

D5g9fl01

1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 DAVID FLOYD, et al.,

4 Plaintiffs,

5 v.

08 CV 1034(SAS)

6 CITY OF NEW YORK, et al.,

7 Defendants.

8 -----x

New York, N.Y.
May 16, 2013
10:07 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
17 Attorneys for Plaintiffs
18 BY: KASEY MARTINI
18 GRETCHEN HOFF VARNER
19 ERIC HELLERMAN
19 BRUCE COREY

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

D5g9flol

1
2
2
3
3
4
4
5
5
6
6
7
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D5g9fl01

1 (In open court; trial resumed)

2 THE COURT: Good morning, everyone. Please be seated.

3 Samuel Walker, resumed.

4 THE COURT: Ms. Patel.

5 DIRECT EXAMINATION

6 BY MS. PATEL:

7 Q. Good morning, Professor Walker.

8 A. Good morning.

9 Q. I'm going to hand you your report, Plaintiffs' Exhibit 418B
10 and 418A which are the CV and the list of sources for your
11 reference.

12 When we broke yesterday we were discussing your
13 opinion recording supervisory review -- reforms in the
14 supervisory review system within the NYPD.

15 Do you remember that?

16 A. Yes.

17 Q. All right. So, what should -- what should supervisors do
18 if they determine there is not reasonable suspicion for a stop?

19 A. Well, they should speak to the officer and attempt to train
20 that officer, coach that officer, instruct that officer about
21 the proper legal basis for reasonable suspicion.

22 That should -- that information or at least the
23 sergeant's presentment should be included in evaluations of the
24 officer. And the officer should be advised that further
25 conduct of this sort could have other adverse consequences.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9fl01 Walker - direct

1 Q. And would -- is it your opinion that that should be
2 documented anywhere?

3 A. Yes.

4 Q. Where would that be documented?

5 A. Well it would be in monthly evaluations of the officer
6 annual evaluations.

7 Q. Anywhere else?

8 A. I'm not sure.

9 Q. Okay.

10 And you've mentioned this, what you call critical
11 review of the documentation related to stops and frisks. Would
12 you -- is your opinion that that kind of --

13 THE COURT: Ask him his opinion, please.

14 MS. PATEL: Sorry?

15 THE COURT: Ask him his opinion.

16 MS. PATEL: He testified to that yesterday.

17 Q. Is your opinion that there should be critical review?

18 MR. KUNZ: Objection, your Honor.

19 THE COURT: I don't know where she's going on this
20 rephrasing. Let's hear it.

21 Q. Is it your opinion -- did you -- you testified yesterday to
22 a critical review of incident forms related to stop and frisk,
23 correct?

24 A. Yes.

25 Q. And is it your -- what's your opinion on how the -- the

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9fl01 Walker - direct

1 frequency of that type of critical review?

2 A. Well, it's unreasonable to assume that a sergeant is going
3 to engage in a critical review each and every stop and frisk,
4 there are so many incidents. But it should certainly occur
5 with every stop and frisk incident report where the sergeant is
6 not satisfied that the proper documentation is there.

7 Q. How would including a narrative on the UF 250 form improve
8 supervisory review?

9 A. It would provide the sergeant with sufficient information
10 and details about the incident to determine whether or not
11 reasonable suspicion existed.

12 Q. Do you have an opinion about the sufficiency of the check
13 boxes that are found on the UF 250 form?

14 A. Yes.

15 Q. What is that?

16 A. That they are insufficient.

17 Q. And why is that?

18 A. They simply don't provide the necessary detail to determine
19 whether or not reasonable suspicion existed for the stop.

20 THE COURT: So I know I asked you this yesterday in
21 terms of space, I asked you how much space should be left on
22 the form to write the narrative. Let me now ask it in terms of
23 time, not space. Obviously the officer has a lot to do. He's
24 busy. He's on the street. How long do you think he should
25 spend writing this narrative?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flol Walker - direct

1 THE WITNESS: In terms of space I think maybe three
2 lines --

3 THE COURT: Yeah, you said -- right.

4 THE WITNESS: -- would be sufficient.

5 THE COURT: Right.

6 THE WITNESS: Well, you have to spend the amount of
7 time necessary to provide the proper detail.

8 THE COURT: Right. How long do you imagine that will
9 take to write out those three lines?

10 THE WITNESS: It's not going to take more than a few
11 minutes.

12 THE COURT: Okay.

13 THE WITNESS: I should supplement that. I do think it
14 should not be overly -- the requirement should not be overly
15 long and burdensome on the officer such that it results in
16 inefficiencies in policing.

17 THE COURT: Thank you.

18 Q. Are you aware of experiences in other police departments
19 subject to recent consent decrees or judicial orders where
20 there's a requirement for description of the underlying facts
21 of the stop encounter?

22 MR. KUNZ: I'm going to object, your Honor. I don't
23 think this is in his report.

24 THE COURT: This, of course, wouldn't be an opinion.
25 This would be a factual basis for an opinion. And he has

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flol Walker - direct

1 established that he's worked with many police departments and
2 on many consent decrees. I will allow this.

3 THE WITNESS: Yes.

4 Q. And what are some those cities or those locations?

5 A. Well Los Angeles, New Orleans in particular.

6 Q. Okay.

7 THE COURT: I'm less interested in the location than
8 the requirement.

9 What happened at those places?

10 THE WITNESS: In those instances, the specific
11 requirement is that supervisors should look for "canned"
12 language -- that would be in quotes -- or "pat" answers such
13 that the officers are simply saying the same thing over and
14 over again to try to document their stop.

15 THE COURT: Is that -- what you've just testified to,
16 is that in the consent decrees?

17 THE WITNESS: The language I quoted is in the consent
18 decrees. So it implies that there is -- the officers are
19 required to provide sufficient narratives where they would use
20 potentially canned language or a pat answer.

21 THE COURT: Is that true in both Los Angeles and New
22 Orleans, the two places you mentioned?

23 THE WITNESS: Yes.

24 THE COURT: Both have that kind of language?

25 THE WITNESS: Yes.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flol

Walker - direct

1 MS. PATEL: First, I would like to clarify.
2 Q. When you said the L.A. consent decree has that language,
3 that's not in a provision for stop encounters?
4 A. That's right. It's for searches.
5 THE COURT: I'm sorry?
6 THE WITNESS: Searches.
7 It's also true -- did I mention New Orleans?
8 THE COURT: You did.
9 MS. PATEL: I would move to admit the New Orleans
10 consent decree.
11 THE COURT: That signed by a court?
12 MS. PATEL: Yes, your Honor.
13 THE COURT: What court?
14 MS. PATEL: The Eastern District of Louisiana.
15 THE COURT: Federal court?
16 MS. PATEL: Yes.
17 THE COURT: Publicly filed document?
18 MS. PATEL: Yes, your Honor.
19 THE COURT: Court order. I'll take that.
20 MR. KUNZ: For the record, we do have an objection to
21 it.
22 THE COURT: Why do you object to it?
23 MR. KUNZ: Well because as your Honor has reminded us
24 many times the facts of this case are very unique.
25 THE COURT: We're not into the liability portion of
SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D5g9fl01 Walker - direct

1 this trial. We're into the remedies portion. And it's, of
2 course, of interest to see what other courts have done.

3 It's a court document. What's the exhibit number?

4 MS. PATEL: I'm sorry. It's Plaintiffs' Exhibit 577.

5 THE COURT: 577 is received.

6 (Plaintiffs' Exhibit 577 received in evidence)

7 THE COURT: U.S. v. City of New Orleans Consent Decree
8 Regarding the New Orleans Police Department.

9 Is there a date on this?

10 MS. PATEL: Dated.

11 THE COURT: I see January 11, 2013.

12 MR. KUNZ: What page are you on?

13 MS. PATEL: This is page 38, paragraph 123.

14 Q. Professor Walker can you read paragraph 123 to the court?

15 THE COURT: He doesn't have to do it. It's in
16 evidence now.

17 "NOPD New Orleans Police Department officers shall use
18 accurate and specific descriptive language and not rely solely
19 on "boilerplate" or "pat" language in any reports documenting
20 investigatory stops, detentions, or searches. Articulation of
21 reasonable suspicion and probable cause shall be specific and
22 clear."

23 This is again is a consent decree, right? Do you know
24 if this was negotiated amongst the parties?

25 THE WITNESS: All consent decrees are negotiated.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9fl01 Walker - direct

1 THE COURT: Right. Okay.

2 Q. And are you aware of whether there is descriptive
3 requirements for the Puerto Rico consent decree?

4 A. Yes.

5 MR. KUNZ: Now this one again we would object to
6 because this is not in his report. New Orleans was mentioned
7 in his report. Puerto Rico was not.

8 THE COURT: Is this a court document?

9 MS. PATEL: Yes, your Honor.

10 THE COURT: What court?

11 MS. PATEL: Filed by the district court -- it's in the
12 district -- filing in the U.S. District Court for the District
13 of Puerto Rico. And it's dated December 21, 2012.

14 THE COURT: I'm going to take it. Seeing other
15 consent decrees in other jurisdictions is part of the remedies
16 proof. There is no problem with that. It's not an opinion.
17 This is a fact on which opinions are based.

18 But anyway I'll take it. What's the exhibit number?

19 MS. PATEL: Plaintiffs' Exhibit 576.

20 THE COURT: 576 is received.

21 (Plaintiffs' Exhibit 576 received in evidence)

22 Q. Direct you to paragraph 61.

23 THE COURT: "Puerto Rico Police Department's
24 investigatory stops and searches reporting policy shall
25 explicitly prohibit the use of boilerplate or conclusionary

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9fl01 Walker - direct

1 language in all respects. Puerto Rico Police Department
2 policies shall also expressly prohibit officers from knowingly
3 using or relying on information known to be materially false or
4 incorrect in effectuating an investigatory stop or detention."

5 This is, again, a consent decree, right? I didn't
6 read the front page.

7 THE WITNESS: Yes.

8 THE COURT: But can I see the front page?

9 MS. PATEL: Yes, your Honor.

10 THE COURT: I see. This Agreement for the Sustainable
11 Reform of the Puerto Rico Police Department.

12 Okay. Thank you.

13 MS. PATEL: Then I would just also --

14 THE COURT: 62?

15 MS. PATEL: Point out 62.

16 THE COURT: "A supervisor shall review each report on
17 investigatory stops and searches determine whether the stop or
18 search was within Puerto Rico police department policy and this
19 agreement. For any investigatory stop or search deemed to be
20 outside of Puerto Rico police department policy or this
21 agreement, the supervisor shall determine if the stop or
22 search: (a) should result in an internal investigation by SPR;
23 (b) indicates a need for additional training, counseling or any
24 other nonpunitive corrective measure for the involved officer;
25 and (c) suggests the need for revising or reformulating agency

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flol Walker - direct

1 policy, strategy, tactics or training. The supervisor shall
2 document on an auditable form those investigatory stops and
3 searches that are unsupported by reasonable suspicion; are in
4 violation of Puerto Rico police department policy or this
5 agreement; or that indicate a need for corrective action or
6 review of agency policy, strategy, tactics or training. The
7 quality of these supervisory reviews shall be taken into
8 account in the supervisor's performance evaluations."

9 BY MS. PATEL:

10 Q. Are you aware of whether the agreement in the East Haven
11 challenge also includes descriptive language?

12 THE COURT: Where is East Haven?

13 MS. PATEL: In Connecticut.

14 THE COURT: Can you repeat the question.

15 Q. I'm sorry. In the town -- the case with the Town of East
16 Haven are you aware of whether that case, the consent decree
17 that came out of that case includes -- has provisions
18 including -- involving descriptions that are required for stop
19 encounters?

20 A. Yes.

21 THE COURT: By the way, were you involved in either
22 the Puerto Rico one we looked at or the Los Angeles one we
23 looked at?

24 MS. PATEL: New Orleans.

25 THE COURT: Thank you for the correction. New Orleans

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9fl01 Walker - direct

1 or Puerto Rico, were you involved in either of those?

2 THE WITNESS: Prior to the justice department
3 investigation in Puerto Rico, I was invited to Puerto Rico by
4 community activists. I testified to that yesterday.

5 THE COURT: Well, I don't remember. You had no
6 involvement in the New Orleans one?

7 THE WITNESS: Not in the development of the consent
8 decree.

9 I had prior involvement with community activists. And
10 one of my research projects involved the internal affairs
11 procedures in the New Orleans Police Department.

12 THE COURT: Did you have any personal involvement in
13 the East Haven one we're about to read.

14 THE WITNESS: East Haven, Connecticut, no.

15 THE COURT: But in any event, you're offering this?

16 MS. PATEL: Plaintiffs --

17 THE COURT: It's another consent decree?

18 MS. PATEL: Yes, your Honor. Its filed in the U.S.

19 District Court for the District of Connecticut.

20 THE COURT: What's the date?

21 MS. PATEL: It was filed November 20, 2012.

22 THE COURT: This is signed by the Court, right?

23 MS. PATEL: It's signed by the Court. The so ordered
24 date is left blank. But it's filed on November 20, 2012.

25 THE COURT: It is signed by the Court. So it's a

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flol Walker - direct

1 court document. Another consent decree.

2 And you make the same objection, Mr. Kunz, for the
3 record.

4 MR. KUNZ: Yes, your Honor.

5 THE COURT: I make the same ruling. It's exhibit
6 what?

7 MS. PATEL: 575.

8 THE COURT: Are you sure? Because at the corner it
9 still says proposed.

10 MR. CHARNEY: Show her the signature of the judge.

11 MS. PATEL: There we go.

12 THE COURT: I see the Attorney General.

13 Maybe you don't have a signed copy.

14 MS. PATEL: Perhaps this is a not final version. But
15 I can correct this. I know -- we know it was signed.

16 THE COURT: You know it was signed by the Court?

17 MS. PATEL: Yes, your Honor.

18 THE COURT: I'll accept your representation. If you
19 can find me a signed copy from the docket, I'd appreciate that.

20 MS. PATEL: Yes, your Honor.

21 THE COURT: You're representing it was signed when?

22 MS. PATEL: It would have been in 2012. I thought it
23 was actually December 2012.

24 THE COURT: You find it when you find it.

25 Can I see the cover, again, the coversheet, the top
SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flol Walker - direct
1 sheet.

2 Thank you. It says, Settlement Agreement and -- now
3 it says proposed order but I assume it's an order. It says
4 Agreement for Effective and Constitutional Policing.

5 What particular paragraph did you want to refer to?

6 MS. PATEL: Paragraph 46.

7 THE COURT: "East Haven Police Department officers
8 shall not use canned or conclusionary language in any reports
9 documenting investigatory stops, detentions, and searches.
10 Articulation of reasonable suspicion and probable cause shall
11 be specific and clear."

12 MS. PATEL: Also paragraph 66.

13 THE COURT: "Officers shall submit documentation of
14 investigatory stops and detentions, and any searches resulting
15 from or proximate to the stop or detention, including a
16 complete and accurate inventory of all property or evidence
17 seized, to their supervisors by the end of the shift in which
18 the police action occurred. Absent exceptional circumstances,
19 within 12 hours of receiving a report on an investigatory stop
20 and detention or search, a supervisor shall review the report
21 and shall document: (a) those investigatory stops and
22 detentions that appear unsupported by reasonable suspicion; (b)
23 those searches that appear to be without legal justification;
24 (c) stops or searches in violation of East Haven Police
25 Department policy or this agreement, or (d) stops or searches

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9fl01 Walker - direct

1 that indicate a need for corrective action or review of agency
2 policy, strategy, tactics, or training."

3 I've read that. I have a question for the witness.

4 We've looked at three consent decrees now; New
5 Orleans, then Puerto Rico, then East Haven. Do you know the
6 size, approximately, of each of those police forces?

7 Approximately?

8 THE WITNESS: Approximate size of New Orleans. I
9 can't speak for the others. East Haven is a small --

10 THE COURT: I didn't hear the first one. New Orleans,
11 you said what?

12 THE WITNESS: New Orleans would be considered a big
13 city police department. That's a term of art used in policing.

14 THE COURT: Do you know roughly the size?

15 THE WITNESS: Over a thousand officers.

16 THE COURT: Under what, five thousand?

17 THE WITNESS: Oh, definitely under five thousand.

18 THE COURT: So over a thousand but definitely under
19 five thousand.

20 THE WITNESS: Yes.

21 THE COURT: And Puerto Rico? And maybe East Haven?

22 THE WITNESS: Puerto Rico I'm simply not clear on.

23 East Haven is a small city and I don't know the exact
24 size of the force but it's definitely going to be a small
25 police department.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flol Walker - direct

1 THE COURT: Under a thousand?

2 THE WITNESS: Definitely under a thousand.

3 THE COURT: Thank you.

4 BY MS. PATEL:

5 Q. Do you have an opinion as to whether a change in the UF 250
6 form by itself is sufficient to correct potential
7 constitutional violations regarding the NYPD's stop-and-frisk
8 practices?

9 A. Yes.

10 Q. What is that opinion?

11 A. A change in the UF 250s in and of itself is not sufficient.

12 Q. Did you review the trial testimony of Chief Joseph Esposito
13 in the course of your preparation for your trial testimony?

14 A. Yes.

15 Q. Did that review of the trial testimony change your opinion
16 in any way?

17 A. No.

18 Q. Was there anything about that opinion -- about that trial
19 testimony that reinforced your opinion?

20 A. Yes. I think the most striking part to me was that there
21 seemed to be just a casual disinterest.

22 MR. KUNZ: So, your Honor --

23 THE COURT: I don't think he should be commenting on
24 the intent factor in somebody else's mind.

25 All I would take: Is the revised form adequate in

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flol Walker - direct

1 your opinion? That's all.

2 MR. KUNZ: Yes. I would move to strike this and then
3 the last --

4 THE COURT: Of course.

5 MR. KUNZ: The last two questions as well where he
6 said that he reviewed the testimony and that strengthened his
7 opinion.

8 THE COURT: No. That would be the testimony about the
9 revised form. I'll allow any testimony about the revised form.
10 He has to study the revised form and tell me whether he thinks
11 that corrects the issue. But that's all. Not somebody's
12 intent and all that.

13 Just stick to the form. Do you think the revised form
14 is adequate to solve the problem?

15 THE WITNESS: No.

16 THE COURT: Why not?

17 THE WITNESS: Well, as I testified yesterday, what is
18 needed is a comprehensive approach. So if you change one
19 element, one component of the entire accountability structure,
20 it's not necessarily going to achieve its intended purpose
21 unless all of the other components are changed.

22 THE COURT: I understand that answer.

23 But if you could just for a moment focus on the form.
24 I realize it's only one component of a comprehensive plan and
25 therefore not sufficient in itself. But is the form, as

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flol Walker - direct

1 revised, sufficient; or would you make further changes to the
2 form?

3 MS. PATEL: Would you like to see the form?

4 THE COURT: Yeah. That's an idea.

5 MR. KUNZ: What Exhibit is this?

6 MS. PATEL: J13.

7 THE WITNESS: If you could bring up the lower.

8 Q. The question: What's your understanding of the changes
9 that are required by this memo?

10 A. There needs to be more space for a narrative that will
11 allow the officer to explain the factual basis for the stop and
12 such that a supervisor could review that to determine whether
13 or not the stop was constitutional.

14 Q. And then do you see here this box that says stop, question
15 and frisk report?

16 Do you have an opinion about the sufficiency of this
17 instruction?

18 MR. KUNZ: I'm going to object there, your Honor.

19 THE COURT: Wait. Let me look at that. Or read it
20 into the record.

21 "An explanation regarding the circumstances are
22 included under the 'other reasonable suspicion of criminal
23 activity (specify)' caption."

24 I'll allow him to testify to that because that's still
25 part of the evaluating the quality of the revised form.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flol Walker - direct

1 MS. GROSSMAN: This section is about the proposed
2 language that should go in the memo book by Chief Hall.

3 THE COURT: Even if that were true he can still
4 comment on documenting a stop. Part of his expert testimony is
5 the appropriate way to document a stop.

6 I don't know if you're right. I thought you were
7 wrong. It doesn't matter much. He's talking about documenting
8 a stop.

9 MS. GROSSMAN: I'm just confused about revised form
10 because I don't know this is a revised form. This is just an
11 existing form.

12 THE COURT: Fair enough.

13 MS. PATEL: What?

14 MS. GROSSMAN: An existing form.

15 THE COURT: I may be the one who started that
16 confusion. There may be no revised form. It may be the form
17 that is being used in the police department now and the only
18 change was the memo that instructed people how to carefully
19 fill it out. It may not be a revised form at all.

20 So this instruction actually is important because --
21 this is part of the March memo?

22 MS. GROSSMAN: Yes.

23 THE COURT: So this is the most recent directive from
24 a high ranking police chief as to how to fill out the existing
25 form.

D5g9flol

Walker - direct

1 Anyway, was that instruction adequate in your view?

2 THE WITNESS: No.

3 THE COURT: Why not?

4 THE WITNESS: There's insufficient space for the
5 officer to provide sufficient detail. And it just -- it does
6 not instruct the officer there to provide detail. It just says
7 "the circumstances."

8 MS. GROSSMAN: Just so that we're clear. This was an
9 instruction for the officer to include in a memo book which has
10 more space.

11 MS. PATEL: It doesn't say that here. She's
12 testifying.

13 THE COURT: Obviously, she cannot testify. That's
14 your recollection of the testimony. Maybe you'll be able
15 eventually to find the page and lines. You're welcome to find
16 it. He just testified. It wasn't this Chief Hall, just
17 yesterday, when he was discussing the memo? So everybody can
18 look for the page and line.

19 MS. GROSSMAN: Do you have a copy of the exhibit?

20 MS. PATEL: No. It's J13.

21 MS. GROSSMAN: Do you have a copy for counsel?

22 MS. PATEL: No, I don't. You have a copy of J13.

23 MR. CHARNEY: It's your exhibit.

24 BY MS. PATEL:

25 Q. Is there anything on this form that refers to a memo book,

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flol Walker - direct

1 on this memo, on this page?

2 A. No.

3 Q. And doesn't --

4 THE COURT: Why don't you -- I've got an idea. Why
5 don't you show him the whole March memo from Chief Hall.

6 MS. GROSSMAN: Show the whole exhibit.

7 THE COURT: It's one exhibit. It's a memo with the
8 attached UF 250 and the attached memo book, the sample of how
9 to fill it out. You recall the exhibit. It was three pages.

10 Are you showing him the whole --

11 MS. PATEL: Yes.

12 THE COURT: Show him all three pages. Give him a
13 minute to look at it. This is a recent memo from Chief Hall of
14 the police department, the cover memo in March, to all commands
15 and it shows attached how to fill out the UF 250, how to fill
16 out the memo book. Take a minute to look at it.

17 THE WITNESS: So I'm ready.

18 THE COURT: If you're ready. What's the question
19 then. I guess this direction --

20 MS. PATEL: Can we put it up on the screen?

21 THE COURT: Yes. It would be helpful again.

22 MS. PATEL: Can you go to the third page, please.

23 THE COURT: So that box that we looked at earlier,
24 stop, question and frisk report.

25 Do you see it on your screen?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flol Walker - direct

1 THE WITNESS: Yes.

2 THE COURT: There's a box that said, "An explanation
3 regarding the circumstances are included under the 'other
4 reasonable suspicion of criminal activity (Specify)' caption."

5 That's just to the right of the UF 250 form, right?

6 THE WITNESS: Yes.

7 BY MS. PATEL:

8 Q. And there's a box on the UF 250 form that says "other"?

9 THE WITNESS: Yes.

10 THE COURT: Now do you think that's a sufficient
11 instruction.

12 THE WITNESS: No.

13 THE COURT: We're going over this again.

14 And why not?

15 THE WITNESS: I don't think -- this is a memorandum.
16 It's not an operations order. I don't think it really changes
17 anything. It's simply a reminder.

18 MR. KUNZ: Objection, your Honor. Move to strike. I
19 mean this is absolutely liability testimony and he's not
20 answering the question.

21 THE COURT: Yes. The question is simply: Is this
22 sufficient?

23 I understand that it's a reminder. I understand
24 there's a careful instruction as to how to fill out an existing
25 form. I understand that.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flol1

Walker - direct

1 But, do you think it's adequate?
2 MR. KUNZ: Just can we strike the last response.
3 THE COURT: Yes.
4 And do you think it's adequate?
5 THE WITNESS: No.
6 THE COURT: We're doing this for the third time.
7 THE WITNESS: No.
8 THE COURT: And why not?
9 THE WITNESS: I just -- it does not change the form.
10 THE COURT: Okay. And you think the form needs to be
11 changed?
12 THE WITNESS: Yes.
13 THE COURT: And it needs to be changed in what way?
14 THE WITNESS: More space provided and a greater
15 priority for the reasons and not putting it in a box that is
16 marked "other" which implies afterthought.
17 THE COURT: Okay. Thank you.
18 MS. PATEL: Your Honor, just on the defendant's
19 objection regarding --
20 THE COURT: I think they're right. I'm trying very
21 carefully to limit this to remedy proof and not get any
22 comments on somebody's actions or state of mind or anything
23 else.
24 Let's stick with the form. He's told me why he thinks
25 this one is inadequate and how he would revise it. That's

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9fl01 Walker - direct

1 helpful. That's remedies proof.

2 MS. PATEL: I understand that, your Honor.

3 In the March 5 pretrial conference this issue was
4 raised.

5 THE COURT: March 5 of what year?

6 MS. PATEL: 2013 in the conference when this issue of
7 whether or not Professor Walker could testify on liability
8 issues was raised with the Court.

9 And at that time Mr. Charney explained that there has
10 been so much -- so many changes since Professor Reiter's report
11 in 2012 specifically regarding the Quest for Excellence
12 program. And since that pretrial conference, there's the issue
13 of this memo has come up. And your Honor said okay -- and I
14 can read it to you -- but the Court instructed: So if he,
15 meaning Professor Walker, were to take as his fact basis the
16 current lay of the land, he would say: I'm aware of all the
17 policy -- all the police department has done in the last year
18 or two. I know what they've done. That's admirable but that's
19 not enough; or it's still wrong; or whatever he wants to say.
20 But he will sort of bring it to date and explain why there's
21 still a need for a remedy.

22 THE COURT: I think he just did that. He said I see
23 what was put out on March 5. It's inadequate. Here is why the
24 form needs to be changed. There needs to be space for a
25 narrative. It shouldn't be in a box that's just marked

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flol Walker - direct

1 "other." That's the testimony he just gave.

2 I don't see any inconsistency in what I said then and
3 what he's testifying now. He covered it.

4 Do you want to do the same with the next page of that
5 exhibit? Do you want to go to the next page, the memo book
6 documentation, or not? It's up to you.

7 You don't. Okay. Fine. Next question.

8 Q. Can you summarize your opinion regarding the supervisory
9 review -- regarding supervisory review as part of the
10 comprehensive approach?

11 A. Changes are needed in the supervisory process in the NYPD
12 to ensure an end to unconstitutional stops and frisks.

13 MR. KUNZ: Objection, your Honor. That to me seems
14 like a liability answer.

15 THE COURT: One second please.

16 Not at all. This is his opinion on what would be an
17 appropriate prong of the comprehensive review in terms of how
18 to conduct supervisory reviews.

19 In fact, we probably heard it. That's my strong
20 answer. He told us yesterday what he thinks about supervisory
21 review. It's one of the prongs of the comprehensive approach.

22 This isn't liability at all. It's his idea of what
23 should be done here. Absolutely, I'm going to take this.

24 Go ahead.

25 THE WITNESS: The remedy I'm recommending involves
SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9fl01 Walker - direct

1 both changes to the UF 250 form itself and the manner in which
2 sergeants review those reports.

3 Q. Just on this March 5 memo, it's your understanding that it
4 requires the memo book entry to be stapled to the UF 250 form,
5 correct?

6 A. Yes.

7 Q. Do you believe that that's adequate?

8 A. I think it's -- it's not adequate. I think it's a
9 cumbersome and inefficient and costly process.

10 THE COURT: Why is it not adequate though in terms of
11 a remedy? Why doesn't that satisfy --

12 THE WITNESS: The details of that -- that provide the
13 basis for the stop should be on the UF 250 form because that is
14 the form that is reviewed, that is the form that is audited.
15 That is the form that, again, I would recommend be in auditable
16 form so that there could be a command review of the stop.

17 THE COURT: So I understand. What do you think is not
18 adequate about stapling the memo book entry to the UF 250 is
19 that it shouldn't be two forms that have to be merged; it
20 should be all on the one form that's audited?

21 THE WITNESS: It's should all be on the one form for
22 the sake of efficiency, yes. And efficiency is going to
23 heighten the accountability process.

24 THE COURT: Let me ask you though. Now the officer on
25 the scene is writing these three or four lines under your

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flol Walker - direct

1 remedy on the UF 250 in two or three minutes, right, on the
2 scene?

3 THE WITNESS: Yes.

4 THE COURT: You've said it would take a few minutes?

5 You don't think it's helpful when he or she gets back
6 to the precinct and has a little more time to write it out more
7 fully in the memo book?

8 THE WITNESS: I think the stapling process, having two
9 documents is inefficient. It's filled with pitfalls and it --

10 THE COURT: So is it your notion that they shouldn't
11 summarize the stop in the memo book?

12 THE WITNESS: Should.

13 THE COURT: They should?

14 THE WITNESS: Yes. But I would not -- I would include
15 that same information in the UF 250 report.

16 THE COURT: Would they -- you see them as exact
17 duplicates? The two descriptions should be exactly the same?

18 THE WITNESS: They would have to be close on the
19 crucial details regarding --

20 THE COURT: I assume close on the crucial details.

21 But are you suggesting that after the person prepares
22 the memo book entry, which may be a little fuller, they go back
23 and put all those words on the UF 250?

24 THE WITNESS: Yes.

25 THE COURT: They should go back to the 250 and make

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flol Walker - direct

1 sure it conforms to the memo book?

2 THE WITNESS: They should conform. Yes. The
3 circumstances wouldn't change. The officer --

4 THE COURT: I understand that. But you're suggesting
5 the extra step. The officer pulls back the 250 and makes
6 changes; as he wrote down more details in the memo book, he now
7 conforms the UF 250 to the memo book? Is that what you're
8 saying?

9 THE WITNESS: Yes.

10 THE COURT: Okay.

11 Q. And just to clarify a little bit when -- is it the practice
12 that these incident forms would necessarily be filled out right
13 then and there?

14 THE COURT: Which forms? I'm sorry.

15 MS. PATEL: The UF 250 forms.

16 THE WITNESS: No.

17 Q. What's the general practice --

18 A. I believe that the memo book would be reported close to the
19 time of the accident. The UF 250 report can be done later.

20 THE COURT: Okay. So in your opinion, if you were
21 preparing a remedy, a proposal of what should be done, you
22 would say the officer should fill out the memo book as close as
23 possible in time to the event and the UF 250 at a later,
24 quieter time?

25 THE WITNESS: Yes.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flol Walker - direct

1 THE COURT: Okay.

2 THE WITNESS: May I add that it is standard in
3 policing that police officers fill out incident reports for all
4 sorts of incidents. So it is not in any way burdensome to ask
5 them to spend a few more minutes to complete a narrative on the
6 UF 250 form.

7 THE COURT: That's fine. I just want, you know, your
8 opinion of what should be done. Okay.

9 Q. As part of your opinion regarding the NYPD need to
10 implement a comprehensive approach to accountability, did you
11 form an opinion related to the NYPD's system of performance
12 reviews?

13 A. Yes.

14 Q. What is your opinion regarding the performance review
15 systems that NYPD should implement to correct widespread
16 constitutional violations in the stop-and-frisk practices?

17 A. Based on the materials I had an opportunity to review, the
18 current system is inadequate to prevent unconstitutional
19 policing with regard to stops and frisks.

20 THE COURT: Well, that's fine. But then what would be
21 your approach to a remedy? How would you remedy this
22 insufficient system?

23 THE WITNESS: Well, it does not appear that
24 supervisors are doing critical review of incidents and officer
25 behavior. And so the resulting, for example, monthly

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flol Walker - direct

1 conditions impact reports contain boilerplate language. It's
2 repetitious.

3 THE COURT: You've told me twice now what's wrong with
4 the current system. That's fine.

5 What would you do to fix it? What's your remedy?
6 That's what I'm interested in hearing from you.

7 So with respect to performance reviews, how would you
8 change it?

9 THE WITNESS: There needs to be a requirement that
10 sergeants inquire deeply, more deeply into particular incidents
11 regarding stops and frisks and to examine the 250s and examine
12 the memo books and in cases where there are questions in the
13 sergeant's mind to talk with the officer.

14 THE COURT: Okay. Do you think they also need to talk
15 to the person stopped, or is that too many steps?

16 THE WITNESS: Well we're talking about what is in the
17 mind of the officer; what did the officer believe to be the
18 circumstances that gave rise to reasonable suspicion.

19 THE COURT: So, to summarize. The sergeant, if he had
20 has doubts, should speak with the officer?

21 THE WITNESS: Yes.

22 THE COURT: That's the long and short of it?

23 THE WITNESS: Yes.

24 THE COURT: Okay.

25 THE WITNESS: But to answer your question, not the

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9fl01 Walker - direct

1 individual stopped.

2 THE COURT: No. Got it.

3 MS. PATEL: I would just -- maybe to refresh your
4 recollection, if you could refer to paragraph 38 of your
5 report.

6 THE WITNESS: Yes.

7 Q. Did you review a number of documents in order to assess and
8 form your opinion regarding performance review -- the changes
9 in the NYPD's performance reviews?

10 A. Yes.

11 Q. Do you recall what documents you reviewed?

12 A. They are in Exhibit B of my report.

13 Q. Can you tell us generally which documents in Exhibit B you
14 reviewed in order to form your opinion related to performance
15 reviews?

16 A. Item by number? Begins with item No. 5.

17 Q. Which is the police student guide general regulations dated
18 October 18, 2011?

19 A. Yes.

20 Down through 13.

21 Item 16 through --

22 Q. 16 through 33; is that correct?

23 A. Yes, 33.

24 Q. This is we're looking at Exhibit 418B, your list of
25 sources, correct?

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D5g9fl01 Walker - direct

1 A. Yes.

2 Q. And is it fair to say that what you've listed is a range of
3 NYPD documents related to the Quest for Excellence program?

4 A. Yes.

5 Q. And that includes police officer monthly conditions impact
6 measurement reports, right?

7 A. Yes.

8 Q. And squad supervisor recapitulations?

9 A. Yes.

10 Q. And quarterly assessments of squad sergeants?

11 A. Yes.

12 Q. And some training materials?

13 A. Yes.

14 MS. PATEL: Your Honor, I'd move for the admission of
15 the documents that he reviewed. It's a little awkward but when
16 Beirne was testifying, your Honor suggested that we admit these
17 when Professor Walker testifies.

18 THE COURT: Who was testifying?

19 MS. PATEL: Beirne. I don't remember his title.

20 MR. CHARNEY: Deputy commissioner John Beirne
21 testified about the Quest for Excellence program. He was the
22 30(b)(6) witness for that.

23 MS. PATEL: And there's wasn't any objection at the
24 time.

25 MS. GROSSMAN: I would need to look at the transcript
SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D5g9fl01 Walker - direct

1 because that's not something I recall.

2 MS. PATEL: I have it.

3 MS. GROSSMAN: I mean, your Honor, I'd have to look at
4 the transcript.

5 MS. PATEL: I think I have a copy if that's necessary.

6 THE COURT: It is. She would like to see the
7 transcript.

8 MS. PATEL: While Ms. Grossman is reviewing --

9 MS. GROSSMAN: That's fine, your Honor. We have no
10 objection.

11 THE COURT: Okay. Good.

12 MS. PATEL: I just wanted to say that the consent
13 decree --

14 MS. GROSSMAN: We need a copy though.

15 THE COURT: Please don't interrupt her thought.

16 You wanted to say the consent decree what?

17 MS. PATEL: Was signed December 21, 2012.

18 MR. CHARNEY: This is the East Haven.

19 THE COURT: I understand.

20 Now there is no objection to receiving all this paper
21 but your adversary says they need a copy of all that, all that
22 paper?

23 MS. GROSSMAN: I don't know --

24 MS. PATEL: It's listed in sources to his report, and
25 we've provided them the document with exhibit numbers.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flol

Walker - direct

1 THE COURT: It's a whole lot of paper. Would you tell
2 me what each one is, each of those clips? I'm sure they have
3 it.
4 What are all those clips? One at a time.
5 Are they different exhibits, first of all?
6 MS. PATEL: Yes.
7 THE COURT: Let's go one by one.
8 MS. PATEL: The first exhibit is Defendants' Exhibit
9 H6 and that's NYC --
10 THE COURT: No, no. I don't need the numbers.
11 Defendants' Exhibit H6 is what? What is it?
12 MS. PATEL: It is Quest for Excellence documents from
13 the 107th precinct, the 43rd precinct --
14 MR. KUNZ: I just want to see the transcript because I
15 don't believe H6 was on the list of documents.
16 MS. PATEL: I can explain that issue.
17 H6 is a compilation of several of Plaintiff's
18 Exhibits. We thought it would be more efficient to just admit
19 the one exhibit rather than breaking it up. It's the same
20 information.
21 THE COURT: It sounds like the record is getting
22 cluttered. Why don't you just talk to each other for three
23 minutes and get this done. I know they're going to come in.
24 Instead of reading it all in and fighting about H6 is a
25 compilation of three other exhibits that are already agreed on,

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flol Walker - direct

1 would you just talk to each other offline, please. I'm sure
2 it's all going to come in.

3 (Pause).

4 MR. KUNZ: So, your Honor, our only provision that
5 plaintiffs are representing that -- Plaintiffs' Exhibit 234
6 through Plaintiffs' Exhibit 237 is identical to Defendants'
7 Exhibit H6. If that's the case, it's fine they go in this way.
8 We're going to verify that and we can check back.

9 THE COURT: Good. Okay.

10 So let's start again for the record. What are these
11 exhibits? So H6 is two exhibits, plaintiffs' exhibits --

12 MS. PATEL: It's multiple. I think it would be easier
13 if I read the Bates range.

14 THE COURT: It's not easier to read those Bates
15 numbers. It doesn't tell us anything. I thought he just said
16 it's made up of two plaintiffs' exhibits. He just said that.

17 MS. PATEL: H6 is --

18 THE COURT: Let me try something else.

19 What is H6? You said it's the Quest for Excellence
20 what? Just tell me what it consists of.

21 MS. PATEL: It's multiple precincts, your Honor.

22 THE COURT: Multiple precincts. Quest for Excellence
23 documents?

24 MS. PATEL: That's right. It's QAD sergeant reviews.
25 It's monthly officer -- police officer monthly conditions

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9f1o1 Walker - direct

1 impact measurement reports.

2 THE COURT: Okay. I've got it.

3 H6 is received subject to the city checking the
4 exhibits that are part of H6.

5 (Plaintiffs' Exhibit H6 received in evidence)

6 THE COURT: What's the next one?

7 MS. PATEL: Plaintiffs' Exhibit 437, which is
8 quarterly assessment of squad sergeant from the 107 precinct.

9 THE COURT: Which one again?

10 MS. PATEL: That was 437.

11 THE COURT: 437 is received.

12 (Plaintiffs' Exhibit 437 received in evidence)

13 MS. PATEL: Plaintiffs' Exhibit 310, which is the
14 squad supervisors recapitulation form for, it says, command
15 185.

16 And I think it's all 185. Yes.

17 THE COURT: All right. Plaintiffs' 310 is received.

18 (Plaintiffs' Exhibit 310 received in evidence)

19 MS. PATEL: Plaintiffs' 309 which is a similar Quest
20 for Excellence document for command 182.

21 THE COURT: Plaintiffs' 309 is received.

22 (Plaintiffs' Exhibit 309 received in evidence)

23 MS. PATEL: 308. Plaintiffs' Exhibit 308 is also
24 monthly activity reports for Bronx anticrime, patrol borough
25 Bronx anticrime unit.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flol

Walker - direct

1 THE COURT: 309 is received.
2 (Plaintiffs' Exhibit 309 received in evidence)
3 MS. PATEL: And E11, which is a similar Quest for
4 Excellence documents for the 73rd precinct.
5 THE COURT: That's E11?
6 MS. PATEL: Yes, your Honor.
7 THE COURT: E11 received.
8 (Plaintiffs' Exhibit E11 received in evidence)
9 THE COURT: Is that it?
10 MS. PATEL: That's it, your Honor.
11 MS. GROSSMAN: Your Honor, just in terms of the
12 purpose for which these exhibits are offered.
13 THE COURT: He reviewed these. I don't know why all
14 this paper has to clutter the record. But he reviewed these in
15 deciding that it was inadequate.
16 MS. GROSSMAN: So assuming liability, it's for
17 purposes of assessing remedy.
18 THE COURT: Absolutely.
19 MS. GROSSMAN: So it's not for purposes of liability.
20 THE COURT: No. Absolutely right.
21 MS. GROSSMAN: I just wanted to make that clear; that
22 these documents are not offered for that purpose.
23 THE COURT: Absolutely right. These documents are
24 offered for him to say that he doesn't think method is adequate
25 and why and what he would do.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flol

Walker - direct

1 Did you get all that in the record? Why they were
2 inadequate and what you would do?
3 THE WITNESS: No.
4 THE COURT: Did we cover that already?
5 THE WITNESS: Not on these forms.
6 THE COURT: Why are these documents that you reviewed
7 inadequate in terms of -- is it supervisory review that we're
8 up to, Ms. Patel? Are we talking about supervisory review now?
9 MS. PATEL: No. Performance evaluation.
10 THE COURT: Why do these documents that you've
11 reviewed show that the performance evaluation system is
12 inadequate in your view?
13 THE WITNESS: The reviews are superficial.
14 The language is repetitive on review, after review,
15 after review.
16 There is a lack of probing in terms of what the
17 officers did and what the sergeants did.
18 There -- it is -- performance is reduced really to
19 numbers. There's a number of stops and frisks.
20 On the quarterly -- I mean the monthly impact reports
21 officers were often -- were generally praised for their number
22 of arrests and summonses.
23 THE COURT: For their what, please?
24 THE WITNESS: Arrests, summonses, and 250s.
25 THE COURT: Did you say number?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flol Walker - direct

1 THE WITNESS: Number of.

2 And I saw repeated criticisms of officers for an
3 insufficient number of 250s, arrests and summonses.

4 THE COURT: Now how would you change things in terms
5 of performance review? What remedy would you propose in the
6 performance review prong of the comprehensive program.

7 MR. KUNZ: I'm sorry.

8 THE COURT: I'm not going to strike it.

9 So I understand your motion. I have to understand
10 what the deficiency is in order to understand the proposed
11 remedy.

12 How would you fix the performance evaluation system?

13 THE WITNESS: Through training and supervision from
14 higher commands. Supervisors need to inquire into the actual
15 activity of the -- the quality of the activity of the officers.
16 And they need to make comments to that effect such that you can
17 make qualitative assessments about an officer's performance;
18 that this officer has a series of stops and frisks where there
19 were questions about whether reasonable suspicion existed.
20 Officers could be praised for the quality of their stops and
21 frisks.

22 THE COURT: So are you suggesting quality over
23 quantity? Is that what you're saying, in short?

24 THE WITNESS: It has to be, yes.

25 THE COURT: Qualitative.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flol Walker - direct

1 THE WITNESS: Qualitative, yes.

2 THE COURT: Not quantitative?

3 THE WITNESS: And specifically with regard to stops
4 and frisks.

5 THE COURT: I'm trying to understand. Qualitative but
6 not quantitative? Or you think the quantitative elements
7 should stay?

8 THE WITNESS: There should be some quantitative
9 element. Obviously, if an officer is not doing any work at
10 all, that's an important issue for the police department.

11 But there needs to be a qualitative assessment of
12 their stop-and-frisk activity.

13 THE COURT: Okay.

14 How do you think the supervisor should do that
15 qualitative evaluation? I'm trying to think of a time
16 efficient way of handling that.

17 How would the supervisor do a qualitative analysis?

18 THE WITNESS: Well, a sergeant would review 250s and
19 would come to a general assessment of an officer's performance.
20 This officer is hard-working officer. He's making -- he's
21 using 250s, making arrests and summonses.

22 Another officer, there are repeated questions about
23 whether there was adequate reasonable suspicion for stops.

24 THE COURT: So the way to do it is reviewing 250s?

25 THE WITNESS: Yes. Part of it.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flol Walker - direct

1 THE COURT: Part? Is there more?

2 THE WITNESS: If you have questions about the 250s,
3 you go back to the memo books.

4 THE COURT: How is this different than your testimony
5 about supervisory techniques?

6 I don't understand the difference between supervisory
7 techniques and performance evaluations.

8 Sounds like it's the same activity. You want the
9 supervisor to review the 250s; and if he has questions, meet
10 with the officer.

11 THE WITNESS: Well, the monthly conditions in the
12 impact report is going to be based in part on those previous
13 reviews of the UF 250 reports.

14 THE COURT: I will try again.

15 Are you suggesting a different or revised performance
16 evaluation form that maybe has different numbers or boxes or
17 something or other? Would you revise the performance
18 evaluation form that's currently in effect?

19 THE WITNESS: I have not formulated an opinion on that
20 point.

21 I have formulated an opinion that officers -- that
22 supervisors need to be more diligent in terms of their critical
23 assessment of officers' performance and to document
24 deficiencies.

25 Q. Is there anything in paragraph 38 that would refresh your

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9fl01 Walker - direct

1 recollection around the type of performance review that you
2 believe should be implemented?

3 A. Let me refer to my report.

4 What I reported in paragraph 38 is supervisors should
5 be attentive to whether officers understand the law of
6 reasonable suspicion, whether they understand department
7 policies, and should evaluate officers accordingly.

8 (Continued on next page)

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

D5G8FLO2

Walker - direct

1 Q. Is there another part of your opinion that involves
2 evaluative indicators?

3 A. Well, I thought I indicated the monthly impact reports are
4 heavily quantitative oriented. There is emphasis on the
5 numbers, numbers of 250s, arrests and summonses, and it needs
6 to be more qualitative rather than strictly quantitative.

7 Q. Can you look at the first line on page 17 of your report?

8 A. Yes.

9 Q. So what is your opinion regarding evaluative factors that
10 should be implemented as part of a review system with the NYPD
11 regarding stop and frisk?

12 A. I'm sorry. Would you repeat the question?

13 Q. Sure. Did you read the first line of page 17 to refresh
14 your memory?

15 A. Yes.

16 Q. What is your opinion regarding the implementation of
17 performance reviews and the types of factors that supervisors
18 should review?

19 A. Well, again, my report indicates more robust evaluative
20 indicators that would be more than the numbers.

21 THE COURT: What would those be? What are robust
22 evaluative factors?

23 THE WITNESS: It would be the sergeant's assessment of
24 officers based on the quality of the work, a special
25 understanding of the law of stops and frisks, understanding

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO2 Walker - direct

1 department policies, and whether officers understand and comply
2 with those policies.

3 Q. Can you please refer to paragraph 44?

4 A. Yes.

5 Q. Do you have an opinion as to the specific factors that the
6 NYPD should include beyond what you have testified to?

7 A. Referring to paragraph 44?

8 Q. Your opinion.

9 A. My opinion in paragraph 44 is NYPD needs to retain an
10 expert in this particular area to help them revise their
11 procedures for the performance reviews. And that there should
12 be an audit developed of the current process and to
13 draw -- leave it at that.

14 Q. Just backing up a little bit to your review of the forms,
15 you reviewed quite a number of them, is that right?

16 A. Yes.

17 Q. You say there is over 200?

18 A. Probably, yes. Excuse me. Yes, more than 200.

19 THE COURT: What were the 200 forms you reviewed?

20 Those were performance evaluations?

21 THE WITNESS: Monthly conditions impact reports.

22 THE COURT: Are those performance evaluations?

23 THE WITNESS: Yes.

24 THE COURT: They are?

25 THE WITNESS: Yes.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO2

Walker - direct

1 MS. GROSSMAN: I didn't hear that last answer.

2 THE COURT: I asked him if they were performance
3 evaluations, and he said yes.

4 MS. GROSSMAN: Not yearly though.

5 THE COURT: I didn't ask that. I said, are they
6 performance evaluations? He said yes.

7 THE WITNESS: I was referring to monthly.

8 MS. GROSSMAN: They are assessments.

9 THE COURT: You are not testifying. Ms. Grossman,
10 please. He can be wrong. You can impeach him. You can
11 cross-examine him. You can make a summation. You can't
12 testify. He said they are performance evaluations. That's his
13 testimony. I have no idea if it's accurate. That's what he
14 said.

15 Q. Based on your review of the over 200 sample monthly
16 conditions impact measurement reports, what can you say about
17 the comments and the questions that informed your opinion about
18 the remedy that is necessary in this case?

19 A. Could you repeat it?

20 Q. Sure. Let me just explain.

21 A. I want to be sure I am responding to the question.

22 Q. This is an example of the police officer's monthly
23 conditions report that you reviewed, correct?

24 A. Yes.

25 Q. I am putting on the screen NYC-2-21252, which is an

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO2 Walker - direct

1 anticrime squad from the 107th Precinct, which is a portion of
2 H6. So this is the form you reviewed, correct?

3 A. Yes.

4 Q. And you testified earlier that there is a number of boxes
5 here, a number of factors, correct?

6 A. Yes.

7 Q. And you indicated that it was primarily numbers that were
8 listed in the form?

9 A. Yes.

10 Q. Then on the backside, you also testified that there was
11 room for comments, correct?

12 A. Yes.

13 Q. Now, in your review of the comment form that's filled out
14 by the supervisors --

15 THE COURT: The comment portion of the form.

16 Q. The comment portion of the form, and the comments that you
17 reviewed in those forms, is there anything you can say about
18 them that informed your opinion about the remedy that's
19 necessary in this case?

20 A. Yes. In the comment section where the sergeant is making
21 the comment, the officer is criticized because he did not have
22 an arrest for the month, and praised apparently for having a
23 certain number of UF-250s.

24 THE COURT: And so how did that inform your opinion
25 that this method is inadequate?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO2

Walker - direct

1 THE WITNESS: Because it's entirely focused on the
2 numbers of activities in both of these two categories.

3 THE COURT: So it's quantitative again, not
4 qualitative?

5 THE WITNESS: Yes.

6 May I elaborate?

7 THE COURT: Yes.

8 THE WITNESS: For example, I do not recall seeing in
9 that comment section where a sergeant commented that an officer
10 had many questionable or some questionable UF-250s.

11 THE COURT: That's again a lack of qualitative
12 analysis.

13 THE WITNESS: That would be a qualitative analysis,
14 yes.

15 Q. This is based on this report. Is there anything you can
16 say generally about all of the reports that you reviewed
17 related to the comment section?

18 A. Well, this one is fairly typical of the general pattern of
19 comments in that section on all of the reports that I saw.

20 Q. Do you recall any other types of comments that support your
21 opinion about the qualitative -- the need for a change in the
22 form for a more qualitative review?

23 A. There is just a repetitious pattern. As I read through the
24 more than 200, you could -- I would come across 10, 12, 13
25 reports in a row that had identical language. Then the

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO2 Walker - direct

1 language would shift, and I could check -- the sergeant's tax
2 ID number is partially there. It was a different sergeant and
3 that sergeant used slightly different language for, again, what
4 were a series of reports that were virtually identical
5 language.

6 THE COURT: But the identical language, did that
7 language relate to a quantitative evaluation as opposed to
8 qualitative?

9 THE WITNESS: Quantitative.

10 THE COURT: Is there anything else about the
11 repetitive language that struck you other than that it's
12 quantitative, not qualitative?

13 THE WITNESS: It lacked detail. There's a series
14 where it said officer addressed conditions, which in a
15 conditions impact report is the major thrust of these reports.
16 It didn't say what that officer did. It didn't say whether
17 what that officer did was good or bad.

18 THE COURT: So when we looked at those consent
19 decrees, we looked at three on the screen, it said something
20 about supervisors should not use pat language. Is that what
21 you would relate that to, similar to those paragraphs in those
22 consent decrees?

23 THE WITNESS: They say the officers should not use
24 that language and the supervisors should look for that and be
25 alert to it.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D5G8FLO2

Walker - direct

1 THE COURT: But here you're criticizing the supervisor
2 using pat language. Would you call that pat language when it
3 was repetitive?

4 THE WITNESS: Yes.

5 THE COURT: And you don't think supervisors should use
6 pat language either?

7 THE WITNESS: No, no one should.

8 BY MS. PATEL:

9 Q. Do you agree that unjustified stops should be noted and
10 tracked in this evaluation system?

11 A. Yes. This would be the primary ground level documents to
12 identify officers who do questionable stops or have patterns of
13 questionable stops, or unconstitutional stops.

14 Q. Please summarize your opinion related to the necessary
15 remedy for a performance review as part of a comprehensive
16 approach remedy?

17 A. The NYPD must develop a more robust performance review
18 system that emphasizes quality of officer performance and not
19 simply the quantity of activity, and certainly not focused
20 entirely on the quantity of 250s, arrests and summonses, and
21 that the reviewed documents should include sufficient detail
22 that would document the difference between good performance and
23 poor performance.

24 Q. On a monthly basis, do you believe that the supervisors
25 when conducting these reviews should look at other things

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO2 Walker - direct

1 besides activity?

2 A. Yes.

3 Q. What would those things include?

4 A. I'm sorry. Did your question refer to a specific kind of
5 activity?

6 THE COURT: She is saying, other than the word
7 activity, what else should the supervisor look at in doing
8 their performance evaluation, other than just the officer's
9 activity level?

10 A. Well, the activity would be the basis for inquiring about
11 officer's knowledge, officer's compliance with the law,
12 officer's attitude, professionalism.

13 Q. Let's shift to your opinion regarding command review of
14 officer performance. That's another level, another prong,
15 final prong with the comprehensive approach?

16 THE COURT: We have been talking about performance
17 evaluations for the last ten minutes, at least, haven't we?

18 MS. PATEL: Yes, your Honor. This is related to an
19 early intervention system which is an additional aspect of a
20 monitoring system.

21 THE COURT: Is this part of performance evaluation or
22 not?

23 MS. PATEL: No, it's separate.

24 THE COURT: OK. What is the question you're asking or
25 what is the prong you're speaking of?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO2 Walker - direct

1 MS. PATEL: It's referred to as command level review,
2 and that also equates to an early intervention system.

3 THE COURT: Let me ask him.

4 What is command level review?

5 THE WITNESS: That is a higher level than the two we
6 have previously discussed.

7 THE COURT: Which were?

8 THE WITNESS: Supervisor review and performance
9 review. We are now at the higher level within the department
10 command level.

11 THE COURT: What is command level review?

12 THE WITNESS: That's a department-wide assessment. It
13 would be an accountability tool for --

14 THE COURT: Department-wide?

15 THE WITNESS: Department-wide.

16 THE COURT: Even beyond borough, the whole department?

17 THE WITNESS: Yes.

18 THE COURT: What should be done at the command level
19 or the department level that's not being done?

20 THE WITNESS: It is my recommendation that the NYPD
21 needs to develop an early intervention system.

22 THE COURT: What is an early intervention system?

23 THE WITNESS: Early intervention systems have emerged
24 in the last 20, 25 years as the centerpiece of accountability
25 systems.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D5G8FLO2 Walker - direct

1 THE COURT: Tell me what it is. I don't know. What
2 is early intervention?

3 THE WITNESS: Early intervention system is a
4 centralized database on officer performance, and it includes
5 various indicators that I have included in my report, such that
6 it would allow supervisors at all levels to assess individual
7 officer performance on a wide range --

8 THE COURT: A centralized database would be every
9 single officer would be in the database individually?

10 THE WITNESS: Yes.

11 THE COURT: What would the database tell us about each
12 individual officer that would help with an early intervention
13 concept?

14 THE WITNESS: If you have the proper indicators, as I
15 have indicated in my report, it is an early intervention system
16 because you can spot patterns of problematic officer
17 performance before they lead to serious trouble.

18 THE COURT: What would you enter into the database for
19 individual officers? What kind of data would you enter into
20 the database? What data would you want about individual
21 officers?

22 THE WITNESS: Would you like me to read?

23 THE COURT: You could. I have done that before.

24 MS. PATEL: It's a list of 17 things.

25 THE COURT: I would like that. These are the things

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO2

Walker - direct

1 that you think should be in the database? You can do that.

2 THE WITNESS: All officer reported uses of force.

3 Those would be based on the incident reports.

4 THE COURT: That's one of the 17?

5 THE WITNESS: That's one.

6 THE COURT: All uses of force.

7 THE WITNESS: That would also include the outcome of
8 any investigation of allegations of improper use of force, and
9 as a subset of that, whether any discipline was imposed.

10 B. The outcomes of departmental investigations of
11 report of use of force.

12 C. All resisting arrest charges filed against the
13 officer.

14 THE COURT: Ms. Patel, I think I can get there faster.
15 All resisting arrests. What does that mean?

16 THE WITNESS: Any time an officer files a resisting
17 arrest charge against a person, that report would be entered
18 into the early intervention system. They are regarded as very
19 valuable indicators of officers with performance problems.

20 THE COURT: Some resisting arrests, of course, must be
21 completely accurate.

22 THE WITNESS: Some are. The virtue and the value of
23 an early intervention system is you have the systematic data.
24 So when you analyze it and you find an officer who is filing a
25 much higher level of resisting arrest charges than peer

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO2 Walker - direct

1 officers, that is smoke, and you determine whether there is
2 fire and you in fact a problem.

3 THE COURT: So you put in all resisting arrest
4 charges. Go ahead.

5 THE WITNESS: All citizen complaints.

6 THE COURT: OK.

7 THE WITNESS: Then you would have the outcomes of
8 investigations and any discipline and so on.

9 All department initiated investigations of allegations
10 against the officer. Those would be where a supervisor files
11 an internal report that the officer used excessive force. And
12 the outcomes of those investigations.

13 All civil suits against the police department where
14 the officer is named as a party.

15 All stops made by the officer, including but not
16 limited to stops and frisks, this would include pedestrian
17 stops and vehicle stops. And again, you would then have
18 details about the stop. They would come -- this information
19 would come from the stop incident reports. That highlights the
20 importance of having a report that captures the relevant
21 details of those stops.

22 All criminal proceedings against a police officer.

23 Any judicial proceedings against a officer, a
24 restraining order or such.

25 All incidents involving loss or alleged theft or

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO2 Walker - direct

1 damage to --

2 THE COURT: Loss what?

3 THE WITNESS: Loss, alleged theft, or damage to
4 department property.

5 Commendations from the department, positive things.

6 The training history of an officer.

7 Use of sick leave time by the officer.

8 Those are the ones that I list in my report.

9 THE COURT: Are many of those already included in the
10 CPI index? Do you know what that is?

11 THE WITNESS: Yes, I do.

12 THE COURT: Are many of the things you listed there
13 already on that form?

14 THE WITNESS: Some of them are, but they are
15 inadequate in my opinion as they exist in the CPI.

16 THE COURT: As they exist now. You would change that
17 form in some ways? Have you seen one of those recently?

18 MS. GROSSMAN: I would just object because that's not
19 part of the report.

20 THE COURT: There is no opinion on the inadequacy of
21 the CPI index. OK.

22 MS. GROSSMAN: I move to strike.

23 THE COURT: Yes. It's my question. It doesn't matter
24 because he has given his 17. I can compare it to the current
25 CPI.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D5G8FLO2 Walker - direct

1 MS. PATEL: I was just going to make sure that D was
2 included, all injuries to citizens resulting from actions by
3 the officer.

4 THE WITNESS: Yes.

5 THE COURT: Exhibit C15 is the sample central
6 personnel index. No big deal.

7 Go ahead.

8 BY MS. PATEL:

9 Q. In your opinion, why is such a broad array of indicators
10 important for the NYPD to utilize when monitoring police
11 officers' stop and frisk activity?

12 A. Early intervention systems have become the custom in
13 policing as a central accountability tool, because the more
14 indicators you have, the broader picture, more complete picture
15 you develop of an officer's performance. And you can, for
16 example, link problem behavior in one category with problem
17 behavior in another. You can put them together and you
18 indicate that here is an officer who may indeed need some
19 intervention.

20 THE COURT: Do you know of any police department that
21 has such a database as you envision?

22 THE WITNESS: Yes. I am the author of the one Justice
23 Department report on early intervention systems, and I have, in
24 both Los Angeles sheriff's department and Phoenix, I have sat
25 down with command officers and looked at their database.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO2

Walker - direct

1 THE COURT: That wasn't my question. Do you know of
2 any police department that's utilizing the kind of database
3 that you just described, that you envision with the 17 topics?

4 THE WITNESS: Yes.

5 THE COURT: These are actually in use somewhere?

6 THE WITNESS: Many departments.

7 THE COURT: Have a database that captures all of this
8 data?

9 THE WITNESS: Some have more indicators.

10 THE COURT: Which are the ones that most capture the
11 17 categories you just mentioned? Which police departments
12 have a database in existence now that captures most of the 17
13 that you just listed, or comes the closest anyway?

14 THE WITNESS: Los Angeles sheriff's department, Los
15 Angeles police department, Phoenix police department. Those
16 are large departments.

17 THE COURT: Yes, they are. Thank you.

18 Q. Do you have an opinion as to the specific system the NYPD
19 should develop to ensure constitutional stop and frisk
20 practices?

21 A. Yes. It would involve an early intervention system as I
22 have described it in the testimony.

23 Q. Can I refer you to paragraph 50 of your report?

24 A. Well, I have described the general terms. It is my opinion
25 that the NYPD should hire a recognized expert with experience

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO2 Walker - direct

1 in this field, and there are many in existing police
2 departments, to design the specifics that would be appropriate
3 for the NYPD.

4 Q. By that, you mean the way the actual system would run, how
5 it would utilize current existing data, etc.?

6 A. There are many questions on the number of indicators, which
7 ones, what thresholds would trigger an automatic review of an
8 officer. There are differences regarding who has access to the
9 data, who has access to data about which officers. There are
10 many technical questions that can be answered.

11 THE COURT: Isn't this going well beyond stop and
12 frisk problems? This would identify officers with all kinds of
13 problems.

14 THE WITNESS: That is true.

15 THE COURT: Excessive force problems or personal
16 problems, all kinds of problems. This is beyond stop and frisk
17 problems that that officer might have, is that true?

18 THE WITNESS: Yes. But it would be necessary for a
19 full and complete accountability system related to stops and
20 frisks. I do not believe you can separate stops and frisks
21 from other aspects of officer behavior.

22 THE COURT: I see.

23 THE WITNESS: You have to integrate them all together.
24 That is the custom in a big city police department.

25 Q. How is pattern analysis different from the existing QAD

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO2 Walker - direct

1 audits based on your understanding of the NYPD auditing?

2 THE COURT: I didn't understand your question, Ms.

3 Patel. Say it again.

4 MS. PATEL: That's fine. I will try to move this

5 along.

6 THE COURT: OK.

7 Q. Since you wrote your report, have you come to learn more
8 about the CPI?

9 A. Yes.

10 Q. You listened to Hall's testimony yesterday?

11 A. Yes.

12 Q. Based on the information you heard in the testimony
13 yesterday, does that change your opinion in any way?

14 A. No.

15 Q. Why not?

16 A. Well, from Mr. Hall's testimony --

17 THE COURT: Chief Hall.

18 A. Chief of Patrol Hall.

19 -- it is evident that the NYPD has several different
20 databases, the CCRB database, CPI, I believe there is the
21 UF-250 database. The problem is that they are separate and
22 discrete databases and it is inefficient in terms of getting a
23 picture of officer performance and of unit performance.

24 THE COURT: So that's why you would want to create one
25 overall database?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO2

Walker - direct

1 THE WITNESS: Because that is the custom.

2 I would also add that I am familiar with inadequacies
3 in these various databases, as we have already heard testimony
4 in this court, the UF-250 --

5 MS. GROSSMAN: Objection. I don't know that this is
6 in the report.

7 THE COURT: Also, I don't need this testimony. You
8 started to say I have heard testimony. So if I have heard it,
9 I heard it.

10 MS. GROSSMAN: Move to strike.

11 THE COURT: He didn't get there. There is nothing for
12 me to strike. He said, as you have heard. If I have heard it,
13 it's in the record.

14 Q. I am going to turn to your opinion related to a court
15 appointed monitor. You testified a little yesterday about the
16 roles -- you testified about the roles of court appointed
17 monitors in judicially imposed remedies. Is there a particular
18 fixed or described role for a court appointed monitor in cases
19 involving widespread constitutional violations by a police
20 department?

21 A. There is no set of rules, there is no manual, for police
22 monitors regarding judicially ordered remedies for police
23 misconduct.

24 THE COURT: Have there been judicial orders that have
25 appointed monitors over police departments?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO2

Walker - direct

1 THE WITNESS: In all of the cases I am familiar with
2 where you're talking about patterns of police misconduct.

3 THE COURT: Were there monitors appointed, for
4 example, in the three consent decrees I just saw?

5 THE WITNESS: All of the consent decrees and memoranda
6 of understanding have court appointed monitors. It has become
7 the custom. That is true in Justice Department investigations
8 and several private litigations.

9 THE COURT: As part of your analysis of the remedies
10 here, what would you see as a proper role for a monitor here in
11 dealing with the stop and frisk part? What would this monitor
12 do?

13 THE WITNESS: As I testified yesterday, the monitor
14 would be responsible for overseeing the implementation of
15 whatever remedies are ordered and to report to the court on
16 that and to provide technical assistance to the department to
17 ensure compliance with the remedies.

18 Q. Can you give an example of the type of technical assistance
19 that a monitor provides?

20 A. Well, it would involve providing expertise regarding the
21 development and implementation of an early intervention system.
22 It would be technical assistance in terms of revising the
23 UF-250 and other documents.

24 Q. What role can a court appointed monitor have in assisting
25 law enforcement agencies -- actually, I will strike that.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO2

Walker - direct

1 When are court appointed monitors necessary based on
2 your research and experience?

3 A. They are necessary and particularly important in cases
4 involving patterns of unconstitutional policing, which is a
5 very complex process, and the remedies necessarily have to be
6 appropriately complex, as I have testified.

7 Q. Can you refer to paragraph 31 of your report?

8 A. Yes.

9 Q. Is there any other reason based on your research and
10 experience that a court appointed monitor is necessary?

11 A. Well, it's appropriate where you have a situation where the
12 department in question has been resistant to change in the face
13 of public protest and even official reports about the alleged
14 misconduct.

15 Q. Do you believe that every case alleging racial profiling or
16 unconstitutional practices require a court appointed monitor,
17 or is it just certain cases that fit within your analysis of
18 when it's important?

19 A. It's appropriate, and I believe necessary, in cases
20 involving large patterns of misconduct. If you're talking
21 about a more discrete problem, it may not be necessary.

22 Q. Based on your research, have there been court appointed
23 monitors appointed where the judicial oversight relates to a
24 specific police practice rather than multiple practices
25 typically at issue in Department of Justice consent decrees?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO2

Walker - direct

1 A. The answer is yes.

2 Q. Where is that?

3 A. That would be the New Jersey state police where the issue
4 involved allegations of racial profiling arising from --

5 MR. KUNZ: I have to object. I don't believe this
6 opinion is in the report either.

7 MR. CHARNEY: It is a fact.

8 MS. PATEL: I am asking him --

9 THE COURT: I heard what you're asking. Let me think
10 about that.

11 She asked whether there are some cases that involve a
12 single practice versus multiple practices and are there
13 nonetheless monitors even in a single practice case?

14 MS. PATEL: In addition, your Honor --

15 THE COURT: Can we stop there for a minute?

16 Are there cases?

17 THE WITNESS: Yes.

18 THE COURT: That involve sort of a single pattern as
19 opposed to multiple patterns within the same department?

20 THE WITNESS: The New Jersey state police case.

21 THE COURT: What single practice was at issue there?

22 THE WITNESS: Allegations of racial profiling arising
23 from motor vehicle stops by New Jersey state troopers.

24 THE COURT: Did that result in the appointment of a
25 monitor?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO2

Walker - direct

1 THE WITNESS: It was a consent decree and the
2 appointment of a monitor.

3 Q. In that case, there were no allegations of use of force, is
4 that right?

5 A. The remedies involved reporting use of force, but that was
6 not the primary basis of the case. It was vehicle stops.

7 Q. But the remedy did include reports on use of force?

8 A. Yes.

9 Q. What about the history of the department would fit within
10 your analysis of the reasons why court appointed monitors are
11 important?

12 THE COURT: I don't understand that question. I am
13 sorry. It made no sense. Would you try that again?

14 MS. PATEL: I will rephrase that.

15 Q. You testified that the history of police departments and
16 their response to public controversy is important to your
17 opinion regarding whether a court appointed monitor should be
18 put in place, right?

19 A. Yes.

20 Q. What about the history of the New Jersey police department?

21 A. Well, there was a public --

22 THE COURT: First of all, it's not the New Jersey
23 police department, is it?

24 THE WITNESS: State police.

25 THE COURT: What was it about the history of the New
SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO2 Walker - direct

1 Jersey state police that one factored in in deciding to appoint
2 a monitor?

3 THE WITNESS: There were continuing allegations of
4 racial profiling. I believe there were a number of individual
5 lawsuits. The New Jersey state police did not respond
6 effectively to those complaints. There was an attorney
7 general's report which documented that the allegations of
8 racial profiling were probably true. And at that point the
9 Justice Department stepped in to investigate and the result was
10 a consent decree with a monitor.

11 Q. In that case, with the single system, why was the
12 implementation of that consent decree complicated enough that
13 it warranted a court monitor there?

14 A. The remedies involved significant changes to the
15 documentation of stop incidents and supervisory review of
16 incident reports and the command level review of larger
17 patterns and trends. It was a very complex set of remedies.

18 Q. Was a monitor important to restore public trust with that
19 department?

20 A. It is my opinion that monitors are important to restore
21 public trust -- help restore public trust with the law
22 enforcement agency involved.

23 MS. GROSSMAN: Again, this is outside the scope of the
24 report, and I would object to this testimony and move to strike
25 because of that.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D5G8FLO2

Walker - direct

1 THE COURT: I will allow it because it's giving an
2 example of another jurisdiction where a monitor was appointed
3 and one of the factors considered, apparently, was the history
4 of that department in responding to these types of allegations.

5 How much longer is your direct, Ms. Patel? Can you
6 give us an estimate?

7 MS. PATEL: I would say about 15 minutes, 20 minutes.

8 THE COURT: I wouldn't be shocked to see you all back
9 in the courtroom tomorrow. In any event, we will reconvene in
10 about 12 minutes.

11 MS. PATEL: Maybe 10.

12 (Recess)

13 MS. GROSSMAN: May I just on the scheduling with Chief
14 Hall and for the remainder of the day. I am wondering if the
15 plaintiffs could just let us know the estimated time of Mr.
16 Moore's arrival?

17 THE COURT: I don't think they know. He is in a
18 settlement conference.

19 MR. CHARNEY: We don't know. He hasn't told us.

20 THE COURT: Chief Hall said he could be here in 10 or
21 15 minutes. But we don't have an update.

22 MS. GROSSMAN: One thought in terms of trying to get
23 through this all today, if the Court was available, if
24 necessary, to extend the court schedule from 4:30 for a little
25 bit so that we can try and finish today.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO2 Walker - direct

1 THE COURT: I can't make that determination now. It
2 depends on what a little bit means.

3 We will see. I don't have very many after matters.

4 THE COURT: Ms. Patel.

5 BY MS. PATEL:

6 Q. You have already testified about some of the recent changes
7 by the NYPD. Do you recall that, the March 5 memo and quest
8 for excellence program?

9 A. Yes.

10 Q. So how does the department's -- your recommendation for the
11 changes that need to be made in those department policies
12 relevant to the need for a monitor?

13 A. It does not change it.

14 Q. Based on your work on race and policing, why is rebuilding
15 public confidence towards the NYPD in the remedy process
16 important?

17 A. In policing, it is generally recognized that the police
18 depend upon the public.

19 THE COURT: I didn't hear you.

20 A. That the police depend upon the public. They depend upon
21 public confidence, public trust, and public cooperation.

22 Q. How can a court appointed monitor build public confidence
23 and reform for stop and frisk?

24 A. By including community input into the remedies process.

25 Q. Can you explain what you mean by community input in the

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO2 Walker - direct

1 remedy process?

2 A. Well, it would involve a formal requirement that the court
3 appointed monitor establish procedures for soliciting community
4 input specifically on stops and frisks.

5 Q. What is your definition of community input?

6 A. Well, it would be a variety of possible different
7 procedures for getting the perceptions and experiences of
8 people in New York City.

9 Q. In what circumstances should community input be
10 incorporated when reforming a police practice?

11 A. It has become increasingly common in recent consent decrees
12 and settlements that a specific community input component is
13 included.

14 Q. Are there examples?

15 A. Yes. The recent settlements in New Orleans, in Seattle,
16 and the letter, not the consent decree, in Portland, Oregon.

17 Q. I will just refer you to paragraph 55.

18 A. Yes.

19 Q. Are there any other judicial orders that include community
20 input?

21 A. Yes. In Cincinnati there were actually two settlements
22 parallel to each other and interlinked by paragraphs. The
23 collaborative agreement involved very extensive community
24 input.

25 Q. Do you recall the type of community input that is imposed

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO2 Walker - direct

1 in Seattle, Portland or New Orleans?

2 A. Well, they involve creating new committees within the
3 community to solicit input.

4 Q. Is research or surveys sometimes the form of input?

5 A. Yes. It was used in Cincinnati extensively.

6 Q. When in the remedial process should community input be
7 considered in your opinion? And here I will direct you to
8 paragraph 52 of your report.

9 A. Well, at really two stages. One would be, at the very
10 initial stages, the remedy could include the monitor soliciting
11 input from the community in developing the specific remedies.

12 Q. Is there a second stage?

13 A. The second stage is, as the remedies are being implemented,
14 overseen by the monitor, community input to inform the public
15 to solicit input about their perceptions of whether it's
16 succeeding or not succeeding, and all of that is essential to
17 building legitimacy for the remedies themselves.

18 Q. In that second stage, that's part of the evaluation of the
19 compliance with the order?

20 A. It could include specific evaluations, such as community
21 surveys of residents in the city.

22 Q. Just in conclusion, can you take a step back and summarize
23 your overall opinion around the comprehensive approach that is
24 necessary as a remedy, community input into the remedial
25 process, and the necessity of a court appointed monitor?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO2 Walker - direct

1 A. It is my conclusion that, assuming there is a finding on
2 behalf of the plaintiffs, that the remedies must include a
3 comprehensive approach to accountability, the appointment of a
4 court appointed monitor to oversee the implementation of the
5 remedies, and community input as part of the remedies process.

6 MS. PATEL: Nothing further.

7 THE COURT: Mr. Kunz.

8 CROSS-EXAMINATION

9 BY MR. KUNZ:

10 Q. Good morning still for a few minutes.

11 A. Good morning.

12 Q. I want to talk about the topics that came up in your direct
13 testimony, but before we get there, I have some questions about
14 your qualifications.

15 Am I correct in thinking you never worked as a police
16 officer?

17 A. That is true.

18 Q. Am I also correct in thinking that you have never worked
19 inside of a large police department managing a force of police
20 officers on a daily basis?

21 A. That is correct.

22 Q. Your experience in the field of policing is limited to
23 research and consulting, correct?

24 A. Correct.

25 Q. Now, you do your research and consulting out of Omaha,

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO2 Walker - cross

1 Nebraska?

2 A. Correct.

3 Q. It's true that New York City is a very different place than
4 Omaha, Nebraska, correct?

5 A. That's true.

6 Q. The population of New York City is 8 million as compared to
7 400,000 in Omaha?

8 A. Yes.

9 Q. And New York City residents rely heavily on public
10 transportation, whereas citizens in cities like Omaha tend to
11 drive places, correct?

12 A. Correct.

13 Q. In fact, many of the cities you have worked with are
14 distinguishable from New York City in a lot of these same
15 respects. Chicago, Los Angeles, New Jersey state police, the
16 Austin police department, the Minneapolis police department,
17 all of these cities like New York are more vehicle oriented
18 cities, correct?

19 A. Correct.

20 MR. CHARNEY: I object.

21 THE COURT: Hold on.

22 I think you meant unlike New York. You said like,
23 that's what I heard, and that's what the transcript shows. I
24 think you meant all these cities unlike New York are more
25 vehicle oriented. You meant unlike.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO2

Walker - cross

1 MR. KUNZ: Right.

2 THE COURT: What is the problem with that?

3 MS. PATEL: Chicago is public transportation oriented.

4 MR. KUNZ: The witness agreed.

5 THE WITNESS: I was about to elaborate on my answer.

6 THE COURT: I will allow the question, but I am going
7 to allow him to elaborate on his answer because you named a lot
8 of cities.

9 The question was, Chicago, Los Angeles, New Jersey
10 state police, Austin police department and Minneapolis police
11 department, are they all more vehicle oriented than New York
12 City?

13 THE WITNESS: Chicago has a heavy public
14 transportation component. The issues at stake in the New
15 Jersey state police entirely related to vehicles.

16 THE COURT: That's his point.

17 Q. Now, you did do some work in Washington, D.C.?

18 A. Correct.

19 Q. D.C., like New York, is a city that has a large mass
20 transportation system?

21 A. Yes.

22 Q. But the work did you in D.C. was limited in nature,
23 correct?

24 MS. PATEL: Object to the characterization of what
25 limited means.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO2

Walker - cross

1 MR. KUNZ: We can get into the details of that.

2 THE COURT: Just ask him what he did in D.C.

3 What did you do in D.C.?

4 A. Two things. First, I was retained by the U.S. Justice
5 Department as a consultant on the development of their
6 memorandum of understanding with the Washington, D.C. police
7 department. Second, with regard to the development of the
8 current citizen complaint review process, I worked with the
9 coalition of community groups in terms of developing their
10 proposal for the Washington city council.

11 Q. Those are two separate occasions where you did work in
12 Washington, D.C. The first time was with the DOJ in '97 and
13 '98?

14 A. Yes.

15 Q. You said that you worked on developing the memorandum of
16 understanding?

17 A. The specific language with regard -- specific provisions
18 with regard to the citizen complaint process.

19 Q. So you did not work on the overall development of the
20 memorandum of understanding, but you provided specific
21 consultation in regard to the processing of civilian
22 complaints?

23 A. That's true.

24 Q. That's the exact same work you did in Washington, D.C. for
25 the NAACP and ACLU?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO2 Walker - cross

1 A. Yes, citizen complaint procedure.

2 THE COURT: I'm sorry?

3 The civilian complaint?

4 THE WITNESS: Yes.

5 THE COURT: Is that the only aspect that you worked on
6 both times when you dealt with Washington, is just the civilian
7 complaint aspect, or did you work on more aspects than just
8 civilian complaints?

9 THE WITNESS: The actual work was just civilian
10 complaints.

11 THE COURT: Both times?

12 THE WITNESS: Yes.

13 Q. I also noticed from your CV that you have done some
14 consulting work around traffic stops, correct?

15 A. Yes.

16 Q. For Miami-Dade police department?

17 A. I did not do work on traffic stops in Miami-Dade.

18 THE COURT: Did you do it anywhere with any police
19 department?

20 THE WITNESS: I have a published article on the
21 evaluation of traffic stop data. I have not worked with a
22 department on traffic stops, no.

23 Q. And that's any department on traffic stops?

24 A. Well, to the extent that I have had very extensive
25 involvement with the New Jersey state police, both as the

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO2

Walker - cross

1 consent decree was developed and then regarding the state's
2 consideration of post consent decree steps that they might want
3 to take, that was indirectly related to traffic stops.

4 THE COURT: Who did you work with there?

5 THE WITNESS: It was a governor's task force, in terms
6 of what steps the state might want to take to ensure
7 continuation of the reforms in the post consent decree period.

8 THE COURT: So you worked with the governor's task
9 force?

10 THE WITNESS: Yes.

11 THE COURT: That was post consent decree?

12 THE WITNESS: It began as the consent decree was
13 nearing its termination.

14 THE COURT: I guess I am trying to say, you did not
15 work with any other entity other than the governor's task
16 force?

17 THE WITNESS: Correct.

18 Q. And your work on the governor's task force, your
19 consultation again was limited, it was focused to specific
20 areas that you were asked to consult on?

21 A. Well, the entire case involved one specific area, vehicle
22 stops.

23 Q. It had to do with the data collection procedures that New
24 Jersey state police would keep in place at the end of the
25 decree?

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D5G8FLO2 Walker - cross

1 A. Actually, my consultation was in terms of what kind of
2 oversight mechanisms would or should be developed to maintain
3 the reforms.

4 Q. To analyze the data that comes from reforms?

5 A. Just general oversight mechanisms that would oversee all
6 aspects of the New Jersey state police.

7 Q. I think we are going to come back to that. I want to ask
8 you some specific questions about your experience with New York
9 City and your knowledge of the New York City Police Department.

10 You have never consulted for the NYPD, correct?

11 A. Correct.

12 Q. You have never consulted, other than this case, with any
13 other entity in regard to the NYPD?

14 A. I have done some work with the CCRB.

15 THE COURT: When you say with the CCRB, what does that
16 mean? They retained you or they consulted you?

17 THE WITNESS: It was actually, in developing my report
18 on the mediation of citizen complaints, New York City, the CCRB
19 was one of the sites that I visited. I talked with the staff
20 and I talked with experienced mediators.

21 THE COURT: What year was that, roughly?

22 THE WITNESS: Mid-2000.

23 THE COURT: That's fine. Mid-2000.

24 Q. So that was learning about the way the CCRB operates?

25 A. Yes. I should add that as part of my research for my book

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO2

Walker - cross

1 "Police Accountability: The Role of Citizen Oversight," I
2 looked at all the major citizen oversight agencies in the
3 country, and that included the CCRB, and at professional
4 meetings I have had the opportunity to talk to staff and board
5 members of the CCRB and discuss a variety of matters.

6 Q. So then other than the work that you have done, the
7 research you have done on CCRB, you haven't done any other
8 research or consulting in regard to the NYPD?

9 A. I did a ride-along in Brooklyn in 1985.

10 Q. Other than that 1985 ride-along?

11 A. No.

12 Q. In fact, you have never attended any of the training
13 programs that NYPD uses to train its officers?

14 A. No.

15 Q. You didn't attend the new stop, question and frisk training
16 that New York is giving at Rodman's Neck?

17 A. No.

18 MS. PATEL: I object to this line of questions. He is
19 not opining on training at all.

20 THE COURT: Training is one aspect. But that's OK.

21 Might as well bring out all of the experience or lack of it.

22 Q. You didn't speak to any New York City police officers since
23 1985 about how they do their job, correct?

24 A. I have met some New York City police officers and command
25 officers at some conferences. Other than that, no.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO2

Walker - cross

- 1 Q. You did review a number of NYPD policy documents or
2 training documents in your preparation for this case, correct?
3 A. Correct.
4 Q. These were all documents that your attorneys gave you?
5 A. Correct.
6 Q. You listed 33 documents in your report, is that correct?
7 A. Correct.
8 Q. I believe that 12 and 13 on the list is actually repeats.
9 I think it was actually just 32 documents you reviewed?
10 A. I accept that if that's your representation.
11 Q. Five of the documents, numbers 29 through 33, command
12 conditions reports, those are basically the same type of
13 document just covering different precincts?
14 A. Yes.
15 Q. Different parts of the city.
16 Then another five documents, number 21, 25 through 28,
17 squad supervisor recapitulations, again, those are the exact
18 same types of documents, they just cover different parts of the
19 city?
20 A. Correct.
21 Q. Did you know that there is over 415 documents that have
22 been admitted in this case?
23 A. No, I do not know that.
24 Q. You also reviewed, according to the list, several patrol
25 guide provisions?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO2

Walker - cross

1 A. Yes.

2 Q. The stop, question and frisk patrol guide, which is three
3 pages long; the activity log patrol guide provision, which is
4 two pages long; the monthly and quarterly performance review
5 patrol guide, which is seven pages long; and the annual
6 performance review patrol guide provision, which is two pages
7 long.

8 So you have reviewed a total of four patrol guide
9 provisions for 14 pages, correct?

10 A. I will accept your representation of that.

11 Q. Did you know that the NYPD patrol guide has hundreds of
12 sections and is over 1500 pages long?

13 A. I did not know the exact number.

14 Q. So you reviewed just a miniscule fraction of the NYPD
15 procedures?

16 A. That would be a fair assessment.

17 Q. And the ones you did review were selected by the attorneys
18 for the plaintiffs?

19 A. Correct.

20 Q. You also reviewed a few supervision guides, right?

21 A. Yes.

22 Q. The monitoring and assistance program guide?

23 A. Yes.

24 Q. The lieutenant's guide for quarterly assessment of
25 sergeants, and a command level training instructor's guide on

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO2 Walker - cross

1 the quest for excellence, correct?

2 A. Yes.

3 Q. So that's three supervision related documents?

4 A. Yes.

5 Q. I can skip this next section, but just so I am clear,
6 you're not issuing any opinions at all today about the training
7 that the New York City Police Department offers?

8 A. That's correct.

9 Q. Or the possible need for remedial changes in regard to
10 training, you do not think there are remedial changes needed
11 there?

12 MS. PATEL: Objection. He did testify that training
13 is part of the comprehensive approach. He may not have given a
14 detailed opinion.

15 THE COURT: Training is part of a comprehensive
16 approach, but you didn't give any recommendation as to changing
17 or in any way reforming the current training?

18 THE WITNESS: That is correct.

19 Q. Now, as of the date of your report, March 5, 2013, the only
20 deposition testimony you had read was that of Mr. Lou Reiter?

21 A. That's correct.

22 Q. Since then have you read any of the deposition testimony?

23 A. Yes.

24 Q. What deposition testimony have you read?

25 A. I recall reading Helen McAleer, I forgot her exact title,
SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO2 Walker - cross

1 Deputy Commissioner Julie Schwartz.

2 Q. Is this trial testimony?

3 A. There were depositions and then there was trial testimony.

4 Q. Other than those two?

5 A. There are others. I can't recall them right offhand.

6 Q. How much of the trial testimony in this case have you
7 reviewed?

8 A. I don't know the exact total number of the trial testimony
9 so I can't give an answer to that.

10 Q. Well, I will represent that as of last night there were
11 about 7,450 pages of trial testimony. How much did you review?

12 A. I probably reviewed maybe 10 or 12 trial testimonies.

13 THE COURT: 10 or 12 pages?

14 THE WITNESS: 10 or 12 individuals.

15 Q. Which individuals were those?

16 A. Former Chief Esposito, Julie Schwartz, Helen McAleer,
17 Thompson, is it Joan Thompson with CCRB.

18 Q. Did you review any of the trial testimony of the officers
19 and street level supervisors, the sergeants, that have
20 testified in this trial?

21 A. I was provided them. I read through them quickly. I did
22 not read them in detail.

23 Q. For example, did you read Sergeant Kelly's testimony about
24 how he supervises the conditions team in the 43rd Precinct?

25 A. No.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D5G8FLO2

Walker - cross

1 Q. Did you read Sergeant Houlahan's testimony about how he
2 supervised his officers?

3 A. No.

4 Q. How about the testimony of Detective Dang about his
5 training on stop, question and frisk and how he applied that in
6 the field, did you read that?

7 A. No.

8 Q. Given the fact that you never worked for the NYPD and that
9 you have reviewed such a limited array of NYPD documents, isn't
10 it fair to say that your opinions in this case are limited to
11 just general observations and are not specific to the facts of
12 this case and the NYPD?

13 MS. PATEL: Object to that.

14 THE COURT: I don't need more than one lawyer speaking
15 at once.

16 Mr. Charney, you're starting to speak to yourself.
17 It's been a long trial. You're younger than he is. Speaking
18 to oneself is something that happens when you get older.

19 Objection is sustained because it's an argumentative
20 question.

21 Q. Now, going back a minute to the work that you have done for
22 CCRB, you mentioned you met with CCRB?

23 THE COURT: He didn't really say he did work for CCRB,
24 I don't think.

25 MR. KUNZ: I will rephrase the question.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO2

Walker - cross

1 Q. You mentioned that you met with the CCRB in New York City.
2 How long was that meeting?

3 A. Well, there were -- I can't recall the exact time. It was
4 maybe two hours. We discussed the mediation program
5 specifically, that included staff members, investigators and
6 mediators.

7 Q. Other than focusing on the mediation program of the CCRB,
8 did you get into any other aspects of the CCRB's operations?

9 A. Well, I studied that independently long before the
10 mediation project as part of my work on citizen oversight of
11 the police.

12 Q. So the plaintiffs would like to qualify you as an expert on
13 police reform in this case, is that correct?

14 A. That is my understanding.

15 Q. But your work in this area has focused on more specific
16 aspects of police reform, isn't that correct?

17 A. Could you repeat that question?

18 Q. I will be a little more specific actually.

19 In paragraph 6 of your report, you state that your
20 focus has been on police accountability, citizen complaints,
21 police relations with racial and ethnic minority groups and
22 citizen oversight. So isn't it fair to say that your work on
23 police reform is limited to those topics?

24 MS. PATEL: I would object.

25 THE COURT: I will allow it. He is going to say

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO2 Walker - cross

1 that's fair or not fair.

2 Is that a fair characterization of all your work over
3 all these years?

4 THE WITNESS: It is a misleading characterization.

5 THE COURT: What would be fair? What is missing?

6 THE WITNESS: Well, to the extent that you say race
7 and ethnicity in policing, that inevitably covers every single
8 aspect of policing, from employment practices, to disciplinary
9 practices, to everything.

10 THE COURT: And police accountability sounds like a
11 broad term too.

12 THE WITNESS: Police accountability is a broad term
13 because it covers each and every critical -- each and every
14 critical incident involving police/citizen contact. It's very
15 broad.

16 Q. But when you provide technical assistance and give advice,
17 it's not broad, it's focused on those specific issues, correct?

18 A. It depends on what they ask. It's whatever they want me to
19 provide assistance on.

20 Q. In recent years, your research has been focused on civil
21 rights litigation against law enforcement agencies for
22 violating constitutional rights?

23 A. Yes.

24 Q. Your consulting work has been limited to two specific
25 areas, correct?

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D5G8FLO2

Walker - cross

1 THE COURT: What two specific areas?

2 Q. In paragraph 11, you talk about your consulting work in
3 developing EIS systems?

4 THE COURT: EIS?

5 THE WITNESS: Early intervention.

6 Q. In paragraph 12 of your report, you talk about your
7 consulting work doing accountability mechanisms, meaning
8 processing of civilian complaints.

9 That's been the focus of your consulting work,
10 correct?

11 A. Yes. But in both of those cases, the subjects implicated
12 all aspects of policing, all aspects of police/citizen contact.

13 THE COURT: Would that include amongst them stop or
14 stop and search practices?

15 THE WITNESS: Yes.

16 Q. Let's take the example of D.C. In D.C, the first time you
17 went in, you said that you did consulting on a specific topic,
18 correct?

19 A. Which one are you talking about?

20 Q. When you did work for the DOJ in '97 and '98.

21 A. Yes.

22 Q. And that topic was?

23 A. Their proposed provisions on citizen complaints in the
24 consent decree.

25 Q. That was the advice that you gave them, right, it had to do

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO2

Walker - cross

1 with the proposed remedies for processing civilian complaints?

2 A. That is true. That's what they asked, that's what I gave
3 them.

4 Q. You didn't give more broad recommendations in regard to
5 these other areas you say are interrelated?

6 A. That's true.

7 Q. Is it true that you have never served as a monitor for a
8 police department?

9 A. That is true.

10 Q. Have you consulted for police departments that are under
11 the supervision of a monitor?

12 THE COURT: Wait. That one I have to understand
13 better. While they were under the supervision of a monitor or
14 departments that at some point came under the supervision of a
15 monitor?

16 MR. KUNZ: While they were under the supervision.

17 THE COURT: Have you consulted with a police
18 department while the department was being supervised by a
19 monitor?

20 THE WITNESS: Very much in the case of the New Jersey
21 state police. And also, Oakland, California, which is under a
22 consent decree arising from a private litigation, I was
23 retained on one occasion by the monitoring team.

24 Q. Now, in both those instances -- we have already talked
25 about the New Jersey state police so we will focus on

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO2 Walker - cross

1 Oakland -- you were asked to opine on a specific area, correct?

2 MS. PATEL: I think that's a confusing question given
3 his prior testimony about his involvement.

4 THE COURT: There's two entities in that question.

5 MR. KUNZ: I said we can ignore New Jersey for the
6 time being because we talked about that earlier. And just
7 focusing on Oakland.

8 THE COURT: Putting aside New Jersey, which we have
9 already discussed, focusing solely on Oakland, that's your
10 question?

11 MR. KUNZ: Yes.

12 THE COURT: Focusing solely on Oakland, what is the
13 question?

14 Q. You consulted with the monitor on a specific area, correct?

15 A. It was generally compliance with the terms of the
16 settlement agreement there. I have forgotten the specific
17 chapters or subjects of the consent decree that I consulted on,
18 but there was a general problem of lack of compliance.

19 Q. I understand there was a problem with general compliance in
20 Oakland, and I think we will end up learning more about that
21 today. But my question is, the work that you did, the
22 consulting advice that you gave, was focused to specific areas,
23 right?

24 A. I do not recall the exact details of my one brief encounter
25 with the Oakland police department.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO2

Walker - cross

1 Q. How brief was it?

2 A. I had one visit to the city of Oakland.

3 THE COURT: Did you say with the monitor?

4 THE WITNESS: With the monitoring team.

5 THE COURT: You met with the monitoring team?

6 THE WITNESS: Yes.

7 THE COURT: What year was this, roughly?

8 THE WITNESS: The consent decree was 2003. It was
9 sometime in 2006 or 7.

10 THE COURT: That's close enough. Thank you.

11 MR. KUNZ: So, generally, your Honor, I think we would
12 move now to disqualify the expert opinions in police reform
13 generally. We think at most he can opine on EIS systems and
14 accountability systems, but because he has no specific
15 knowledge of the NYPD, his opinions in those areas are totally
16 untethered from the facts so we would move to disqualify him.

17 THE COURT: Motion denied.

18 (Continued on next page)

19

20

21

22

23

24

25

D5g9flo3

Walker - cross

1 BY MR. KUNZ:

2 Q. So your chief recommendation in this case in several areas
3 is that the NYPD should conduct audits or an expert should
4 conduct audits of the NYPD and then make recommendations,
5 right?

6 A. That's correct.

7 Q. So then you have not conducted those audits, right?

8 A. That's correct.

9 Q. So we're finishing a two-month trial. And as I said
10 before, as of yesterday the trial transcript was 7,452 pages.
11 You could have reviewed that record and made specific
12 recommendations, right?

13 MS. PATEL: Objection.

14 THE COURT: Objection sustained. That is
15 argumentative. He's made specific recommendations. The
16 testimony is what it is. You may reread it. That's his
17 testimony.

18 Q. So in the area of supervisory structure, which we talked a
19 lot about on direct, your recommendation is that the Court
20 should order an audit or evaluation of the NYPD supervisory
21 structure, right?

22 MS. PATEL: I don't think he testified to that.

23 THE COURT: He didn't. It might be in the report but
24 I didn't hear that.

25 MR. KUNZ: Do you have the report in front of you?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo3

Walker - cross

1 THE COURT: I'm saying it may be in the report, but I
2 don't think he testified to it because I didn't hear that.

3 So you could question him about: Is that his opinion?
4 Q. Is that, in fact, your opinion?

5 THE COURT: That's a fair question.

6 Is it your opinion in that the Court should order an
7 audit of the supervisory system? Is that one of your opinions?

8 THE WITNESS: I recommended that the Court should
9 order -- the remedy should involve audits of various aspects of
10 NYPD.

11 Q. And one of the specific ones you mentioned in your report
12 was the supervisory structure?

13 A. Yes.

14 Q. And you've said in the report that this audit should
15 include interviews with officers and supervisors up the chain
16 of command?

17 A. Yes.

18 Q. But you didn't do that?

19 A. No.

20 Q. And you said that the audit --

21 MR. CHARNEY: Your Honor, that's --

22 THE COURT: It's an unfair question. Of course, he
23 didn't do it. There is no remedies in place.

24 We're trying a case first to see if there's liability;
25 and then if there is, possibly imposing remedies.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo3

Walker - cross

1 Nobody has retained him or asked him pro bono to
2 actually do these things. Of course not. But okay.

3 MR. KUNZ: That's exactly our point, your Honor.

4 We want to show the limitation of his opinion.

5 THE COURT: I don't understand. I'm a little
6 mystified --

7 MS. PATEL: He's testifying --

8 THE COURT: Is somebody talking? I'm sorry.

9 What is it, Ms. Patel?

10 MS. PATEL: I was just going to say I find it improper
11 that Mr. Kunz is making an argument and testifying in the
12 middle of questioning.

13 THE COURT: Cross-examination by definition is
14 argumentative. I'm not upset by that.

15 But to think he should have applied the remedies he's
16 recommending himself before we've gotten anywhere near that
17 seems odd to me.

18 MR. KUNZ: Not applied the remedies, your Honor.

19 The question was did he conduct an audit to determine
20 what specific remedies there should be.

21 THE COURT: Did he conduct an audit?

22 Did you review records in making your determination of
23 inadequacies thereby supporting your opinion that there needs
24 to be a remedy?

25 THE WITNESS: I looked at documents, yes.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo3

Walker - cross

1 THE COURT: Yes.

2 THE WITNESS: Extensive documents.

3 THE COURT: Yes.

4 MR. KUNZ: We went over the documents you reviewed
5 earlier, correct?

6 THE WITNESS: Yes.

7 THE COURT: And they're in evidence. There are piles
8 in evidence too.

9 Q. This is the 32 documents on your list?

10 THE COURT: I don't know what 32 you're talking about.
11 I saw a physical stack of six to eight inches of whatever
12 they're called.

13 MR. CHARNEY: Several of those documents had
14 hundreds --

15 THE COURT: I know, but I've forgotten what they're
16 called.

17 MR. CHARNEY: Command conditions reports.

18 We actually had hundreds of documents within one
19 exhibit so to say he only looked at 32 --

20 THE COURT: I understand that.

21 And then you said when you looked at all of those you
22 saw repetitive phrases, you saw quantitative not qualitative
23 analysis. So it is misleading to refer to it as just so many
24 exhibits. There were hundreds of pages, each page being a
25 separate -- I forget the word again.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo3

Walker - cross

1 MR. CHARNEY: Command --
2 MS. PATEL: Monthly performance review.
3 THE COURT: Just give me the word again.
4 MR. CHARNEY: Command conditions report and monthly --
5 MS. PATEL: And monthly conditions impact measurement
6 report.
7 THE COURT: And you looked at hundreds of pages of
8 both of those?
9 THE WITNESS: Yes.
10 THE COURT: Among other things? You looked at other
11 documents too?
12 THE WITNESS: Yes.
13 THE COURT: Okay.
14 Q. You also think that the NYPD should audit -- you think that
15 the audit of the NYPD supervisory structure should include a
16 review of completed UF 250 forms and officer memo books, right?
17 A. If you're doing an audit -- of a supervisor, that's what
18 you would look at.
19 Q. And you did not do that in this case, right?
20 A. That is correct.
21 Q. So, then -- all right. So I'll move on.
22 Likewise, in the area of performance evaluations your
23 opinion there is also that an expert should come in and do an
24 evaluation of the current structure, correct?
25 A. Yes.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D5g9flo3 Walker - cross

1 Q. And you haven't done that evaluation?

2 A. No.

3 Q. So, in this area you were not able to reach any conclusions
4 on specific remedies, correct?

5 THE COURT: Do you object?

6 MS. PATEL: Yes, your Honor.

7 THE COURT: Sustained.

8 He gave his opinion on remedies. You may argue that
9 they weren't specific when we get to argument. Read his
10 testimony. It is what it is. You can argue about it.

11 Q. The same is true in the development of the early
12 intervention true?

13 THE COURT: I'm sorry. I don't know what "the same is
14 true" means. You'll have to phrase it as a complete sentence.

15 Q. In regard to your recommendations for the early
16 intervention system, your opinion is that an expert should
17 review the current procedures and make recommendations,
18 correct?

19 A. Yes.

20 Q. And, again --

21 THE COURT: Well wait a minute. With respect to the
22 early intervention system, you described to me in great detail
23 a proposed database with at least 17 different components,
24 right?

25 THE WITNESS: Yes.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo3

Walker - cross

1 THE COURT: That was your recommendation, right?

2 Was that your recommendation?

3 THE WITNESS: Yes.

4 THE COURT: That all had to do with identifying early
5 intervention?

6 THE WITNESS: Yes.

7 Q. You did describe in your report and in your testimony this
8 early intervention system. But because your knowledge of the
9 NYPD practices and procedures are limited, that's why you say
10 an expert should audit the current system, correct?

11 A. Yes.

12 Q. So then the recommendations you make are not specific to
13 the NYPD? They are general observations about --

14 MS. PATEL: I would object.

15 THE COURT: I'll allow that. Maybe he thinks that all
16 large police departments should have a single integrated
17 database that tracks all of these factors so there can be an
18 early intervention system.

19 Is that true?

20 THE WITNESS: That is true.

21 THE COURT: So it's not unique to New York? It's to
22 any big city police department.

23 Is that true?

24 THE WITNESS: The accreditation standard --

25 THE COURT: The what?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo3

Walker - cross

1 THE WITNESS: In the law enforcement accreditation
2 standard.

3 THE COURT: The law enforcement accreditation
4 standard.

5 THE WITNESS: That's CALEA. Commission on
6 Accreditation for Law Enforcement Agencies, CALEA, has a
7 specific standard that for large departments, that an early
8 intervention system is required for accreditation.

9 THE COURT: So I gather you agree with Mr. Kunz that
10 this would be a generic program for any large police
11 department?

12 THE WITNESS: That's true.

13 THE COURT: Okay.

14 Q. Now, in regard to performance evaluations, I believe that
15 your recommendation is that -- let me rephrase -- withdraw and
16 rephrase that.

17 So you recommended change to the performance
18 evaluation system. But you have no expert opinion as to -- as
19 to what specific changes should be made to the current system?

20 THE COURT: That's simply not true.

21 The testimony that you gave, is this correct, that it
22 had to focus more on qualitative and less on quantitative.
23 That's the shortest summary of what you said.

24 Is that true?

25 THE WITNESS: Yes. More specific detail about
SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo3 Walker - cross

1 incidents so that a supervisor or anyone else conducting an
2 audit could determine whether there was sufficient grounds for
3 a reasonable suspicion stop.

4 Q. Like the other area we've just talked about, because your
5 knowledge of the specifics of NYPD are limited, your
6 recommendation here is again a general observation about
7 practices that should be in place?

8 MS. PATEL: Objection.

9 THE COURT: I'll let him answer that. I don't know
10 whether it's generic or specific to New York.

11 Would this be peculiar to New York or to any large
12 police department?

13 THE WITNESS: Well, the standard of accountability is
14 generic. It should apply to all departments, large and small.

15 But the specific recommendation was based on my review
16 of the documents provided to me.

17 Q. Now, do you have expertise -- or is it true that you do not
18 have expertise in performance evaluations, in specific?

19 A. That is not true.

20 Q. Okay. So it seems to me the backbone of your opinion, as
21 came up in your report and in your testimony, is that the New
22 York City Police Department should use a comprehensive approach
23 to guiding and controlling police officer conduct, correct?

24 A. For the purposes of ensuring compliance with the
25 constitution, yes.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo3

Walker - cross

1 Q. And this comprehensive approach has a number of components?

2 A. Correct.

3 Q. So one of the components of the comprehensive approach is
4 the need for formal written policies to cover stop-and-frisk
5 incidents, correct?

6 A. Correct.

7 Q. So then what is needed here literally is a written guide
8 that is distributed to all police officers in the department
9 that details when a stop can be made and the procedures to be
10 followed, correct?

11 A. Correct.

12 Q. Are you aware that the NYPD has such a formal written
13 policy?

14 A. Yes.

15 Q. And that's because you reviewed it in preparation for your
16 report, right?

17 A. Yes.

18 THE COURT: Did you find it adequate or inadequate for
19 that component?

20 THE WITNESS: Well, it's partially adequate. But,
21 again, as I testified early in my testimony a comprehensive
22 approach depends upon this interaction of all the different
23 components.

24 THE COURT: I do understand. But I'm isolating this
25 component for the moment. In terms of your remedy testimony,

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo3 Walker - cross

1 does that part of your remedy; in other words, do the written
2 directives need to be improved or not?

3 THE WITNESS: I would need to look at that again to
4 answer the question.

5 THE COURT: Okay.

6 Q. Are you aware that plaintiffs' liability phase expert, Lou
7 Reiter, opined that NYPD formal written policies comport with
8 good and accepted practices in the field?

9 A. I don't recall that but I will accept your representation
10 that he did.

11 Q. Now another component of a comprehensive approach is a
12 performance assessment system for officers that allows
13 supervisors to determine whether officers are complying with
14 the constitution, state laws, local ordinances and department
15 policies, correct?

16 A. Correct.

17 Q. So, in this area if a department has a performance system
18 like the one you described is necessary, then this would not be
19 an area where remedial changes are needed, correct?

20 A. Your question poses a hypothetical.

21 MS. PATEL: Can I hear that question.

22 THE COURT: Yes. You can hear it.

23 But, yes, his question is hypothetical.

24 Let's pause. The reporter is going to read it back
25 for Ms. Patel.

D5g9flo3

Walker - cross

1 (Record read)

2 MS. PATEL: What is the "performance system" that that
3 question --

4 THE COURT: It doesn't much matter. But if it's
5 already what you would recommend, then it wouldn't need
6 changes, right?

7 THE WITNESS: Correct.

8 Q. So, for example, if a department assessed the performance
9 of its officers in 28 separate performance and behavioral
10 areas, several of which go to the officer's understanding of
11 the constitutional requirements, that would be an example of a
12 situation where there would be no remedial changes necessary?

13 A. I cannot say that with the information that's -- you have
14 presented to me.

15 Q. Okay. So then what about if a department provided extra
16 scrutiny to officers who receive low evaluations in regard to
17 ethics and judgment. That would be a factor that would weigh
18 against remedial changes in this area, correct?

19 MS. PATEL: Objection. Extra scrutiny is unclear.

20 THE COURT: I'll allow it.

21 That's one good thing, I suppose, right?

22 THE WITNESS: Well it sounds good as you present it
23 but I would need to know the specifics of it, including seeing
24 documents related to that.

25 Q. How about a department that provides annual reviews of all

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo3

Walker - cross

1 officers and for new officers it provides reviews in the 4th,
2 the 10th, the 16th, and the 22nd month of service? That
3 would be another factor that would weigh against any remedial
4 changes in the performance assessment area, correct?

5 A. I would need to see the details of that process.

6 Q. So another component of your comprehensive approach is
7 training for all officers on those policies. And then you list
8 some specific areas where training is necessary in your report.
9 That's another aspect of the comprehensive approach?

10 A. Yes.

11 Q. So --

12 MS. PATEL: For completeness, do you want to read the
13 rest of that.

14 MR. KUNZ: Sure. Training for -- I'm quoting now,
15 quote, "Training for all officers on those policies which
16 includes: One, preservice academy training; two, mandatory
17 annual in-service training; three, roll call training; and
18 four, field training when supervisors have questions or
19 concerns regarding officers -- officer stop-and-frisk
20 performance."

21 Q. So that's the type of comprehensive training system that a
22 department should have in place in your opinion?

23 A. That's the bare-bones of it. But, again, for any
24 particular department or training program, I would need to see
25 the details.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo3 Walker - cross

1 Q. So if a department has all those things in place, that
2 would be a fact or that would weigh against remedial change?

3 THE COURT: I think you've just asked that. He says
4 it's not the factors. It's how they're applied. He'd have to
5 look at all those training components.

6 Have you done that? Have you analyzed all the
7 training material?

8 THE WITNESS: No.

9 THE COURT: Okay.

10 Q. So, a department that has a six-month long academy, that
11 would weigh against remedial changes, right, because that would
12 be a detailed training system?

13 MS. PATEL: Again, he's not --

14 THE COURT: I have to sustain an objection this time.
15 Depends what's being trained on during those six months,
16 obviously. You need to know the curriculum. You need to know
17 the curriculum in some detail, right?

18 THE WITNESS: The curriculum and the actual processes
19 within the classroom and the academy and then what's required
20 for passing and failing.

21 THE COURT: So it's not just the length of the
22 training program, right?

23 THE WITNESS: Right.

24 THE COURT: If you only knew it's six months, you
25 can't say anything about it, right?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo3 Walker - cross

1 THE WITNESS: Right.

2 BY MR. KUNZ:

3 Q. So it's not just the length, right? But that would be one
4 factor that you would want to look at?

5 THE WITNESS: I would need to know the details.

6 THE COURT: He's saying: Is length one factor?

7 THE WITNESS: That would be one factor to look at.

8 Q. How about would another factor be whether or not the
9 academy is CALEA accredited?

10 A. That would be one factor I would look at.

11 Q. Would another factor be that a police academy is an
12 accredited educational institution by the state in question?

13 THE COURT: I'll allow that for what weight it has.

14 THE WITNESS: That would be one factor I would
15 consider.

16 Q. And another factor would be if a department has a whole
17 bureau dedicated to the development of the training materials.
18 That would be another factor you would want to look at?

19 A. It would be a factor. It would not be determinative.

20 Q. If a department requires in-service training on a yearly
21 basis, that would be another factor you would look at?

22 A. That's what I've recommended.

23 Q. A department that gives command level trainings at role
24 calls, distributes training materials to officers, that would
25 be another factor you would look at?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo3 Walker - cross

1 A. That would be a factor.

2 THE COURT: Would you have to know the content of
3 those instructions?

4 THE WITNESS: Absolutely.

5 THE COURT: For example, roll call instructions?

6 THE WITNESS: What subjects are covered, the manner in
7 which they're covered.

8 THE COURT: So without knowing the contents of those
9 instructions, can you say anything about them?

10 THE WITNESS: Not really. Beyond the fact that
11 something happens.

12 Q. Or if a department has -- if every precinct within the
13 department has a training officer assigned to it, at least one
14 training officer, that would be another factor you'd look at to
15 determine the quality of the training and if remedial changes
16 are needed?

17 MS. PATEL: Your Honor, I would --

18 THE COURT: That's a good thing. Is that a good
19 thing?

20 THE WITNESS: It's a good thing. But it would not be
21 a determinative factor.

22 MS. PATEL: Your Honor, just in terms of this line of
23 questioning. He doesn't have an opinion on training. There's
24 an efficiency issue right now with regard to time. And all of
25 this is in evidence somewhere else and can be used in summation

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo3 Walker - cross

1 or closing. It doesn't seem necessary to argue this point at
2 this moment.

3 MR. KUNZ: I'll just do one more question here and
4 then I'll move on, your Honor.

5 Q. Would another factor be if a department develops a specific
6 refresher training course in regard to stop, question, frisk
7 and then is -- having all of its officers go to that training,
8 would that be a factor that you would look at to determine if
9 remedial changes are needed?

10 A. It would depend on the content of that program.

11 Q. Okay. Another component of your comprehensive approach is
12 close supervisor by immediate supervisors, sergeants, on a
13 daily basis that allows supervisors to assess officer
14 performance with respect to compliance with the law and
15 department policies.

16 That's a part of your comprehensive approach?

17 A. Yes.

18 Q. Now, so if a department had policies in place that required
19 supervisors to visit officers during -- on a regular basis
20 during tours, that would be a factor that you would want to
21 know about, correct?

22 A. As with the other questions, I would need to know the exact
23 content of that.

24 Q. Or how about if department policy is that a supervisor
25 needs to show up at that time scene of an arrest to verify the

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo3

Walker - cross

1 arrest. That would be another factor you'd look at, right?

2 A. It would be a factor, yes.

3 Q. Another component to the comprehensive approach is the
4 review of supervisory activity. This is the review of
5 sergeants' activity, correct?

6 A. Yes.

7 Q. So likewise a department that has a performance system in
8 place for sergeants, where sergeants are required to review
9 their subordinates in regard to how well they are able to
10 verify the officer's judgment of probable cause, that would be
11 a factor that would weigh against remedial changes here, right?

12 A. It would be -- well the issue in this case I understand is
13 reasonable suspicion, not probable cause.

14 But that would be a factor. But, again, I would need
15 to know more detail.

16 Q. And how about a department that required sergeants to
17 evaluate their officers' ability to handle -- I'm sorry.

18 Withdrawn.

19 How about a department that evaluates sergeants on the
20 sergeant's ability to handle Civilian Complaint and Review
21 Board complaints against their subordinates. That would be a
22 factor that would show -- that would weigh into your opinion on
23 remedial changes necessary to the sergeant's supervisory
24 function?

25 A. You used the word "handle." I would have to know more

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo3 Walker - cross

1 detail about what that word involves.

2 Q. So in all these areas I guess we're coming back to this
3 same theme is that you don't know the details here, correct?

4 A. That's correct. I know some of the details. I don't know
5 all of the details.

6 Q. So there are several other components here I just want to
7 look at briefly.

8 The systematic review of officers' encounters with
9 citizens. That's another, you know, footpost I guess of your
10 comprehensive system?

11 THE COURT: I guess we're calling them prongs.

12 Q. Is this another prong in the comprehensive system?

13 MS. PATEL: I would ask that the rest of that sentence
14 be read, especially the last part.

15 MR. KUNZ: So a prong of your systematic -- I'm sorry,
16 of your comprehensive approach is, "A systematic review of
17 officer encounters with citizens, including stop and frisk
18 activities, for the purpose of identifying patterns of activity
19 that may violate constitutional standards and need corrective
20 action."

21 THE WITNESS: Yes.

22 Q. So, if a department tracks all civilian complaints in
23 several different databases and then monitors those complaints
24 with regard to specific officers and looks for trends, that
25 would be a sign that the officer -- that the department does

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo3

Walker - cross

1 not need remedial changes in this area, correct?

2 A. It depends on exactly what data is in different databases,
3 and depends what kind of tracking is done and what kind of
4 action is taken on the basis of that tracking.

5 Q. And also a department that does on a regular basis several
6 different audits of reports relating to stop, question, frisk
7 and activity logs, that would be a sign that a department does
8 the systematic review that you're talking about, correct?

9 A. You're describing a system of regular audits. If there
10 were audits and different units of the department received
11 failing grades over a period of many years and took no action
12 and the failing grades continued, that would call for remedial
13 action.

14 MR. KUNZ: Well I guess I'd move to strike that
15 response as nonresponsive to my question.

16 Q. The question is, if a department does audits, is that a
17 sign?

18 THE COURT: No. I think it was responsive. He is
19 saying it's not enough to do audits. It's what the audits show
20 that he would take into account in deciding whether or not to
21 recommend remedial action.

22 THE WITNESS: And my answer was based primarily on the
23 testimony of Julie Schwartz.

24 Q. So another component of your comprehensive approach is
25 internal investigations and disciplinary processes?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo3

Walker - cross

1 A. Yes.

2 Q. So a department that is monitored by an outside agency
3 which reviews civilian complaints and then has the power in
4 some cases to prosecute the officer for misconduct, that would
5 be a sign of strong internal investigation and disciplinary
6 process, correct?

7 MS. PATEL: I would ask that the full sentence be read
8 again.

9 THE COURT: If you could, it would be helpful.

10 MR. KUNZ: "Internal investigation and disciplinary
11 process which includes meaningful steps to investigate and
12 discipline officer abuse of stop and frisk."

13 Q. So that's a part of your comprehensive approach?

14 A. Yes.

15 Q. And so if a department does internal investigations that
16 get at -- and discipline officers for abuse of stop and frisk,
17 that would be a sign that remedial changes are not needed here,
18 correct?

19 A. Depends on the quality of those investigations and the
20 outcome of those investigations.

21 Q. And the same is true if the department is monitored by an
22 outside agency that reviews complaints and can prosecute
23 officers? That would be another sign that there -- that
24 remedial changes in this area are not needed?

25 A. Depends on what that outside agency does and the quality of

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo3 Walker - cross

1 its work.

2 Q. Okay. So one last time here. In all these areas of the
3 comprehensive review, you kept coming back to the idea that it
4 depends on the details.

5 Is that fair to say?

6 MS. PATEL: Just for the matter of completeness, if
7 you could read the last one, H, that would -- I think that it's
8 necessary, given that you're going through the entire thing.

9 MR. KUNZ: All right. "Citizen complaint process that
10 provides an opportunity for community expression of
11 dissatisfaction or satisfaction."

12 Q. That's another prong of your comprehensive approach?

13 A. Yes.

14 Q. So as I said before, if a department has an outside
15 civilian complaint review board that does investigations and
16 publishes the results of those investigations, that would be a
17 sign that remedial changes in this area are not needed,
18 correct?

19 A. No. Not necessarily. It depends on the details. The
20 devil's in the details of everything.

21 Q. So this is what I was getting at. It depends on the
22 details and you don't know the details in this case, correct?

23 A. I have seen sufficient material to frame my opinion in this
24 case.

25 Q. And that sufficient material is the four patrol guide

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo3 Walker - cross

1 provisions you've looked at?

2 MS. PATEL: We've already gone through everything he's
3 looked at.

4 THE COURT: But you'd have to say each thing. You
5 couldn't just pick one. It would be the patrol guide pages,
6 the testimony, the documents -- I mean you'd have to put it all
7 into one big long question.

8 MR. KUNZ: I could do that.

9 Q. So the documents you reviewed includes the four patrol
10 guide provisions, the three supervisory guides, six training
11 documents, and your review of the testimony in this case?

12 THE COURT: I don't know. And hundreds of --

13 MR. CHARNEY: Conditions impact reports.

14 THE COURT: And hundreds of pages of those
15 evaluations --

16 MS. PATEL: And also.

17 THE COURT: -- I can't recall the names of.

18 MS. PATEL: Your Honor, it either includes the
19 Reiter's report and summaries included there, this Court's
20 previous decisions on numerous --

21 THE COURT: He said that.

22 MS. PATEL: There's an entire list.

23 THE COURT: And he looked at the March memo.

24 MS. PATEL: And his experience.

25 THE COURT: With the current UF 250. And the current
SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo3

Walker - cross

1 standard for the memo book. I mean you'd have to put together
2 everything he ever said he looked at. He's not sure --
3 basically you base your opinion on all the things you've
4 testified that you reviewed; is that right?

5 THE WITNESS: That's correct.

6 Q. So then would it be fair to say that if there are documents
7 that you did not review which get at these questions that those
8 might change your opinion significantly?

9 A. I can't speculate on documents I have not seen.

10 Q. I understand that. So let's look at just specifically the
11 patrol guide provisions. You looked at four of them. If you
12 looked at the whole guide, wouldn't that give you a much better
13 picture about the operations?

14 MS. PATEL: Again, it's argumentative and unclear.

15 THE COURT: It certainly calls for speculation. I
16 guess he doesn't know, as he said, whether it would change his
17 opinion if he hasn't looked at the fifteen hundred pages you
18 spoke of.

19 MR. KUNZ: Okay. So moving on.

20 THE COURT: I just realized Mr. Moore is here because
21 he's talking to himself.

22 Have you alerted Chief Hall that he can come at 2:05?

23 MS. GROSSMAN: We'll do that, your Honor.

24 THE COURT: Good. Great. I didn't realize you were
25 here.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D5g9flo3

Walker - cross

1 MS. GROSSMAN: Should we wait -- I think we should
2 wait until this witness is done.

3 THE COURT: That's your choice. I'm just saying he --
4 if he can be here at 2:05 and you want to start with him,
5 that's fine. If you want to finish this cross and redirect,
6 it's your choice.

7 MS. GROSSMAN: Yes.

8 MR. MOORE: It's just that I do believe they said that
9 Chief Hall is not available on Friday.

10 THE COURT: He's not available on Friday.

11 MS. GROSSMAN: We may be able to finish.

12 THE COURT: I think what Ms. Grossman is predicting is
13 Mr. Kunz is close to finishing.

14 MS. PATEL: I just wanted to point out he has a flight
15 that we've already changed once.

16 THE COURT: I cannot be concerned about his flight.
17 I've got bigger things to worry about, namely this trial. So
18 he will get done when he gets done.

19 Anyway it sounds like the defense would prefer to
20 finish him. What time is your flight today?

21 THE WITNESS: 6:20.

22 Sounds like the defense prefers to finish him anyway.
23 Not to worry, Ms. Patel.

24 MR. KUNZ: One moment, your Honor.

25 (Pause)

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo3 Walker - cross

1 Q. So I'll move on to a different area.

2 Now one of the -- one of your recommendations is that
3 an external court-appointed monitor is required to ensure that
4 the NYPD complies with the law and conducts stop and frisks in
5 a constitutional manner, correct?

6 A. Correct.

7 Q. Now, generally speaking, when a police department needs to
8 make reforms, there are times when a court-appointed monitor is
9 needed and there are times when a court-appointed monitor is
10 not appropriate, correct?

11 A. That question is much too general. I can't --

12 Q. Well, you -- answered a similar question on direct. I
13 guess my question is: Is a court-appointed monitor needed in
14 every single case?

15 THE COURT: That's fair.

16 THE WITNESS: Every single case of what sort?

17 THE COURT: Alleging a pattern and practice of
18 unconstitutional behavior.

19 THE WITNESS: Where there is a pattern of practice,
20 yes; and where there's a history of the department failing to
21 address the problem, yes.

22 Q. So then you've said -- you've listed some specific factors
23 here. So that if a department has resisted change, that would
24 be a factor that would weigh in favor of the appointment of a
25 monitor, correct?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo3 Walker - cross

1 A. That was my testimony, yes.

2 Q. So then if a department is continuously making internal
3 changes itself, that would be factor that would weigh against a
4 monitor, correct?

5 A. It would depend on the nature of those changes and their
6 impact.

7 Q. And if a police department adjusts its training on a
8 regular basis and requires officers to attend specialized
9 training when issues are identified, that would be a sign that
10 a court-appointed monitor is not necessary?

11 A. It would depend on the nature of that change.

12 THE COURT: Well I guess he's saying if that
13 training -- that just this training were found to be sufficient
14 to address the problem, then there may not be a need for a
15 monitor; is that true?

16 THE WITNESS: If it were found to be.

17 THE COURT: Yes.

18 THE WITNESS: You're assuming.

19 THE COURT: I am for the moment. I think I said
20 sufficient to address the problem.

21 THE WITNESS: Yes.

22 THE COURT: Okay.

23 Q. Well, I think -- my understanding of this factor is a
24 little bit different. I believe your point, and correct me if
25 I'm wrong, is that if the department is generally resistant to

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo3

Walker - cross

1 change.

2 A. If there's a history of that, yes.

3 Q. So then if a department is always making changes,
4 regardless of whether or not sometimes they miss and -- then
5 that would still be a factor that would weigh against the
6 appointment of a monitor?7 A. Again, it depends on the substance of those changes,
8 whether they are cosmetic and whether they get to the root of
9 the problem.10 THE COURT: So if those changes failed to address the
11 problem, then I gather you would still recommend a monitor.

12 THE WITNESS: Yes.

13 THE COURT: Even though they acted in good faith in
14 trying to change it, if they haven't succeeded after many
15 adjustments, you would still think a monitor should be
16 appointed?

17 THE WITNESS: Absolutely.

18 THE COURT: But if they have succeeded, if the new
19 training is sufficient, then that would argue against a
20 monitor; is that right?21 THE WITNESS: But success would have to be
22 independently verified.

23 THE COURT: I understand.

24 So it would depend on how successful their efforts
25 were?

D5g9flo3

Walker - cross

1 THE WITNESS: True.

2 Q. And the flip side of that is that if a department resists
3 changes which are inappropriate or unnecessary, that doesn't
4 mean that they are resistant to change such that a monitor is
5 necessary?

6 THE COURT: Do you understand the question?

7 THE WITNESS: No. The question is too complex.

8 THE COURT: He's saying if the department chooses not
9 to implement change which it believes are not necessary, then
10 that shouldn't be a factor in deciding whether a monitor is
11 needed or should it?

12 THE WITNESS: All of the recommendations I have made
13 represent existing custom in large police departments across
14 the country in response to findings of violations of citizens'
15 rights.

16 THE COURT: I don't think it answers my question or
17 Mr. Kunz's question.

18 If the police department declines to make changes that
19 it concludes needn't be made, it concludes. It does a review.
20 It thinks about it. It says I don't need to make this change,
21 it's not a good change. If they are right about that,
22 independently verified, then that would argue against the
23 appointment of a monitor, right?

24 THE WITNESS: If they are right. But that's a large
25 "if."

D5g9flo3

Walker - cross

1 THE COURT: Okay.

2 Q. So another factor you think is important in determining if
3 a monitor is needed is whether or not the department is
4 resistant to outside oversight, correct?

5 A. Correct.

6 Q. So then if a department is subject to outside oversight
7 from numerous different sources, that would weigh against the
8 appointment of a monitor?

9 THE COURT: You've lost me a little bit there because
10 I know all of these questions are in theory about the New York
11 City Police Department. What kind of outside oversight are you
12 thinking about in your own question?

13 MR. KUNZ: So the Civilian Complaint and Review Board,
14 for example, would be one example. The mayor's task force on
15 police corruption would be another example. The regular
16 reports to the city council would be another example.

17 THE COURT: That's very helpful.

18 Can you put that back into the question. Those were
19 examples of, what did you call it, outside --

20 MR. KUNZ: Of a department demonstrating it is not
21 resistant to outside oversight.

22 THE COURT: If there is outside oversight in the
23 examples he just gave, would that demonstrate that a department
24 is not resistant to outside oversight?

25 THE WITNESS: No. It would depend on the nature of

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo3

Walker - cross

1 that oversight and the outcomes of the oversight process.

2 Q. How about a department that hires outside experts to come
3 in and review procedures when problems have been identified?

4 A. Depends what problems. Depends what experts. Depends what
5 their recommendations are. Depends whether those
6 recommendations affect change.

7 THE COURT: In other words, a department might retain
8 an expert but then may reject the recommendations of that
9 expert?

10 THE WITNESS: Right. It may retain an unqualified
11 expert.

12 THE COURT: Or it might retain an unqualified expert.
13 So it would depend on each instance?

14 THE WITNESS: Mm-hmm.

15 Q. So another factor you list is -- another important factor
16 to look at to determine if a court-appointed monitor is
17 necessary is whether or not the department works with the
18 community, correct?

19 A. That would be a factor.

20 Q. So, again, if a department continuously works with the
21 community on many levels, that would be a factor that would
22 weigh against the appointment of a monitor?

23 A. That would be a factor. Again, it depends upon the details
24 of that.

25 Q. So if a department requires all its precincts to have

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo3

Walker - cross

1 community council meetings on a monthly basis where any member
2 of the public can come and express concerns, that would be a
3 factor that would weigh against a monitor, correct?

4 A. That would be a factor.

5 Q. And a department that has a special community liaison
6 officer assigned to every command whose job it is, is to
7 communicate with the public about concerns, that would be
8 another factor that would weigh against the appointment of a
9 monitor?

10 A. That would be a factor. It would depend on the details of
11 that and the outcomes.

12 THE COURT: I'm going to have to interrupt. The clock
13 is in control. You might be very close.

14 MR. KUNZ: In full disclosure, your Honor, I'm not
15 very close. I probably have 45 minutes left.

16 MR. CHARNEY: Are you kidding me.

17 MR. KUNZ: Your Honor as we've been remind numerous
18 times this is a very important case.

19 THE COURT: It is. I did not say a word for the
20 record. You were reading my expression. I said not a word.
21 Forty-five minutes. All right. Whatever. See you at 2:05.

22 (Luncheon recess)
23
24
25

D5g9flo3

Walker - cross
AFTERNOON SESSION
2:12 p.m.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Samuel Walker, resumed.

THE COURT: Mr. Kunz.

CROSS-EXAMINATION CONTINUED

BY MR. KUNZ:

Q. Before we took the break we were just finishing up on the factors that you think are important to consider -- that the Court should consider in determining whether or not to appoint a court-appointed monitor and the last one I was going through was whether or not the department works with the community.

So, you've opined that community input is a necessary part of this -- of a police department, correct?

A. Yes.

Q. And --

MS. PATEL: That was unclear.

MR. CHARNEY: I think the --

MS. PATEL: Important part of the police department. Just misstating the testimony.

MR. KUNZ: Well, okay.

Q. Do you agree that the police department should take into account community input?

A. Yes.

Q. And do you agree that whether or not a department does that is a factor the Court should consider in determining whether or

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo3 Walker - cross

1 not a court-appointed monitoring is necessary?

2 MS. PATEL: I think the testimony is about whether
3 it's a part of the remedy, not generally community --

4 MR. KUNZ: Right. And the remedy question here is
5 whether or not a monitor should be appointed.

6 THE COURT: There's nothing -- there was nothing wrong
7 with his question, Ms. Patel.

8 He said and do you agree that whether or not a
9 department does that, namely works with the community, is a
10 factor the Court should consider in determining whether or not
11 the court-appointed monitor is necessary.

12 THE WITNESS: Right. The answer is yes.

13 Q. And you've reviewed some documents in this case, correct?

14 A. Related to what?

15 Q. Well --

16 THE COURT: First of all, yes. You've reviewed
17 documents? Right?

18 THE WITNESS: Okay. Yes, I did.

19 MR. KUNZ: Thank you, your Honor.

20 Q. And you've read some trial testimony? And you've reviewed
21 some depositions? Yes?

22 A. Yes.

23 Q. Now in your review of documents and your review of
24 testimony, did you come across the NYPD's safety and security
25 task force?

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D5g9f1o3

Walker - cross

1 A. No.

2 Q. Did you come across the NYPD community affairs bureau?

3 A. Yes.

4 Q. Did you come across the facts that the NYPD publishes crime
5 prevention statistics?

6 A. No.

7 Q. Did you come across the NYPD press room, an online resource
8 where lots of information about the police department is
9 published?

10 A. Yes.

11 Q. And did you come across the quarterly reports that the NYPD
12 issues to the city council?

13 A. No.

14 Q. Okay. So during your direct testimony you spent some time
15 talking about the Quest for Excellence and the monthly
16 conditions impact measurement reports.

17 Is that correct?

18 A. Yes.

19 Q. You were critical of these reports, weren't you?

20 A. Yes.

21 Q. So I'm going to put one up and I want to ask you some
22 questions about it.

23 So here's the report, correct?

24 A. Yes.

25 MS. PATEL: Can you say what exhibit this is.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo3

Walker - cross

1 MR. KUNZ: Yes. This is Plaintiffs' Exhibit 307. It
2 is Bates number ended in 2589.

3 MR. MOORE: 5289.

4 MR. KUNZ: Yes. Thank you. Yes. That is correct.
5 5289.

6 Q. So, one of your criticisms here was that because the form
7 calls for officers to write in numbers, you felt that it was a
8 quantitative question and not a qualitative review; is that
9 correct?

10 A. Yes.

11 Q. Now in your review of documents and review of testimony in
12 this case have you come across any explanation of these boxes
13 here? One and two?

14 A. Yeah.

15 THE COURT: Do you have a hard copy of that?

16 THE WITNESS: I've got the screen.

17 MR. KUNZ: I will give him this one. I'm, frankly,
18 not going to substance of these. I'm just going to the form
19 itself.

20 THE COURT: The only reason I asked, it would be nice
21 to know the title of that column, and I certainly couldn't read
22 it on the monitor.

23 MR. KUNZ: These are all different pages from the same
24 report.

25 THE COURT: Can you read to me, Mr. Kunz, the title of
SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo3

Walker - cross

1 the left-hand column.
2 MR. KUNZ: This box here?
3 THE COURT: No, above it.
4 MR. KUNZ: Assignment/identified conditions.
5 THE COURT: I see. Assignment/identified conditions.
6 That's what's handwritten in that left-hand column.
7 MR. KUNZ: This small box here is assignments.
8 Directly to the right of that where it's got a one and a two,
9 those are the identified conditions.
10 THE COURT: No, I don't --
11 MR. KUNZ: I'm sorry.
12 THE COURT: I don't think so because I thought I
13 saw -- again, it's hard for me to read the handwriting, but I
14 thought I saw things like RDO.
15 MR. KUNZ: That's in this column here.
16 THE COURT: Is that right?
17 MS. PATEL: Rob.
18 MR. MOORE: And grand larceny.
19 THE COURT: Oh, that helps.
20 MS. PATEL: So it says list daily assignments. Can
21 you read that.
22 MR. KUNZ: So it says list daily assignments; e.g.,
23 sector patrol, post, developments, subway patrols, TS and two
24 identified conditions. Circle yes or no to indicate if any
25 activity addressed in the identified conditions.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo3

Walker - cross

1 THE COURT: Now your question.

2 Q. So my question is in your review of documents in this case
3 and testimony in this case did you come across anybody talking
4 about the connection between the identified conditions and the
5 numbers that the officers put in these boxes?

6 A. Yes.

7 Q. So, you're aware then that by looking at the condition
8 addressed and comparing it with the activity that the officer
9 did, someone is able to do a qualitative analysis on the
10 officer's activity based on this report?

11 A. No. I would not call it qualitative activity. Those are
12 redacted I can't really tell. I assume that they are numbers.

13 THE COURT: Right.

14 THE WITNESS: As in the one column that's not
15 redacted.

16 THE COURT: Because he hasn't zoomed in right now, I
17 remember those columns -- right.

18 Those titles were things like felony, misdemeanor,
19 violation, you know, vertical patrol. Whatever. You see them.
20 Stop and frisk, etc.

21 So there's lots of different titles there and that
22 person just puts in the number of each.

23 THE WITNESS: Yes.

24 MR. KUNZ: It also has conferrals and aided cards and
25 accident reports.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo3

Walker - cross

1 THE COURT: I was just reading some of them.

2 MR. KUNZ: It tracks I believe it's 16 different types
3 of activity that an officer can conduct.

4 Q. So you said you have reviewed some testimony about how the
5 NYPD does a -- attempts to do a qualitative analysis by
6 comparing the condition addressed and the type of activity?

7 MS. PATEL: Objection.

8 THE COURT: I think he did say something qualitative.
9 Did you say that?

10 THE WITNESS: It's primarily quantitative. It says
11 how many of each of those activities.

12 THE COURT: I understand primarily quantitative.

13 But to an earlier question he asked you if saw some
14 documents and attempted to give it a qualitative aspect by
15 comparing the conditions and the numbers.

16 Did you -- I thought you said you had.

17 THE WITNESS: I don't recall.

18 MS. PATEL: The question was about testimony not a
19 document.

20 MR. KUNZ: Let us look at the back of this form then.

21 Q. This box here that says supervisor's quarterly performance
22 review, and then it has six factors where an officer is rated.
23 And then a seventh one where the supervisor can write
24 additional comments.

25 So looking at these -- did you review these -- this

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo3 Walker - cross

1 box when you did your review?

2 A. Yes.

3 Q. So then you saw that these questions -- let's just take
4 them one by one.

5 So if an officer is evaluated based on whether or not
6 they took initiative in correcting conditions, that's not a
7 quantitative review, right? That's a qualitative review?

8 A. It's partly qualitative, yes.

9 Q. The same is true for the next one. If the officer is rated
10 on the follow-up steps that they took, again, that's not
11 quantitative? That's qualitative?

12 A. Partly, yes.

13 Q. And you know the same is true for all of them. So we can
14 just not waste too much time.

15 Administrative reports were accurate. Qualitative?

16 MS. PATEL: Can I just get that question back.

17 THE COURT: It wasn't a question. He answered it
18 himself. He was saying all six of these are primarily
19 qualitative, right? All six of these listed in the form?

20 THE WITNESS: They're partly qualitative, yes.

21 Q. In fact, in your direct testimony you said that one of the
22 most important factors that officers -- one of the factors that
23 officers should be evaluated on is their overall professional
24 image that they present to the public? And that's one of the
25 factors on this, isn't it?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo3

Walker - cross

1 A. Yes.

2 MS. PATEL: I think this mischaracterizes his
3 testimony.4 THE COURT: Well, I don't remember that. Did you say
5 that?

6 MS. PATEL: I don't remember that either.

7 THE WITNESS: I did mention professional image in the
8 context of one or more questions.9 THE COURT: Okay. What was the context of overall
10 professional image?11 THE WITNESS: In terms of overall assessment of an
12 officer's performance.

13 THE COURT: Now your question is.

14 Q. So a department that on a monthly basis assesses officers
15 on these indicators --16 MR. CHARNEY: This is actually quarterly, your Honor.
17 It says in the document.18 THE COURT: Fine. So a department that makes a
19 quarterly assessment of these six factors -- what's the rest of
20 the question.21 Q. Is, in fact, evaluating its officers on a quantitative --
22 sorry, on a qualitative basis, not a quantitative basis?

23 A. In part, yes.

24 Q. Now, one thing that we didn't look at when you were being
25 questioned on direct was the yearly performance evaluations.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo3

Walker - cross

1 In your review of documents in this case have you seen the
2 yearly performance evaluations that the NYPD uses?

3 A. Yes.

4 Q. So I'm going to put up Defendants' Exhibit C10 which is in
5 evidence.

6 This is a yearly performance evaluation. And you said
7 you've reviewed these, correct?

8 THE COURT: You viewed some of these?

9 MS. PATEL: What exhibit is this?

10 MR. KUNZ: C10.

11 THE WITNESS: Some of them that look like this.

12 THE COURT: And he says he's reviewed some that look
13 like this.

14 Q. So then you saw that the department on a yearly basis
15 reviews officers on these 28 different factors covering both
16 performance areas and behavioral dimensions?

17 A. Yes.

18 Q. Now, when an officer is reviewed based on their community
19 interaction, that question gets at the quality of the officer's
20 stop, question and frisk interactions, correct?

21 MS. PATEL: Objection.

22 THE WITNESS: I understand it to encompass a broader
23 range of interactions.

24 Q. One of the items that would be included in that broad range
25 is stop, question, frisk?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo3

Walker - cross

1 MS. PATEL: Objection.

2 THE COURT: What's the objection?

3 MS. PATEL: How does he know that? What's the basis
4 of that?

5 THE COURT: Well I don't know why he answered yes. Is
6 stop, question and frisk listed as one of the 28?

7 MS. PATEL: No.

8 THE COURT: I'm asking the witness.

9 That's fine. Anybody can read a document in evidence.
10 That's not a problem.

11 So it's not one of the 28. So how do you know it
12 covers performance area or behavioral dimensions of making
13 stops appropriately?

14 THE WITNESS: The community interaction question.

15 THE COURT: Okay.

16 THE WITNESS: I've assumed that.

17 THE COURT: Okay.

18 THE WITNESS: I assume it involves all police citizen
19 contacts. So it would get at some type of rudeness, for
20 example.

21 THE COURT: Well maybe. Do you think it also covered
22 the assessment of reasonable suspicion to make the stop?

23 THE WITNESS: Not that item, no.

24 Q. And how about the item that's apprehension/intervention?
25 Wouldn't that performance indicator also get at the question of

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo3 Walker - cross

1 stop, question, frisk?

2 A. That one could, yes. Would.

3 Q. The same is true for victim/prisoner interactions. That
4 could also get to the question of stop, question, frisk?

5 A. I'm not sure that one does.

6 Q. Well if the stop question frisk becomes an arrest?

7 A. In that case it would.

8 Q. Now how about if a department evaluates -- I'm sorry.

9 Withdrawn.

10 MS. PATEL: Your Honor, I would just object. This is
11 all speculative. It's not based on this document. He's
12 answering it could, it could not, I don't know. I mean this is
13 speculative.

14 MR. KUNZ: We're going to move on.

15 THE COURT: I think it is speculative.

16 MS. PATEL: Move to strike.

17 THE COURT: I don't think he knows what each category
18 covers. He's just taking the words and saying that word might
19 be broad enough to include stop and frisk. It might not. It
20 might encompass the behavior of the police officer in terms of
21 rude or not rude. But he doesn't know that it would encompass
22 evaluation of reasonable suspicion or not.

23 So all around, I'm not going to strike it. But I
24 think he doesn't know. And that's what he really said. When
25 he said it may, may not, he doesn't know what's in the minds of

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo3

Walker - cross

1 the evaluators when they look at those 28 categories.

2 MR. CHARNEY: I would add to this. We've heard
3 testimony from supervisors who have actually conducted these
4 evaluations. And they've testified about how they understand
5 these terms.

6 THE COURT: Then I'll have to find that testimony in
7 the eight thousand pages.

8 MR. CHARNEY: I can mention a couple Captain Materasso
9 talked about it. I think Sergeant Monroe talked about it.

10 THE COURT: Thank you. That will be helpful.

11 Q. So another part of your opinion is that the NYPD should do
12 pattern analysis and peer group analysis?

13 A. Yes.

14 Q. Now the purpose of pattern analysis and peer group analysis
15 is to help identify problematic officers and problematic
16 patterns?

17 A. Yes.

18 Q. So --

19 THE COURT: I can imagine what pattern analysis is.
20 But what's peer group analysis?

21 THE WITNESS: Well to assess an officer's performance
22 you want to compare that officer's performance with people with
23 the same working conditions.

24 THE COURT: Now I understand. Activity or type of
25 activity?

D5g9flo3

Walker - cross

1 THE WITNESS: The same working environment.
2 Presumptively their performance arrests should be some what
3 roughly similar.

4 MR. KUNZ: So this is Plaintiffs' 307 which was put in
5 through the witness earlier today. And it is a Quest for
6 Excellence squad supervisor's recapitulation report.

7 Q. Now down this column here it lists individual officers,
8 right?

9 A. Yes.

10 Q. And then the top here lists all the different types of
11 activity that we've talked about earlier, right?

12 A. Yes.

13 Q. So isn't this a pattern analysis document and a peer group
14 analysis document?

15 A. Not in the way I testified to. Not in the way it has
16 become the custom in other big city police departments with
17 early intervention systems.

18 Q. Isn't this comparing different officers' activity within a
19 given time period to look for patterns?

20 A. In a rudimentary fashion, it does.

21 Q. And you know I guess what I don't fully understand about
22 your point -- your criticism of putting numbers down on the
23 monthly impact conditions reports is that if you're going to do
24 pattern analysis and you're going to do peer group analysis,
25 don't you have to collect the data on the activity?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo3

Walker - cross

1 A. Yes.

2 Q. Now, one of your concerns about putting the numbers down on
3 this form was the idea of a quota, correct?4 MS. PATEL: Your Honor, he did not use the word quota
5 at all.

6 THE COURT: No. He didn't but --

7 MR. KUNZ: He did say numbers for numbers' sake.

8 THE COURT: He did say that. He said it doesn't
9 believe in a purely quantitative approach where it's just
10 numbers for numbers' sake.11 Did you have a concern about a quota? You never
12 testified to a quota? Did you have a concern about that?

13 THE WITNESS: I do.

14 THE COURT: You do?

15 THE WITNESS: Yes.

16 THE COURT: What's your concern?

17 THE WITNESS: That there -- I believe the procedures
18 that exist because of the heavy reliance on quantitative can
19 create pressures and incentives or a quota.

20 THE COURT: Then I'll allow your question.

21 Q. So a quota -- setting a quota is bad police practice,
22 right?

23 A. I understand it's illegal under New York state law.

24 Q. Right. Exactly. Now a quota is a number; and if an
25 officer doesn't meet that number, they get in trouble?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo3 Walker - cross

1 A. Yes. They could, yes.

2 Q. And there is no -- in the quota situation there is no ifs
3 ands or buts about it. It's a straight line. If you don't
4 meet the number, you get in trouble, right?

5 A. Well it depends on how that quota system is articulated and
6 communicated to officers.

7 Q. Now, goal setting, setting a goal isn't a quota, right?

8 A. Correct.

9 Q. In fact, goal setting is commonplace in police departments
10 across the country, right?

11 A. Correct.

12 Q. And on direct yesterday I think you mentioned that one of
13 the important things a frontline supervisor needs to do is to
14 identify problem officers, right? And you said they need to
15 determine whether you have an officer with serious performance
16 problems?

17 A. Right.

18 (Continued on next page)

19

20

21

22

23

24

25

D5G8FLO4

Walker - cross

1 Q. So then part of an EIS system that you think sergeants
2 should use is watching for these patterns in activity, correct?

3 A. Correct.

4 Q. Looking to see if an officer dropped below the level of
5 activity of his peers, right?

6 A. I did not testify to that, the phrase dropping below the
7 average.

8 Q. Let me look at it this way.

9 When you look at an officer's performance over a
10 number of months, let's say eight months, one thing that
11 supervisors should do is note decrease in activity because that
12 might be an early sign the officer is having problems, right?

13 A. Yes.

14 Q. In fact, you mentioned this on direct, but you authored a
15 report for the Department of Justice on this topic, "Strategies
16 for Intervening with Officers through Early Intervention
17 Systems," right?

18 A. Yes.

19 Q. In this report, you noted that specific issue, that it's
20 important to look at the officer's performance over a series of
21 months in terms of their activity and look for patterns?

22 A. That's correct.

23 Q. So then setting goals and watching how officers perform in
24 relation to those goals, it's not setting a quota, it's a good
25 police practice?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO4

Walker - cross

1 A. Correct.

2 THE COURT: Do you think numerical performance goals
3 are a good thing?

4 THE WITNESS: I think performance goals in the sense
5 that an officer should address the conditions in the --

6 THE COURT: I understand. But if somebody were to
7 set, a senior officer in the precinct were to say, this is our
8 performance goal, 20, 20 and 5?

9 THE WITNESS: Putting a number on it is wrong.

10 THE COURT: Putting a number on a performance goal
11 would not be good practice?

12 THE WITNESS: Correct.

13 Q. Also, in your cops report, you recognize that EIS systems
14 are not used for identifying problem officers, but can also be
15 used to identify hero officers, right?

16 A. Good officers.

17 Q. In fact, a valid use of an EIS system would be recognizing
18 officers who take the most initiative, right?

19 A. That's one use for identifying good officers.

20 Q. In your review of the documents in this case, did you see
21 the October 2010 memorandum from the Office of the Deputy
22 Commissioner of Legal Affairs dealing with the New York State
23 anti-quota bill?

24 A. I believe I did, but I would need to see it. Can you show
25 it to me?

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D5G8FLO4 Walker - cross

1 Q. I don't actually have a copy. I just wanted to know if you
2 reviewed it.

3 MS. PATEL: He doesn't remember if he reviewed it.

4 THE COURT: That wasn't his answer.

5 The answer was?

6 A. I believe I did, but I would need to see the actual
7 document that you're referring to. I did see documents on the
8 New York State quota bill.

9 Q. Now, just to close up this section, your final
10 recommendation in this area of performance review is that the
11 NYPD should hire an expert in the field, and that expert would
12 evaluate the system and make recommendations, right?

13 A. That's correct.

14 Q. Now, we took some testimony today about these three consent
15 decrees that were put into evidence and I want to just -- my
16 last area of questioning with you is just going to be going
17 over these a little bit.

18 First of all, in all three of these locations, Puerto
19 Rico, New Orleans and East Haven, all three of the consent
20 decrees say that the police departments need to collect data on
21 stop activity, correct?

22 A. Yes.

23 Q. Have you seen the forms for any of these locations that
24 those departments use to collect that data?

25 A. No, I have not. All of them are, I believe, 2012, and so

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO4

Walker - cross

1 it's early in the stages of the implementation of those consent
2 decrees so they may or may not exist.

3 Q. Now, you were also asked a few questions about the size of
4 these police departments on direct, and we did some research
5 over the lunch break.

6 Would you agree that if the size of the East Haven
7 police department is 50 police officers, that the reforms that
8 are covered in this consent decree may not be applicable to the
9 City of New York?

10 A. No, I would not. The reforms I am recommending are a
11 generic approach to accountability, and they apply with equal
12 force to departments of all sizes, and with necessary
13 adaptations for particularly large departments and some other
14 changes for the very small ones.

15 Q. Going back to the fact that you haven't seen the forms,
16 possibly because they are not developed yet, I guess my point
17 is, you don't know if in any of the forms that these police
18 departments developed there will be narrative sections?

19 MS. PATEL: I object.

20 THE COURT: I can't allow the question because, of
21 course, he doesn't know what is in a form that's not yet
22 written or not yet published. Of course he doesn't know.

23 Q. Going back to the size of the police departments, you did
24 mention that New Orleans you thought was maybe around 1,000, a
25 little over. We looked it up. It's about 1,400.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO4

Walker - cross

1 Is it fair to say that the types of reforms, the
2 specific types of remedial measures that are put in place in
3 New Orleans would be different than the sorts of reforms that
4 might be used in a city like New York that has 34,000 police
5 officers?

6 A. No. Because the issues at stake in terms of holding police
7 accountable, particularly with regard to constitutional
8 policing in the area of stops and frisks, that would be the
9 same in any police department, whatever the size.

10 Q. I understand the broad strokes idea, that you need to have
11 a comprehensive system regardless of how big you are. But when
12 you get down to the specifics, doesn't the size of the
13 department really matter?

14 MS. PATEL: Objection. Asked and answered.

15 THE COURT: I will allow it.

16 A. Only in terms of specifics with regard to implementation.
17 The larger the department, you have more subunits, it's a more
18 complex administrative task. But the essential nature of the
19 remedies given the problem would be the same. You have
20 officers required to report incidents with sufficient detail so
21 that a supervisor and any other person could determine whether
22 or not there was or was not a factual basis to justify
23 reasonable suspicion.

24 Q. The last thing I want to talk about in this area is, isn't
25 it true that the types of reforms that were being implemented

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO4 Walker - cross

1 by these consent decrees are very different than the types of
2 reforms that we are talking about in this case?

3 MS. PATEL: I don't understand that question.

4 A. I do.

5 THE COURT: Then go ahead and answer it.

6 A. Well, police departments are all different, and communities
7 are different with respect to the problems they face. And so
8 Portland, the DOJ letter focuses on the handling of mentally
9 ill people, so it's focused on that. It gets into use of force
10 and so on. New Jersey state police, it was traffic enforcement
11 and allegations of racial profiling. And so, yes, there are
12 going to be differences depending on what are the issues at
13 stake in a particular police department.

14 Q. So in East Haven, for example, the issues that were at
15 stake in this reform effort were reforms to all use of force,
16 all searches and seizures, all administrative tracking
17 procedures, it was a total reworking of the department, right?

18 A. I would not use the word total reworking of the department,
19 that encompasses a lot of things. But if uses of force and
20 search and seizure were the problems in East Haven, the
21 remedies were properly designed to address them.

22 Q. Search and seizure, it's arrests, it's warrants, it's a
23 litany of issues that police officers do. Use of force
24 includes the whole scale of force moving up the spectrum.

25 So I guess my question is, wasn't the problem being

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO4 Walker - cross

1 addressed by the consent decree in East Haven very different
2 than the problem that we are here talking about in court?

3 A. I would not say very different. I would say it was simply
4 a different problem area in terms of officer conduct, but
5 again, the remedies that I recommended here are generic and
6 apply to any kind of police/citizen interaction that raises
7 constitutional problems.

8 Q. New Orleans at least, in fact, I think New Orleans and
9 Puerto Rico both, it was in fact a total reorientation of the
10 police efforts in those locations, moving towards community
11 oriented policing, right?

12 MS. PATEL: Objection.

13 THE COURT: I don't understand the question.

14 Q. We will take them one at a time.

15 In New Orleans, the reform that this consent decree
16 was implementing in New Orleans was a total reorientation of
17 that police department towards community oriented policing
18 which they did not previously do?

19 A. If you represent to me that the term community policing
20 appears in the consent decree, I will agree to that.

21 Q. Do you have specific knowledge of the issues addressed in
22 this consent decree?

23 A. I have specific knowledge of many of the substantive
24 issues. I do not recall at this moment whether the phrase
25 community policing appeared.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO4 Walker - cross

1 Q. In your knowledge of the substantive issues that were
2 addressed in this consent decree, isn't it true it covered a
3 huge swath of policing activities and reformed almost every
4 aspect of the department?

5 A. I can't say every aspect. I can't say there were a number
6 of specific different problems in terms of police/citizen
7 interactions.

8 Q. The same is true for Puerto Rico, right, it was a much
9 larger reworking of the police department covering many, many
10 different issues, right?

11 A. I agree that it covered many different issues related to
12 police activities.

13 Q. The New Jersey state police, we have talked about this a
14 little bit. You're aware that the New Jersey state police had
15 this consent decree in place and it was aimed at addressing
16 racial disparities?

17 A. Not racial disparities. It was allegations of racial
18 profiling arising from vehicle stops.

19 Q. Are you familiar with an article by Noah Kupferberg, who is
20 actually a student of Jeffrey Fagan's at Columbia, are you
21 familiar with an analysis he did of the effectiveness of the
22 New Jersey consent decree at reducing racial disparities?

23 A. No.

24 Q. So then you're not aware that he concluded --

25 THE COURT: That's not fair. Then you're going to
SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO4 Walker - cross

1 read in what he concluded, which you can't do. He is not
2 familiar with it. There is no point in reading what that
3 person concluded.

4 MR. KUNZ: If I could just have one moment, your
5 Honor.

6 Q. I understand you're not aware of that specific article, but
7 are you aware generally of criticisms of the effectiveness of
8 the consent decree in that case and whether or not it was
9 effective in addressing the racial disparities that were
10 identified?

11 A. I'm not familiar with specific pieces of literature, no.

12 THE COURT: He didn't ask you about specific pieces.
13 Now he just said, are you aware of criticisms of that consent
14 decree and its effectiveness?

15 THE WITNESS: Well, there are criticisms of consent
16 decrees generally.

17 THE COURT: Are you aware of criticisms of that
18 consent decree and its effectiveness?

19 THE WITNESS: No.

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

21 THE COURT: Thank you.

22 Ms. Patel.

23 REDIRECT EXAMINATION

24 BY MS. PATEL:

25 Q. In New Orleans, Puerto Rico, and East Haven, was one of the
SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO4 Walker - redirect

1 issues covered by the consent decree stop and frisk?

2 A. Yes.

3 THE COURT: Would you use the microphone, please?

4 Q. In police departments where monitors have been put in
5 place, are you aware of departments where reform processes
6 actually begin before the consent decree is signed?

7 A. Well, police departments are a moving entity. Changes are
8 occurring all the time. So some departments have made reforms
9 prior to a consent decree, but they may not have adequately
10 addressed the issues arising in the suit.

11 Q. Are you aware of police departments that may have begun the
12 implementation of certain provisions of consent decrees before
13 they are finalized and put into effect?

14 A. Well, yes.

15 Q. When you referred to patterns in your DOJ report, do the
16 patterns that you discuss in that report include anything other
17 than numbers of activity?

18 A. Well, the numbers are indicators that then prompt the
19 administrators to take action to review qualitatively a
20 particular officer's performance.

21 Q. Can you explain that further?

22 A. Well, in the Los Angeles sheriff's department, the one I
23 knew probably best, there are formal thresholds, and when an
24 officer crosses that threshold, it is brought to the attention
25 of commanders. That triggers what they call performance

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO4

Walker - redirect

1 review, and they prepare a package where they look further into
2 that officer's record, they will interview the -- we are
3 talking about commanders here -- they would interview that
4 officer's immediate supervisor, they may talk to other officers
5 who know something about that officer, and then they come up
6 with a report that goes to the performance review committee,
7 and they look at the evidence and make a decision about whether
8 to place that officer into monitoring.

9 Q. When you said on cross that activity levels could result in
10 some kind of monitoring, it includes more than just the numbers
11 of activity, the reports include more information than that,
12 right?

13 A. Yes. The full and complete answer to that is that there
14 have been some limited -- some early intervention systems which
15 relied only on numbers, there was an automatic referral, and I
16 have criticized those in print and in public testimony.

17 So that the ideal program, what is recognized as the
18 best approach, is something similar to what is found in the Los
19 Angeles sheriff's department, where it's really a two-stage
20 process, where the numbers in the EIS bring an officer to the
21 commander's attention, and then they dig deeper, and this is
22 precisely the type of critical review that I talked about in my
23 testimony.

24 MS. PATEL: Can I have just one moment, your Honor?
25 Nothing further, your Honor.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO4

Walker - redirect

1 One thing. I wanted to just correct the record. I
2 have the -- not correct the record. For the record, state that
3 we are now going to have 575, it's an identical document.

4 THE COURT: That's substituted for the previous 575.
5 We will just take the other one out and put this in.

6 MS. PATEL: Yes, your Honor.

7 THE COURT: We are done with this witness.

8 MR. KUNZ: No further questions.

9 THE COURT: Thank you.

10 JAMES P. HALL, resumed.

11 THE COURT: Welcome back, Chief Hall. You don't have
12 to be sworn again. You understand that you're still under
13 oath?

14 THE WITNESS: I do.

15 THE COURT: We are just starting the cross?

16 MR. MOORE: Just starting.

17 CROSS-EXAMINATION

18 BY MR. MOORE:

19 Q. Chief Hall, you talked on direct about a number of
20 committees that you sit on, do you recall that?

21 A. I do.

22 Q. You don't actually attend every meeting of those
23 committees, right?

24 A. I will go through them for you.

25 CCRB profile assessment, yes.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO4

Hall - cross

- 1 Career advancement review board, about 90 percent I
2 sit on that.
- 3 Honor committee, yes.
4 Overtime committee, yes.
5 Department vehicle accident, yes.
- 6 Q. You have a staff under you as chief of patrol?
7 A. I do.
- 8 Q. Do you from time to time designate one of your
9 representatives to attend those meetings?
10 A. It could happen, not that often though. They like the
11 bureau chief to be present.
- 12 Q. You're not the bureau chief, you're the chief of patrol?
13 A. I am bureau chief of patrol services.
- 14 Q. These committees operate with a unit that filters the
15 information that's given to the committees, right?
16 A. That's correct.
- 17 Q. So that if somebody is eligible for monitoring, it wouldn't
18 necessarily follow that their case would be presented to a
19 committee, right?
20 A. Could you repeat that?
21 Q. Yes. If somebody was eligible for instance for -- what is
22 the one about the civilian complaint, what do you call it?
23 A. Profile and assessment.
24 Q. Profile and assessment committee.
25 There is a staff, a unit of your department that
SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D5G8FLO4 Hall - cross

1 prepares the documents for presentation at those committees?

2 A. That's correct.

3 Q. Of all the people who are eligible to be heard by those
4 committees, not all of them are actually heard, right?

5 The unit you have makes assessments as to who to
6 present to the committee, correct?

7 A. That's accurate.

8 Q. You mentioned -- we had some testimony about the central
9 personnel index?

10 A. Yes, sir.

11 Q. I think C15 is the document you testified to, correct?

12 A. That looks like it, yes.

13 Q. There are different types of central personnel index forms
14 in the department, correct?

15 A. This is the one I am familiar with.

16 Q. This is the one that deals with promotion, right?

17 A. I'm not sure. This is one page of a CPI.

18 Q. You see at the top there it says, Central personnel index,
19 promotion?

20 A. That might have been the reason why they ran the CPI.

21 Q. You're not aware that there are different types of central
22 personnel indexes that are generated depending on what the
23 purpose of the review is?

24 A. I'm not aware of that, no, sir.

25 Q. Have you ever seen a central personnel index document that

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO4 Hall - cross

- 1 includes the disciplinary history of an officer?
2 A. Yes.
3 Q. That includes CCRB and IAB allegations?
4 A. Depending, substantiated, not substantiated, but they would
5 be on the CPI if they're substantiated.
6 Q. This particular form you identified does not have a list of
7 any CCRB allegations against an officer, right?
8 A. No. That would be on the CCRB database.
9 Q. It's also on a different type of central personnel index,
10 right? Have you ever seen those?
11 A. There will be CCRB information on the CPI if the actual
12 complaint was substantiated and resulted in a penalty, we will
13 see that on the CPI. If not, you would go to the CCRB database
14 to get information on it.
15 Q. You don't see that on this particular run of the central
16 personnel index form for promotion, right?
17 A. No. You just see that second entry that he has been placed
18 on monitoring because of three civilian complaints.
19 Q. Right. But it doesn't indicate what the complaints are,
20 that's my point?
21 A. No.
22 Q. There is no listing of the complaints?
23 A. Not on the CPI. The actual narrative, no.
24 Q. Now, I wasn't sure I heard your testimony on direct. Who
25 has access to the central personnel index files of officers?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO4

Hall - cross

- 1 A. The commanding officer of the precinct will have it,
2 certainly the borough commander has access to it.
- 3 Q. What about below the level of a commanding officer?
- 4 A. The ICO will have it, and that's pretty much it.
- 5 Q. So the line supervisor or platoon lieutenant don't have
6 access to the CPI, right?
- 7 A. I think if you look at the duties and responsibilities of
8 the lieutenant in the patrol guide, I believe that's -- one of
9 his responsibilities is that he can review the CPI of members
10 in his platoon.
- 11 Q. This is very sensitive personnel information on officers,
12 right?
- 13 A. It is.
- 14 Q. They are maintained on all officers throughout the
15 department, right?
- 16 A. That's correct.
- 17 Q. Including yourself, you have one, right?
- 18 A. I do.
- 19 Q. So are you aware that with respect to investigative units
20 that access to CPI forms are limited to either serious
21 misconduct cases or corruption cases?
- 22 A. Could you ask that question again, sir?
- 23 Q. Do you recall that with regard to the availability of
24 central personnel index forms for investigative units, that
25 they can only access the central personnel index filed on an

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO4 Hall - cross

1 officer if it's an allegation of serious misconduct or an
2 allegation of corruption, so-called M cases and C cases? Are
3 you aware of that?

4 A. No, I'm not aware of that.

5 Q. Are you aware that an allegation of an illegal stop and
6 frisk would not be considered an M case, a serious misconduct
7 case, or a C case, a corruption case?

8 A. It could be. It could be.

9 Q. What about an allegation of racial profiling, are you aware
10 whether it falls under the category of serious misconduct cases
11 or corruption cases?

12 A. It could be criminal.

13 Q. I understand that, and I think I would agree with you. But
14 what I am asking you is whether in the department, whether
15 those are considered either corruption cases or serious
16 misconduct cases?

17 A. That would be serious misconduct.

18 THE COURT: What does that mean? What would be
19 serious misconduct?

20 THE WITNESS: Serious misconduct, your Honor, is the
21 most egregious, border on criminal.

22 THE COURT: What in the stop and frisk context would
23 be serious misconduct?

24 THE WITNESS: If it was a stop and frisk based on
25 racial profiling, then that's serious misconduct.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO4 Hall - cross

1 Q. Have you ever seen a serious misconduct case involving a
2 stop and frisk where the allegation is racial profiling, have
3 you ever personally seen that?

4 A. I have not.

5 Q. Now, we also took a look at a document that was entitled
6 CCRB history and narratives. Do you remember that?

7 A. Yes, sir.

8 Q. D15. This cover page -- this cover page that says CCRB
9 history and narratives, is that part of the package of
10 documents that you get or is that something that was created
11 for this trial?

12 A. I'm not sure. When I get my case folder, I just open it up
13 and I get to the narratives.

14 Q. So you don't know whether this top form is something that
15 was just created for the trial in order to demonstrate a
16 collection of CCRB forms or whether that's part of the police
17 department's regular documents, right?

18 A. I don't know.

19 THE COURT: Does any counsel know?

20 MS. GROSSMAN: It's part of the packet that is
21 provided to the assessment committee. It's not prepared for
22 this litigation.

23 THE COURT: I accept that.

24 Q. Is it your testimony that the documents in D15 would be the
25 type of documents that would be given to a promotion board that

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO4

Hall - cross

1 was reviewing somebody for a promotion?

2 A. That would depend. If the individual was appearing before
3 the career advancement review board and the reason for his
4 appearance, he or she's appearance was based on excessive
5 CCRBs, that document would be there for us to look at.

6 Q. Right. That was my question. This includes a listing of
7 the complaints, the history of the complaints the officer has,
8 and then there is a complaint report for each of the separate
9 complaints, right?

10 A. Narrative, correct.

11 Q. Which involves a narrative, right?

12 A. That's correct.

13 Q. You see, with respect to these narratives, they also
14 indicate whether more than one officer was involved, right?

15 A. It does in some cases.

16 Q. We will get to that in a minute.

17 You had a chance to look at this document before you
18 testified, correct?

19 A. I looked at it.

20 Q. You had a chance to study the document before you
21 testified?

22 A. I looked at it, yes.

23 Q. Are you aware that four of the nine complaints in this
24 collection of documents involve allegations of either racial
25 profiling or racial stereotyping?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO4 Hall - cross

1 A. I know at least three of them did.

2 Q. The first one on Bates stamp number 9416 says officer is
3 accused of saying, "And that's why I don't like --"

4 THE COURT: I don't know where you are. I know you're
5 on page 9416. Where are you?

6 MR. MOORE: In the narrative section.

7 THE COURT: Where?

8 MR. MOORE: Two lines from the bottom.

9 THE COURT: Where the officer allegedly says, "That's
10 why I don't like Spanish people."

11 MR. MOORE: Right.

12 MS. GROSSMAN: I would object, first of all, because I
13 was limited in my direct examination of the witness by Mr.
14 Moore in terms of going into the substance. I was told that I
15 could only go into what the assessment committee would look at.
16 So I would object to going into this particular detail because
17 I was limited on my direct examination. It's beyond the scope
18 of direct and this was just to illustrate the type of
19 information that is evaluated and looked at on the committee.

20 THE COURT: I assume this is one of those witnesses
21 that you're going to say you could have called on your direct
22 case?

23 MS. GROSSMAN: It is not.

24 THE COURT: I am asking Mr. Moore. Is this one of
25 those you would make that argument or no?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO4

Hall - cross

1 MR. MOORE: I didn't hear the question.

2 THE COURT: Is this one of those witnesses where you
3 would say, I could have called him on direct, but I decided I
4 would do it on cross, or not?

5 MR. MOORE: If I had known he was a possible witness,
6 I might have called him on our case.

7 MS. GROSSMAN: There were only two witnesses that fall
8 in that category.

9 MR. MOORE: I am not asking him these questions as to
10 the truth of what is in there. I am asking him from a process
11 standpoint, from a procedure standpoint, when he sits on the
12 committee and gets documents like these, what he would do or
13 what he should do.

14 THE COURT: I don't understand. You're going into the
15 specifics of the first one to point out that there is a remark
16 about someone's ethnicity. I don't understand what that would
17 have to do with process.

18 MR. MOORE: I want to bring out that anybody sitting
19 and reviewing these documents would see that four out of the
20 nine involve allegations of either racial profiling, racial
21 stereotyping --

22 THE COURT: What follows from that?

23 MR. MOORE: Then I want to ask him what he would have
24 done with those allegations.

25 THE COURT: I think you can ask that without any of us
SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO4 Hall - cross

1 looking at this form at all.

2 If there are allegations of racial profiling that come
3 before the CCRB profile and assessment committee, how would
4 they be handled?

5 THE WITNESS: Looking at each individual complaint, we
6 are going to see, if the complaining fact clearly shows racial
7 profiling, what was the investigation, your Honor, done
8 concerning that complaint? Was the complaint substantiated?
9 Was it unsubstantiated? Was it exonerated? Was it unfounded?
10 Was the complaint withdrawn by the person that made the
11 complaint? So certainly we want to know what the disposition
12 to the complaint was. A complaint before us, where there is a
13 founded case of racial profiling, quite frankly, I don't think
14 that would ever make it to the CCRB assessment. That would be
15 a complaint where the officer was given immediate severe
16 discipline.

17 So when we are looking at them, your Honor, what we
18 really want to do is, what is the type of complaint, and if it
19 does allege profiling, what was the findings by CCRB and/or the
20 police department if we investigated it?

21 THE COURT: The only thing I would ask you to answer
22 that you didn't already answer, if I changed the word profiling
23 to bias, would your answer be the same? If a complaint alleged
24 racial bias, would your answer be the same? You would look at
25 it the same way?

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D5G8FLO4

Hall - cross

1 THE WITNESS: It would. Once again, that's a serious
2 complaint, that type of complaint. But I think ultimately as a
3 committee we want to see how was the complaint investigated,
4 what were the findings.

5 THE COURT: It would be the same answer.

6 THE WITNESS: It would be for the most part.

7 Q. In your time on the committee, have you ever looked at a
8 series of CCRB complaints and referred the officer for further
9 investigation based on any kind of belief that you thought he
10 was engaging in racial profiling, racial stereotyping? Have
11 you ever personally done that or aware that the committee has
12 ever done that?

13 A. We have.

14 Q. When is the last time that happened?

15 A. We met last month, and I don't remember the particulars
16 exactly, but we asked that a particular officer be subject to a
17 test, a field test.

18 Q. A field test to determine whether they are biased in their
19 policing?

20 A. Just an encounter with this particular officer to see how
21 he is going to act.

22 Q. How would that field test take place?

23 A. It's usually run by the Internal Affairs Bureau. I am not
24 privy to what the contents of the tests are, but they run the
25 tests.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO4

Hall - cross

1 Q. So the Internal Affairs Bureau can engage in testing to
2 determine, or at least possibly identify, officers who may be
3 exhibiting bias in their policing, right?

4 A. They could tailor a test for that I think.

5 THE COURT: I think his original question, do you
6 recall a case that was sort of sent back for further
7 investigation?

8 THE WITNESS: In this particular case, your Honor, the
9 one I am referring to, I don't know if it was exactly racial
10 bias, but there was enough that the committee looked at that we
11 weren't comfortable with how this officer was engaging with
12 people in the street and we directed that he be tested.

13 THE COURT: I got that. Have you ever sent one back
14 somewhere for further investigation to see whether the
15 allegations were founded? Even though the CCRB may have
16 already said founded or not founded, have you ever said we need
17 to look further on this one, we are going to investigate it?

18 THE WITNESS: Not that I recall, your Honor.

19 Q. Have you ever looked at a series of CCRBs reports like this
20 which contain allegations of racial bias or racial profiling or
21 racial stereotyping that involve more than one officer, have
22 you ever referred that out for testing of the units?

23 THE COURT: I think you should strike "like this."

24 When two officers are involved in a complaint
25 together, have you ever referred the unit for testing?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO4 Hall - cross

1 MS. GROSSMAN: Are we talking about in connection with
2 the process?

3 THE COURT: The process, but not in exhibit.

4 When you sit on this committee, if two officers are
5 discussed in a complaint, have you ever referred that unit for
6 further testing or investigation as opposed to being an
7 individual officer?

8 THE WITNESS: We haven't made a recommendation
9 concerning a unit, but we have made recommendations concerning
10 two officers that work together and directed -- the committee
11 has directed that they be separated. And in fact, once again,
12 based on last month's committee, I have a pretty good
13 recollection of two officers that worked together that had an
14 inordinate amount of complaints and the committee recommended
15 separation, removed from their unit, and placed back in
16 uniform. They were plain clothes officers at the time we had
17 the committee.

18 Q. Have you ever relied on a series of CCRB reports to take a
19 look at whether there is a problem with racial profiling or
20 racial stereotyping or racial bias in a precinct or a
21 particular command?

22 A. That has not come up during any committee meeting.

23 THE COURT: You have been attending since when?

24 THE WITNESS: Your Honor, I have been on this
25 committee since '05 -- hold on, '07.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO4 Hall - cross

1 Q. I think you said '05 in your direct.

2 A. That might have been CompStat.

3 Q. All right. Fine.

4 A. Either way I know I have been on it since '07.

5 Q. Now, you also talked about your serving on the committee
6 that does performance monitoring. Do you recall that?

7 A. No. That's not a committee. That's just three levels that
8 you can call, I am a customer of theirs, making referrals of
9 our people, working with the commanding officers of the
10 precincts to make sure that the right people are placed in
11 monitoring.

12 Q. Are you personally aware of an officer ever being put on
13 performance monitoring for a complaint involving an illegal
14 stop?

15 A. Not that I am aware of.

16 Q. Are you personally aware of an officer being put on
17 performance monitoring for a complaint involving an illegal
18 frisk?

19 A. Not that I am aware of.

20 Q. Are you personally aware of an officer having been put on
21 performance monitoring for a complaint involving a search
22 incident to a stop and frisk?

23 MS. GROSSMAN: I object because the witness is here to
24 talk about his personal knowledge about his role on the
25 committee.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D5G8FLO4

Hall - cross

1 THE COURT: He is talking about that.

2 MS. GROSSMAN: This is different. The performance
3 monitoring that he is referring is different than CCRB.

4 THE COURT: I realize that. He also said he
5 participates, I thought, in some level of performance
6 evaluation or performance monitoring.

7 THE WITNESS: Not really. Those people that are
8 selected for performance monitoring, they are selected by the
9 employee management division, performance analysis section.
10 And then I am informed, as are the precinct commanders, that
11 they have been placed in --

12 THE COURT: He still could ask if you knew of anybody
13 placed on performance monitoring for the following things.

14 THE WITNESS: I don't always get the reasons why they
15 have been placed in it.

16 THE COURT: To your personal knowledge, you still say
17 no to two of his three questions.

18 The last one had to do with an illegal search?

19 MR. MOORE: The last one was an illegal search
20 incident to a stop and frisk.

21 THE COURT: Do you personally know of any such person
22 placed on monitoring for that purpose?

23 THE WITNESS: I don't personally know, but that
24 doesn't mean it may not have been a contributing factor in
25 putting them in.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO4 Hall - cross

1 Q. I am just asking for your personal knowledge.

2 You do sit on the CCRB profile and assessment
3 committee though?

4 A. Yes, sir.

5 Q. You make recommendations in that committee regarding
6 monitoring, supervision, assignment and training of members?

7 A. Of the patrol officers, yes, in my bureau.

8 Q. Once again, the fact that an officer might meet a certain
9 threshold set by the committee doesn't mean they are going to
10 be reviewed by the committee?

11 MS. GROSSMAN: Objection. Asked and answered. He did
12 this at the beginning.

13 MR. MOORE: I did it with a different committee.

14 THE COURT: I think she is right. I think you did
15 this.

16 Did you think you have answered that question already?

17 THE WITNESS: Yes.

18 THE COURT: That's three of us. Mr. Moore, three of
19 us think so.

20 Q. To your knowledge, while you have been on that committee,
21 how long have you been on this committee the CCRB -- what was
22 it called?

23 MS. GROSSMAN: Profile and assessment committee.

24 MR. MOORE: Please, Ms. Grossman.

25 THE COURT: She was helping you. You asked the name.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO4 Hall - cross

1 Q. The CCRB profile and assessment committee is primarily
2 aimed at reducing the incidence of four categories of
3 misconduct that CCRB generally investigates, which is
4 unnecessary force, abuse of authority, discourtesy and
5 offensive language?

6 MS. GROSSMAN: Can you just read that question back?
7 (Record read)

8 Q. Is that correct?

9 A. Yes, sir. It's an early intervention program where we are
10 trying to get the officers to reduce the number of complaints
11 that they receive.

12 Q. We have heard testimony in this trial that if it's an
13 allegation with regard to racial profiling or stop and frisk,
14 that that's not included in those four categories?

15 A. I don't agree with that.

16 Q. During the time you have been on the committee, has
17 anybody --

18 THE COURT: Give me one minute.

19 You said we have heard testimony. Could you identify
20 the witnesses? I thought I recalled that from the lady that
21 talked about CCRB.

22 MS. BORCHETTA: Ms. Thompson, the executive director
23 of the CCRB, testified to that.

24 THE COURT: But they don't handle those types of
25 complaints because they don't fall under FADO?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO4 Hall - cross

1 MS. BORCHETTA: Generally, they don't fall under FADO
2 unless it's an issue of offensive language.

3 THE COURT: I interrupted your question. Do you
4 remember where?

5 MR. MOORE: That's all right.

6 THE COURT: Do you remember where you were?

7 MR. MOORE: Yes.

8 Q. Let me ask it in another way that would be unobjectionable.

9 During the time you have been on this committee, have
10 you ever disciplined an officer solely because of the number of
11 illegal stops and frisks he might have been involved in? Do
12 you have any personal knowledge of doing that?

13 A. I can't say I have any knowledge that any officer engaged
14 in illegal stops. That's never been highlighted to us during
15 the committee meetings that somebody engaged in illegal stops.

16 Q. In all the time you have been on that committee since 2007,
17 there has never been an allegation that somebody was engaging
18 in illegal stops, is that your testimony, as far as you can
19 recall?

20 A. That's correct. If it's a complaint that arose out of a
21 stop scenario, oftentimes it has to do with offensive language
22 or what we view to be abusive police authority.

23 THE COURT: That's the same. Abuse of police
24 authority would be, you have no basis to stop me, which makes
25 it an illegal stop. I can think of one we have heard in this

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO4 Hall - cross

1 case, where the person went to the CCRB right away and said, I
2 was stopped for no reason.

3 THE WITNESS: Right, your Honor. But I don't
4 necessarily take that to mean there is racial profiling.

5 THE COURT: He didn't say that. He said illegal. Do
6 you remember anybody ever being investigated for an illegal
7 stop, which would mean one that had no reasonable suspicion? I
8 didn't use the word racial profiling.

9 THE WITNESS: Not discipline that I recall.

10 Q. What about retraining or monitoring or any of the other
11 results that the committee can mete out when they are
12 investigating an officer?

13 A. Very often, if there are CCRBs that result from stops, the
14 officer is directed to attend legal bureau training.

15 Q. Let me ask you about CompStat now.

16 You testified -- I thought you testified that you and
17 your staff review 250s prior to CompStat meetings, right?

18 A. Yes, sir.

19 Q. You don't actually bring the 250s into the meeting, do you,
20 as a matter of course?

21 A. When you say bring into --

22 THE COURT: Physically. Do you bring a pile of
23 UF-250s?

24 THE WITNESS: I usually don't, no.

25 Q. It would be a rare occurrence that you did that, right?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO4 Hall - cross

1 A. I would say rare, yeah.

2 Q. What is the purpose of reviewing -- I think you mentioned,
3 what was it, 30 250s from three different tour of duties?

4 A. Platoons, that's correct.

5 Q. And the purpose of that is primarily to determine if the
6 precinct is targeting their enforcement action at the right
7 people at the right time and at the right location, right?

8 A. That's part of it.

9 Q. That's the main purpose of it though, right?

10 A. I also like, as I stated yesterday, by looking at the
11 actual 250 itself, it could shed some light if the officer has
12 written something on the 250 that shouldn't be on the 250, and
13 then we can take some type of corrective action.

14 Q. Is it your testimony that looking at a 250, looking at just
15 the 250, you could, at least the ones that have been in
16 operation before March of 2013, that you can determine whether
17 there is reasonable suspicion from just looking at the 250, is
18 that your testimony?

19 A. I am not present when these stops are made.

20 Q. Obviously.

21 A. By looking at the 250, it's the best gauge that I have as
22 the chief of patrol to determine if the 250 -- if the stop was
23 based on reasonable suspicion.

24 Q. So you're comfortable saying you could make a determination
25 that reasonable suspicion existed from simply looking at the

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO4 Hall - cross

1 UF-250 form, correct?

2 A. Based on that's what I have to look at, yes.

3 Q. The review that's done of these, I think you mentioned 90
4 250s that's not done by you, that's done by people on your
5 staff, right, for the most part?

6 A. Usually staff, but I have no issue, you know, when I am
7 preparing to say, hey, give me 20. Then I take a look at those
8 20.

9 Q. Primarily it's done by the staff and they report to you,
10 right?

11 A. Correct.

12 Q. Now, as you said, one of the purposes of looking at the
13 250s is to determine if the precinct is targeting their
14 enforcement action in the right location, correct?

15 A. That's one of the reasons.

16 Q. And to address what the conditions are in that precinct,
17 correct?

18 A. That's correct.

19 Q. So if you had a condition that involved male Hispanics, age
20 14 to 21, committing burglaries in a precinct, if that was a
21 condition, you would want to look at 250s to see whether the
22 officers are stopping male Hispanics 14 to 21 at that location
23 where that condition has been identified, right?

24 A. Not necessarily.

25 Q. You wouldn't want to do that?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO4

Hall - cross

1 A. No. What I think we want our commanders to do, and what I
2 instruct them to do, if you have a burglary condition at a
3 location and it involves, as you said, male Hispanics 14 to 21,
4 we should be reviewing the complaint reports, and you're going
5 to see greater detail than just male Hispanic 14 to 21.

6 Q. I am talking about the 250s. Wouldn't you want to see the
7 250s targeting male Hispanics, 14 to 21, and the location where
8 the crime condition is, isn't that what you would be looking
9 for?

10 A. I want them to be looking at that, but I also want them to
11 be informed on the details of those complaints, which is very
12 easily to do.

13 Q. Right. I appreciate that. I want you to set aside the
14 complaints for a moment. You're looking at a collection of
15 250s from a precinct looking at a condition, and the condition
16 is male Hispanics, 14 to 21, committing burglaries at a certain
17 location, say a two or three block radius, OK?

18 A. OK.

19 Q. You're looking at just the 250s. Set aside the complaint
20 reports. You would as a commanding officer would want to see,
21 would you not, whether the 250 activity is targeting male
22 Hispanics, 14 to 21, in that area, right?

23 A. That would be one of the things I would be looking at.
24 Certainly, if you're looking at, as you described, a burglary
25 condition with within a two block area, and I saw 250s prepared

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO4 Hall - cross

1 in that area, and there were male Hispanics stopped that were
2 65, I'm going to ask some questions. So, you know, obviously
3 part of the 250 is, yeah, the right age or the right group of
4 people, but ultimately the commanders are instructed to really
5 look at the details of the reports and then tailor your
6 enforcement including the 250 to the details of those
7 complaints.

8 Q. Just to be clear, the main purpose of looking at the 250s
9 in CompStat, or preparing that analysis before the actual
10 CompStat meeting, is to determine whether the precinct is
11 targeting their enforcement action in the right direction?

12 MS. GROSSMAN: Objection. We have been through this
13 four times.

14 THE COURT: I thought it was three, but I think four
15 is right.

16 Q. You're not primarily looking at the 250s to determine
17 whether there is reasonable suspicion, right?

18 A. I think we do look at them to see that --

19 Q. That's not your primary purpose in doing this review of the
20 250s, right?

21 A. When I am looking at 250s, and I looked last week at Staten
22 Island, I looked at 50 250s from commands in Staten Island.

23 Q. A patrol service bureau command?

24 A. That's correct.

25 Q. What precinct?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO4

Hall - cross

1 A. 120 and the 123. When I looked at those, and I looked at
2 them, I was looking at the quality of the 250, in terms of does
3 it look, based on the 250, was there reasonable suspicion? I
4 was looking for accuracy and completeness. And that was what I
5 honed in on, and that was what I was looking at as the chief of
6 patrol.

7 THE COURT: I guess when you instruct your staff,
8 which is doing this more than you are, he is saying, are you
9 trying to match the conditions to the stops, or are you looking
10 to analyze whether there is reasonable suspicion for each of
11 those stops, and he put it primarily.

12 THE WITNESS: Primarily, it would probably be more
13 related to the crime condition than the actual stop.

14 Q. OK. That review you did you said last week?

15 A. I think it was last week.

16 Q. That was a collection of 250s that was given to you by your
17 staff?

18 A. By the command.

19 THE COURT: What did you instruct them to collect?

20 THE WITNESS: We wanted, your Honor, 90 from that
21 particular command. My staff calls out to the precinct and
22 then the precinct forwards it to my office.

23 THE COURT: Do you know how those 90 stops were
24 selected? Were they all the stops for April?

25 THE WITNESS: The most recent stops and by platoon, by
SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO4 Hall - cross

1 the late tour, the day tour.

2 THE COURT: Most recent until they hit 90?

3 THE WITNESS: That's correct.

4 Q. So you were just looking at the 250 forms?

5 A. That's correct.

6 Q. And nothing else, right, just the 250 forms?

7 A. That's what I looked at, yes.

8 Q. There was nothing --

9 THE COURT: Nothing else, no memo books, for example,
10 just the 250s?

11 THE WITNESS: Just the 250s.

12 Q. So this would have been over two months after your
13 order -- your memo that you sent out in March saying memo book
14 entries should be stapled or attached to the 250 forms,
15 correct?

16 A. That's correct.

17 Q. All you looked at were 250s?

18 A. That's correct.

19 Q. Did that raise any question to you about whether those
20 precincts in Staten Island were actually complying with your
21 March 5 memo?

22 A. I had asked the borough commanders, including the Staten
23 Island borough commander, to look and see what type of
24 compliance we were getting with the memo.

25 THE COURT: I don't understand your answer.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO4

Hall - cross

1 Does that mean they were stapled or not stapled?

2 THE WITNESS: Not stapled. But separately from his
3 question was, I looked only at the 250s.

4 THE COURT: But his question implied, you had directed
5 that they be stapled together. Do you know how they got
6 separated or were they never stapled?

7 THE WITNESS: I don't have the answer for that.

8 Q. You also testified, and I think you have also said it here
9 today, but you testified on direct that an officer who engages
10 in illegal stops that aren't based on reasonable suspicion
11 could be subjected to, and I think your words were incredibly
12 severe discipline. Do you recall that?

13 A. I do.

14 Q. What is your definition of incredibly severe discipline?

15 A. It could result in termination from the department,
16 depending on the facts of the case.

17 Q. To your knowledge, as you sit here today, do you have any
18 personal knowledge of any officer who has suffered incredibly
19 severe discipline for engaging in an illegal stop? Do you have
20 any personal knowledge of that?

21 A. My personal knowledge, not that I am aware of.

22 Q. Do you have any personal knowledge of any officer who has
23 suffered incredibly severe discipline for an illegal frisk in
24 the course of the stop?

25 A. There may --

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO4 Hall - cross

1 Q. Once again, your personal knowledge.

2 A. Not knowing all the details of these cases, there are
3 instances where officers have been severely disciplined,
4 arrested, and as part of the discipline they may have engaged
5 in that type of activity, but my personal knowledge, nothing
6 comes to mind right now.

7 Q. Based on your personal knowledge, are you aware of any
8 officer who has suffered incredibly severe discipline for
9 engaging in racial profiling?

10 A. Yeah. Two cases come to mind.

11 Q. Over how many years had you have been looking at it?

12 A. Based on my recent recollection, I can think of two cases
13 that probably happened within the last 15 months where officers
14 were arrested and charged with that.

15 THE COURT: Arrested and charged with racial
16 profiling?

17 THE WITNESS: Correct. As part of the case, your
18 Honor.

19 Q. There were other allegations involved in those cases, more
20 serious allegations?

21 MS. GROSSMAN: Can you let the witness answer? You're
22 testifying.

23 Your Honor, I am asking for some help here.

24 THE COURT: Do you want to know about these two racial
25 profiling cases? Do you want him to describe them?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO4

Hall - cross

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. MOORE: Sure.

THE COURT: Tell us what you recollect --

MR. MOORE: Do you want to know, Judge.

THE COURT: That wasn't my question. I asked if you wanted to ask that question.

MR. MOORE: Let's hear.

THE COURT: Can you tell us about each of them?

THE WITNESS: They are both cases that emanate from Staten Island. One is about 12 to 15 months ago, where an officer I believe arrested and charged and African-American for crimes that the African-American didn't commit. He then made racial offensive comments concerning what he did. Ultimately, I believe he was arrested. I think Internal Affairs did the investigation and the Staten Island DA's office had part of this investigation.

Then I believe it was yesterday or two days ago, I get newspaper clippings every day that I review, another Staten Island officer was arrested and charged after he arrested an African-American in Staten Island for criminal charges that this individual did not do. He was then captured on a wiretap making racially insensitive comments, and ultimately he has been arrested and will face very severe --

MR. MOORE: Incredibly severe.

THE WITNESS: Incredibly severe is the word I used. That's what he will face.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO4 Hall - cross
(Continued on next page)

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D5g9flo5

Hall - cross

1 Q. And on those two cases both come out of the Staten Island.
2 Does that give you some reason to believe that -- were those
3 both out of the 120 precinct?

4 A. I don't know the commands. I believe one of them was. I'm
5 not sure of the second one.

6 Q. Did those two cases give you any cause for concern about
7 whether there's some problem in Staten Island with respect to
8 bias policing?

9 A. It doesn't. You know, we have three patrol precincts on
10 Staten Island. You know, I look at these as two really
11 horrendous acts. But I don't think it's an indictment of the
12 almost five hundred officers that work on patrol in Staten
13 Island. I don't.

14 Q. Do you agree -- have you ever -- have you -- you mentioned
15 in your direct that on one occasion you have reviewed three
16 250s of an officer who put on the 250 form why he did a frisk
17 and it was to search for drugs.

18 Do you recall that?

19 A. I do.

20 Q. And that would have been a 250 form that was signed off by
21 the supervisor, right?

22 A. I believe it was.

23 Q. And do you know whether the supervisor was ever
24 investigated for signing off on a form that you could determine
25 by looking at it was improper?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo5 Hall - cross

1 A. We spoke to the precinct commander.

2 Q. When you say "we," did you speak to him or did you have
3 somebody in your staff speak to him?

4 A. My executive officer spoke.

5 Q. Well then I don't -- you never spoke to him?

6 A. No. I can't tell you --

7 Q. I understand. I don't want you to tell me what you heard
8 from somebody else.

9 You would agree with me, would you not, that the key
10 element in ensuring that officers make stops only with
11 reasonable suspicion is the oversight that the officers get
12 from their supervisors? That's really the key element? You'd
13 agree?

14 A. I think it starts with training.

15 Q. But it's the first line supervisor that really has to make
16 sure that the officers are following their guidelines and
17 regulations and training with respect to doing stops and
18 frisks, right?

19 A. That's part of it. Absolutely.

20 Q. And if the sergeant isn't doing their job in reviewing the
21 250s or ensuring that entries are made in the memo books, the
22 chain of command is broken, right?

23 A. The sergeants --

24 Q. Would you agree with that?

25 THE COURT: I don't think it was a complicated
SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D5g9flo5 Hall - cross

1 question. Basically he said if a sergeant fails in his job,
2 does that sort of break the chain of command?

3 THE WITNESS: It can. But I think you also have to
4 realize that many of our officers are able to do their job with
5 minimal or no supervision and they do their job well.

6 THE COURT: Except isn't the sergeant supposed to sign
7 off on the UF 250?

8 THE WITNESS: A supervisor does, your Honor, sign off
9 on it.

10 THE COURT: Is that a sergeant?

11 THE WITNESS: It doesn't have to be. It doesn't have
12 to be.

13 MR. MOORE: Sergeant or above though, right?

14 THE WITNESS: Correct.

15 THE COURT: Then I go back to my question.

16 So if that first line supervisor, whether it's a
17 sergeant or higher, fails to do his job, does that break the
18 chain of command.

19 THE WITNESS: Well if -- when he's looking at the 250s
20 and from the 250 he establishes that something's wrong with the
21 250 or the stop and he fails to act upon it, then he's not
22 doing his job and then a piece of the puzzle is broken.

23 THE COURT: I think that was his question. Thank you.

24 MR. MOORE: Thank you.

25 THE COURT: So in other words it's important that the
SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo5 Hall - cross

1 first line supervisor really takes a look?

2 THE WITNESS: Yes. We want them reviewed. And I
3 misstated. It doesn't have to be a sergeant. It can be a
4 lieutenant.

5 THE COURT: I understand. But that first line
6 supervisor should do his job and really take a look?

7 THE WITNESS: He should.

8 THE COURT: Okay.

9 Q. I want to show you what's in evidence as Plaintiffs'
10 Exhibit 290 and the first page is a -- I guess a transmittal
11 sheet from your office, correct?

12 THE COURT: I can't see.

13 MR. MOORE: It's actually not from your office but it
14 attaches a memorandum regarding a quota bill and the second
15 page is a copy of a memorandum from you, correct, dated
16 October 22, 2010.

17 THE WITNESS: Yes, sir.

18 MS. GROSSMAN: Your Honor, I would just object because
19 the plaintiffs' attorney, Mr. Moore, e-mailed me to say that he
20 didn't want to go into Quest for Excellence which is I think
21 related.

22 THE COURT: This had to do with the comment with
23 respect to the proposed quota bill. That's how I read it.

24 MR. MOORE: Right.

25 THE COURT: In fact, it says memorandum regarding
SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo5 Hall - cross

1 quota bill.

2 First paragraph says, "The attached memorandum was
3 prepared by the legal bureau to assist borough and precinct
4 commanders in understanding the amendment to labor law section
5 215(a) (quota bill) which became effective August 31, 2010,"
6 correct?

7 THE WITNESS: That's accurate.

8 THE COURT: What's the question now that we know what
9 this is.

10 (Pause)

11 MR. MOORE: 290 is already in evidence, I believe.

12 THE COURT: That's this?

13 MR. MOORE: Yes. 290.

14 THE COURT: If you tell me it's in evidence, I trust
15 you.

16 BY MR. MOORE:

17 Q. This was signed by your executive officer, Inspector Brian
18 McCarthy, right?

19 A. Yes, sir.

20 Q. But you reviewed it before it went out, right?

21 A. I did.

22 Q. And it attaches a memorandum from the legal bureau,
23 correct?

24 A. That's correct.

25 Q. You see there on the first paragraph, and I've highlighted

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo5 Hall - cross

1 a portion it says, "In an effort to address crime and public
2 safety conditions in precincts, supervisors have made
3 statements that could be interpreted as the setting of quotas
4 for enforcement activity."

5 Do you see that?

6 A. I do.

7 Q. Can you recall any specific examples of such statements by
8 supervisors?

9 A. I can't.

10 Q. You can or you cannot?

11 A. I cannot.

12 Q. Let me ask you this. If a supervisor at a roll call said
13 on this tour I want five Cs or five 250s, would you consider
14 that a statement that could be interpreted as the setting of
15 quotas for enforcement activity?

16 A. Not necessarily because if you --

17 THE COURT: I don't think "necessarily" answers his
18 question. He said could a reasonable listener interpret it as
19 a quota?

20 THE WITNESS: Is that what you're asking, could --

21 MR. MOORE: No. That's what she's asking. That's the
22 judge's question.

23 THE COURT: In other words, many people listening at
24 roll call. Could a person reasonably interpret that, I want
25 five Cs and five, whatever you said -- five Cs and five what?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo5

Hall - cross

1 MR. MOORE: Five 250s.

2 THE COURT: I want five Cs and five 250s, could a
3 reasonable listener interpret that to be a quota of enforcement
4 activity? In your opinion?

5 THE WITNESS: A police officer, obviously, he'd be the
6 person listening to that statement.

7 THE COURT: Yes.

8 THE WITNESS: I could see that. My knowledge of
9 quotas, I don't see it. But I could see a police officer
10 thinking that.

11 THE COURT: Fair enough.

12 MR. MOORE: Okay. Fair enough. Thank you.

13 BY MR. MOORE:

14 Q. Although this memorandum says quotas are prohibited, it
15 does say that it's okay to set performance goals, right?

16 A. Yeah, I believe that language is in there.

17 THE COURT: I think he's highlighted it.

18 "And department managers can set performance goals for
19 the officers under their supervision and can insist that
20 officers take appropriate enforcement action to address crime
21 problems, quality of life conditions, and public safety issues
22 in the commands they are responsible for policing."

23 Right? I've read that correctly?

24 THE WITNESS: That's it.

25 Q. If a supervisor said at a roll call: I want five 250s this

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo5 Hall - cross

1 tour, that would be a quota, right?

2 A. No, not unless there's some type of adverse job, you know,
3 action against the officer if he failed to meet the quota.

4 THE COURT: So you would call that a performance goal?

5 THE WITNESS: Well it could be, your Honor. But it
6 doesn't fit the legal definition of quota unless there's an
7 adverse, you know --

8 THE COURT: I know that. That's why I asked you
9 whether you might consider that a performance goal if he says I
10 want five 250s?

11 THE WITNESS: It could be, yes.

12 Q. And you think it's appropriate for a supervisor to say to
13 officers at a roll call, I want five Cs or five 250s this tour?
14 Is that appropriate.

15 A. Once again, depending --

16 Q. Can you answer that yes or no?

17 A. The context in which it's being said -- you know, if we're
18 talking about a precinct or a command where there's a condition
19 that is so extreme, it could be something that the sergeant
20 said that, you know, I'm not going to say that it was the wrong
21 thing to say. But once again I would need to know the context
22 in which it was said and what is he really talking about.

23 Q. Well, you recall in this memo it says, the last page of
24 this memo it says, "It is extremely important to avoid
25 discussing specific numerical objectives at role calls, in

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo5 Hall - cross

- 1 training sessions or in documents that are given to
2 subordinates. Any discussion or direction that links failure
3 to reach a specific numeric goal with an adverse employment
4 consequence can give rise to an allegation of a quota
5 violation," right?
6 A. Yes, sir.
7 Q. So this is the -- if you interpret this -- do you
8 understand this memo to say supervisors should avoid discussing
9 specific numerical objectives at roll calls or when they're
10 instructing their officers? Is that how you interpret this?
11 A. I do.
12 Q. Okay. Thank you.
13 You've heard about the -- what's it called, operation
14 impact?
15 A. Yes.
16 Q. And those are with the new officers coming out of academy,
17 they're fresh out of the academy, right?
18 A. Yes, sir.
19 Q. And for the first six months out of the academy they do
20 operation impact tours, right?
21 A. At least six months, correct.
22 Q. And those are tours that -- they're right on the street in
23 direct contact with citizens on the street, right, for the most
24 part?
25 A. They are.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D5g9flo5

Hall - cross

1 Q. They're not riding around in cars for the most part?
2 They're on foot, in direct contact with citizens, you know, for
3 the duration of their tour, right?

4 A. That's accurate.

5 Q. And you would agree with me that -- would you not, that
6 with new officers, it takes them a while to get used to what
7 reasonable suspicion is, right?

8 A. Well they've been trained and they're right out of the
9 police academy. So, you know, there's a part of me that --
10 it's fresh in their mind. They've just come out of six months
11 of intensive training.

12 Q. But it's fair to say that being on the street is different
13 than being in the academy, right?

14 A. It is. Now it's time to apply what you've learned.

15 THE COURT: I guess what he's saying, isn't it true
16 that experience is the best teacher?

17 THE WITNESS: I like it in this line of work.

18 THE COURT: So a newer person may have a little more
19 difficulty drawing the lines than an experienced officer?

20 THE WITNESS: I think a confidence issue. Correct.

21 Q. I believe you testified on direct, Ms. Grossman asked you:
22 How do you know that officers are not subject to quotas?

23 Do you recall that? Do you recall being asked that
24 question? I know it was yesterday, but.

25 A. I believe I recall it.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo5 Hall - cross

1 Q. And you said two things. You said first we don't have
2 quotas. That was the first thing you said, right?

3 Do you recall that?

4 A. I do.

5 Q. And the second thing you said was well I look at overtime
6 reports and the activity is low so that means there is no
7 quotas.

8 Do you recall that?

9 A. I looked at -- I think it was violent reduction overtime.

10 Q. Right.

11 A. And I look what is done during those tours by the officers.

12 Q. Do you do anything else to determine whether officers are
13 subject to quota other than the two things you mentioned to
14 Ms. Grossman in your direct?

15 A. Well, for example, there's this memo was one of the things
16 I did. I made sure that the borough commanders and the
17 precinct commanders were aware of it.

18 And then I also had the legal bureau come down and
19 speak to every precinct commander in the city to make sure that
20 they were clearly aware of what the issues were as it pertained
21 to quotas. So the 76 precinct commanders and the borough
22 commanders were all fully briefed by our legal bureau on the
23 issue.

24 Q. So you mentioned your March 5 memo which is Exhibit J13
25 which I believe is in evidence.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo5

Hall - cross

1 THE COURT: Yes.

2 MS. GROSSMAN: Are you talking about the quota bill or
3 are you talking about --

4 THE COURT: No. We're up to the recent March 5 memo.

5 MR. MOORE: J13.

6 Q. Now J13 is a memo from you to all the commanding officers
7 at all patrol boroughs. And it sets forth this new procedure
8 regarding how to --

9 MS. GROSSMAN: Your Honor, just for clarification.
10 I'm just not sure if I understood from the answer, looking at
11 the exhibit. Is it the quota bill that the witness testified
12 he brought all the commanders down to speak with legal?

13 THE WITNESS: That's correct. He was asking me.

14 MS. GROSSMAN: I think I saw J13, I wasn't sure if he
15 was pointing to wrong exhibit when he said that.

16 MR. MOORE: Fine. I appreciate that clarification.

17 Q. That would have been back in 2010, right?

18 A. Yes.

19 Q. You haven't done that since 2010, have you?

20 A. I have not.

21 Q. And you didn't do it in conjunction with this memorandum,
22 right, March 5, 2013 memorandum?

23 MS. GROSSMAN: Didn't do what in conjunction?

24 MR. MOORE: Bring them all down and discuss 250s and
25 quotas.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo5 Hall - cross

1 Q. You didn't do that in regard to this bill, right?

2 A. I have discussions with borough commanders monthly.

3 Q. I understand.

4 A. Where I've discussed since 2010 quotas and numerical
5 comments made at roll calls. I have discussed 250s and memo
6 books on numerous occasions with borough commanders and
7 precinct commanders.

8 Q. Let's take a look at the March 5, 2013 memo, right?

9 A. Yes, sir.

10 Q. And when you became the -- you became chief of patrol in
11 March 2010, right?

12 A. Yes.

13 Q. And you became aware at that time that the patrol services
14 bureau was failing the QAD audits with respect to the 802 and
15 the 802-A audits, right?

16 A. I did.

17 Q. You actually knew that before then, right?

18 A. Before when, sir?

19 Q. You knew before you became chief of patrol that the patrol
20 services bureau was failing those audits, right?

21 A. No, not really. I knew transit did well where I was. I
22 wasn't aware of what patrol was doing.

23 Q. In 2010, 2011, 2012 the patrol services bureau continued to
24 fail those audits with respect to putting details of stops in
25 their memo books, right?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo5

Hall - cross

1 A. They did.

2 Q. It got better, but it continued to fail, right?

3 A. We saw improvement, but we still did not get a passing
4 grade.

5 Q. And you said you tried to address this problem by doing a
6 couple of things, right?

7 A. Yes.

8 Q. One, you discussed at borough commander meetings and with
9 precinct commanders the importance of putting the details of
10 the stops in the memo books, right?

11 A. That was one of the solutions.

12 Q. And the other thing you testified to on direct was that you
13 issued this memo, right?

14 A. I did.

15 Q. Now, is there some reason why it took you three years to
16 issue the memo? Since you recognized there was a problem in
17 2010?

18 A. No. I -- first of all, in 2010 I become aware of the memo
19 book entry some -- I'm the chief of patrol a few months when I
20 have a conversation with Chief Cronin. I become aware of it.

21 There are then numerous discussions with the borough
22 commanders and precinct commanders.

23 But if you look, I went back to my staff and I said:
24 Why do we do so poorly in this area? They offered some
25 explanations as it was just something that patrol was lagging

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo5 Hall - cross

1 behind the two other bureaus. And I can show historically that
2 this office, the chief of patrol's office dating back to 2008
3 there are memos stating, you know, we have to do a better job
4 when it comes to documenting incidents in our memo books.

5 Q. And nothing happening, right?

6 A. Well I wouldn't say nothing happened because I can say
7 since I've been the chief of patrol, you know, it's a big ship
8 and we're turning it slowly. There's been slight improvement.

9 And then ultimately precinct commanders throughout the
10 city put out their own memos as a result of my communications
11 with them, dating back to 2011.

12 Q. Fine.

13 What I'm trying to understand is why -- I'm trying to
14 understand why this memo came out on March 5, 2013.

15 Did you know that this matter was going to trial on
16 March 18, 2013?

17 A. Yes, I was aware.

18 Q. When did you know that this matter was going to trial on
19 March 18?

20 A. I don't know. As I stated yesterday, the memo came about
21 after Chief Pizutti produced a memo in January and shared it
22 with me at a borough commander's meeting. I then asked her for
23 a copy of her memo.

24 Q. I'm simply asking when you first knew you were going to be
25 a witness in this trial.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9f1o5 Hall - cross

1 Do you know the date?

2 A. The exact date, no.

3 Q. Was it before the trial?

4 THE COURT: Was it before March 18, before we started?

5 THE WITNESS: It was -- your Honor, it was after I
6 testified in Ligon and then at some point after Ligon ended I
7 was told I was probably going to be a witness in this trial. I
8 don't have the exact date.

9 THE COURT: But before March 5?

10 THE WITNESS: It was before March 5.

11 Q. All right. You say you came up with the idea of affixing a
12 photocopy of the memo book to the 250 form from Chief Pizutti,
13 correct?

14 A. That's correct.

15 Q. Now a handwritten 250 form, it gets entered into a computer
16 database, right?

17 A. It does.

18 THE COURT: I have a question, by the way. Is it
19 common for the police officer to fill out the 250 first or the
20 memo book first? In your experience?

21 THE WITNESS: 250 first.

22 THE COURT: The 250 first. Thank you.

23 BY MR. MOORE:

24 Q. I don't understand that because I thought you fill out your
25 memo book along the way on your tour as incidents happen?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo5 Hall - cross

1 Isn't that the usual practice?

2 A. Not absolutely.

3 Many officers carry 250s in their memo book. So when
4 there's the need to -- a stop, question and frisk arises, right
5 after the encounter you have the ability to sit in the car and
6 fill out the 250.

7 THE COURT: So that was your answer. In your
8 experience, you think it's more typical to fill out the 250
9 first?

10 THE WITNESS: That's correct.

11 THE COURT: Okay.

12 THE WITNESS: And then make your memo book entry.

13 THE COURT: Right.

14 Q. Is that the reason why so many memo book entries are
15 missing, because they first fill out the 250, they go through
16 the tour, and then they forget to enter the details in the memo
17 book?

18 MS. GROSSMAN: Objection.

19 THE COURT: Sustained. It sounds just argumentative.

20 Q. Now the 250 that a officer fills out gets a serial number,
21 right?

22 A. It does.

23 Q. And that -- under the new procedure you have where the
24 photocopy is affixed to the 250, there's nothing in there that
25 indicates if the officer should put the serial number on the

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo5 Hall - cross

- 1 copy of the memo book, right?
2 A. No.
3 Q. So if the -- if they got separated, which happens often
4 when you staple two documents together, if they get separated
5 there is no way to know whether you can put them back together
6 again, right?
7 A. Well, you would have the pedigree, the date, the time.
8 Q. You'd have to go through the entire form to try match it to
9 a 250, right?
10 A. It wouldn't be that difficult to do.
11 Q. In any event, the memo book entry doesn't have a serial
12 number on it, right?
13 A. No, it doesn't.
14 Q. So let's be clear about this. This is a memorandum from
15 you, right?
16 A. Yes.
17 Q. It's not an operations order, correct?
18 A. That's correct.
19 Q. It's not an interim order?
20 A. No, sir.
21 Q. Not a revision of the patrol guide?
22 A. No, sir.
23 Q. Correct?
24 A. That's correct.
25 Q. It's not sent to all commands in the NYPD, right? It's

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo5 Hall - cross

1 just sent to patrol services bureau command, right?

2 A. That's accurate.

3 Q. So that excludes a large number of officers who may be
4 engaging in stops and frisks on a daily basis in the course of
5 their activities, right?

6 A. I can't say that.

7 Q. Well it excludes all housing officers?

8 A. It excludes them but I can't say they're engaging in
9 illegal stops.

10 MR. MOORE: I didn't say illegal.

11 THE COURT: He said there are many other officers who
12 do stops.

13 THE WITNESS: Correct. This memo only applies to
14 people under my command.

15 THE COURT: That's all he said. In other words,
16 housing police wouldn't have gotten this memo?

17 THE WITNESS: That's correct.

18 THE COURT: And they do make stops, to your knowledge?

19 THE WITNESS: They do.

20 THE COURT: Yes. That's all he's saying.

21 Q. And it excludes transit as well, right?

22 A. It does.

23 Q. How many officers in transit?

24 A. I'd say about 2500.

25 Q. How many officers in housing?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo5 Hall - cross

1 A. Close to the same.

2 Q. How many officers in OCCB?

3 A. Not totally sure.

4 THE COURT: Can you give me a rough on that?

5 THE WITNESS: I'm going to say 12 to 1600.

6 Q. So we're up to about 62 to 6600, right?

7 A. That's correct.

8 Q. If I do the math right?

9 THE COURT: Right.

10 Q. What about -- this directive, this memo doesn't apply to
11 officers doing narcotics work, right?

12 A. That would be -- no.

13 Well, narcotics work within patrol services, yes.

14 But narcotics work within the world of organized crime
15 control bureau, no.

16 Q. So they would be part of OCCB, right?

17 What about boroughwide anticrime units?

18 A. This memo would apply to them.

19 Q. Now, the memo that you sent out is -- was it reviewed by
20 the police academy or individuals in the police academy?

21 A. No, sir.

22 Q. Did you run --

23 THE COURT: Actually, I didn't understand that.

24 MR. MOORE: Pardon?

25 THE COURT: I didn't understand your question or his
SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo5 Hall - cross

1 Q. Unlike -- you provide in your memorandum a sample memo book
2 entry, right?

3 A. We do.

4 Q. And this -- you recognize this as the same memo book entry
5 that officers are trained on? Is that where you got that?

6 A. I believe we took -- was it exact out of our training guide
7 that we issue.

8 Q. Showing you Plaintiffs' Exhibit 63. I'll put them together
9 here. It's the same memo book entry, right?

10 A. Pretty much so. A difference in the name of subject.

11 MR. MOORE: Different names. Yes. All right.

12 Q. But you use that as a guide, right?

13 A. We do.

14 Q. You notice the little box on the left side of each of the
15 forms, it has a specific reference to stop, question and frisk?

16 MS. GROSSMAN: Which form?

17 MR. MOORE: Both forms.

18 Q. Do you notice that, both forms have this entry, have this
19 little box about stop and frisk, right?

20 A. Yes.

21 Q. Is there any reason why you changed the language from
22 the -- from Plaintiffs' Exhibit -- from the patrol services
23 bureau memo on memo book entries for your memo? Is there any
24 reason why you changed the language?

25 A. I just need a second to compare.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo5

Hall - cross

- 1 Q. Sure.
- 2 A. If the difference we're talking about is "must be
3 elaborated" as opposed to "imperative that a detailed entry be
4 made"? Is that the difference we're --
- 5 Q. Which one do you think is stronger in terms of --
- 6 A. Mine.
- 7 Q. -- a direction to police officers?
- 8 A. Mine.
- 9 Q. You think "must be elaborated" is stronger than "imperative
10 that a detailed entry be made"?
- 11 A. Yes. It's imperative means it's important. Must means we
12 want you to do it.
- 13 Q. You also say in your memorandum that commanding officers --
14 you see in the last paragraph four there.
- 15 "Commanding officers will ensure that members of the
16 respective commands are appraised and comply accordingly,"
17 right?
- 18 A. Yes, sir.
- 19 Q. And you don't give any direction as to how members of the
20 command are supposed to be made aware of this change, right?
21 You leave it up to the commanders?
- 22 A. Commanders do that.
- 23 Q. It doesn't set out any procedure for announcing this in
24 successive role calls, right?
- 25 A. No.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D5g9flo5 Hall - cross

1 Q. That's often done in the police department, right, when
2 there's a change in procedure?

3 A. Sometimes.

4 But, once again, within patrol services memos, interim
5 orders, this would normally go to the sergeant's clipboard.
6 And this would also go to the training sergeant in the command.
7 And this would be discussed with all the members of the command
8 at our precinct unit level training and at roll call briefings.

9 Q. Do you see in paragraph two you say, "In addition to the
10 circumstances or factors of suspicion must be elaborated on in
11 the additional circumstances factors section."

12 Do you see that?

13 A. I do.

14 Q. You specifically make reference to furtive moment, right?

15 A. Yes.

16 Q. Is that because you concluded that just putting furtive
17 movement, just checking off furtive movement doesn't really
18 tell you anything?

19 You wanted to know more detail about what the furtive
20 movement was, right?

21 A. I did. I wanted more specifics to it.

22 Q. Would you agree with me that furtive movements just
23 describes a conclusion, doesn't actually set forth what the
24 conduct is that's furtive, right?

25 A. Furtive movement, I understand what it is, but I want the

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo5 Hall - cross

1 officers to, you know, specify what it was that led them to use
2 that box and put it in the memo book.

3 THE COURT: You just said "I understand what it is,"
4 but of course you wouldn't know what it was in any particular
5 stop unless the police officer --

6 THE WITNESS: No, unless I had the memo book entry
7 with what he put.

8 THE COURT: You wouldn't know whether it was tugging
9 on the waistband or looking back over your shoulder?

10 THE WITNESS: Correct.

11 THE COURT: There are all kinds of those examples.
12 But you wouldn't know which one?

13 THE WITNESS: Right.

14 Q. So that's why you wanted to add that piece?

15 A. Into the book.

16 Q. Into the book -- into the 250, right?

17 A. Into the memo book.

18 Q. Okay. No. Actually it's the 250. It says, "The
19 circumstances or factors of suspicion." I'm looking at
20 paragraph two.

21 THE COURT: I thought so too.

22 In the additional circumstances factors section of the
23 stop, question and frisk report.

24 THE WITNESS: And the.

25 THE COURT: I know the and. But before we get to the

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo5 Hall - cross

1 and, that's the 250?

2 THE WITNESS: Right.

3 MR. MOORE: And to be fair it also says.

4 THE WITNESS: And activity log.

5 THE COURT: It's both.

6 MR. MOORE: To be fair, it says: Explanation of
7 suspicion, you mentioned that, in describing what goes into the
8 activity log, right?

9 THE WITNESS: Correct.

10 Q. Would you agree with me that a 250 form that simply has the
11 box furtive movement checked off would not be enough
12 information for you to determine whether the officer had
13 reasonable suspicion in making a stop? Would you agree with me
14 on that?

15 A. No. I wouldn't agree with you because the officer that
16 actually performed the stop, if he checks that box, furtive
17 movement, he saw something that led him to check that box.

18 Q. Fair enough. My question wasn't precise enough.

19 To somebody reviewing a 250 form who wasn't present,
20 if all they have is a box checked off, furtive movement, that
21 wouldn't be enough information for them to determine whether
22 there was reasonable suspicion for this particular stop, right?

23 A. No. Not necessarily because there are other captions and
24 boxes on the 250 that could still lead one to believe that it
25 was a good stop.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo5

Hall - cross

- 1 THE COURT: Yeah, but that wasn't his question.
2 He said you would agree with me that a 250 form that
3 simply has the box furtive movement checked.
4 THE WITNESS: And no other boxes checked?
5 THE COURT: Assume that for the moment. Right.
6 THE WITNESS: And no other boxes checked?
7 THE COURT: Yes. That's my hypothetical.
8 THE WITNESS: Your Honor, just ask me the question now
9 that you've clarified it.
10 THE COURT: If that's the only box checked, can you
11 assess whether there was reasonable suspicion for that stop?
12 THE WITNESS: You probably could not clearly.
13 Q. Now what you provide here is the direction that the
14 description of a furtive movement should be specified on the
15 250 form, right?
16 Is that correct?
17 A. When I'm looking at this memo, my intention was to get that
18 in the activity log.
19 Q. I understand. But you made a change in how officers under
20 the patrol services bureau are supposed to fill out their 250
21 form. And you give an example which says if they check furtive
22 movement they should provide a description --
23 A. Of what it was.
24 Q. And it says "must be specified," right?
25 A. That's correct.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D5g9flo5

Hall - cross

1 Q. And on the form that was prepared, the UF 250 sample form,
2 you provide an example of -- which shows furtive movement
3 checked, right?

4 Do you see that?

5 A. I see it.

6 Q. And the example you provide here is, check the other
7 reasonable suspicion of criminal active box, and then say,
8 "turned at the sight of police and kept looking back," right?

9 A. That's correct.

10 Q. So you don't -- you're not -- even though you're asking
11 officers to describe what the furtive movement was, you're not
12 giving them anymore room in this box on this form to do that,
13 right?

14 A. No. But you can write it just as we have it in there. The
15 officer can make an entry here.

16 Q. To be fair, Chief, if you look at this form, look at it in
17 total, that's typed information in very small type, right?

18 A. Based on what I'm looking at on the screen, yes, sir.

19 THE COURT: But that's only the front. Is the back
20 below it? That's the back part. Does it have anymore room?
21 Not really. Okay.

22 Q. And these forms are handwritten not typed in, right?

23 A. Handwritten.

24 Q. And so I mean maybe somebody has really good penmanship and
25 they can print that small but generally people write larger

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo5

Hall - cross

1 than that when they're writing -- filling out forms, right?

2 A. I've looked at -- I've mentioned the review of the ones
3 that I did of Staten Island. There were handwritten comments
4 that I could clearly, you know, read off of the form that were
5 made in ink.

6 Q. But there's barely enough space for one line of text if
7 you're handwriting it out, right?

8 A. Depending on your writing style, I guess.

9 Q. And rather than -- why did you leave it -- why did you
10 direct that officers should check the other reasonable
11 suspicion of criminal activity stop to put that narrative in?
12 Isn't that a little confusing?

13 A. You'd have to take me back to the memo. Did I direct that
14 they check that box?

15 Q. Well to be fair you don't direct it. But the example you
16 have has the officer checking furtive movement. And then where
17 they put in the explanation, you have checked off other
18 reasonable suspicion of criminal activity.

19 Do you see that?

20 A. I do.

21 Q. So that's what officers are looking at when they get this
22 new memo, right, or supervisors or commanders, that's what they
23 see, right?

24 A. Yes, sir.

25 Q. Do you think that's a little confusing? Because it doesn't

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo5

Hall - cross

1 say, you know -- it asks for other reasonable suspicion of
2 criminal activity, not for an explanation of boxes that are
3 checked, right? Do you think that's a little confusing?
4 A. Well if you read the memo, we ask for an explanation of
5 furtive movement. I think that's pretty straightforward, you
6 know.
7 Q. Now, you know who Chief Morris is, right?
8 A. I do.
9 Q. And he is the chief of patrol borough Manhattan North,
10 right?
11 A. That's correct.
12 Q. And were you aware that he issued his own memorandum after
13 your March 5 memorandum concerning your March 5 memorandum?
14 A. No.
15 Q. As you sit here today you've never seen that?
16 A. No, I didn't see it. I don't recall seeing it.
17 Q. As you sit here today have you ever seen it?
18 A. His memorandum?
19 Q. Yes.
20 A. I spoke --
21 Q. No. I don't want you to tell me whether you spoke to him.
22 Have you ever seen it?
23 A. I don't recall seeing a memorandum from Chief Morris.
24 Q. Were you aware that he -- that Chief Morris conducted a
25 review in his borough of how your March 5, 2013 memo is being

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo5 Hall - cross

1 implemented?

2 MS. GROSSMAN: Your Honor, I just want to remind the
3 court that yesterday I was precluded from going into these
4 details. So, Mr. Moore objected to questions that I had about
5 the results of the surveys of all the borough commanders. And
6 then I said if Mr. Moore is going to object to me asking
7 questions, he shouldn't then ask questions of this witness.

8 MR. MOORE: I'm not going to ask --

9 MR. CHARNEY: The results --

10 MR. MOORE: Hold on. I think I can answer this.

11 I'm not going to ask him questions about any of the
12 borough commanders. Chief Morris testified that he conducted
13 this review following receipt of Chief Hall --

14 THE COURT: Doesn't that ask for a report on the
15 effectiveness of the March 5 memo?

16 MR. MOORE: Wasn't that what, Judge?

17 THE COURT: Doesn't that ask for testimony about the
18 effectiveness of the March 5 memo?

19 MR. MOORE: I'm asking him about testimony that has
20 been heard in this trial from Chief Morris.

21 THE COURT: I realize it's been heard in this trial.
22 And now you're asking him to testify as to whether he's aware
23 of how effective this March 5 memo was.

24 MR. MOORE: Let me withdraw that.

25 Q. Did he report to you that he -- a survey was conducted,

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo5 Hall - cross

1 Chief Morris?

2 A. I directed that he do it.

3 Q. Okay?

4 THE COURT: Did you direct anybody else to do it or
5 just him?

6 THE WITNESS: No. All the borough commanders.

7 Q. Did you gather a report back from Chief Morris about the
8 success of his survey?

9 A. Verbally.

10 THE COURT: From all the commanders?

11 THE WITNESS: Verbally, your Honor. I heard from all
12 of them.

13 Q. And Chief Morris told you that --

14 THE COURT: No. No. No. That's exactly what the
15 objection was; that she wasn't allowed to go into how effective
16 or ineffective it was, then you couldn't either.

17 MR. MOORE: I thought your ruling was --

18 THE COURT: See, I don't remember it.

19 MR. MOORE: He couldn't testify to conversations he
20 had with people who were not identified who -- we weren't made
21 aware of. But I didn't understand it to exclude any
22 conversations he would have had with Chief Morris because Chief
23 Morris testified to it.

24 THE COURT: I don't know unless I see the ruling I
25 made yesterday.

D5g9flo5

Hall - cross

1 MR. MOORE: In any event, let me just ask this one
2 question.

3 Q. Were you made aware that in the patrol borough Manhattan
4 North there was only 60 percent compliance with your directive?

5 MS. GROSSMAN: Your Honor, that's getting right at
6 what we were talking about.

7 THE COURT: I agree. And of course the question isn't
8 evidence, so.

9 I see people have gone to look for the transcript.
10 Maybe on both sides. So if they find what that ruling was
11 we'll get it.

12 MR. MOORE: I'll move on.

13 Q. You saw Chief Pizutti's memorandum, right, which is M14?

14 A. I did.

15 Q. This is what inspired you to send your own out, right?
16 That's your testimony?

17 A. Yes, sir.

18 THE COURT: This one I assume is in evidence.

19 MR. MOORE: Yes.

20 MR. CHARNEY: You're right. It's in the transcript.

21 MR. MOORE: I'm right?

22 THE COURT: What is he right about for the first only
23 time, Mr. Charney?

24 MR. CHARNEY: Mr. Moore objected to information that
25 Chief Hall got other than from Chief Morris.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo5

Hall - cross

1 THE COURT: It was right in the objection?
2 MR. CHARNEY: Yes. This is page 7388, line 6.
3 THE COURT: And the objection was sustained.
4 MR. CHARNEY: Then you said, "I don't think he
5 described any other results in terms of following up to see if
6 there's been improvement between March and May."
7 THE COURT: So apparently it's because -- it's already
8 in the record what Morris said. I know it. So he might as
9 well, if he wants to comment on having learned that it was
10 almost 60 percent compliance -- in what district or borough?
11 MR. MOORE: Patrol borough Manhattan North.
12 THE COURT: Do you remember him sharing with you that
13 figure?
14 THE WITNESS: I do, your Honor.
15 THE COURT: And what do you want to know about it?
16 Q. You were aware that there was only a 60 percent compliance,
17 right?
18 A. I am.
19 THE COURT: That's all you wanted to ask?
20 Q. Well, you weren't happy about that, right?
21 A. I wasn't.
22 THE COURT: All right. Done.
23 MR. MOORE: I'm happy to know I was right once.
24 THE COURT: Only light humor late in the day. I'm
25 sure you've been right twice.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo5

Hall - cross

1 MR. MOORE: Maybe one other time -- maybe three times?

2 THE COURT: All right. Next.

3 Q. So looking at Chief Pizutti's memo, she describes it as a
4 training memo, right?

5 THE COURT: Yes. See that? To PBQN.

6 MR. MOORE: Patrol Borough Queens.

7 THE COURT: Patrol Borough Queens training sergeants.

8 THE WITNESS: Queens North.

9 THE COURT: That's who it was sent to.

10 Q. She directs this to her training sergeants, right?

11 THE COURT: Clearly. We just covered that. Patrol
12 Borough Queens North training sergeants.

13 MR. MOORE: I thought you were talking about the other
14 one.

15 THE COURT: No.

16 Q. And she says in the memo that all members of the service
17 are to follow this format when making activity log entries
18 regarding stop, question and frisk, right?

19 A. Yes.

20 Q. One of the things she says, it says, "All supervisors
21 signing 250s are required to inspect the activity log entry to
22 ensure proper entries are made."

23 Do you see that?

24 A. (No response).

25 Q. Beginning right here.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo5 Hall - cross

1 "All MOS, members of service, are to follow the below
2 format when making activity log entries for a stop, question
3 and frisk. Supervisors signing the stop, question and frisk
4 worksheets are to inspect the issuing member's activity log,
5 and will ensure proper entries are made."

6 Do you see that?

7 A. I do.

8 Q. You don't mention that in your memorandum though, do you?

9 A. No.

10 Q. And she also says, "Supervisors will be held accountable
11 for any errors associated with improper activity log entries,"
12 right?

13 A. That's in the memo.

14 Q. You don't say that in your memo, right?

15 A. I don't.

16 Q. What's the operative effect, if you know, of this memo from
17 Chief Pizutti. Is that how officers from the patrol borough
18 Queens are filling out their memo books?

19 A. That's the procedure that she's put in place. And she's
20 relayed some success to me.

21 Q. And as far as you know that's what they're doing, right?

22 A. That's correct.

23 Q. So, is it fair to say that supervisors in patrol borough
24 Queens are being told to do something different with respect to
25 how they fill out their memo book -- how officers record their

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo5 Hall - cross

1 stop and frisk different than what officers in patrol borough
2 Manhattan North are being told, right?

3 A. I think the differences are so minute.

4 Our goal here was, we're the one bureau that has not
5 done as well with memo books. Transit and housing have done
6 very well. My goal here is to correct the problem. The
7 department wants a memo book entry. It's in the patrol guide.
8 That's what's required.

9 My goal was to try to accomplish that. Chief
10 Pizutti's memo is -- I modeled my memo off of her idea.

11 Are the memos exact? Not perfectly exact. But the
12 basic premise behind the memos is the same.

13 Let's get an activity log entry, make a photocopy of
14 it and make sure that the activity log entry has sufficient
15 details of the stop.

16 Q. So do you think supervisors being held accountable for
17 errors associated with improper entries is a minute or
18 inconsequential fact?

19 A. Supervisors are always held accountable. It wasn't in my
20 memo. They're always held accountable.

21 Q. Now, M14 also is different from your memo because it
22 doesn't direct that officers are filling out their activity
23 logs that she they should put in the entry the suspected crime
24 or offense.

25 Do you see that?

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D5g9flo5

Hall - cross

1 THE COURT: I'm sorry. Would you point out what
2 you're saying.

3 MR. MOORE: Yes, Judge.

4 THE COURT: Going back to his memo for a moment.

5 MR. MOORE: I'm going to go back to his.

6 MS. GROSSMAN: The documents really do speak for
7 themselves.

8 MR. MOORE: J13, which is your memo, one of the things
9 you say officers should document in their 250s or their
10 activity log is suspected crime or offense, right?

11 THE COURT: Right. Okay.

12 MR. MOORE: Looking at Chief Pizutti's memorandum
13 there's nothing there that says officers should document the
14 suspected crime or offense, right?

15 THE WITNESS: Well it would be documented on the 250.

16 Q. Yes or no? Is it in there?

17 A. It would be documented on the 250 that the officers
18 prepared.

19 Q. I'm talking about entry in the memo book.

20 THE COURT: This is a memo book format?

21 MR. MOORE: Right.

22 THE COURT: I'm asking where it says format and
23 example, do you read that to be for a memo book?

24 THE WITNESS: Yes, your Honor.

25 THE COURT: Okay.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo5

Hall - cross

1 So it doesn't say put in your memo book.

2 THE WITNESS: The offense on Chief Pizutti's is not
3 listed, no.

4 THE COURT: Go ahead. You what?

5 MS. GROSSMAN: I would just note that a lot of these
6 questions are about -- the documents speak for themselves. And
7 so we're now at quarter after four and we have fifteen more
8 minutes.

9 THE COURT: And we're going to finish your witness who
10 isn't even called yet?

11 MS. GROSSMAN: No. I'm saying Chief Hall.

12 THE COURT: You want to finish Chief Hall today?

13 MS. GROSSMAN: Yes.

14 THE COURT: We'll finish Chief Hall today no matter
15 what. You don't really expect we're going to finish the
16 remaining witness?

17 MS. GROSSMAN: I know that.

18 THE COURT: We are finishing Chief Hall because I'll
19 stay until midnight if I have to, to accommodate Chief Hall.
20 But we're not going to get to your remaining witness, so we may
21 as well be realistic and tell him to come back.

22 MR. MOORE: And I would just note that Ms. Grossman
23 took about three hours with this witness so I've been at it
24 about an hour or so.

25 THE COURT: An hour 40. You took over 20 of three.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo5

Hall - cross

1 Because Mr. Kunz came in fifteen minutes less than his
2 estimate. He was 30. You've been an hour 40.

3 Q. M14 also doesn't direct that officers filling out their
4 activity logs -- that with officers filling out their activity
5 logs that they should put in the entry whether or not the
6 suspect was frisked? She makes no mention of that, does she?

7 THE COURT: Does this happen to have a second page?
8 Are you sure?

9 MR. MOORE: I'm sorry, Judge?

10 THE COURT: Does this have a second page, just want to
11 be sure that this is the whole.

12 MR. MOORE: This is it.

13 THE COURT: As long as we're sure.

14 THE WITNESS: No. It doesn't indicate anything about
15 the frisk.

16 THE COURT: But yours did, right, in the memo?

17 THE WITNESS: It did.

18 MR. MOORE: It says whether or not the suspect was
19 frisked.

20 THE COURT: Okay.

21 Q. You indicate -- your direction is that should be entered.
22 But that's not in Chief Pizutti's memorandum, right?

23 A. No, it's not.

24 Q. And Chief Pizutti also doesn't direct that officers filling
25 out their activity logs should put in the disposition of the

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo5 Hall - cross

1 stop, right?

2 A. No, it's not in Chief Pizutti's memo.

3 Q. It's in yours, though, right? Do you see there?

4 A. Yes.

5 Q. So, again, you have officers in Queens being trained to do
6 something, to do the same activity differently than officers in
7 Manhattan or the Bronx, right?

8 A. Her -- you know her memo, once again, I modeled my memo off
9 of her memo, and I added some additional requirements.

10 Q. Right. But you said earlier that -- this is still the
11 operative memo in patrol borough Queens, Chief Pizutti's memo?

12 THE COURT: No, not quite fair. Because you pointed
13 out this is for training purposes.

14 THE WITNESS: It is.

15 THE COURT: I don't know what's for operational
16 purposes in the precinct in Queens. This is a training memo.

17 Q. So officers are being trained differently in the two
18 boroughs, right?

19 THE COURT: No. We don't have the evidence about
20 training in the remaining boroughs. This one -- he's writing
21 to patrol commanders, isn't that what they're called?

22 THE WITNESS: Yes.

23 THE COURT: That's not the training portion of life,
24 so. Right now I'm comparing apples and oranges slightly.

25 MR. MOORE: Let me see if I can just wrap it up here

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo5 Hall - cross

1 with just a few questions.

2 THE COURT: So much for midnight. That's good.

3 Q. Will you agree with me that historically policing in this
4 country is based on the model that officers would respond when
5 called to allegations of wrongdoing?

6 That's the historical model, right?

7 THE COURT: Reactive versus proactive. Was that
8 historical?

9 THE WITNESS: Yeah, historical.

10 Q. That's where the term first responders comes from, right?

11 A. In part.

12 Q. And that for many years officers have had the legal
13 authority to conduct stop, question, and frisks?

14 THE COURT: Officers what?

15 MR. MOORE: Have had the legal authority to conduct
16 stops, questions, and frisks.

17 THE WITNESS: Yes, sir.

18 Q. And would you agree that the NYPD has moved away in the
19 past few years from the idea that police should just be
20 responding to crime to having a more active role in trying to
21 prevent crime before it happens?

22 A. I would agree with that.

23 Q. And that's consistent with this theory that police should
24 engage in proactive enforcement activity, right?

25 A. Yes, sir.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo5

Hall - cross

1 Q. Would you agree with me that proactive enforcement activity
2 really revolves around the concept of trying to prevent crime
3 before it happens?

4 A. One of the things.

5 Q. And would you also agree with me that the change in this
6 concept to a more proactive model has resulted in a significant
7 increase in enforcement activity by New York City police
8 officers?

9 A. That's hard for me to say because, you know, what's the
10 basis -- what am I comparing here? We're talking about the
11 police department as it exists today, the NYPD is a proactive
12 department that has enjoyed incredible success reducing crime
13 as compared to when.

14 THE COURT: No. I don't think he meant that.

15 You started, I think you told me 32 years ago, I need
16 to remind you. So from when you started until now, is there
17 more enforcement activity being conducted per officer?

18 That's really all I think he's asking. Do you have a
19 sense of enforcement activity; stops, summonses, things like
20 that, enforcement activity?

21 THE WITNESS: It is encouraged today.

22 THE COURT: Has it increased?

23 THE WITNESS: It would be -- I was a pretty active guy
24 in 1981 as a police officer.

25 THE COURT: But you haven't seen total figures?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo5

Hall - cross

1 THE WITNESS: Right, you know.

2 THE COURT: So you haven't seen figures of increased
3 numbers of stops and frisks, for example, over the last five
4 years going up, up, up?

5 THE WITNESS: In that particular category, stop,
6 question and frisk, yes.

7 THE COURT: And that's an enforcement activity?

8 THE WITNESS: That's an enforcement activity.

9 But in terms of summons enforcement and, you know,
10 arrests --

11 THE COURT: You don't know if there's anything --

12 THE WITNESS: Well, obviously, you're talking about a
13 department at one time that was 23,000 versus a department that
14 in 2001 was at 40,000. So it's difficult for me to give that
15 answer.

16 THE COURT: So you know that stops and frisks have
17 risen but you're not sure if arrests and summonses have risen.

18 THE WITNESS: Right. I wouldn't want to say that I'm
19 exactly right on those two other numbers.

20 Q. So were you present on April 20, 2013 when Mayor Bloomberg
21 addressed the NYPD at One Police Plaza?

22 MS. GROSSMAN: Objection. This is beyond the scope.

23 THE COURT: It really is.

24 MR. MOORE: I don't know, Judge. Can I at least make
25 a --

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo5

Hall - cross

1 THE COURT: No.

2 MR. MOORE: No, I can't even make?

3 THE COURT: No.

4 Q. Do you understand what the term first preventers are?

5 THE COURT: As opposed to first responders?

6 THE WITNESS: I think I have a general understanding
7 of what it is.

8 Q. Do you believe that first police officers in the City of
9 New York should describe themselves as first preventers and not
10 first responders?

11 MS. GROSSMAN: Your Honor again. I object. This is
12 beyond the scope.

13 THE COURT: Sustained.

14 MR. MOORE: Well, Judge, the reason I think it's
15 relevant is because -- this is really my last area so I might
16 as well make my argument, is that on April 20 Mayor Bloomberg
17 addressed the police department.

18 THE COURT: I know he addressed the police department.
19 I saw it in the newspapers.

20 MR. MOORE: I have a transcript of that.

21 THE COURT: So.

22 MR. MOORE: And I think it reflects, and it's
23 important evidence of a policy and practice in the New York
24 City Police Department with respect to stop and frisk because
25 he specifically talks about stop and frisk.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo5

Hall - cross

1 THE COURT: Since we're reconvening tomorrow anyway I
2 really would like to hear the city's response. You might want
3 to think about it.

4 What he's saying is he has the right to offer Mayor
5 Bloomberg's statement as a statement of the city containing
6 policy -- whatever it is he said, which I don't know. I know
7 he spoke, but I don't know what he said.

8 I'd be interested in your response to that. You may
9 want to think about it overnight.

10 I don't think you have to ask him. Either it's an
11 admissible statement or it's not.

12 MR. MOORE: I'll provide the city a copy and I'll mark
13 it as an exhibit and then I don't think we need --

14 THE COURT: I don't think so either.

15 MR. MOORE: Chief --

16 THE COURT: I don't think so.

17 Q. Are you aware, Chief Hall, that since 2006 there have been
18 over 4.4 million stops that led to the filling out of a UF 250?

19 A. I know -- that wasn't the exact number I knew but I knew --
20 you're in the right area.

21 Q. Are you also aware that 90 percent of those stops led to no
22 further enforcement activity; in other words, no arrests, no
23 summonses.

24 Are you aware of that?

25 MS. GROSSMAN: I didn't go into this because I was --

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo5

Hall - cross

1 THE COURT: There's very little to go into. Everybody
2 knows the 90 percent figure.

3 Chief Hall, are you the only person in the room who
4 hasn't heard the 90 percent figure?

5 THE WITNESS: I'm aware of the figure, your Honor.

6 THE COURT: Okay. Fine. Now what. Everybody has
7 heard that. Next.

8 Q. Are you aware that a -- withdraw that.

9 Do you have any -- does the number of stops in the
10 90 percent rate at which there is no further enforcement
11 activity give you any concern that officers are engaging in
12 suspicionless stops and frisks? Give you any concern?

13 THE COURT: I'll allow the yes or no. Does that give
14 you any concern?

15 THE WITNESS: It doesn't give me any concern.

16 Q. Does the fact that the overwhelming majority of those
17 stopped are black and Hispanic? Does that give you any concern
18 about whether officers are engaging in racial profiling and
19 racial stereotyping?

20 A. No, it doesn't.

21 MR. MOORE: One second, Judge.

22 Nothing further.

23 THE COURT: Thank you.

24 MS. GROSSMAN: Just a few questions.

25 (Continued on next page)

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo5 Hall - cross

1 REDIRECT EXAMINATION

2 BY MS. GROSSMAN:

3 Q. Chief, going back to your testimony on the CCRB profile and
4 assessment committee. Mr. Moore asked you some questions about
5 whether you ever return cases for investigation.

6 Do you remember those questions?

7 A. I do.

8 Q. Or recommended that cases be returned for investigation?

9 A. Correct.

10 Q. The cases that you're looking at, aren't they closed cases
11 by the time that you review them on the CCRB profile and
12 assessment committee?

13 A. They are. They're usually closed. There are very few that
14 are active.

15 In fact, you know, in my recollection I don't recall
16 an active one being looked at because it then could result in
17 the officer being exonerated and it wouldn't be an issue.

18 Q. And the document Mr. Moore showed you which listed the CCRB
19 cases that you did evaluate in connection with one of the
20 committee assessments, there was reference to unsubstantiated
21 CCRBs throughout that document, correct?

22 A. There was.

23 Q. But there are occasions when there might be reference to
24 substantiated CCRBs?

25 A. There are.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D5g9flo5 Hall - redirect

1 Q. Now, Mr. Moore asked you some questions about the group of
2 250s that you reviewed from Staten Island?

3 A. Yes.

4 Q. And he asked you if you only reviewed the 250 alone, not
5 along with the corresponding memo book.

6 Do you remember that?

7 A. I do.

8 Q. Did you actually ask for the memo books when you asked for
9 the 250s?

10 A. I didn't. And that's just an error on my part.

11 Q. Now, you were asked about a breach in the chain of command
12 if a sergeant didn't do what he was required to do.

13 Do you remember those questions?

14 A. I do.

15 Q. Now, do you have an opinion about other checks and balances
16 that can address that so-called break in the chain of command?

17 A. Yeah. When you look at the department, you know, the
18 sergeant obviously is the first line supervisor. And if he
19 fails to do something or, you know, human error, misses
20 something, we have, you know, as it pertains to stop, question
21 and frisk, they're being looked at by the precinct commander.
22 The audit is being done by the executive officer. So there are
23 different layers looking at the same issue.

24 Those layers can extend beyond the precinct itself and
25 go to borough oversight, the borough investigations unit.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo5 Hall - redirect

1 And if there's something, you know, seriously wrong it
2 can end up being looked at by the Internal Affairs Bureau.

3 Q. Now, you testified about the March 2013 memo that you
4 rolled out and sent out to the borough, correct?

5 A. Correct.

6 Q. Now was there any -- did you observe any trends in
7 discipline of your officers while you were serving on any of
8 your committees?

9 A. I did.

10 MR. MOORE: I don't understand that question, trend.

11 THE COURT: I didn't get it either.

12 Q. Was there anything that in addition to the concerns with
13 the activity logs that you saw there were deficiencies in
14 activity log entries, did you make any observations about any
15 of the officers in patrol borough that were suffering command
16 disciplines that might have prompted your issuance of the memo?

17 THE COURT: I'm sorry. I cannot follow that. I don't
18 understand the relationship between the activity log entry and
19 the next part of your question.

20 MS. GROSSMAN: Sure.

21 Q. Other than failing the audits, was there anything else that
22 concerned you and which was responsible for sending out that
23 March 2013 memo?

24 A. Absolutely.

25 MR. MOORE: Judge, I think --

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5g9flo5 Hall - redirect

1 THE COURT: No. I understand the question now.
2 Other than that failing grade on the audits, was there
3 anything else that prompted that memo being sent?

4 THE WITNESS: Absolutely, your Honor.

5 On those boards that I sit on, CCRB profile
6 assessment, career advancement, time and time again I have
7 access to officers' CPIs. And they are all being disciplined,
8 getting schedule B command disciplines, losing vacation time
9 because of their failure to make a memo book entry.

10 MR. MOORE: Judge I --

11 THE WITNESS: And that --

12 THE COURT: I'm going to allow it, Mr. Moore. I don't
13 even understand what's upsetting you.

14 So, go ahead. That was part of your motivation in
15 sending out --

16 THE WITNESS: Absolutely. Because in my mind, number
17 one, I want to be in compliance with what the patrol guide
18 states; but number two, when you're serving on these boards and
19 you see officers that are now being disciplined and in some
20 ways, you know, damaging their own careers, you know, as the
21 leader of patrol services, I think I'm obligated to try to fix
22 it.

23 (Continued on next page)

24
25

D5G8FLO6

Hall - redirect

1 THE COURT: What is the problem, Mr. Moore? What was
2 wrong with all of that? Or do you want to withdraw the
3 objection?

4 MR. MOORE: It's beyond the scope of my cross. He is
5 talking about a review that we have had no knowledge of, this
6 review where he identified all these officers making bad stops.

7 THE COURT: She asked essentially what motivated him
8 to write the March 5 memo. He said, it wasn't just the audits,
9 it was also the fact that people were being disciplined for
10 memo book entries.

11 BY MS. GROSSMAN:

12 Q. Did you issue the March 5, 2013 memo because of this trial?

13 A. No. This trial has gone on a long time. These cases go on
14 a long time. I am still in charge of patrol services. I am
15 the chief of patrol. I still have to do my job every day. The
16 commanders have to do their job every day. So ultimately we
17 don't stop because we are on trial here. We keep going. So
18 the memo was put out and once again, as I stated earlier, kind
19 of based on what Chief Pizzuti did. I thought it was a good
20 idea that she had.

21 MS. GROSSMAN: No further questions.

22 RE-CROSS-EXAMINATION

23 BY MR. MOORE:

24 Q. So it's just a coincidence that after three years as the
25 chief of patrol, and three years where the patrol service

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO6

Hall - recross

1 bureau failed the audit, that 13 days before trial you issued
2 this memo, correct? It was just a coincidence?
3 A. No. As I stated earlier, there is a track history of the
4 chief of patrol's office, along with precinct commanders, that
5 predate this trial, where we were trying to get this condition
6 corrected.

7 THE COURT: So it was just a coincidence that the
8 dates are close to each other, the date of the memo and the
9 date of trial?

10 THE WITNESS: It wasn't motivated by the trial.

11 THE COURT: It was a coincidence?

12 THE WITNESS: Yes.

13 THE COURT: Anything else for Chief Hall?

14 Thank you. You're done.

15 Now, you want to try to finish your witness given the
16 surprise that we are done at only 4:35? I thought we might be
17 here later.

18 MR. KUNZ: We'd love to get started.

19 THE COURT: I don't think we should start unless we
20 are going to finish.

21 MR. KUNZ: I think we should start and finish.

22 THE COURT: How long do you think your direct is?

23 MR. KUNZ: Best estimate, 45 minutes to an hour.

24 THE COURT: Who is cross-examining?

25 MR. CHARNEY: I don't know what he is going to ask.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO6

1 THE COURT: First of all, I may have one matter.
2 Do you want to try to go for another hour, hour and a
3 half?

4 I have got your side. What do the plaintiffs feel?
5 It could be until 6:00.

6 MR. CHARNEY: That's fine with me. Although could we
7 have a five minute break? We have been going since 2:00.

8 THE COURT: I do want to warn you of one other
9 problem. Long ago when the plaintiffs finished their case, the
10 defense wanted to make a motion. I said you really hadn't
11 finished your case because you hadn't called your experts, and
12 also some of the witnesses the defense called were also your
13 witnesses, but don't worry, this is not the time, but there
14 will be a time. I would think plaintiffs' case is now all in.
15 The only remaining witness is clearly a defense witness. There
16 are no more plaintiffs' witnesses at all. The problem is we
17 may need time for these motions too. I don't know whether you
18 want to just do it pro forma or whether you really wish to
19 argue these motions at some length. I suspect any argument on
20 the motions will be duplicative of the summation because it
21 will be likely I would reserve anyway and merge it with the
22 ultimate ruling.

23 So What is the defense feeling?

24 MS. BORCHETTA: Just housekeeping. Before our case
25 would technically end, we would need to admit some documents.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO6

1 I need to do that before I would make any motion.

2 THE COURT: The bottom line is, do you want to be
3 heard on these motions or you just want to preserve them and
4 essentially merge them with the summation and that's that?
5 Because I expect a full-blown argument will be a lot like the
6 summation.

7 MS. GROSSMAN: I wasn't anticipating going into as
8 much detail as the summation if I was going to make a motion.
9 I have to give some thought to that, and I am not prepared to
10 make that formal motion now.

11 THE COURT: Do we need to meet tomorrow morning anyway
12 for the motions?

13 MS. GROSSMAN: If we are going to take a few minutes,
14 may I just have a chance to confer?

15 THE COURT: Let's reconvene at quarter to five, which
16 is about seven minutes.

17 (Recess)

18 THE COURT: Ms. Borchetta, what is it that you have to
19 introduce?

20 MS. BORCHETTA: Your Honor, as the Court knows, we
21 submitted a lot of deposition designation testimony and there
22 were exhibits attached to those deposition designations. Most
23 of them were admitted during the course of the trial, a few
24 were not. So we just need to read those into the record for
25 admission.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D5G8FLO6

1 So I will list them. It is Plaintiffs' Trial Exhibits
2 123, 142 through 143, 148 through 151, 185, 243, 252, 257, 301,
3 317, 336, 469, 470, 474, and 476 through 480.

4 THE COURT: Any objection to any of those?

5 MS. GROSSMAN: No, your Honor. I understand one of
6 the attorneys on our case, she is sick and she went home early.
7 Ms. Richardson is not here.

8 MS. COOKE: I believe she identified most of our
9 exhibits in the course of the designations as they have come in
10 with the Court. We would just ask that we can confirm with Ms.
11 Richardson that there aren't any outstanding additional
12 exhibits that are for the defendants.

13 THE COURT: But you don't object to any of the numbers
14 she just said?

15 MS. COOKE: I don't know that that list was separately
16 provided to us. If they were as they were identified in
17 designations, we don't have any objection. Again, Ms.
18 Richardson was coordinating on our part.

19 THE COURT: Hopefully, you will take that page of the
20 transcript and go over it and tell me either by e-mail or in
21 person that there is no objection.

22 Along those lines, I received a letter that plaintiffs
23 move to strike Officer Dang's May 7th testimony starting on
24 page 6386, line 2, through 6395, line 23, pursuant to an
25 earlier ruling that I had made about his testimony with respect

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO6

1 to specific 250s.

2 Did anybody check that e-mail?

3 MS. PUBLICKER: I believe Ms. Richardson was also
4 coordinating with Mr. Corey on that issue, but I believe that
5 they had reached an agreement and we can confirm.

6 THE COURT: The end of the e-mail has an agreement
7 that I don't understand, but that's on a different note.

8 It says, "The parties agree that:

9 "1. Of the 127 UF-250s Officer Dang completed, 97
10 UF-250s were part of a so-called group stop."

11 MS. PUBLICKER: I can explain that.

12 THE COURT: "The other 30 UF-250s Officer Dang
13 completed were 30 stops of a single pedestrian.

14 "2. There were 31 group stops and Officer Dang
15 stopped an average of 3.12 pedestrians in these 31 group
16 stops."

17 My confusion is paragraph 1 seems to say there are 97
18 group stops and paragraph 2 says there are 31 group stops.

19 MS. PUBLICKER: I believe what it is is that there
20 were 31, quote unquote, encounters, and that those 31 stops,
21 there were three-plus individuals present accounting for 97
22 individuals in total stopped. If I understand it correctly.

23 THE COURT: So paragraph 1 says, "Of the 127 UF-250s,
24 97 UF-250s were part of so-called group stops." There is one
25 UF-250 for each person stopped. I get it. Only 31 of the

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO6

1 stops --

2 MS. PUBLICKER: 31 encounters with multiple people.

3 THE COURT: Everybody was stopped.

4 MS. PUBLICKER: Yes.

5 THE COURT: That stipulation is fine.

6 MS. PUBLICKER: I do believe that Ms. Richardson and

7 Mr. Corey had agreed on the language that was in the e-mail.

8 THE COURT: That part they agreed on. That

9 stipulation is on the record.

10 MS. PUBLICKER: And the striking.

11 THE COURT: I don't know if they agree.

12 MS. PUBLICKER: I believe they had agreed on it.

13 THE COURT: I have to wait on that one too.

14 MS. PUBLICKER: Yes.

15 THE COURT: Now, what have you decided about the

16 motion practice?

17 MS. GROSSMAN: It's really just to reserve. I think

18 in just a few minutes I can just make a very brief motion.

19 Defendants submit that plaintiffs have not met their

20 burden of proof on their pattern and practice claims of

21 unconstitutional stops under the Fourth Amendment, including no

22 showing of deliberate indifference by the City of New York. 19

23 stops described by 12 individuals out of 4.5 million stops

24 between 2004 and 2012 is insufficient evidence to meet their

25 burden of proof.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO6

1 THE COURT: I didn't think I was going to have any
2 real debate on this, but that is a troubling argument. How
3 many should I try? Should we reopen the trial and try 200?
4 That was something we have discussed all along. The time it
5 would take to try a number that would be sufficient would be
6 months or years. That's an argument that truly troubles me.
7 If you say that all 19 failed, that's different. They put
8 forth 19, and they are all good stops, they all have reasonable
9 suspicion, that's what I expect your summation to say. But to
10 say 19 wasn't enough, when I think you argued many times over
11 the years, there's too many, they put forth 40, 50. Can't we
12 reduce that? But no number that's reasonable to be tried is a
13 sample number of 4.4 million. 400 wouldn't be even be 1
14 percent. I should try 400 scenarios? We would be on trial for
15 two years.

16 So I don't know what that argument means that it's not
17 enough numbers. You didn't argue here yet that they are all
18 good stops, which I assume you will in summation. But what
19 you're saying now is this isn't a big enough number. How many
20 is a big enough number out of 4.4 million to try?

21 MS. GROSSMAN: I think, your Honor, I would say that
22 that, in tandem with the Professor Fagan's analysis --

23 THE COURT: That's a different argument, and I don't
24 want to go there. I am asking you what number would you have
25 said would prevent you from arguing that there weren't enough

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO6

1 stops testified to here? Because you're not yet telling me
2 they were quality, meaning that they were good and reasonable
3 stops. You're just saying there weren't enough of them. What
4 number could they possibly have picked and you agree to and I
5 agree to that you wouldn't be arguing that the number was too
6 low?

7 MS. GROSSMAN: I don't know that I ever agreed that we
8 would ever not argue that this was just insufficient evidence.
9 I don't know that you could make a determination on this number
10 of stops based on a whole system of stop, question and frisk,
11 the entire police department. I don't know that you can rely
12 on 19 individual --

13 THE COURT: Or 29 or 49 or 89 or 99. So there is no
14 ideal number. So there is no ideal number.

15 MS. GROSSMAN: I would also submit --

16 THE COURT: Is that right? Are any of those numbers
17 any better?

18 MS. GROSSMAN: If I can answer, one response I have is
19 that, if you think about, the plaintiffs have selected the
20 individual stops. Now, we wanted to develop some testimony of
21 other stops that showed constitutionality, and we were not
22 allowed to go into other stops from other officers because we
23 were cabined and limited.

24 THE COURT: But there wasn't discovery of those
25 so-called other stops. You can't just put them on in the

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO6

1 middle of a trial and start going into a stop of which there
2 was no discovery. It takes an enormous amount of discovery to
3 go into all the facts of the stop. You argued against some
4 plaintiffs being added at a late date. We had argument about
5 certain people. I think I ruled one out. I ruled two out.
6 You argued against them for whatever reason. But it's an
7 enormous amount of time to do discovery per stop. If the stop
8 had known officers, you also felt the officers had to be heard.
9 So trying one stop is a two- or three-day effort.

10 I understand the point of your argument. There is no
11 number that would have been representative of 4-1/2 million,
12 right?

13 MS. GROSSMAN: We wanted to do discovery of the other
14 stops of the class members, but we were precluded from doing
15 that, and the plaintiffs advocated against us going into other
16 stops. There were dozens of other stops that the plaintiffs
17 were involved in that they had no challenge to and that were
18 probably constitutional in some respects, and we were precluded
19 from going into that.

20 THE COURT: This is all off of your point. It's a
21 distraction. It's lovely to distract me, but that's not my
22 question. There is no number that could have been
23 representative of 4.4 million that could have been tried in the
24 courtroom stop by stop by stop, you agree with that? How many
25 could I have tried? Surely, I couldn't have tried 4-1/2

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO6

1 million. I will be long in my grave. Actually, you will be
2 too, Ms. Grossman. If we had to try 4.4 million, all of us
3 present in this courtroom would have been long dead. So that
4 couldn't be tried.

5 MS. GROSSMAN: That's a challenge in this type of
6 case.

7 THE COURT: But it's your argument. That's why I
8 asked you what number might have been a number that you
9 wouldn't be able to make this argument?

10 MS. GROSSMAN: Whatever that number would or would not
11 be, I don't know that I would agree. But the bottom line is
12 that this has been cherry-picked in terms of the plaintiffs
13 that have come forward to talk about stops.

14 THE COURT: It's always going to be cherry-picked, so
15 to speak. I can't try 4-1/2 million.

16 MS. GROSSMAN: But we were trying to get at this by
17 going at other stops.

18 THE COURT: Of the same plaintiffs.

19 MS. GROSSMAN: Yes. Then we tried to get in testimony
20 from some of the officers. Officer Dang, we were trying to
21 talk about some of the stops. We were shut down.

22 THE COURT: I don't use the word shut down. The
23 objection was sustained. There was no discovery of the stops
24 that Officer Dang made. No records were produced, no discovery
25 was made.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D5G8FLO6

1 MS. GROSSMAN: The plaintiffs had an opportunity to
2 move to compel. We redacted the names for confidentiality
3 reasons.

4 THE COURT: Therefore, they didn't have access to the
5 person who was stopped.

6 MS. GROSSMAN: If they wanted to hear more about the
7 stops, they could have moved to compel.

8 THE COURT: So your first argument is that it's too
9 low a number and more should have been tried, but you won't
10 tell me how many more should have been tried. I suggest that
11 there is no number that would have satisfied you that could
12 have been tried in my lifetime.

13 MS. GROSSMAN: My argument is that what the plaintiffs
14 have put forth as evidence is insufficient.

15 THE COURT: That's fine. An insufficiency argument is
16 made in every case. That I understand. But there was a
17 different argument made, which the number of stops tried wasn't
18 enough.

19 MS. GROSSMAN: 19 stops described by 12 individuals
20 out of 4.5 million stops are insufficient evidence.

21 THE COURT: The only response I can give to that is,
22 tell me the number that would have satisfied you, and you won't
23 do it. I can't try 4-1/2 million. I can't try 2.2 million. I
24 can't try 1 million. I can't try 500,000. I am asking you for
25 a number that would have caused you not to make that argument

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO6

1 that the number is too low; not the quality, not reasonable
2 suspicion, but the number.

3 Next.

4 MS. GROSSMAN: We would also submit that the
5 undisputed facts demonstrate that many of the stops are
6 constitutional stops under the Fourth Amendment.

7 As to the Fourteenth Amendment, the plaintiffs have
8 absolutely failed to meet their burden of proof that the
9 individual officers stopped them based on their race. There is
10 very little evidence, none at all, in terms of the individual
11 motivation of the officers in terms of race, and that race
12 being the motivating factor behind that individual stop. The
13 only case was Mr. Ourlicht, where he said that he was with
14 someone who was Caucasian and that that person was stopped and
15 searched like he was. So there has been absolutely no evidence
16 to support that the individual stops by the officers were based
17 on race and that those officers intended to stop those
18 individuals based on race.

19 Now, turning to Fagan's analysis of the 4.5 million
20 stops, we believe that Professor Fagan, his analysis doesn't
21 support the pattern and practice claim because we cannot say
22 from a 250 alone that a stop is unconstitutional. And that is
23 what he is doing.

24 I would also submit there is insufficient evidence
25 that the performance goals actually lead to unconstitutional

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO6

1 stops, or that the audits are insufficient in any way.

2 THE COURT: Or the what audits?

3 MS. GROSSMAN: The QAD audits.

4 THE COURT: Are insufficient in any way? I thought it
5 was virtually conceded that they were insufficient in the
6 category of memo books.

7 MS. GROSSMAN: That's the rate. The audits
8 themselves, not the results, the manner in which the audits are
9 done.

10 I would also submit in terms of the audits, we are
11 auditing stop, question and frisk in total. Every one has
12 past. So whether it's one activity log component of the audits
13 that has been a challenge for the police department, that
14 doesn't mean that the stop, question and frisk audits are
15 inadequate.

16 Now, further, because plaintiffs cannot show that the
17 4.5 million stops were made without reasonable suspicion, we
18 believe they are unable to show that there is anything other
19 than a race neutral reason --

20 THE COURT: Your argument is not that they had to show
21 that all 4.5 million lacked reasonable suspicion, which is what
22 you just said. Did you mean that?

23 MS. GROSSMAN: They are claiming that systemically
24 that we have problems with Fourth Amendment issues, that the
25 stops are without reasonable suspicion.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO6

1 THE COURT: Does that mean that you think they had to
2 prove that all 4-1/2 million lacked reasonable suspicion?

3 MS. GROSSMAN: I don't know that they have made a
4 showing that any of them are really without reasonable
5 suspicion.

6 THE COURT: That's a different argument.

7 MS. GROSSMAN: They haven't met their burden that the
8 4.5 million stops are without reasonable suspicion.

9 THE COURT: Do they have to show that all 4-1/2
10 million lacked reasonable suspicion?

11 MS. GROSSMAN: I would submit that even under
12 Professor Fagan's classification analysis, if we are at 90
13 percent that are apparently justified, I don't know that 10
14 percent represents a system-wide pattern --

15 THE COURT: That argument I can understand.

16 MS. GROSSMAN: But based on Professor Fagan's
17 analysis, I don't know that his reports can show that there
18 anything other than a race neutral reason for the stops that
19 were made under the Fourteenth Amendment as well.

20 I have nothing further to say.

21 THE COURT: Did you want to respond briefly, Mr.
22 Charney?

23 MR. CHARNEY: I guess before I do that, I wanted to
24 get clarification from your Honor. You said that you may
25 reserve. We are going to give a closing argument, which I

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO6

1 think is going to address a lot of these issues.

2 THE COURT: Of course. She had to preserve the
3 record. You don't have to respond, but if you wanted to
4 briefly do so, that's up to you. I am not encouraging or
5 discouraging you.

6 MR. CHARNEY: I think we are going to reserve for the
7 closing argument.

8 THE COURT: Then I guess you're going to call your
9 last witness.

10 MR. KUNZ: Defendants call Mr. Stewart.

11 JAMES STEWART,

12 called as a witness by the defendants,

13 having been duly sworn, testified as follows:

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

16 THE WITNESS: James Stewart, J-A-M-E-S, S-T-E-W-A-R-T.

17 DIRECT EXAMINATION

18 BY MR. KUNZ:

19 Q. Good evening, Mr. Stewart. Could you please tell the Court
20 about your history as a police officer?

21 A. Yes. In 1966 October, I was sworn in as a police officer
22 in Oakland, California. I attended academy that was 12 weeks
23 long. After that academy, I was assigned to an officer in East
24 Oakland, and I learned to do patrol. Eight weeks later I was
25 put into a single car and patrolled in high crime areas. I did

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO6

Stewart - direct

1 that for about two years. I was then recruited for the first
2 SWAT team. I then was recruited for the special operations
3 section, which was a felony, much like your impact officers,
4 crime prevention. I then was selected to be a juvenile
5 officer, a juvenile investigator, so I did a lot of
6 investigation involving youth. I worked with the schools.
7 Then I was selected to be a police officer in the community
8 relations section, and then I was selected as -- I moved up to
9 the officer in charge of community relations. That's what I
10 did as an officer.

11 THE COURT: There is more in the police department?
12 Then what happened?

13 THE WITNESS: I was promoted to sergeant. I was
14 assigned to the jail. They had a series of abusive conduct
15 that was going on in the jail.

16 THE COURT: This is still Oakland?

17 THE WITNESS: This is Oakland. They took the top
18 people on the sergeant's exam and moved them in as supervisors,
19 and our job was to stabilize a professional cadre, reinstall
20 the rule of law. And once we stabilized that, which took about
21 a year, year and a half, I was then transferred to the special
22 operations section again, only as supervisor over seven police
23 officers who were engaged in the high crime area.

24 After that I was promoted to sergeant -- actually,
25 lieutenant, and as a lieutenant I was assigned to the personnel

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO6 Stewart - direct

1 section. The personnel section was operating under a consent
2 decree at that time, and I revised -- they were unable to
3 achieve the diversity numbers that they were looking for, and
4 the people that they had recruited were terminated from the
5 academy because of poor performance.

6 I took over that position --

7 THE COURT: What position?

8 THE WITNESS: The commander of personnel.

9 We revamped the entire recruitment process. We were
10 able to balance the numbers. We were able to retain all the
11 people that we had hired. And we were able to produce several
12 valedictorians who were minority people.

13 In addition to that, there was a separate suit that
14 was brought that we had discriminatory entrance examination
15 that tested your physical capabilities. Then under Griggs v.
16 Duke Power, I worked on developing a job related jobs
17 requirements and performance standards. We went out and met
18 with all the officers. We completely revised the test based on
19 what the officers actually did in the field.

20 We then were sued in federal court. I was the expert
21 witness for the police department. I was the only witness they
22 put on, and they said that this in fact test that we developed
23 was in fact a new national standard, and many people across the
24 United States began to adopt that physical performance, and we
25 had a number of women that we were able to subsequently hire.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO6 Stewart - direct

1 After that I was promoted --

2 THE COURT: When you were an expert witness, you were
3 still in the department?

4 THE WITNESS: Yes, I was.

5 Then I was promoted to captain. I was put in charge
6 of the criminal investigation division which was having some
7 problems. They asked me to take over and straighten it out. I
8 won't go into the problems.

9 During my time, I then went to the FBI national
10 academy, and when I completed --

11 THE COURT: Did you leave the Oakland police
12 department?

13 THE WITNESS: No. They asked me to go to the national
14 academy at the FBI.

15 THE COURT: To teach?

16 THE WITNESS: Later I did at the national academy.

17 THE COURT: When you first went, was it for teaching
18 or training?

19 THE WITNESS: Training.

20 During my tenure at the Oakland police department, I
21 was also an instructor. But I went to the national academy,
22 and I graduated from there, returned to the department,
23 maintained as chief of detectives, and I was there for another,
24 I think, about four and a half, five years.

25 In that time, I competed for the White House

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO6 Stewart - direct

1 fellowships. I then took a leave of absence from the
2 department. I was one of 13 White House fellows selected in
3 1981, '82.

4 THE COURT: Who was the president?

5 THE WITNESS: I applied under Jimmy Carter and it
6 turned out to be Ronald Reagan. And I was assigned to William
7 French Smith. I served as his special assistant in law
8 enforcement policy.

9 After my time as a White House fellow, the president
10 nominated me to take over the National Institute of Justice,
11 which is the principal research agency for the U.S. Department
12 of Justice. I was confirmed by the Senate, something you and I
13 share, and I served in that position for two presidents and
14 three attorneys general.

15 After that I was involved with -- Booz Allen recruited
16 me to be a principal in their organization. Booz Allen was a
17 worldwide professional services consulting group, and they
18 asked me to help build a justice practice.

19 THE COURT: The two presidents, that would be
20 President Reagan and President Bush I?

21 THE WITNESS: Yes.

22 THE COURT: Then what happened?

23 THE WITNESS: Then when I was with Booz Allen, I did a
24 number of high-profile assignments. One of the first ones was
25 for Mayor Daley in Chicago who wanted to completely revamp the

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO6

Stewart - direct

1 Chicago police department, and we developed a Chicago
2 alternative policing strategy. It lasted about five years. We
3 were able to completely revise the department, change its
4 deployment, change its incentives, and we were able to bring
5 the community in, much what Professor Walker was talking about,
6 and that program is still going on today. So it's about 23
7 years later.

8 After that Congress and the control board in
9 Washington, D.C. asked Booz Allen and myself, while they were
10 considering federalizing the Washington, D.C. metropolitan
11 police department, they asked if I would come in and try to
12 revise the police department and refocus the police department
13 and to do something about crime. We were able to do that.
14 That assignment lasted about, I would say, four years.

15 I also did a number of assignments for redesigning the
16 criminal investigation division for the IRS. I worked with the
17 intelligence division of DEA and put new systems in for them.
18 For the FBI we developed a ballistic identification system and
19 for INS I led a team that revamped the way they put sensors on
20 the board.

21 While I was with Booz Allen, I received the gold medal
22 for excellence. And I was then taken to -- recruiters came and
23 asked if I would like to work for the think tank at CNA in
24 Alexandria, Virginia. CNA does not stand for any name at all.
25 It used to be the Center for Naval Analysis. But it is a think

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO6 Stewart - direct

1 tank that does essentially analysis and solutions for
2 high-level federal officials, and they wanted me to help them
3 leverage some of the brainpower that they have. They have
4 about 600 Ph.D.s that work there in the hard sciences. I have
5 been there for about 14 years now.

6 And I have done a number of assignments within the
7 Justice Department. I have worked for local police departments
8 as well, in terms of reforming police departments, making
9 changes in police departments, and responding to -- I also
10 worked for the civil rights division and have done analysis in
11 several cities that we worked on.

12 I have published several reports with the COPS office.

13 THE COURT: What office?

14 THE WITNESS: COPS. That stands for Community
15 Oriented Policing Services.

16 THE COURT: Community?

17 THE WITNESS: Oriented Policing Services office. One
18 was on racial profiling. It involved four cities. We have
19 done a number of activities.

20 And I have been retained by New York City on this case
21 just recently.

22 THE COURT: What is your academic background?

23 THE WITNESS: My academic background is I have a
24 bachelor's in philosophy from the University of Oregon. I have
25 a master's in public administration from Cal State University

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO6

Stewart - direct

1 in Hayward. I have a graduate certificate from UVA that I got
2 coincidentally when I graduated -- it's just a management
3 certificate from when I was at the national academy.

4 THE COURT: Have you published any papers?

5 THE WITNESS: I have.

6 THE COURT: Do you have a CV?

7 MR. KUNZ: I was going to move to admit both the CV
8 and the list of exhibits that he has examined to prepare his
9 opinion.

10 THE COURT: Let's do one at a time.

11 I would like to see the CV. What exhibit number is
12 that?

13 MR. KUNZ: I don't know that I have an exhibit number
14 attached to it.

15 THE COURT: You have to tell me now for the record.
16 You don't have to put the sticker on.

17 MR. KUNZ: Q15, your Honor.

18 THE COURT: Then you said you wanted to offer what
19 else?

20 MR. KUNZ: Exhibits and other documents that
21 Mr. Stewart examined in regard to this case marked as Q16.

22 THE COURT: With respect to Q15 that I just looked at,
23 are you going to have a physical Q15? You want to put it on my
24 copy or another copy?

25 MR. KUNZ: I will put it on another copy.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO6

Stewart - direct

1 THE COURT: And the same thing with Q16?

2 MR. KUNZ: Yes.

3 THE COURT: Q16, these are all the documents he says
4 he reviewed to support his opinion.

5 MR. KUNZ: It's Exhibit B to his report.

6 THE COURT: I understand that.

7 MR. KUNZ: I would move for admission.

8 THE COURT: Yes. Both Q15 and Q16 are both received.
9 (Defendants' Exhibits Q15 and Q16 received in

10 evidence)

11 BY MR. KUNZ:

12 Q. Can you briefly describe, when you worked for the Chicago
13 police department, what were the specific issues that you were
14 addressing in Chicago?

15 A. The specific issues were a high crime rate. The community
16 felt that they were getting no service, particularly the poor
17 areas, from the police department. The mayor felt that the
18 police department was nonresponsive to any directions that he
19 gave, in terms of their assignment, deployment and the
20 priorities, and he wanted me to develop with the police
21 department a new strategy for policing.

22 Q. Did you develop such a strategy?

23 A. Yes, I did.

24 Q. What did that look like?

25 A. That basically looked like -- it engaged with community

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO6 Stewart - direct

1 policing. It identified problems which clustered around crime
2 and disorder. It got the police officers -- the police
3 officers in Chicago were worried about going into the Robert
4 Taylor Homes, Cabrini-Green, and other locations, and they
5 refused to respond to normal calls unless they were in a convoy
6 of six or eight cars. The community complained that the police
7 officers would not stop for them when they were flagging them
8 down unless they were in front of the police cars.

9 We held community meetings. We began to collect the
10 evidence that showed that there was an enormous gap between the
11 expectations of the public, what professional policing
12 performance in large cities, thresholds for performance, were,
13 and then we began to design an organization in which the
14 department would change. We eliminated the rank of commander,
15 duplicated that of a captain, and we changed the assignments.
16 We created a regional district chiefs.

17 We then held them to very specific performance
18 expectations and gave them considerable -- developed
19 substantial training. And it was based on evidence-based work
20 that we had done at the National Institute of Justice, and we
21 were able to change fundamentally the way that the policing was
22 done, but it did take us five years. And we did employ -- we
23 didn't employ, but we got the federal government to provide
24 social scientists to also document the efforts that we did.
25 And because that was the case, it helped continue the kinds of

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO6

Stewart - direct

1 changes that we experienced. And it is, like I said, the COPS
2 program is still fully operational and is the single strategy
3 that has survived I think five superintendents and now it's on
4 another mayor.

5 BY MR. KUNZ:

6 Q. Did part of that strategy involve holding commanders
7 accountable to the crime in their districts and holding
8 lieutenants accountable to crime during their tours?

9 A. Absolutely. In fact, we reorganized the basic patrol
10 areas. So there was a lieutenant in charge 24 hours a day,
11 seven days a week, a single lieutenant, so we can fix the
12 responsibility. In the past, the lieutenants would only be
13 responsible for an eight-hour shift, and they would say, it
14 didn't happen on my shift, it must have happened on somebody
15 else, that was somebody else's problem, and nobody would
16 address the problem of crime in the community and the predatory
17 activities that were going on there, particularly in public
18 housing.

19 Q. Now, your work in D.C., did you also do any sort of
20 workload analysis in D.C.?

21 A. Yes, we did.

22 Q. Tell the Court just a little bit about the workload
23 analysis.

24 THE COURT: Is this part of qualifying him as an
25 expert? Because otherwise I don't need to know the details of

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO6

Stewart - direct

1 A. I have.

2 Q. Have you also, during your work for the City of New York in
3 regard to these issues, have you had an opportunity to observe
4 NYPD officers and supervisors?

5 A. I have.

6 THE COURT: Observe in what context?

7 THE WITNESS: I actually went out into the precinct
8 stations. I spent time with the officers. We did specific
9 ride-alongs. I was present during arrests on two occasions in
10 which I was basically the number three officer. I had
11 interviews with the commanders from the precincts as well as
12 the training officers. I went to the training academy. I met
13 with Mr. O'Keefe and his staff. I also met with Michael
14 Farrell. I met with who runs the OMAP office.

15 We got a briefing on the organization of the NYPD. I
16 spoke to the head of the Internal Affairs Bureau, which was
17 Chief Campisi. I talked to Chief Jaffe. I have spoken with
18 Chief Delatorre. I have interviewed and spent time with Chief
19 Campisi from Internal Affairs. I spoke with Donna Jones, who
20 was the head of personnel, inspector of personnel, she has
21 since been promoted. And I spent time interviewing Chief Banks
22 from community affairs bureau, who was just promoted to chief
23 of department.

24 So I have met with a lot of officers. I have been out
25 on patrol. This was not in the daytime, this was on the night

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO6 Stewart - direct

1 shift as well.

2 MR. CHARNEY: I guess we may have some objections.

3 THE COURT: Wait until you have them. You may have
4 them. We will wait until you have them.

5 Q. You said you reviewed the report of Mr. Walker, is that
6 correct?

7 A. I did.

8 Q. Did you also listen to his testimony at trial?

9 A. I have.

10 Q. Are you familiar with EIS systems?

11 A. I am.

12 Q. What do you understand EIS systems to be?

13 A. I understand them to be an early intervention system, and,
14 in fact, at the National Institute of Justice, we initiated
15 some of the early research that went into that. And the basic
16 concept is to carefully monitor specific types of behavior by
17 police officers. Those are precursors to potentially
18 problematic circumstances. And when the officers began to
19 exhibit those, it was an opportunity to signal the police
20 department for a variety of interventions, whether they be
21 retraining or psychological counseling or a transfer to see
22 whether officers could be recovered and required special
23 supervision.

24 Q. Now, did you hear Professor Walker's testimony in regard to
25 the 15 specific prongs of an EIS system?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO6 Stewart - direct

1 THE COURT: I thought it was 17.

2 Q. 17?

3 A. He did say 17, but he only listed 15. Anyway, we did look
4 at the prongs. How's that?

5 Q. Have you had an opportunity to compare those prongs with
6 systems that the NYPD has in place?

7 A. Yes, we have.

8 Q. What is your opinion in that regard?

9 MR. CHARNEY: Objection, your Honor.

10 THE COURT: I will allow that.

11 The real point is, if I recall Professor Walker, I
12 thought his real point was that he thought all these 15 items
13 should be a single integrated database. I assume you didn't
14 find a single integrated database in the New York City Police
15 Department?

16 THE WITNESS: Your assumption is right.

17 THE COURT: It may have had many of these prongs in
18 one place or another, but you certainly agree with him that
19 it's not in one database?

20 THE WITNESS: That's right.

21 I also agree that it is accessible to the command
22 with -- the three databases are readily available to the
23 commanders. That's what I was going to say.

24 Q. In terms of a remedy that the Court may consider adopting
25 in this case, do you believe it would be necessary to have all

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G8FLO6 Stewart - direct

1 of these in one database?

2 A. I don't believe it would be necessary to have them in one
3 database because what is necessary --

4 MR. CHARNEY: Objection. It's not in his report.

5 MR. KUNZ: He absolutely talks about these 15 factors.

6 THE COURT: I realize he talks about the 15.

7 Apparently, he did not respond to his report, to the concept
8 that Professor Walker testified to of the importance in his
9 opinion of having it in a single integrated database. He did
10 not respond to that part of Professor Walker's report. He
11 surely had the opportunity to do so.

12 MR. KUNZ: Walker's report talks about the need for an
13 EIS system with 15 factors. He never says they have to be in
14 the same database. He just says a department needs to track
15 these 15 factors.

16 THE COURT: They need to pause. They think it's right
17 in there. I don't know.

18 MS. PATEL: I read paragraph 47 to require a single
19 system.

20 THE COURT: Would you just read it into the record or
21 put it on the board? Didn't we have some of these paragraphs
22 on the screen before? I guess it was for the consent decrees.

23 What does paragraph 47 say? Would you read slowly?

24 (Continued on next page)

25

D5G9FLO7

Stewart - direct

1 MR. KUNZ: "It is my conclusion that in order to
2 effectively guide and control officer conduct with respect to
3 stops and frisks, the NYPD must develop and implement an early
4 intervention system that includes between 15 and 25 performance
5 indicators. Based on my professional experience with early
6 intervention systems, an NYPD system would at a minimum need to
7 include for each officer," and then it lists all of the fifteen
8 factors.

9 THE COURT: I agree with you already, Ms. Patel. He
10 said a system that includes the following fifteen. That is one
11 system. One database to me. There's been no response to that,
12 so I can't allow it.

13 MR. KUNZ: I would just say --

14 THE COURT: But I understand that he gave his opinion
15 anyway, that he thinks the three databases that exist that
16 include most if not all of these fifteen is sufficient.

17 That is your opinion and you said it. So, that part.

18 MR. CHARNEY: This may be the time to raise I think
19 this is going to be a recurring objection that we have related
20 to the issue of the fact that this is a remedies witness.

21 THE COURT: I'm very conscious. I don't think you
22 need to give any tutoring on that. I'm very conscious of that.
23 I'm not going to have him go over what I consider liability
24 proof. But this relates directly to his response to Professor
25 Walker's remedy of the need for an early intervention system

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G9FLO7

Stewart - direct

1 that prepares a single database that would access in one place
2 all the information about a particular officer because
3 Professor Walker described that in detail. I remember asking
4 him is it per officer, is all this information in one place,
5 yes, and all that. Okay.

6 MR. KUNZ: I understand your Honor's ruling.

7 But just for the record I would say that I believe
8 that a single system could include multiple databases.

9 THE COURT: Good to know what you think, but you're
10 not a witness. So that comment is stricken and not to be
11 considered. It really doesn't matter what you think. You have
12 an expert here, so.

13 MR. KUNZ: I'll ask the expert.

14 THE COURT: I understand. But that's what I've just
15 ruled out. Because he didn't issue an opinion on that.
16 However, he did get to say that he believes all these 15 -- was
17 it all of the 15 or most of the 15 are already covered in
18 various databases?

19 THE WITNESS: Actually they are all covered.

20 THE COURT: All covered.

21 THE WITNESS: Or the functional equivalent is covered
22 of the other two. They are all there.

23 THE COURT: Okay.

24 MS. PATEL: Your Honor --

25 THE COURT: It's a subject for cross-examination.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G9FLO7 Stewart - direct

1 Wait until you get your turn.

2 Ms. Patel, you don't -- nevermind. I'm not going to
3 say it.

4 Go ahead, Mr. Kunz.

5 I guess I will. If you have an objection say
6 objection and the ground. Don't say your Honor.

7 What is it, Mr. Kunz?

8 BY MR. KUNZ:

9 Q. Now moving to the topic of supervision.

10 In terms of the -- you heard Mr. Walker talk a lot
11 about his opinions of the supervisory system and the remedies
12 that he would recommend be put in place?

13 A. I did.

14 Q. Now from your perspective, in terms of the NYPD's current
15 written policies, what is your assessment of the need for
16 whether or not the written supervisory policies need to be
17 reformed?

18 THE COURT: I think that has to be rephrased.

19 What do you think of Professor Walker's testimony that
20 there needs to be a remedy that addresses -- what was it,
21 training?

22 MR. KUNZ: The supervision.

23 THE COURT: Right. That address the supervisory
24 system. What is your opinion as to his opinion that there has
25 to be a remedy regarding supervisory systems?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G9FLO7 Stewart - direct

1 MR. CHARNEY: Your Honor.

2 MS. PATEL: Objection.

3 MR. CHARNEY: We object again because to the extent it
4 asks for testimony about what they currently do.

5 THE COURT: I understand. That's why I rephrased the
6 question. He can respond to Professor Walker's proposed remedy
7 with respect to supervisory systems.

8 MR. CHARNEY: But to the extent he starts to veer into
9 well they already do this and -- because.

10 THE COURT: That's sort of unavoidable if it explains
11 why they're, in his opinion, Professor Walker's proposed remedy
12 is not necessary.

13 MR. CHARNEY: But there's a couple other issues with
14 going into what they currently do, one of which is to the
15 extent he's basing it off hearsay evidence that either is from
16 a witness --

17 THE COURT: An expert is allowed to consider and rely
18 on hearsay evidence, as you know.

19 MR. CHARNEY: They are, except they can't simply
20 compare it.

21 THE COURT: No. That's true.

22 MR. CHARNEY: What another fact witness would have
23 said.

24 And there are many people that he's spoken to, he's
25 identified them already, who have never testified at this

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G9FLO7

Stewart - direct

1 trial, were never identified as witnesses, and only appear in
2 his report. And to the extent he's simply going to tell us
3 what they told him --

4 THE COURT: No, that wouldn't be right.

5 MR. CHARNEY: Without putting in an opinion about it,
6 that needs to be excluded.

7 THE COURT: I suspect what he's doing is synthesizing
8 all the material he reviewed and producing an opinion based on
9 that synthesis. I don't suspect he's going to sit on the stand
10 and say so and so told me and then quote them verbatim. That,
11 obviously, wouldn't be allowed.

12 MR. CHARNEY: My issue would be if he says they don't
13 need to change it because they're already doing it. And you
14 say what's the basis of that? They told me that this is what
15 they do.

16 THE COURT: Well the materials I reviewed.

17 MR. CHARNEY: Yes, but I guess that's not an opinion.
18 That's just telling us what they already do.

19 THE COURT: Well, the materials I reviewed. I mean
20 based on all of the material I've reviewed, which is three
21 single-spaced pages, I reviewed these and these documents, or
22 this and this testimony, and therefore my opinion is, this is
23 what I base it on, this three pages of review.

24 MR. CHARNEY: I guess our question is what is the
25 opinion? To simply --

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G9FLO7

Stewart - direct

1 THE COURT: If you would stop talking I might find
2 out. I can't talk and listen at the same time.

3 MR. CHARNEY: There's going to be a lot of objections
4 then.

5 THE COURT: I know that.

6 Q. So the question was after hearing -- I'm going to try to
7 get it right -- after hearing Walker's opinions about the types
8 of remedial changes that he believed would be appropriate given
9 his understanding of the NYPD's supervisory structure, did you
10 form opinions?

11 A. I did.

12 Q. And what were those opinions?

13 A. I formed the opinion that Mr. Walker asked for a robust
14 evaluative system. And that my review of what was needed, in
15 terms of a robust evaluative system in which that the
16 supervisors are in contact with the -- with their subordinates
17 on a regular basis, that they have direct supervision and
18 interaction with them; they review their work products, and
19 that they also report to their lieutenant, and they're reviewed
20 by the lieutenants --

21 THE COURT: Who --

22 THE WITNESS: -- sergeants. That the sergeants report
23 to their superiors, that -- both what the officers are doing as
24 part of the components of a superior system, that you would
25 have to be able to analyze the work through -- when I looked

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G9FLO7 Stewart - direct

1 through it, I said yes, this looks like the kind of system that
2 would be needed.

3 The question is: How do you operationalize it? And
4 as I looked at what the NYPD had, that it was clearly something
5 that was currently in operation that --

6 THE COURT: I'm sorry. I'm having trouble following
7 you.

8 MR. CHARNEY: Objection.

9 THE COURT: What is in operation?

10 THE WITNESS: A robust evaluative system.

11 THE COURT: How did you fine robust evaluative?

12 THE WITNESS: That it combines both qualitative and
13 quantitative information which Professor Walker talked about.

14 THE COURT: Yes.

15 THE WITNESS: That it has direct observations. It has
16 interactions between the supervisor and the subordinates. That
17 there is training that goes on, and that it is -- that that --
18 that it's related to the crime conditions and the community
19 conditions that -- quality of life conditions that exist on the
20 beat.

21 So it's not just doing activity but that the activity
22 actually is related to conditions.

23 MR. CHARNEY: Your Honor, I would move to strike this.
24 This seems to me to be rebuttal testimony to Mr. Reiter. He's
25 basically giving an opinion that the current supervision system

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G9FLO7 Stewart - direct

1 is adequate to ensure constitutional conduct. That's clearly
2 prohibited by your Honor's prior order.

3 MR. KUNZ: I would just make one observation here,
4 your Honor, which is that at some point, to the extent there's
5 a finding of liability, you'll need to sit down and fashion
6 remedies. And an effective remedy is one which would address
7 an issue that's present.

8 And so to the extent that the expert can offer
9 opinions on whether or not a specific remedy would be effective
10 in this case, he needs to talk about what his observation of
11 the current policies and practices are.

12 THE COURT: Not really. I have a record of that.

13 MR. CHARNEY: Exactly.

14 THE COURT: I know what the current system in place is
15 because I've had two months of testimony about it. For him to
16 repeat that two months of testimony is not helpful.

17 He says officers go into the field and observe,
18 officers sit down -- or supervisors sit down with officers and
19 go over things.

20 I've heard all this and I'm going to evaluate how
21 accurate it is. But hearing it again from the expert is not
22 going to help.

23 MR. KUNZ: I understand.

24 THE COURT: It doesn't help.

25 MR. KUNZ: We're just trying to rebut the sort of

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G9FLO7

Stewart - direct

1 opinions that Professor Walker talked about. And Professor
2 Walker --

3 THE COURT: But he was very specific as to what he
4 would change on the evaluation form.

5 MR. KUNZ: But to get there.

6 THE COURT: On the meetings between sergeants and
7 officers, what he would suggest be done at those meetings.
8 There were a whole lot of specifics he gave.

9 MR. KUNZ: Right. But to get there first he said that
10 he felt that the current system was lacking in this way.

11 THE COURT: But I had evidence. I've -- I have
12 evidence before me as to what is the current system, both in
13 theory and in practice. Both from the documents that is the --
14 the alleged policy and then the so-called operational policy
15 what really happens in the precincts.

16 It is redundant for him to summarize that. And it is
17 not helpful to the Court. Or put it differently, in terms of
18 evidence, it's not helpful to the trier of fact. And whenever
19 we hear an expert, particularly in a jury trial, typically we
20 say: Is this helpful to the trier of the fact? The answer is
21 no. This answer was a summary of the evidence I've heard. And
22 I never allow it in any kind of case.

23 MR. KUNZ: I'm saying this is the backup for his
24 opinion about the types of remedies that would be appropriate
25 here.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D5G9FLO7

Stewart - direct

1 THE COURT: No.

2 He has no opinion on the type of remedy that's
3 appropriate.

4 MR. KUNZ: On the appropriateness of the remedies
5 proposed by Professor Walker.

6 THE COURT: That's right.

7 But he has to really get to say each of the specifics
8 that Professor Walker recommends, here's why I don't agree with
9 it. That's what I expected. If he's going to say that, I'd
10 listen.

11 If he says Professor Walker recommended that the form
12 has too many numbers and not enough narrative, or the sergeants
13 are not sitting down with the officer and actually discussing
14 the stops as to which they have doubts. If he responded to
15 each of those specifics, that's one thing.

16 But to summarize basically how good things are is not
17 helpful. I have real evidence from people who were there. So
18 I am striking the last answer.

19 BY MR. KUNZ:

20 Q. So we'll take one of those examples.

21 One of Professor Walker's opinions was that the NYPD
22 needs to adopt a supervisory structure where sergeants meet
23 with officers and discuss the constitutionality of stops.

24 Did you hear him talk about those issues?

25 A. I did.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D5G9FLO7 Stewart - direct

1 Q. And based -- have you formed an opinion on the
2 appropriateness of that as a remedy in this case?

3 A. I have.

4 Q. And what is your opinion in that regard?

5 A. My opinion is, is that it's unnecessary because I saw it in
6 action in the field when I was on patrol, when we actually made
7 the arrests and we made the initial stops. I have personal
8 knowledge that, in fact, that the sergeants did question very
9 clearly the officer on (a) the reasonable cause for the arrest.

10 THE COURT: I'm sorry. This was a sergeant who was
11 there or wasn't there?

12 THE WITNESS: This was a sergeant who came.

13 THE COURT: Came after the stop?

14 THE WITNESS: After the stop and after we transport --
15 we walk the person down the -- from the 15th floor of the
16 public housing projects. And by the time we got out the door,
17 the sergeant had pulled up. And she walked up and she said
18 right to the officers: What do you have here? And the
19 officers described it. And then she said: Well, what was your
20 cause for originally stopping him?

21 THE COURT: But the bottomline is from that single
22 observation you have the opinion that sergeants are routinely
23 meeting with and questioning the officers who make stops?

24 THE WITNESS: And I had another observation in another
25 arrest.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D5G9FLO7

Stewart - direct

1 THE COURT: From those two observations you are
2 concluding that across the police department sergeants are
3 meeting with officers and discussing with them the officer's
4 observation that caused them to make the stop?

5 THE WITNESS: And I had interviews with the officers.

6 THE COURT: Other officers?

7 THE WITNESS: Other officers. Not just those
8 officers. With other officers. And also the commanders. And
9 that's been reported to me. And that they showed me documents
10 that show that they have done that.

11 THE COURT: Just so I understand. So the basis of
12 your opinion is a couple of observations and a group of
13 interviews of officers and commanding officers?

14 THE WITNESS: That's right.

15 MR. KUNZ: So, your Honor, I actually wasn't trying to
16 expand it systemwide.

17 What I meant to ask is based on those observations is
18 that the sort of supervisor interaction that you believe would
19 be appropriate?

20 THE WITNESS: I do. It goes to the reasonable
21 suspicion, the initial reasonable suspicion.

22 THE COURT: If you want to sit down this is exactly
23 what Professor Walker suggested so you ought to be seated.

24 Go ahead.

25 THE WITNESS: They checked the reasonable articulable
SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G9FLO7

Stewart - direct

1 suspicion of the initial stop as well as the reasonable cause
2 of the stop. And it worked much the same way as the training
3 materials I read, the supervisor's guide that I read, the
4 lieutenant's guide to supervisors that I read. So I have some
5 experience in observing that.

6 Q. No your expert opinion is that level --

7 THE COURT: I'm sorry. Let me interrupt one more
8 time. This is all in 2013.

9 THE WITNESS: Yes, it is -- no. That occurred in
10 2012.

11 THE COURT: When? What month?

12 THE WITNESS: May.

13 THE COURT: So these observations began a year ago?

14 THE WITNESS: Yes.

15 THE COURT: And these interviews and discussions?

16 THE WITNESS: Yes.

17 This was related to the Davis case.

18 THE COURT: Okay.

19 MR. CHARNEY: I actually have a question or a request
20 I guess. This might obviate the need for any further
21 objections, just so it's clear that his testimony does not in
22 any way go to liability; in other words, when he talks about
23 what he observed they currently do. Because it sounds to me --

24 THE COURT: No I will not be considering it in the
25 liability phase of this case or my decision on this case. I've

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G9FLO7 Stewart - direct

1 on those individuals. And if they spend their time with the 80
2 who are quite competent and doing a good job, the difficulty
3 is, is that you don't have the amount of time available to take
4 care of the people who may have subsequently problematic or
5 less competent activities.

6 MR. CHARNEY: I apologize, your Honor, but the
7 objection to this testimony is that it's not in his report. So
8 we would move to strike that answer.

9 In other words, there is no opinion in here about
10 whether or not it's necessary to provide that level of
11 supervision to every officer, some, what percentage.

12 MR. KUNZ: Well but --

13 MR. CHARNEY: The experienced ones, the inexperienced
14 ones.

15 MR. KUNZ: Walker testified to this and it's not in
16 his report.

17 THE COURT: It's a natural follow-up.

18 I am concerned about the clock. I think you would be
19 rushing to try to finish in twelve minutes, then there's still
20 cross, and possibly redirect. I don't see how we can avoid
21 coming back tomorrow. I hope it will be a short session. We
22 can start at 10:30 instead of 10 and hopefully finish by noon.
23 Does everybody think we can get this done in an
24 hour-and-a-half. We've put in our time tonight. Is that going
25 to tie your hands too much if it's 10:30 to 12:00?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G9FLO7

Stewart - direct

1 MR. KUNZ: I wouldn't have --

2 THE COURT: I mean altogether.

3 MR. CHARNEY: I guess it depends how long the direct
4 is going to be.

5 MR. KUNZ: I think we could work on an agreement
6 where --

7 MR. CHARNEY: Should we start at 10:00?

8 THE COURT: No.

9 MR. CHARNEY: You can't start at 10:00?

10 THE COURT: Like you, I counted not being on trial
11 today or tomorrow.

12 10:30 to 12:30. That's the latest I can go.

13 I know you don't want to be here. You all want to be
14 preparing for summations. So, obviously, you don't all have to
15 be here. You might want to consider very slimmed down teams
16 tomorrow.

17 We're not going to take up anything else. The motions
18 have been made. The evidence has been put in. I do need to
19 hear from Ms. Richardson if she's better or if you could,
20 Ms. Publicker, get the information from her so we can finalize
21 those two issues; the exhibits Ms. Borchetta mentioned and the
22 letter about Officer Dang. But there's very little left to
23 worry about. It's basically finishing this one witness.

24 As I said, we used the time well tonight. We did take
25 care of the motions and we did get an hour of testimony, but I

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D5G9FLO7

Stewart - direct

1 don't know that any of us will be working at top efficiency any
2 longer tonight. All right.

3 (Adjourned to May 17, 2013 at 10:30 a.m.)
4
5
6
7
8
9

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX OF EXAMINATION

Examination of:	Page
Samuel Walker	
Direct By Ms. Patel . . . . .	.7455
Cross By Mr. Kunz . . . . .	.7523
Redirect By Ms. Patel . . . . .	.7598
JAMES P. HALL	
Cross By Mr. Moore . . . . .	.7601
Redirect By Ms. Grossman . . . . .	.7679
Recross By Mr. Moore . . . . .	.7683
JAMES STEWART	
Direct By Mr. Kunz . . . . .	.7698

PLAINTIFF EXHIBITS

Exhibit No.	Received
577 . . . . .	.7461
576 . . . . .	.7462
H6 . . . . .	.7489
437 . . . . .	.7489
310 . . . . .	.7489
309 . . . . .	.7489
309 . . . . .	.7490
E11 . . . . .	.7490

DEFENDANT EXHIBITS

Exhibit No.	Received
Q15 and Q16 . . . . .	.7706

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

