recall being asked that question and giving
18 that answer?

19 A. I haven't found it but if it's there, yes.

20 Q. Aside from the materials provided by plaintiffs' counsel
21 you did not review or consider any other data in forming your
22 opinion in this case, did you?

23 A. No. Other than what I know myself. But I didn't go to any
24 source document, correct.

25 Q. So you didn't go to your own library to review materials?

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D4o9flo5 Reiter - cross

1 A. I did not.

2 Q. You did not do any internet searches?

3 A. No.

4 Q. And your report mentions the IACP and CALEA standards,
5 right?

6 A. Correct.

7 Q. But you did not actually rely on those standards in
8 drafting your opinion in this case?

9 A. Not specifically. That's correct.

10 Q. And you didn't review any other law enforcement agency
11 policies or guidelines to reach your conclusions, right?

12 A. True.

13 Q. But you state that your opinion is correct to a reasonable
14 degree of certainty?

15 A. In my opinion, yes.

16 Q. And that's based solely on your knowledge, skill, and
17 experience?

18 A. Correct.

19 MR. MOORE: Object. He also testified to reviewing
20 several documents at his deposition.

21 Q. You believe that all police agencies conduct stop,
22 questions and frisks, correct?

23 A. Yes.

24 Q. To your knowledge what percentage of these police agencies
25 document those stops, questions and frisks?

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D4o9flo5 Reiter - cross

1 MR. MOORE: What's the incentive?

2 MS. PUBLICKER: Percentage.

3 THE WITNESS: I have no idea.

4 Q. You aren't aware of how the LAPD currently documents stop
5 encounters, are you?

6 A. No.

7 Q. You don't know if Philadelphia documents them?

8 A. I don't.

9 Q. But it's your opinion that the UF 250 form of the NYPD does
10 not meet generally accepted standards, right?

11 A. Yes.

12 Q. And in your opinion the 250 form can and should be used to
13 evaluate field officer performance to ensure that officers are
14 doing something out in the field, right?

15 A. It's one tool that could be used, yes.

16 Q. And to identify officers who may be stopping people more
17 frequently than others?

18 A. Yes.

19 Q. And that the principal purpose of a 250 form is
20 investigatory for the police department, right?

21 A. That's what it's supposed to be, yes.

22 Q. And isn't it true that all of these purposes are adequately
23 addressed by the current UF 250 form?

24 A. Those purposes. But whether it's done in a legal manner, I
25 don't believe it is. And that's what I've already testified

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Reiter - cross

1 several times to.

2 Q. And in your opinion one of the problems with this form is
3 that in administrative investigations an investigator would
4 have to go back and speak to the officer who conducted the stop
5 to determine the exact facts of that stop, right?

6 A. Yes.

7 Q. But you would agree with me, would you not, that an
8 investigator looking into the facts of a stop for an
9 administrative investigation would have to speak to the officer
10 regardless, right?

11 A. Should.

12 Q. And you believe that the standards laid out in the
13 Department of Justice consent decree since 1977 set out
14 generally accepted practices for the field of law enforcement?

15 A. I do. I think they're considered best practices.

16 Q. And the DOJ entered into a consent decree with the LAPD in
17 2001, right?

18 A. They did.

19 Q. And in that consent decree the DOJ required the LAPD to
20 complete a written or electronic report every time an officer
21 conducted a citizen stop?

22 A. I don't recall that specific provision. But if you say so,
23 I'll accept that.

24 Q. And that consent decree described what must be on the form?

25 A. I don't recall specifically what it required.

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Reiter - cross

1 Q. So you don't recall whether or not the DOJ required the
2 LAPD to include check boxes for officers to describe the reason
3 for the stop?

4 A. I don't.

5 Q. Would you agree that a stop can be based on reasonable
6 suspicion regardless of whether that stop was ever documented?

7 MR. MOORE: Judge, I think that's -- we're also now
8 getting kind of far afield.

9 THE COURT: I think that probably is outside the scope
10 of his report.

11 Q. It's your opinion that other agencies record stop and
12 frisks in more than one document, right?

13 MR. MOORE: Judge, we've gone over this two or three
14 times.

15 MS. PUBLICKER: No, we have not.

16 THE COURT: I'll allow it.

17 THE WITNESS: Some may, yes.

18 Q. And the first document would be a field interview form
19 similar to the 250?

20 A. Yes.

21 Q. And the second place you believe other cities document stop
22 and frisks is in what you call CAD printouts, correct?

23 A. Correct.

24 Q. And that's Computer Assisted Dispatch?

25 A. Yes.

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D4o9flo5 Reiter - cross

1 Q. And those are similar to the NYPD's Sprint reports, right?

2 A. I'm not familiar with your Sprint report.

3 Q. Well the CAD printouts record radio transmissions made by
4 police officers during a stop and frisk, right?

5 A. The CAD report gives a basic summary of what the officer
6 says. The officer then, using that CAD number, supplements it
7 with more descriptive data after the stop is over or after the
8 police task is over. So there's much more than just a line
9 saying what time he got a call or what time he intervened with
10 someone and what might have occurred. It's a much more
11 descriptive format.

12 Q. Did you review a single Sprint report in this case?

13 A. Don't recall doing that, no.

14 Q. You believe that proper supervisory review of citizen stops
15 requires a supervisor to be present for the stop or to conduct
16 a substantive review of the 250 form and memo book later,
17 right?

18 A. Yes.

19 Q. But I believe you told the court earlier that you don't
20 expect every supervisor to do an in-depth review of every
21 single stop; is that correct?

22 A. True.

23 Q. So according to your expert report sufficient supervision
24 could simply be the presence of a supervisor at the scene of a
25 stop-question-frisk encounter even if that supervisor does not

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D4o9flo5

Reiter - cross

1 conduct a substantive review of the paperwork, right?

2 A. It could.

3 Q. But your report also states that the presence of
4 supervisors at the scene of a stop creates a lack of
5 objectivity by the supervisor; is that right?

6 A. Particularly -- the reference there was particularly the
7 anticrime unit where there's a one-to-five ratio and the
8 supervisor really becomes simply one of the group of
9 enforcement officers.

10 So it depends on the objectivity and the actual role
11 of the supervisor. If he or she is actually engaged in the
12 actual enforcement task, then he's not that objective reviewer.
13 If he comes to the scene and watches what they do, then that
14 could be adequate, yes.

15 Q. But isn't the presence of a supervisor at the scene of a
16 stop in the best position to evaluate whether reasonable
17 suspicion existed?

18 A. That's a possibility, yes. Depends what he sees and
19 whether he agrees and what he does with that information. But
20 he is in a better position than simply looking at a piece of
21 paper.

22 Q. You personally only reviewed I believe you said six UF 250
23 forms in this case?

24 A. I've looked specifically at six that I can recall, yes.

25 Q. And I believe you just mentioned the anticrime unit a

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Reiter - cross

1 minute ago. You believe that the supervisor-to-officer ratio
2 in the anticrime unit is appropriate, right?

3 MR. MOORE: Judge, I think it's outside the scope.

4 THE COURT: It is outside whether he thinks it's an
5 appropriate ratio. I sustain an objection to that.

6 MS. PUBLICKER: Your Honor, he's talking about the
7 supervision and the appropriate supervision here. I believe
8 the ratio --

9 THE COURT: That may be the definition. He said it's
10 an appropriate ratio. That may be for law enforcement purposes
11 or carrying out operations. I don't know for what purpose the
12 ratio is appropriate.

13 For supervisory purposes? Is that what you're saying?

14 MS. PUBLICKER: For supervisory purposes.

15 THE COURT: Do you think a ratio four to one or five
16 to one is appropriate for supervisory purposes?

17 THE WITNESS: I'll tell you, every department in the
18 country would love to have that kind of ratio. But they don't
19 have that.

20 The Oakland consent decree pegged it at one-to-seven.
21 Most departments though probably run one-to-ten-to-twelve.

22 Q. You can't put a number on how many stops a supervisor
23 should personally observe, right?

24 A. Correct.

25 Q. And it's your opinion that generally accepted practices

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D4o9flo5 Reiter - cross

1 dictate that when practical an immediate supervisor should
2 review reports done by officers under their command, right?

3 A. Yes.

4 Q. But another supervisor could review an officer's reports
5 when it's not practical for the immediate supervisor to review,
6 right?

7 A. True.

8 Q. And would you agree with me that how closely a supervisor
9 supervises an officer under their command depends on many
10 factors?

11 A. True.

12 Q. Including the unit that officer is assigned to?

13 A. That could be.

14 MR. MOORE: Judge, I think we're just going over this,
15 over and over now, so.

16 THE COURT: It's long.

17 Do you have much more, Ms. Publicker?

18 MS. PUBLICKER: I do, your Honor.

19 THE COURT: How much longer?

20 MS. PUBLICKER: At least half an hour.

21 THE COURT: Well, would any of it be repetitive of
22 things you've already asked because I don't think we're
23 covering new ground any longer. We have multiple questions
24 that go over the same ground.

25 MS. PUBLICKER: I understand, your Honor. I will try

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Reiter - cross

1 to move it along. But it was a 50-page report with a lot of
2 opinions.

3 THE COURT: We're talking about the testimony, not the
4 report.

5 MS. PUBLICKER: I understand, your Honor.

6 MR. MOORE: Judge, let me just say two things -- three
7 things. One is Mr. Reiter is obviously here from out-of-town.
8 He's been here since the weekend.

9 THE COURT: I realize that.

10 MR. MOORE: Two, they didn't -- they opposed --

11 THE COURT: Admission of the report.

12 MR. MOORE: Three, it's not 50 pages. It's 37 pages.

13 Four, they're asking questions outside the scope of
14 what he was asked about and it's --

15 THE COURT: Much of what you say is true. I'm asking
16 her to please collapse this.

17 MS. PUBLICKER: I understand, your Honor.

18 Q. Are you aware that QAD audits did not begin until 2003?

19 A. That's my understanding, yes.

20 Q. Even though you've testified that you reviewed audits from
21 2001 today?

22 A. I believe that was --

23 THE COURT: If you said that, were you mistaken? It
24 doesn't begin until '03?

25 THE WITNESS: That would be true. It would be a
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D4o9flo5 Reiter - cross

1 mistake.

2 Q. Now your report -- and today you testified about Chief Diaz
3 where I believe you said that he had an issue where there was
4 an increase in the number of 250s and that that was
5 attributable to precinct staff, correct?

6 MR. MOORE: I'm not sure what that question was,
7 Judge, so.

8 Q. You testified earlier about Chief Diaz, correct?

9 A. I did.

10 Q. Do you remember giving testimony about the number of 250s
11 in a command under Chief Diaz increasing?

12 A. Yes.

13 Q. And do you recall that you stated that that was
14 attributable to precinct staff not to the officers themselves?

15 A. What he said was if there was an arrest made and there was
16 no 250 he had someone in the precinct make the 250.

17 THE COURT: Her question was the increasing numbers of
18 250s in that precinct, did that come from staff increases?

19 THE WITNESS: I don't know if that was an increase or
20 not, your Honor.

21 Q. Isn't it true that Chief Diaz actually stated that a
22 commanding officer in his borough created an internal process
23 to ensure that officers were properly filling out 250s?

24 MR. MOORE: Objection. I don't know how he would know
25 that.

D4o9flo5 Reiter - cross

1 MS. PUBLICKER: It was in the deposition that he cited
2 to.

3 THE COURT: Do you remember reviewing that statement
4 as you sit here today? Just yes or no.

5 THE WITNESS: No.

6 THE COURT: Okay.

7 Q. And that the increase in stops wasn't attributable to
8 precinct staff?

9 THE COURT: He doesn't recall this portion of the
10 deposition.

11 MS. PUBLICKER: I can --

12 THE COURT: Look, if it's in evidence I'm going to get
13 it from Diaz. Is that portion in evidence?

14 MR. CHARNEY: We actually designated that.

15 THE COURT: It's a designated part of the deposition
16 so it doesn't matter.

17 Q. So it's not your understanding that a commanding officer
18 under Chief Diaz conducted his own quality control to make sure
19 that the proper work was filled out?

20 THE COURT: I'm going to sustain the objection to this
21 question because he's gone over this and he doesn't recall this
22 part of the deposition.

23 Q. You talked about the Ourlicht investigation, correct?

24 A. I did.

25 Q. But your expert report indicates that you never read David

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D4o9flo5

Reiter - cross

1 Q. And are you aware that Mrs. Ourlicht and David Ourlicht
2 never made allegations against either one of them?

3 A. I never said they did. I said they were back-up officers
4 to Officer Moran. So they were percipient witnesses to what
5 occurred.

6 Q. You also testified about the Deon Dennis incident, right?

7 A. I did.

8 Q. You believe you stated that you did not know who
9 investigated that incident?

10 A. It was left blank. At least the document I looked at had
11 no investigator's name on.

12 Q. Are you aware that Flavio Rodriguez investigated that
13 complaint?

14 A. No.

15 Q. Did you review Flavio Rodriguez's deposition testimony?

16 A. I don't know.

17 Q. And are you aware that there's been testimony from the two
18 officers who observed Mr. Dennis drinking a cup with brown
19 liquid that there was a bottle that they said stated Hennessy
20 on it next to Mr. Dennis?

21 A. I didn't review their trial transcript.

22 Q. And are you aware that Ms. Edwards, Mr. Dennis' girlfriend,
23 actually made the complaint for Mr. Dennis?

24 A. Yes.

25 Q. And that when contacted by Sergeant Rodriguez Mr. Dennis

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D4o9flo5

Reiter - cross

1 A. Absolutely.

2 Q. Even though most police agencies do not do so?

3 A. I disagree with you.

4 Q. You believe most police agencies do it?

5 A. I do. Most that are following generally accepted police
6 practices and the best practices of Department of Justice and
7 the model policy of the IACP, yes, they do.

8 Now there are some departments that aren't run very
9 well. They may not.

10 Q. So what percentage of police agencies do you believe
11 investigate withdrawn allegations?

12 A. I have no way of knowing that.

13 MR. MOORE: Do we need to go through the percentage?

14 THE COURT: He said he has no idea of the percentage.

15 Q. It's your opinion that the fact that a complainant refuses
16 to participate in an investigation can be used as a factor in
17 the final adjudication of that investigation, correct?

18 A. Yes.

19 Q. And you rely on the 2008 status report of the CCRB for the
20 assertion that stop, question and frisk allegations make up an
21 ever increasing majority of allegations to the CCRB, right?

22 A. That's what that report says.

23 MR. MOORE: Judge, he actually didn't testify to that.

24 THE COURT: Please, please. That was a fair question.
25 If you have an objection, say objection. Do not argue. Do not

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D4o9flo5 Reiter - cross

1 THE WITNESS: No.

2 Q. And you also -- your report cites to the 2008 CCRB status
3 report for the assertion that the NYPD in 2007 declined to
4 pursue punishment in 102 out of 296 cases forwarded from the
5 CCRB?

6 A. That's what the report said, yes.

7 Q. And I believe you stated here today that the CCRB has no
8 discipline authority? Is that accurate?

9 A. That's my understanding. Correct.

10 Q. Are you aware that in 2011 the administrative prosecution
11 unit of the CCRB assumed the role of lead attorney in certain
12 cases brought by the CCRB?

13 MR. MOORE: Object, Judge. First of all, it's after
14 he gave the report.

15 THE COURT: All right. Sustained.

16 Q. Your report states that Joan Thompson, director of the
17 CCRB, testified that while stop and frisk has come up in an
18 increased number of cases she's never made a recommendation
19 regarding that issue to the NYPD, right?

20 A. That was from her deposition. Correct.

21 Q. Are you aware that after her deposition but before you
22 wrote your report she actually did flag issues regarding stop,
23 question and frisk to the NYPD?

24 MR. MOORE: Object, Judge.

25 THE COURT: I'll allow it.

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Reiter - cross

1 Either you're aware of that or not.

2 THE WITNESS: No.

3 Q. Did you review her trial testimony in this case?

4 A. I did.

5 Q. So are you aware that the CCRB identified a trend in
6 housing stops relating to trespass arrests in 2010?

7 A. I'm sorry. I wouldn't focus on that. It just was not an
8 issue I was looking at.

9 But I'm not aware of that, no.

10 Q. So would it change your opinion in this case to learn that
11 the NYPD accepted a recommendation from the CCRB about
12 improving stop -- stop-question-frisk training and
13 documentation?

14 MR. MOORE: Judge, first of all, I'm going to object
15 to that. That assumes facts that I don't think are true or are
16 in evidence, so.

17 THE COURT: I sustain the objection to that question.
18 Ask you to move on.

19 Q. One of your proposed remedies is quality control callbacks
20 for individuals who have been stopped, correct?

21 A. Yes.

22 MR. MOORE: Judge, he's not --

23 THE COURT: I'll allow that.

24 Is that something you wrote in your reports, one of
25 opinions?

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D4o9flo5

Reiter - cross

1 THE WITNESS: Yes, your Honor.

2 MS. PUBLICKER: And I believe he testified to it --

3 THE COURT: Go ahead.

4 MR. MOORE: Just the term remedies. He's not
5 testifying --

6 THE COURT: Please, Mr. Moore.

7 Go ahead, Ms. Publicker.

8 Q. You aren't aware of a single police agency that conducts
9 quality control callbacks for stop, question and frisk, are
10 you?

11 A. Not specifically for stop, question and frisk. Correct.

12 THE COURT: But for other kinds of quality control you
13 are aware of calling in the complainant?

14 THE WITNESS: Oh, absolutely. On sexual misconduct we
15 do that regularly for officers whom you believe might be a
16 sexual predator or someone who is routinely stopping women and
17 trying to work up dates.

18 We do that for people who have been -- indicate
19 they've been arrested and the evidence has been dropped on
20 them.

21 So a myriad of things. But specifically to her
22 question, no I'm not familiar with that.

23 Q. When you were a police officer you stopped hundreds of
24 individuals, right?

25 A. Yes.

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D4o9flo5 Reiter - cross

1 Q. You did it all the time?

2 A. Yes.

3 Q. And you made the decision about whether or not to stop
4 someone based in part of your knowledge of the area, right?

5 THE COURT: You mean the geographic?

6 MS. PUBLICKER: The geographic area, yes.

7 THE WITNESS: That's true.

8 Q. And your knowledge of the kinds of crimes that were
9 occurring in the area?

10 A. Yes.

11 Q. You were also a supervisor, weren't you?

12 A. Yes.

13 Q. And you supervised officers who conducted stop, question
14 and frisk?

15 A. I did.

16 Q. But you only sometimes were able to personally observe the
17 stops your officers made, right?

18 A. Yes.

19 Q. Turning to administrative investigations. I believe you
20 stated that you've done audits of other agencies' internal
21 investigations, right?

22 A. I have.

23 Q. And when you've done those audits you reviewed a random
24 sample of investigations?

25 A. Normally, yes.

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Reiter - cross

- 1 Q. For example, I believe you testified that in your work in
2 Steubenville there are 800 administrative investigation files
3 that you -- that Steubenville had?
4 A. It was Pittsburgh, they had eight hundred. I asked for
5 every eighth one. So a little over a hundred, yes.
6 Q. So in order to form your opinion of the office of municipal
7 investigations there, you reviewed a hundred administrative
8 files?
9 A. Yes.
10 Q. But here you only looked at one OCD case?
11 A. One -- I'm sorry?
12 MS. PATEL: Two.
13 Q. I'm sorry. Two?
14 Two OCD cases?
15 A. That's true.
16 Q. And you looked at how many CCRB cases?
17 A. One.
18 Q. And how many IAB investigations?
19 A. None.
20 Q. And were any of those investigations randomly chosen?
21 MR. MOORE: Well if there's none they couldn't be
22 randomly chosen.
23 Q. The IAB, CCRB or OCD investigation files you reviewed, were
24 any randomly chosen?
25 A. No. They were very specifically chosen because they

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D4o9flo5 Reiter - cross

1 involved officers directly involved in this litigation.

2 Q. And there are thousands of OCD complaints reported every
3 year?

4 A. There are.

5 MR. MOORE: Object, Judge.

6 Q. And there are thousands of CCRB complaints?

7 A. Yes.

8 Q. Are you aware that IAB tape records all interviews with
9 complainants and police officers?

10 A. No.

11 Q. Are you aware that the CCRB tape records all interviews
12 with complainants and police officers?

13 A. I'm not.

14 Q. You testified on direct about your involvement with the
15 Public Agency Training Council, right?

16 A. I did.

17 Q. And you publish most of your articles through the PATC?

18 A. Yes.

19 Q. And you said that these are more or less peer reviewed?

20 A. I didn't say -- no, there is no review. There are other
21 persons who will look at my articles before we actually send
22 them out. But it's not under the academic idea of peer review.

23 Q. You sit on the PATC advisory board, right?

24 A. I do.

25 Q. So you review articles written by other board members

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D4o9flo5 Reiter - cross

1 before they're published?

2 A. Sometimes, if they ask for my input.

3 Q. Articles published by PATC explicitly state that what
4 constitutes reasonable suspicion is not always clear. Is that
5 right?

6 A. I'd have to see the actual article and who might have
7 written that.

8 Q. I can hand you the article. It's by Jack Ryan and the
9 title is The Law of Citizen Contacts in Stop and Frisk?

10 A. Okay.

11 THE COURT: What is the point of handing him the
12 article?

13 MS. PUBLICKER: He sits on the advisory board of this
14 organization PATC.

15 THE COURT: Right. But you're not familiar with the
16 article?

17 THE WITNESS: I'm not, your Honor.

18 THE COURT: Then there is no point in doing it here.

19 MS. PUBLICKER: One moment, your Honor. I know that
20 not everyone who says they're almost finished is almost
21 finished but I'm trying.

22 THE COURT: Okay.

23 Q. So in this case you did not institute the same methodology
24 that you've used in other cities to evaluate the NYPD, right?

25 MR. MOORE: Object to the form.

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D4o9flo5

Reiter - cross

1 THE COURT: In what sense? I'm not sure I understand
2 the question. What methodologies are missing here?

3 MS. PUBLICKER: I'm sorry. I jumped. He testified in
4 Pittsburgh to review the administrative investigations there,
5 you looked at a randomly selected set of one hundred
6 administrative cases.

7 THE COURT: Okay. So you didn't follow that
8 methodology here? Is that true?

9 THE WITNESS: I didn't follow the methodology that I
10 use when I'm asked to audit the operation of the administrative
11 investigation process. That's correct.

12 THE COURT: So you're saying it's a different task
13 here?

14 THE WITNESS: Yes, your Honor.
15 Q. And your opinion is based solely on your experience and the
16 materials given to you by plaintiffs' counsel?

17 MR. MOORE: Object, Judge.

18 THE COURT: Is that right? Your experience plus the
19 materials you reviewed?

20 THE WITNESS: Right. My specialized experience,
21 knowledge and skills plus the materials provided to me that
22 were discovered in this case. That's correct.

23 MR. MOORE: And testimony in court.

24 THE COURT: No, you can't -- please, Mr. Moore, that's
25 not an objection. For you to add to the answer is not an

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D4o9flo5 Reiter - cross

1 objection.

2 Ms. Publicker.

3 Q. So you did not rely on police practices from other cities
4 in forming your opinion?

5 MR. MOORE: Objection.

6 THE COURT: Actually I think you testified to the
7 contrary.

8 Is that part of your experience to know what other
9 police departments do?

10 THE WITNESS: Yes, Your Honor. I think I identified a
11 whole bunch of them.

12 THE COURT: I think you did.

13 MS. PUBLICKER: Which --

14 THE COURT: I'm not going over it. It's in the
15 record.

16 MS. PUBLICKER: Your Honor, at this time the
17 defendants would move to exclude Mr. Reiter's testimony as not
18 being based on a reliable methodology. Although he is not a
19 scientific expert, I still do not believe that he has met the
20 standards in Kumho or Daubert.

21 THE COURT: I'll reserve decision on that.

22 Any redirect?

23 REDIRECT EXAMINATION

24 BY MR. MOORE:

25 Q. In addition to reviewing a lot of -- some actual

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D4o9flo5 Reiter - redirect

1 investigative files, you also reviewed numerous training
2 bulletins and operations orders from NYPD, correct, with
3 respect to stop question and frisk?

4 A. Yes.

5 Q. You also reviewed QAD audits over a number of years,
6 correct?

7 A. I did.

8 Q. And you read the testimony of several officials in the
9 NYPD, correct?

10 A. I did.

11 Q. From the chief on down to a patrol officer, correct?

12 A. True.

13 Q. And you also were given and reviewed testimony in this
14 trial from various witnesses who have testified, correct?

15 A. Yes.

16 Q. So you're not just relying on three or four complaints by
17 individuals in giving your opinion in this case, correct?

18 A. Correct.

19 Q. And you mentioned -- so the data, although it was provided
20 by plaintiffs' counsel, it was mostly data from the NYPD,
21 correct?

22 A. Yes.

23 Q. You talked about performance goals and/or quotas as not
24 necessarily being inconsistent with generally accepted police
25 principles. When, in your judgment, would such goals or quotas

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D4o9flo5 Reiter - redirect

1 be inconsistent with generally accepted police practices?

2 A. When officers are told that they have to produce a certain
3 number and we don't care how you get that number or what kind
4 of legal constraints you might feel you're under. We just want
5 the numbers. We don't care about the quality.

6 Q. And some of the testimony you've reviewed here from some of
7 the officers was -- suggested that that, in fact, was taking
8 place, correct?

9 A. They believed it was.

10 Q. You don't know but that's what they were testifying to,
11 correct?

12 A. Yes.

13 Q. And that's the type of situation where use of performance
14 goals and quotas could lead to officers just going out to get
15 numbers rather than actually doing lawful legitimate police
16 enforcement work, correct?

17 A. It could.

18 Q. You talked about use of force reporting. We talked about
19 on the UF 250 there's a section about -- with regard to
20 capturing use of force, correct?

21 A. Yes.

22 Q. And you mentioned that New York at some point in your work
23 with the U.S. Attorney in Brooklyn that you were looking at use
24 of force by New York City police officers, correct?

25 A. That was the focus, yes.

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D4o9flo5

Reiter - redirect

1 Q. And one of the things that became clear to you in the
2 course of that was that New York, unlike most cities, do not
3 document use of force other than the use of deadly force,
4 right?

5 A. You know you're getting into an area I really can't testify
6 to because I was working as a consultant with the U.S.
7 Attorney.

8 Q. To your knowledge does the NYPD -- you've talked about how
9 the NYPD with respect to stop and frisk doesn't supervise up to
10 generally accepted police principles. To your knowledge, does
11 the NYPD document use of force in a way that comports with
12 generally accepted police practices?

13 MS. PUBLICKER: Objection, your Honor. We are very
14 far afield at this point.

15 MR. MOORE: She asked about use of force, Judge.

16 THE COURT: She did.

17 MS. PUBLICKER: In terms of the stop, question and
18 frisk.

19 THE COURT: One moment. So your question is.

20 (Pause)

21 Right. You're taking it out of the context of stop
22 and frisk. So objection has to be sustained. You're talking
23 about all use of force. It could be a shooting. How is a
24 documented? You're way beyond stop and frisk.

25 Q. Well one of the things you've opined in this case you

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D4o9flo5 Reiter - redirect

1 believe from an supervisory standpoint, from an administrative
2 oversight standpoint the police department has failed to
3 adequately document stop-and-frisk activity in the City of
4 New York, correct?

5 A. Yes.

6 Q. Isn't that consistent with your view that the police
7 department also fails to document adequately use of force other
8 than deadly force?

9 MS. PUBLICKER: Objection, your Honor.

10 THE COURT: You have to ask a question that is limited
11 to stop and frisk use of force. The use of force during a stop
12 and frisk.

13 The real question is: Is that adequately documented
14 in your opinion?

15 THE WITNESS: As I said before, I qualified it. If
16 that's the only form that's used, no. But I don't know if
17 there are other forms being used by the police department.

18 Q. As you sit here today you don't know -- in the context of a
19 stop and frisk when force is used, where other than little
20 notation on the UF 250 there are other forms that are prepared
21 for that use of force by the NYPD as a matter of practice,
22 correct?

23 A. I don't know that.

24 Q. The allegation -- Ms. Publicker went over some of your
25 discussion of the allegation -- of the recommendations in the

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D4o9flo5 Reiter - redirect

1 RAND report. Do you recall that?

2 A. I do.

3 Q. One of them had to do with whether there was adequate --
4 whether they were passing out these cards. Do you remember
5 that?

6 A. Yes.

7 Q. That was a recommendation that they should provide more
8 information, correct? That the NYPD should, correct?

9 A. Yes.

10 Q. Now, with regard to that have you become aware that, in
11 fact, a pilot program was conducted which involved the use of
12 cards that were passed out?

13 A. Yes.

14 Q. And is it your -- do you have an opinion as to whether the
15 cards that they passed out were adequate for the job?

16 A. I never saw one of the cards. So I have no opinion.

17 Q. Do you recall whether those cards ever -- whether they had
18 the name or the number of any agency that the person could
19 complain to?

20 THE COURT: He said he never saw the cards.

21 Q. Having never seen the card, but has it been reported to you
22 that those cards had that kind of information on there?

23 A. You know, I don't recall, Mr. Moore. I'm sorry.

24 Q. All right. I'll move on from that then.

25 And you've talked -- Ms. Publicker asked you a great

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D4o9flo5

Reiter - redirect

1 deal of questions about the training materials in the NYPD,
2 correct?

3 A. Yes.

4 Q. And you've testified that to the extent that you've
5 reviewed them that those training materials seem adequate,
6 correct?

7 A. I did.

8 Q. And is there, in your experience, and based upon your
9 general experience as a law enforcement executive, have you
10 observed situations where there may be good training materials
11 but on the street the practice is different?

12 A. I have.

13 Q. And is that one of the -- is that your concern with respect
14 to stop and frisk here in New York that although the
15 materials -- the training materials are adequate, that what's
16 actually going on, on the street is different than what the
17 training is?

18 A. That's why it's operational policy. I did.

19 Q. So that the -- what's in writing is not actually what's
20 being done in practice on the street, correct?

21 A. From my point of view, that's correct.

22 Q. Well -- and from the NYPD's point of view as well, correct?

23 A. That's true. From all the QAD studies of audits that
24 they've done, that's true.

25 Q. And the fact that the NYPD fails that audit for ten years

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D4o9flo5 Reiter - redirect

1 in a row with respect to the one area in the -- the one
2 document in the NYPD that captures -- supposed to capture the
3 details of the stop and frisk, what does that say to you as a
4 police person with regard --

5 THE COURT: Police practices expert. Yeah, I'm going
6 to allow this question. I know you're objecting for the
7 record.

8 Go ahead. Failure to document. What does that say to
9 you?

10 THE WITNESS: My bottomline is fix it. Do something.

11 THE COURT: Are we almost done, Mr. Moore?

12 MR. MOORE: Yes, Judge. I'm aware of the time too.

13 Q. With respect to your understanding of the way that the
14 civilian complaints that you reviewed are being tracked and
15 monitored, do you believe that that rises to the level of
16 generally accepted police practice with respect to the ones
17 that you looked at involving stop and frisk?

18 A. You know, I have very limited information about that
19 monitoring process with the police department.

20 Q. Well with respect --

21 A. So I really can't give you an opinion there.

22 Q. Well with respect to the office -- the operations of the
23 office of the chief of department and the investigative review
24 section of that office, do you think that the way in which they
25 handle racial profiling and/or --

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D4o9flo5 Reiter - redirect

1 THE COURT: I think he gave one opinion on that
2 already. By not having a category called racial profiling, did
3 you not identify that as a problem?

4 THE WITNESS: I did.

5 THE COURT: All right.

6 MS. PUBLICKER: This is beyond the scope of my cross,
7 your Honor.

8 THE COURT: Right. And it's repetitive. We have
9 that. I know what his criticism was.

10 There is no category that the computer can tell you
11 how many racial profiling complaints there may be, right?

12 THE WITNESS: I apparently it can't.

13 THE COURT: I understand. Because there is no such
14 category.

15 THE WITNESS: Yes. Yes, your Honor.

16 THE COURT: Anything else, Mr. Moore?

17 MR. MOORE: Just one second, Judge.

18 (Pause)

19 Q. And the use of callbacks. You testified to that in
20 response to some of the questions Ms. Publicker asked you,
21 right?

22 A. I did.

23 Q. When there is a particular practice that's being -- that's
24 come to the attention of the police department because there's
25 a great deal of public interest or whatever, is that the kind

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D4o9flo5 Reiter - redirect

1 of situation where callbacks might be used?

2 A. Absolutely.

3 Q. So that in your experience, like with respect to sexual
4 misconduct, that kind of practice being employed by a police
5 department would be in response to some problems that had been
6 noted in that area, correct?

7 A. True.

8 Q. And in any of the review of the materials with respect to
9 stop and frisk, the NYPD hasn't used that practice with respect
10 to stop and frisk here, correct?

11 A. I haven't seen any evidence of that in any of the
12 documentation I've reviewed.

13 MR. MOORE: One second, Judge.

14 Nothing further, Judge.

15 THE COURT: Ms. Publicker.

16 MS. PUBLICKER: Nothing further, Your Honor.

17 THE COURT: Thank you.

18 We are done for today. We'll pick up tomorrow, but I
19 need to see Mr. Moore and Ms. Grossman at the sidebar for a
20 moment.

21 (Sidebar discussion off the record)

22 (Witness excused).

23 (Adjourned to April 25, 2013 at 10:00 a.m.)

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25

	INDEX OF EXAMINATION	
1		
2	Examination of:	Page
3	MARY C. CRONIN	
4	Cross By Ms. Grossman4758
5	Redirect By Mr. Charney4793
6	Recross By Ms. Grossman4805
7	LOU REITER	
8	Direct By Mr. Moore4808
9	Cross By Ms. Publicker4894
10	Redirect By Mr. Moore4955
11	PLAINTIFF EXHIBITS	
12	Exhibit No.	Received
13	444773
14	804780
15	DEFENDANT EXHIBITS	
16	Exhibit No.	Received
17	F144759
18	G144760
19	H14 and I144766
20	C114769
21	G134786
22	L114788
23		
24		
25		

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