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1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 DAVID FLOYD, et al.,

4 Plaintiffs,

5 v.

08 CV 1034(SAS)

6 CITY OF NEW YORK, et al.,

7 Defendants.

8 -----x

New York, N.Y.
April 3, 2013
10:00 a.m.

10 Before:

11 HON. SHIRA A. SCHEINDLIN,

12 District Judge

13 APPEARANCES

14 BELDOCK LEVINE & HOFFMAN, LLP
15 Attorneys for Plaintiffs

15 BY: JENN ROLNICK BORCHETTA
16 JONATHAN MOORE

17 COVINGTON & BURLING, LLP
17 Attorneys for Plaintiffs

18 BY: KASEY MARTINI
18 GRETCHEN HOFF VARNER
19 ERIC HELLERMAN
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21 BY: DARIUS CHARNEY
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APPEARANCES (Cont'd)

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1 (Trial resumed)

2 THE COURT: I understand the plaintiffs wanted to talk
3 about the schedule at this moment.

4 MS. BORCHETTA: Yes, your Honor, just very briefly we
5 wanted to follow up on what we advised the Court yesterday. We
6 have provided both the Court and the defendants our final
7 anticipated witness schedule, which brings us into resting our
8 liability case on April 26. And I wanted to also advise the
9 Court that in the JPTO, we had anticipated 20 to 30 trial days
10 for plaintiffs' evidence, and that would be 26 trial days.

11 THE COURT: But that is without the remedies?

12 MS. BORCHETTA: Yes. Although we only have one
13 remedies witness.

14 THE COURT: Sam Walker?

15 MS. BORCHETTA: Yes.

16 THE COURT: Mr. Dunn, are you putting on separate
17 proof on the remedies phase?

18 MR. DUNN: We don't know yet because we haven't seen
19 the city's remedies brief, and I think it's not due until the
20 11th. So we won't know until we see what they submit.

21 THE COURT: I am trying hard to schedule another trial
22 after this. So I really want to know.

23 MR. DUNN: I will say this if it helps. My guess is
24 at least much of our remedy presentation, if there is going to
25 be an evidentiary one, would be through department witnesses

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1 that are on the parties' liability list. And since you have
2 asked that any time a witness appears, he or she testify for
3 all purposes, I don't know that we would have anybody we would
4 elicit remedy testimony for who would not be testifying in the
5 liability portion of the trial.

6 THE COURT: Called by the defense?

7 MR. DUNN: Or by the plaintiffs. The plaintiffs have
8 some high-level department witnesses.

9 THE COURT: And you would take a turn and ask her
10 questions?

11 MR. DUNN: Yes. Our understanding is once that person
12 is on the stand, he or she has to be questioned for all
13 purposes.

14 THE COURT: Ms. Grossman, now that you have seen this?

15 MS. GROSSMAN: I just saw it this morning actually.

16 THE COURT: Last night you said you would know better
17 when you saw it.

18 MS. GROSSMAN: We need a chance to confer, but I do
19 note that they removed some of the city witnesses from their
20 list, but we now have to add them to our list. So I don't know
21 that the numbers are going to change all that much. It just
22 means that the plaintiffs are not going to be calling some of
23 these police witnesses.

24 THE COURT: Do you think two weeks would be
25 sufficient, the week of the 29th and the week of the 6th of

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1 May? Theoretically, that would be ten trial days.

2 MS. GROSSMAN: I think that what you said yesterday,
3 moving to the 13th, is that May 13?

4 THE COURT: That would move my trial to May 13.

5 MS. GROSSMAN: The 10th.

6 THE COURT: You would have two weeks. I can start my
7 other trial on the 13th.

8 MS. GROSSMAN: I think that should be feasible. We
9 will be in a better position to know next week.

10 THE COURT: That's what I will tell the lawyers. I
11 will tell the clerk to tell the lawyers. That's a bit of
12 planning.

13 I guess we are ready to proceed.

14 MR. CHARNEY: Your Honor, plaintiffs call Professor
15 Jeffrey Fagan.

16 JEFFREY FAGAN,

17 called as a witness by the plaintiffs,

18 having been duly sworn, testified as follows:

19 THE COURT: State your name, first and last, spelling
20 both for the record.

21 THE WITNESS: Jeffrey Fagan, J-E-F-F-R-E-Y, F-A-G-A-N.

22 DIRECT EXAMINATION

23 BY MR. HELLERMAN:

24 Q. Good morning, Professor.

25 A. Good morning.

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1 Q. What do you do for a living?

2 A. I am the Isidor and Seville Sulzbacher professor of law at
3 Columbia University.

4 THE COURT: You have to keep your voice up. I can't
5 hear you.

6 Q. Where are you employed?

7 A. Columbia University Law School.

8 Q. Are you employed by anybody else?

9 A. Presently I am a visiting professor at Yale Law School.

10 Q. What are your responsibilities at Columbia and Yale?

11 A. I teach courses. I supervise student research. I conduct
12 research. I write articles for professional journals and book
13 chapters. I serve on faculty committees. I serve on
14 committees of -- university wide committees and committees of
15 professional associations.

16 Q. Were you retained to testify as an expert in this case?

17 A. Yes, I was.

18 Q. By whom?

19 A. By plaintiffs.

20 Q. What were you retained to do?

21 A. To respond to and answer questions pursuant to the
22 complaint in this litigation.

23 Q. Did you do that?

24 A. Yes, I did.

25 Q. Were there particular questions that you analyzed?

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1 A. Yes, there were.

2 Q. Would you tell us?

3 A. The first question is whether or not there was a disparate
4 impact or racial bias in stop and frisk patterns with respect
5 to persons in the City of New York. Second was whether or not
6 stops were made pursuant to reasonable and articulable
7 suspicion in the conduct of those stops. Third, I was asked to
8 examine and conduct an analysis and critique of a report
9 produced by the RAND Corporation in 2007 that we submitted to
10 the city and made public. I was also asked to analyze a
11 pattern of burglaries that took place somewhere in the vicinity
12 of the house of one of the named plaintiffs in the case, David
13 Floyd.

14 Q. Did you reach opinions on those subjects?

15 A. Yes, I did.

16 Q. I will ask you shortly to state them, but first I need to
17 ask you some questions about your background.

18 MR. HELLERMAN: Your Honor, may I approach?

19 THE COURT: You don't need to ask.

20 Q. Do you recognize Exhibit 411A, Professor?

21 A. I do.

22 Q. What is it?

23 A. It's an abridged copy of my curriculum vitae.

24 Q. Is this the same curriculum vitae that was annexed to your
25 first report, dated November 29, 2012 -- I'm sorry, November

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1 29, 2010?

2 A. No. October 15, 2010.

3 Q. Thank you for the correction.

4 A. Yes.

5 Q. In what way is this abridged?

6 A. The best of my recollection, this was abridged to include
7 only items such as publications, book chapters, other
8 activities, professional activities, within the 10 years of the
9 date when that report was submitted.

10 Q. Is Exhibit 411A otherwise a complete and accurate copy of
11 your curriculum vitae as of October 2010?

12 A. As of that date, yes.

13 MR. HELLERMAN: Your Honor, I move Plaintiffs' Exhibit
14 411A into evidence.

15 MS. COOKE: No objection.

16 THE COURT: 411A is received.

17 (Plaintiffs' Exhibit 411A received in evidence)

18 Q. Professor, do you recognize Exhibit 417A?

19 A. Yes, I do.

20 Q. What is it?

21 A. This is a copy of my curriculum vitae as of, it appears,
22 November of 2012.

23 Q. Is this a complete and accurate copy of your curriculum
24 vitae as of that date?

25 A. Yes, it is.

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1 MR. HELLERMAN: Your Honor, I move the admission of
2 Plaintiffs' Exhibit 417A?

3 MS. COOKE: No objection.

4 THE COURT: 417A received.

5 (Plaintiffs' Exhibit 417A received in evidence)

6 Q. Professor, would you briefly describe your education,
7 formal education?

8 A. I have a bachelor's degree in engineering from New York
9 University, received in 1968. I have a master's degree in
10 human factors engineering and industrial engineering from the
11 State University of New York at Buffalo, in 1971. And a Ph.D.
12 in civil engineering with a concentration in public policy
13 sciences from, again, the State University of New York at
14 Buffalo, in 1975.

15 Q. Professor, are you familiar with the field of statistics?

16 A. Yes, I am.

17 Q. What is statistics?

18 A. Statistics is many different definitions, but the one that
19 is generally used is it's involved with the study of
20 probabilities of occurrences of certain events, and also to
21 test whether or not events happened, a phenomena that we see
22 happen by chance or systematic. We can go on longer. It's a
23 pretty rich science, but that's basically it. It's the study
24 of probabilities of events.

25 Q. Do you have formal training or experience in the field of

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1 statistics?

2 A. Yes. In each of my college and graduate degrees there was
3 training in statistics. I was also trained in econometrics
4 during my graduate studies.

5 Q. What is econometrics?

6 A. Econometrics is essentially life statistics. It's a
7 different set of modeling strategies. It's examining
8 particular theories and applying quantitative methods to
9 examine theories having to do with human behavior with respect
10 to incentives, costs, etc.

11 Q. Are you familiar with criminology?

12 A. Yes, I am.

13 Q. What is criminology?

14 A. Criminology is the study of crimes, and by that we mean the
15 study of criminal offending, criminal victimization, processes
16 and outcomes of the criminal justice system, interactions
17 between citizens and the criminal justice system, to name a
18 few.

19 Q. Have you taught statistics?

20 A. Yes, I have.

21 Q. On what level?

22 A. While in graduate school I taught it to the undergraduates,
23 and as a professor, I taught it at Rutgers University to
24 graduate students.

25 Q. Have you used the field of statistics in your professional

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1 work?

2 A. Extensively.

3 Q. Have you taught courses in criminology?

4 A. Yes, I have.

5 Q. On what level?

6 A. I have taught them to undergraduates and to graduate
7 students and to law students.

8 Q. Have you worked in the field of criminology?

9 A. I do research in the field of criminology.

10 Q. For how long have you been doing that?

11 A. Since just before I finished my doctorate so since the
12 early 1970s.

13 Q. Since receiving your doctorate, have you had any
14 professional experience in collecting and analyzing data about
15 criminal justice policy and practice?

16 A. For more years than I want to remember, at least 30 years.

17 Q. Could you briefly describe that professional experience?

18 A. I have conducted research projects over that period of
19 time, studying individuals who come into contact with the
20 criminal justice system, racial disparities in the criminal
21 justice, sentencing outcomes, recidivism studies of various
22 sorts. I have studied police responses to intimate partner
23 violence. I have studied the death penalty, particularly the
24 accuracy of verdicts in capital punishment cases. I have
25 studied the effects of drug laws and drug enforcement on

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1 criminal offending. Many others. I have also done research on
2 police activities in particular, including various enforcement
3 strategies, such as stop and frisk or gun enforcement generally
4 as in the Chicago cases.

5 Q. Did you conduct an analysis of stop and frisks conducted by
6 the New York City Police Department in this case?

7 A. In this case, yes, I have.

8 Q. Other than in this case?

9 A. Other than in this case, yes. I studied the stop and frisk
10 phenomena in 1999 under contract between the office of the New
11 York State attorney general and Columbia University. I was the
12 lead investigator on that study. I did research on stop and
13 frisk in consultation with the City Council in 2008. And I
14 have studied stop and frisk in the context of this litigation
15 and two other associated cases.

16 Q. What other associated cases?

17 A. Davis, et al. v. City of New York and Ligon, et al. v. City
18 of New York.

19 Q. Did any of the work that you just described result in
20 publication of any articles or other materials?

21 A. Yes.

22 Q. Would you tell us about that?

23 A. Well, there were several. There was a publication in
24 2007 -- in addition to the reports, for the attorney general's
25 project we contributed chapters that were published by the

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1 attorney general in his December 1999 report.

2 Q. What was the name of that report?

3 A. It was a very long name. An examination or an analysis of
4 the New York City Police Department's stop and frisk practices,
5 something like that. That's the short version of the title.

6 It goes on for a few lines.

7 Q. Any other publications resulting from your analysis of stop
8 and frisks by the NYPD?

9 A. Yes. In 2007, with my colleague Andrew Gelman at Columbia
10 University, we published an article in the Journal of the
11 American Statistical Association on stop and frisk practices as
12 of 1999.

13 In 2010, I published a chapter in a peer review
14 volume, together with several colleagues, looking at patterns
15 of stop and frisk over, roughly, a nine year period, from 1999
16 through 2006 -- a seven year period, sorry.

17 I published an article in the Journal of Empirical
18 Legal Studies in 2010, looking at the subset of cases in the
19 stop and frisk activity in New York related to marijuana
20 enforcement.

21 I published another article in the Journal of
22 Empirical Legal Studies on stop and frisk enforcement in public
23 housing.

24 Q. Have you testified as an expert witness in any case other
25 than this regarding the NYPD stop and frisk practices?

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1 A. Yes. In both the Davis and Ligon cases I have
2 testified -- well, Davis hasn't been testimony. In Ligon.

3 Q. Have you ever done any work for any law enforcement
4 agencies?

5 A. I have worked with law enforcement agencies, yes.

6 Q. Can you tell us about that?

7 A. Well, I worked with the New York State Attorney General's
8 Office and at the time the attorney general reminded me that he
9 was the state's highest law enforcement officer. So I was
10 indoctrinated in that.

11 I have been working since 2002 with the Chicago police
12 department on a program called Operation Safe Neighborhoods,
13 which is a coordinated effort in the city of Chicago to stem
14 gun violence among people who are returning on parole or
15 released on probation. And that involves an effort with the
16 Chicago police department, the state attorney for Cook County,
17 the U.S. Attorney for the Northern District of Illinois, the
18 Illinois Department of Corrections, and several community
19 agencies. I have been working with them steadily since then,
20 and we are still actually working with them now.

21 I have worked with the Boston police department
22 together with a former student who is now a professor at
23 Rutgers. We have been analyzing what they call the FIA data,
24 field interrogation reports or field investigation reports.
25 And we have been analyzing their data at the behest of the

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1 chief to determine, basically to understand what the officers
2 are doing, similar to the inquiries in New York, and to help
3 him make improvements in their data collection system.

4 I have also worked with the New Jersey governor's
5 commission on police standards and practices helping them to
6 evaluate the activities of the New Jersey state police with
7 respect to compliance with the Soto consent decree.

8 Q. Have you published any articles or other writings in the
9 field of criminology?

10 A. Yeah, quite a bit. Well over a 100 articles. I was a
11 co-author on three books. I didn't count the publications.
12 Some of my colleagues do. I don't.

13 Q. Do Plaintiffs' Exhibits 411A and 417A contain a list of
14 such articles within the previous four years of those
15 documents?

16 A. Yes. 411A is accurate -- I'm sorry, 417A is accurate up
17 through, roughly, November 1st of 2012.

18 Q. Are you familiar with the term peer review?

19 A. Absolutely.

20 Q. What is peer review?

21 A. Peer review is a process that many or most professional
22 academic journals use to assess the quality and rigor of
23 articles that have been submitted for publication to those
24 journals. It's a gatekeeping function for social science.

25 Q. What is reviewed in a peer review?

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1 A. Articles are submitted in peer review, usually they are
2 double blind, meaning the articles are submitted to the
3 journal. The journal editor will send the article out to
4 anywhere from three to five reviewers. The reviewer doesn't
5 know the name of the author and the author doesn't know the
6 name of the reviewers. So the review is done blind. Some
7 journals will take what I think is a healthy extra step and
8 take out the name of any self-references that the author makes
9 to his or her own prior work.

10 So the review ensues. The reviewers are asked to
11 review the theoretical rigor, the methodological rigor, the
12 analytic rigor, the soundness of the conclusions based on the
13 results of the data analysis, and to make recommendations, both
14 to cite the strengths and weaknesses of the paper with respect
15 to those parameters and also to make recommendations to the
16 editor about whether to publish the paper or not.

17 Q. What are the possible outcomes of peer review?

18 A. Through peer review, an editor can choose to either accept
19 the paper for publication, accept the paper contingent on
20 certain revisions, send it back to the author for revision and
21 to require the author to address the criticisms raised by some
22 of the peer reviewers, or they could simply reject the paper.

23 Q. Now, have you published any peer reviewed analyses of
24 criminal justice policy and practice?

25 A. Dozens.

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1 Q. Have you published any peer reviewed analyses of the NYPD
2 stop and frisk practices?

3 A. Yes.

4 Q. How many times?

5 A. Three that I can recall.

6 Q. Have you ever had an article or other writing rejected in
7 the peer review process?

8 A. I have had articles that were rejected for publication by
9 one journal and either I alone or together with co-authors
10 revised those publications and submitted them to another
11 journal where it was eventually published.

12 Q. Did you ever have an article or other writing ultimately
13 rejected in a peer review process and not get published?

14 A. Not that I can recall.

15 Q. Have you had any experience with the peer review process
16 other than as an author?

17 A. I have been a -- I still am a peer reviewer quite often for
18 a variety of journals both in law and social science.

19 Q. Are you familiar with the American Society of Criminology?

20 A. Yes, I am.

21 Q. What is it?

22 A. It's a professional association of people who do research
23 and some people who are also practitioners in the criminal
24 justice system.

25 Q. Are you a member?

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1 A. Yes, I am. I am an elected fellow of the society.

2 Q. Are you familiar with the Journal of Quantitative
3 Criminology?

4 A. Yes, I am.

5 Q. What is that?

6 A. That's a peer review journal in criminology. It's quite
7 prestigious. It's probably ranked perhaps second or third in
8 the field among a dozen or so journals, maybe more than a
9 dozen. I was on the editorial board of that journal for
10 several years.

11 Q. Are you or have you been on the editorial board of any
12 other scholarly journals relating to criminology?

13 A. Several others.

14 Q. Tell us what some of those are.

15 A. I was on the editorial board of the journal called
16 Criminology, which is the official journal of the American
17 Society of Criminology. I am currently on an editorial board
18 of the Journal of Criminal Law and Criminology. I am trying to
19 remember the other editorial board. Law & Society Review, I am
20 on that board. Maybe one or two others. I can't recall.

21 Q. Do you know what a UF-250 is?

22 A. Yes, I do.

23 By the way, I was editor of a journal for many years.
24 I don't know if you want me to describe that experience as
25 well.

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1 Q. Please do.

2 A. I was the editor from 1990 through 1996 of the Journal of
3 Research in Crime and Delinquency, where I actually
4 administered the peer review process and made the final
5 decisions about publication on journals in criminology and
6 criminal justice.

7 Q. Do you know what a UF-250 is?

8 A. Yes, I do.

9 Q. What is it?

10 A. A UF-250 is a form on which New York City police officers
11 record information pursuant to stops that they make.

12 Q. Have you worked with UF-250s?

13 A. Quite a bit.

14 Q. Have you worked with them in this case?

15 A. Yes, I did.

16 Q. Have you worked with them other than in this case?

17 A. I have worked with them both in the two concurrent
18 litigation activities, Davis and Ligon. I have worked with
19 them in the attorney general's report in 1999 in that research.

20 Q. Any others?

21 A. Not that I can recall.

22 Q. Generally, which type of information --

23 A. Let me take that back. Some of the UF-250 data are made
24 publicly available by the NYPD. So I have worked with some
25 students who have downloaded those data and analyzed that data.

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1 So in that respect, yes.

2 Q. In general, what type of information on UF-250s have you
3 worked with?

4 A. Much of the information on the form. You want me to
5 elaborate?

6 Q. Yes, please.

7 A. I have worked with information about the person who was
8 stopped and graphic characteristics of the person who was
9 stopped, location of the stop, suspected crime. I will limit
10 my responses to what I have done in this case. The
11 circumstances of the stop or the factors that motivated the
12 stop, additional circumstances associated with the stop,
13 whether or not the suspect -- disposition of the stop, whether
14 or not the suspect was arrested or received a summons, whether
15 force was used in the course of the stop, whether the suspect
16 was frisked or searched. I am trying to remember the rest, but
17 I have a really bad head cold and I might not be capturing
18 everything.

19 Q. Have you worked with that type of UF-250 information prior
20 to this case?

21 A. Yes. In the attorney general's report and also in the work
22 that we did for the City of New York very briefly in 2008.

23 Q. Did you review UF-250s in this case?

24 A. Yes, I did.

25 Q. For what period or periods of time?

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1 A. We did two separate analyses. 2004 through 2009. Those
2 analyses were produced in the first report that I submitted to
3 the Court in this case. And for 2010 to the middle of 2012,
4 through June 30th of 2012, and I did that analysis -- submitted
5 that in November of 2012, again, in part of this case.

6 Q. Why did you analyze the UF-250s for those two periods
7 separate?

8 A. Because the data were given to us separately for those two
9 periods.

10 Q. In what form did you receive the data?

11 A. In electronic databases.

12 Q. Do you recall how many stops there were in the UF-250
13 database for the period of 2004 to '09?

14 A. Roughly, 2.8 million.

15 Q. Do you recall how many stops there were in the UF-250
16 database for the period 2010 through June 2012?

17 A. Approximately, 1.6 million.

18 Q. Do you know what the total number of stops in the UF-250
19 databases for those two periods was?

20 A. 4.4 million, adding those two numbers together.

21 Q. That's an approximation?

22 A. Approximately, 4.4 million.

23 Q. In your work on this case, did you work with any data
24 maintained by the New York Police Department regarding the
25 occurrence of crime?

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1 A. Yes, I did.

2 Q. In what format did you receive that?

3 A. We received electronic databases showing crime complaint
4 incidents for the entire period that I described. Again, in
5 separate batches, relevant to the two distinct sets of
6 analyses.

7 Q. 2004 to '09 and 2010 through June 2012?

8 A. Yes.

9 Q. Prior to this case, have you worked with New York Police
10 Department crime databases?

11 A. As a civilian. Not with those databases, no. We have
12 analyzed their published data various times.

13 Q. In connection with what?

14 A. Regular research activities and did some research in the
15 1990s on aspects of climbing crime rates in New York. We also
16 looked at patterns of drug enforcement and crimes throughout
17 the 1980s and 1990s and incarceration data throughout the 1980s
18 and 1990s as well.

19 MS. GROSSMAN: Your Honor, can we ask the witness to
20 speak up a little bit? It is very hard to hear.

21 THE COURT: It is for both counsel and the witness. I
22 know you said you have a cold. I am sorry about that, but to
23 the extent possible, could you speak into the microphone?

24 THE WITNESS: I will get this thing closer.

25 Is it possible to put the volume up?

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1 Q. Professor, we will both reach closer to the mike.

2 A. Fair enough.

3 MR. HELLERMAN: Your Honor, I move to qualify
4 Professor Fagan as an expert in criminology and statistical
5 analysis in police civilian interaction, including analysis of
6 NYPD stop and frisk activity, NYPD UF-250 forms, and crime and
7 related databases.

8 MS. COOKE: With respect to moving him as an expert in
9 UF-250 forms, I am not sure that's an appropriate expert
10 designation. Obviously, he has utilized the forms and we don't
11 have an issue with him testifying about the analysis of those
12 forms. But I don't know that you can be designated an expert
13 in a form.

14 THE COURT: I think that's a fair objection, Ms.
15 Cooke. I thought you were going to say he is not an expert on
16 crime. I don't know what that means either.

17 MS. COOKE: The crime analysis.

18 THE COURT: I agree with your point.

19 MS. COOKE: To the extent it is analysis of crime
20 data.

21 THE COURT: OK.

22 MR. HELLERMAN: Thank you.

23 BY MR. HELLERMAN:

24 Q. Professor, I have placed before you a binder containing
25 some documents, some of your reports and declarations in this

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1 case. I ask you what the first document, Plaintiffs' Exhibit
2 411, is?

3 A. This is a declaration that we submitted -- I submitted in
4 February of 2012.

5 Q. Is it a declaration?

6 A. It's a report to the Court analyzing various aspects of
7 stop and frisk data.

8 Q. Is Plaintiffs' Exhibit 411 a complete and accurate copy of
9 the report?

10 A. Yes, it is.

11 Q. There are some redactions and corrections and other
12 notations?

13 A. I'm sorry. This is the October 2010 report.

14 Q. There are some redactions and corrections and notations
15 throughout the report. Do you know why those were made?

16 A. Not with any certainty. Some of them had to do with
17 corrections that we made to the record on the conduct of the
18 research that went into this report. Other redactions, I don't
19 recall the reasons.

20 Q. Did you review those redactions?

21 A. Yes, I did.

22 Q. Have you changed any of the opinions you expressed in this
23 report after you submitted it?

24 A. No, I have not.

25 Q. What is Appendix H to the report?

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1 MR. HELLERMAN: Your Honor, I apologize for not having
2 given you a binder because there wasn't one on the table. But
3 may I?

4 THE COURT: Now you have an extra? Oh, good. Thank
5 you.

6 A. Appendix H is the list of data sources and materials that I
7 relied on to conduct the research for this report.

8 Q. Does Plaintiffs' Exhibit 411 set forth any of the opinions
9 that you reached with respect to the issues that you identified
10 earlier?

11 A. You mean does the exhibit express the opinions?

12 Q. Yes.

13 A. Yes, it does.

14 Q. Does Plaintiffs' Exhibit 411 describe the methods that you
15 used to reach the opinions that are set forth in the report?

16 A. Yes, in great detail.

17 MR. HELLERMAN: I move the admission of Plaintiffs'
18 Exhibit 411.

19 MS. COOKE: No objection.

20 THE COURT: I thought I saw in a letter that you both
21 agreed to admit all of the reports, is that right?

22 MS. COOKE: Correct. I assume this binder is the same
23 as the stack that I was provided.

24 THE COURT: The report is received.

25 (Plaintiff's Exhibit 411 received in evidence)

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1 MR. HELLERMAN: In that case, I will also move the
2 admission of Plaintiffs' Exhibit 412.

3 THE COURT: Do you want to just do them all, 411
4 through 417?

5 MR. HELLERMAN: 411, 412, 413, 414, 415, and 417.

6 THE COURT: Pursuant to the previously reached
7 agreement by counsel, I assume there is no objection to any of
8 those?

9 MS. COOKE: There is no objection to the corrections.
10 There is no objection to the admission of the documents, with
11 the exception of 414. It's a declaration, and based on what I
12 heard at the beginning of the testimony, I have some concerns
13 about the admission of 414.

14 THE COURT: We might as well talk about it now. What
15 did you hear earlier that troubles you?

16 MS. COOKE: I'm sorry. 413.

17 THE COURT: One second. OK. What troubles you?

18 MS. COOKE: Professor Fagan indicated that he had been
19 asked to respond to certain questions and provide reports and
20 opinions. The fourth thing he listed was he analyzed a pattern
21 of burglaries. I assume that he is referring to this document
22 in 413, which is not an analysis of patterns of burglaries. He
23 has accessed the databases that we have provided him and
24 identified one burglary and have presented the results of that
25 here. So it's not analysis of burglary patterns. So I would

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1 have concerns about this document being admitted.

2 THE COURT: What document are you referring to?

3 MS. COOKE: 413.

4 THE COURT: There are exhibits to it. Are you talking
5 about one of the exhibits in particular?

6 MS. COOKE: This document I don't have a problem with
7 as a stand-alone document that represents what it is. I am
8 concerned they are going to claim that this is a report
9 analyzing burglary patterns, which it is not. I don't see any
10 opinions set forth -- it's a transmittal declaration of
11 retrieval of data accessing census tract boundaries and looking
12 at crime complaint information. It's not an analysis or
13 opinion as far as I am concerned.

14 THE COURT: Why don't I hold off on this one until you
15 have had a chance to do a voir dire or to cross-examine him on
16 this document. At this time, I will admit 411, 412, 414, 415
17 and 417, right?

18 MS. COOKE: Yes.

19 THE COURT: Those are admitted and I will hold off on
20 413.

21 MR. HELLERMAN: I will note that city's counsel
22 expressly agreed, as set forth in our letter to you, to the
23 admission of this document.

24 THE COURT: Well, maybe now they have had a chance to
25 study it.

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1 MS. COOKE: I agreed to the corrections as accurate
2 and that the exhibits could be used here. My understanding was
3 I was not agreeing in advance to the admission of documents.

4 THE COURT: Anyway, I am still not admitting 413 at
5 this time.

6 (Plaintiffs' Exhibits 411, 412, 414, 415 and 417
7 received in evidence)

8 BY MR. HELLERMAN:

9 Q. Professor Fagan, can you tell us what Exhibit 413 is?

10 A. 413 is an affidavit that I submitted to the Court which
11 presents the results of an examination of burglary crime
12 complaints in the vicinity of a particular address that was
13 given to me by plaintiffs. My understanding is the address was
14 the address of David Floyd, or the location of the stop of
15 David employed.

16 Q. What was the purpose of the analysis?

17 A. Just simply to count within a particular time period,
18 relative to the stop of Mr. Floyd, the number of burglary
19 complaints that had been lodged in or near the vicinity, the
20 general area of that location.

21 MR. HELLERMAN: With that explanation, I renew the
22 admission of the exhibit.

23 THE COURT: Would you like a voir dire on this
24 document?

25 MS. COOKE: Yes, your Honor.

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1 THE COURT: Go ahead.

2 VOIR DIRE EXAMINATION

3 BY MS. COOKE:

4 Q. Professor Fagan, looking at paragraph 10, it reads,
5 "Earlier this month I was asked to determine the total number
6 of burglaries that were reported in the vicinity of 1359 Beach
7 Avenue, in the Bronx, in January and February 2008," is that
8 correct?

9 A. Yes.

10 Q. So that's what you were asked to do and these are the
11 results that you are reporting in this document?

12 A. Yes.

13 Q. The total number of burglaries reported in that vicinity in
14 that time period?

15 A. Correct.

16 THE COURT: How did you define vicinity?

17 THE WITNESS: We defined vicinity as the census tract
18 where that address was located, and, also, we looked at the
19 adjacent census tract because the address seemed to be at the
20 eastern border of one of the census tracts.

21 Q. Am I correct that you did not review any burglary patterns
22 received from the NYPD as part of the inquiry and report of
23 information about burglaries in the vicinity of 1359 Beach
24 Avenue for this time period?

25 MR. HELLERMAN: I object to the question.

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1 THE COURT: I don't understand it. He says total
2 number of burglaries that were reported. Are you referring to
3 different than the reported burglaries?

4 MS. COOKE: A pattern. Burglaries from a location in
5 the city. Did he review pattern sheets in connection with the
6 preparation of this document?

7 THE COURT: These are documents prepared by the police
8 department?

9 MS. COOKE: Yes.

10 THE COURT: Did you have access to something called
11 pattern sheets prepared by the police department?

12 THE WITNESS: No. We analyzed the crime complaint
13 database that was given to us and looked at the number of
14 targeted events within those areas.

15 THE COURT: So you never saw these things called
16 pattern sheets prepared by the police department?

17 THE WITNESS: No.

18 Q. Have you ever reviewed pattern sheets provided by the NYPD
19 in any of your work --

20 THE COURT: Provided by? I don't know what you mean
21 by that. Created by?

22 MS. COOKE: Created by the NYPD and was provided
23 access to it.

24 THE COURT: He was provided access?

25 MS. COOKE: If he has.

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1 A. I was never provided access to those.

2 THE COURT: I think we have seen some of those at this
3 trial. Have you seen any of those in the last few days or
4 weeks, pattern sheets?

5 THE WITNESS: Not that I can recall.

6 Q. Your research and analysis in the field of criminology, has
7 that ever included analysis of patterns of crimes in set
8 locations?

9 MR. HELLERMAN: I think this voir dire is going a bit
10 far afield.

11 THE COURT: I will allow.

12 Do you understand the question?

13 THE WITNESS: I am not sure I would use the term
14 pattern in the same way that counsel for the city would use it.
15 In criminology and social science, patterns mean different
16 things.

17 Q. Have you worked with police departments to determine
18 whether or not crimes in a certain geographical location are
19 related to each other?

20 A. Absolutely.

21 Q. In what cases?

22 A. It's the basis of our Chicago analysis. And it's the basis
23 of the ongoing analysis we are doing with the data in the
24 Boston police department. We looked at temporal and spatial
25 clusters of data.

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1 THE COURT: When you say related to each other, that's
2 what she used in the question, what does that mean?

3 THE WITNESS: To us that means are they temporally
4 associated? Do they occur in certain periods of time? Are
5 they spatially associated? Are they occurring within
6 particular geographical boundaries?

7 THE COURT: So related means time or space?

8 THE WITNESS: Time or space.

9 BY MS. COOKE:

10 Q. What training do you have in the identification of police
11 patterns?

12 THE COURT: Police patterns?

13 Q. Police patterns of crime?

14 THE COURT: I don't know what police patterns of crime
15 means.

16 Q. What training do you have in the identification of patterns
17 of crime?

18 THE COURT: OK. I am going to allow it. I want to
19 know myself. What does that mean?

20 A. Well, I have training in doing statistical analysis of
21 crime occurrences. So we analyze whether or not things take
22 place in particular time periods, if those time periods are
23 spiking or if there is a spike in events within a particular
24 time period, or relative to various time periods. It could be
25 within a week, a day, a month.

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1 THE COURT: She asked do you have training in that?

2 THE WITNESS: I don't think there is any specific
3 training to do that kind of analysis beyond my general training
4 and practice.

5 Q. In what you just described, you didn't include in any way
6 characteristics of the act of the crime, correct? For example,
7 if the burglary is a daytime burglary or breaking into a window
8 versus a door, you didn't include in your answer right there
9 any information about your experience analyzing characteristics
10 of the nature of the crime in crime patterns?

11 A. Not in this particular case, no.

12 MS. COOKE: Just one moment, your Honor.

13 Q. The determination to limit your analysis of the burglary in
14 this affidavit, Plaintiffs' Exhibit 41, you determined to limit
15 it by two census tracts. Whose determination was that?

16 MR. HELLERMAN: Object to the question. I think that
17 mischaracterizes the testimony.

18 THE COURT: I thought he said it was limited to two
19 census tracts. I thought you looked at census tracts 66 and
20 214, right?

21 THE WITNESS: Yes.

22 THE COURT: Was that your decision?

23 THE WITNESS: It was the decision in consultation with
24 counsel.

25 Q. You're aware that the NYPD doesn't use census tracts in

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1 terms of its units of management?

2 A. I wouldn't say they don't use it. I would say they use
3 census tracts in lots of other spatial --

4 Q. Are you aware that the NYPD reports crime in units of
5 census tracts?

6 A. I have not seen a report in units of census tracts.

7 MS. COOKE: With the limitation that this is not an
8 analysis of NYPD crime patterns, I don't have an objection to
9 the admission of this as an affidavit setting forth a search of
10 data electronically that he had access to and identified one
11 burglary.

12 THE COURT: Fair enough. I will accept it with that
13 limitation. Obviously, he didn't see the NYPD crime pattern
14 data because he didn't have it. What he did see he analyzed.
15 We got past that. Go ahead.

16 (Plaintiff's Exhibit 413 received in evidence)

17 BY MR. HELLERMAN:

18 Q. You testified earlier, Professor, that your work in this
19 case included analyzing whether and to what extent NYPD stop
20 and frisk data shows that stops are made without reasonable
21 suspicion. Do you recall that?

22 A. Yes, I do.

23 Q. What data did you review in connection with your analysis
24 of that question?

25 A. We reviewed data from the UF-250 databases.

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1 Q. Anything else?

2 A. We also reviewed data -- well, most of the data reviewed,
3 almost all of the data in connection with that came from the
4 UF-250 database. We also included other data about local crime
5 rates and characteristics of -- social and demographic
6 characteristics of the locations where stops took place. I
7 think that's about it.

8 Q. Was this analysis regarding reasonable suspicion based on
9 any assumptions of the accuracy of the data that you reviewed?

10 A. We took the data as it came to us. In other words, given
11 the limitations of the data, we accepted the accuracy that the
12 database represented what the police officers had reported.

13 Q. Was the analysis based on any assumption as to the
14 completeness of that data?

15 A. We had no information to question the completeness.

16 Q. In connection with the analysis, did you assume that it was
17 complete?

18 A. Yes, we did. Again, within the limitations of the data.

19 Q. Professor, are you familiar with the term hit rate as used
20 with respect to stops and frisks?

21 A. Yes, I am.

22 Q. What does hit rate mean?

23 A. Hit rate means a couple of different things. It means
24 whether or not a suspect was issued a summons or an arrest was
25 made pursuant to a specific stop. Hit rate could also mean

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1 whether or not contraband was seized, weapons were seized, or
2 in particular firearms.

3 Q. Did your reasonable suspicion analysis in this case include
4 an analysis of hit rates?

5 A. Yes, it did.

6 Q. Did you reach conclusions as to the hit rates as reflected
7 in UF-250 databases that you reviewed?

8 A. Yes, we did. We did it on two separate occasions, once for
9 each of the two analyses we did in the case.

10 Q. Are those conclusions set forth in your reports?

11 A. Yes, in each report.

12 Q. Which reports?

13 A. In the October 2010 report and again in the November 2012
14 report.

15 Q. So that's Plaintiffs' Exhibits 411 and 417, correct?

16 A. Yes.

17 Q. Could you summarize for us the opinions that you reached
18 with respect to hit rates?

19 A. We found that the hit rate in each of the time periods
20 was -- I don't recall the exact numbers, but approximately
21 anywhere from 5 to 6 percent on arrests and a comparable number
22 on whether a summons was issued.

23 THE COURT: What is the 5 to 6 percent?

24 THE WITNESS: For arrests made pursuant to a stop.

25 And also whether a summons was issued pursuant to a stop.

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1 Q. Each was about 6 percent?

2 A. Between 5 and 6 percent, depending on which time period.

3 Q. Is that a total of 12 percent?

4 A. I think the total was a little bit less than 12.

5 Q. So what does that little bit less than 12 percent
6 represent?

7 A. The total number of people who received any sanction
8 pursuant to a stop, whether they were given a summons or
9 arrested.

10 THE COURT: So 89 or 90 percent of the people stopped
11 were just let go and moved on?

12 THE WITNESS: Correct.

13 THE COURT: With no summons and no arrest?

14 THE WITNESS: Yes, your Honor.

15 A. You want me to continue?

16 Q. Yes, please.

17 A. With respect to the seizure of contraband and weapons, we
18 found in the first report that weapons -- guns were seized,
19 specifically, roughly about one gun for every thousand stops.

20 THE COURT: One tenth of one percent?

21 THE WITNESS: One tenth of one percent.

22 A. Other weapons, mainly, knives or other cutting instruments
23 or blunt objects, in about .15 percent, or fifteen one
24 hundredths of one percent.

25 And contraband was seized in -- they don't list the

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1 contraband. We assumed it was stolen property or something
2 like that.

3 THE COURT: It could be drugs.

4 THE WITNESS: It could be drugs. It could be stolen
5 property.

6 A. In a little bit more than one percent of the cases.

7 Q. Recognizing that it's up to the Court to say what the law
8 is, do you have an understanding, Professor, as to what is
9 required for an officer to make a stop of a pedestrian?

10 A. Yes. Reasonable and articulable suspicion, individualized
11 suspicion that a crime is afoot, to use the language of the
12 controlling case, which is Terry.

13 (Continued on next page)

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Fagan - direct

1 Q. Did you compare the hit rates that you found in this case
2 to stops that were made on the basis -- on any basis other than
3 reasonable suspicion?

4 A. Well, there is at least one case that we looked at where --
5 or a few cases where in the court records of those cases data
6 reported about hit rates pursuant to either random stops or
7 targeted stops. But the one that was most informative and
8 dispositive to us was a random stop analysis.

9 Q. And what case are you referring to?

10 A. This is Edmond v. the City of Indianapolis.

11 Q. Was it City of Indianapolis against Edmond?

12 A. Yes, I'm sorry.

13 Q. Did you reach any opinion as to any comparison of the hit
14 rates in this case and the hit rates in that case?

15 A. In that case people were stopped -- motorists were stopped
16 at random at checkpoints. And in those cases contraband --
17 they made drug arrests in just a little bit less than five
18 percent of the cases, which we -- I would equate to a seizure
19 of contraband. And arrests total were made in about nine
20 percent of the cases. And that's by chance.

21 And the reason why this is informative to us is
22 because these essentially are made -- random basis or stops by
23 chance.

24 So, the hit rates in those cases seemed to be by
25 chance quite a bit higher than the hit rates that we observed

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1 in this case.

2 Q. So in this case you observed arrest rates of about six
3 percent?

4 A. Correct.

5 Q. And in that case which was a random stop case there was
6 arrests at the rate of nine percent?

7 A. That's correct.

8 THE COURT: Do we know in those cases whether there
9 were any weapons seizures?

10 THE WITNESS: That information wasn't reported in the
11 record of the case.

12 Q. And I believe you stated, Professor, that in the City of
13 Indianapolis case, this seizure rate was close to five percent?

14 THE COURT: I'm sorry. Seizure --

15 MR. HELLERMAN: Seizure of anything.

16 THE COURT: Property or person you mean?

17 MR. HELLERMAN: I mean property.

18 THE WITNESS: They made drug arrests in approximately
19 five percent of the cases. And we -- to -- that seemed to be
20 comparable to a drug seizure. And so compare that to the
21 seizure rate for contraband in this -- in the analysis in this
22 case.

23 Q. So in that case there was seizure of drugs in almost five
24 percent of the cases and here there was seizure of drugs,
25 weapons, or guns or other contraband that were between

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1 approximately a tenth of a percent and almost two percent?

2 A. Correct.

3 Q. And did you reach any conclusion on the basis of that
4 comparison?

5 A. Well it appears that the NYPD was not making any -- their
6 hit rates were far less than what you would achieve by chance.

7 Q. Recognizing, Professor, that it's up to the Court to say
8 whether a stop is legal or illegal, did you perform any
9 analysis as to the extent to which the NYPD stops in the
10 database that you examined were apparently justified based on
11 reasonable suspicion, apparently unjustified based on lack of
12 reasonable suspicion, or not generalizable?

13 THE COURT: What does not generalizable mean?

14 MR. HELLERMAN: Or.

15 THE COURT: Can't be categorized as one or the other?
16 Is that what it means?

17 MR. HELLERMAN: Well I'll rephrase the question, your
18 Honor.

19 THE COURT: Okay.

20 Q. Again, recognizing that it's up to the Court, not you, to
21 say whether a stop is legal or illegal, did you perform any
22 analysis as to the extent to which NYPD stops that you examined
23 were apparently justified based on reasonable suspicion,
24 apparently unjustified based on lack of reasonable suspicion,
25 or fell into any other category?

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1 A. Yes, I did.

2 Q. And what was that other category?

3 A. We classified them as not generalizable, meaning not
4 generalizable to one of the two apparently justified or
5 unjustified categories.

6 Q. Thank you.

7 Did you reach any opinions based on that analysis?

8 A. Yes, we did. I did.

9 Q. Is -- what type of analysis was that?

10 A. This was basically sorting and counting.

11 Q. Are you familiar with the term classification?

12 A. Yes.

13 Q. Event classification analysis?

14 A. We adopted decision rules and classified each event --
15 those decision rules based on combinations of factors
16 articulated in the database as translated from the stop forms.

17 THE COURT: You have used the term "we" a lot. Who
18 were you working with?

19 THE WITNESS: With my research associates, my
20 assistants.

21 THE COURT: Are they employees or students or both?

22 THE WITNESS: Some of them are students. Some of them
23 are employees of the university. And some of them actually
24 were employees of mine pursuant to the case.

25 We did not do this on university time.

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1 Q. Are the opinions that you reached as a result of this
2 classification analysis set forth in your reports?

3 A. Yes, they are.

4 Q. Which reports?

5 A. In the October 2010 report.

6 Q. Exhibit 411?

7 A. Yes.

8 And in the December -- I'm sorry in the November 2012
9 report which I believe is exhibit --

10 Q. 417?

11 A. Yes. 417. Thank you.

12 Q. Now, was your classification analysis based on any
13 assumption as to whether the UF 250s -- UF 250 database you
14 worked with was accurate?

15 A. We assumed the accuracy of the database.

16 Q. And was -- did you have any assumption in connection with
17 this analysis as to whether or not the UF 250 database was
18 complete?

19 A. We assumed it was complete.

20 Q. Can you summarize for us what conclusions you reached as a
21 result of the classification analysis.

22 A. There's a lot of numbers here and I'd ask the Court if I
23 can refer to the documents.

24 THE COURT: Sure. They're in evidence.

25 THE WITNESS: So, referring to table 12 in Exhibit
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1 411, which is on page 56.

2 THE COURT: Which report?

3 THE WITNESS: This is Exhibit 411, the October 2010
4 report.

5 THE COURT: Give me a moment, please.

6 Okay.

7 THE WITNESS: We reported that approximately -- we
8 divided the stops into radio runs and non-radio runs. And we
9 report that at that time 5.26 percent of the radio runs were
10 classified as apparently unjustified. And 6.71 percent of the
11 other -- the non-radio runs were classified as apparently
12 unjustified.

13 Q. Did you reach any conclusions as to the extent to which
14 stops -- first of all, what period of time do those figures
15 apply to?

16 A. This is from October -- I'm sorry from January 2004 through
17 December 31, 2009.

18 Q. In connection with the classification analysis, did you
19 reach any conclusions as to the extent to which stops during
20 that period could not be categorized as either apparently
21 justified or apparently unjustified?

22 A. Yes. Among the non-radio runs, approximately fifteen
23 percent were not class -- we could not classify those. We
24 called them nongeneralizable.

25 Q. What's the difference between a radio run and a non-radio

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1 run?

2 A. A radio run, an officer is responding to a call of a crime
3 in progress or a situation requiring immediate response. And
4 we thought these were separate categories and should be treated
5 separately because officers were seeking information specific
6 to a specific report as opposed to non-radio runs where they
7 were generally on patrol and looking for conditions that might
8 be associated with crime.

9 Q. Now did you reach any conclusions as a result of the
10 classification analysis with respect to the period 2010 through
11 June 2012?

12 A. Yes, we did. We --

13 Q. Is that reported anywhere in your reports?

14 A. Yes. In Exhibit 417. Again, in table 12. And later on in
15 table 12C we report the results of that.

16 Q. What does table 12C represent?

17 A. Table 12C represents --

18 MR. HELLERMAN: Excuse me. Your Honor, this is on
19 page 31 of Exhibit 417.

20 THE COURT: Exhibit 417, page 31.

21 THE WITNESS: Table 12C represents the results of an
22 analysis that was -- at the outset it's similar to the one that
23 we did for the October 2010 report for Exhibit 411 but in the
24 analysis here we also reviewed more extensive information that
25 was contained in the UF 250 database. And we applied that

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1 information to our classification and produced the estimates
2 that are reported in table 12 on page 31. And we concluded
3 that --

4 Q. I believe you misspoke. Page 31 contains table 12C?

5 A. Yes.

6 Q. I thought I heard you say table 12?

7 A. Oh. Table 12 is on page 26.

8 Q. So table 12C is where you reported the results of the
9 analysis that you did on the 2010 through June 2012 data, the
10 classification analysis, correct?

11 A. Correct.

12 Q. And what are the apparently unjustified numbers that you
13 found at the end of that analysis?

14 A. For radio runs we found that 4.91 percent of the stops were
15 apparently unjustified. And another 7.58 percent were not
16 generalizable. For non-radio runs we report that 6.23 percent
17 were apparently unjustified and 5.67 percent were not
18 generalizable.

19 THE COURT: So putting it the other way as I did
20 earlier, that means on both radio runs and non-radio runs
21 approximately 88 percent of the stops appeared to you to be
22 justified.

23 THE WITNESS: Yes.

24 Q. Generally, Professor, what was your basis for determining
25 whether a stop was apparently justified, apparently

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1 unjustified, or couldn't be categorized as either?

2 A. We had a fairly complicated set of decision rules that were
3 based on our reading of case law.

4 We identified categories of stops that were prima
5 facie justified. Other categories of -- or other stop factors
6 that we -- that were -- would be conditionally justified if
7 they were accompanied by another justifying factor. And we
8 identified a set of circumstances where a stop would be
9 unjustified.

10 Q. Did you consider --

11 A. Apparently unjustified.

12 Q. Did you consider anything other than your reading of case
13 law in making these determinations?

14 A. We considered what -- we consulted with counsel. We
15 consulted -- I consulted with colleagues, various professional
16 colleagues.

17 Q. Do you recall that the court made certain rulings with
18 respect to this?

19 A. We were very much influenced by the Court's determinations
20 of various combinations that would fall -- that would inform
21 our classification scheme.

22 Q. And did you comply with those rulings?

23 A. Absolutely.

24 Q. Does Exhibit 417 set forth the, in one place, the -- your
25 criteria for assigning cases to one category or another?

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1 A. Yes, it does. That appears on pages 24 and 25 for -- well
2 24 and 25, yes. This is of the second report. This is Exhibit
3 417.

4 Q. To the extent that any similar set of rules for separating
5 the cases into the three categories appeared in your prior
6 report differed -- did that differ from page 25 of the second
7 supplemental report in any way?

8 A. Yes. There was one circumstance that we changed -- one set
9 of decision rules that were changed from the first exhibit.

10 Q. Why did you change that?

11 A. We changed that based on conversations in this courtroom
12 and recommendations from the bench and also based on
13 interactions with -- just reading from the records in the
14 cases.

15 Q. Was it based on, in any part, on the Judge's -- any of the
16 Judge's rulings in this case?

17 A. Absolutely.

18 Q. I believe you testified that among the analyses you did in
19 this case was analysis to determine whether UF 250s generally
20 were an accurate and an effective means to monitor and ensured
21 officers' compliance with the constitution.

22 Do you recall that?

23 A. Yes.

24 Q. And did you reach any conclusions as to -- with respect to
25 that analysis?

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1 A. Again, within the limits of the data we did, yes.

2 Q. Can you summarize those opinions.

3 A. Again, assuming the accuracy of the data, we concluded that
4 the UF 250 forms were not a very adequate way for determining
5 whether or not a stop is apparently justified.

6 We did assume that the data were far more reliable for
7 determining whether a stop was apparently unjustified.

8 MS. COOKE: Your Honor, I'm going to object and I'm
9 going to ask counsel to direct me to where in which report that
10 opinion that the professor just stated is located.

11 THE COURT: Is that in the report that you just said?

12 MR. HELLERMAN: I was going to ask the same question.

13 THE COURT: Do you know if that opinion appears in the
14 report?

15 THE WITNESS: I can't recall, your Honor. I'd have to
16 go back.

17 MS. COOKE: I believe it's an opinion outside of the
18 report and I move to strike it.

19 THE COURT: Yes. My practice is to rule that opinions
20 that are not in reports are not admissible in court for the
21 first time. So I would strike that last opinion. It had to do
22 with the forms being more useful.

23 MS. COOKE: For the unjustified than the justified.

24 Correct, your Honor. That's news to me.

25 THE COURT: It's easier to tell whether it's

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1 unjustified than whether it's justified based on reviewing
2 solely the 250s. But I'm going to strike that if it's not in
3 the report.

4 If you find it later somewhere I can always revisit
5 the ruling.

6 MR. HELLERMAN: We'll look for it at the break, your
7 Honor.

8 THE COURT: It may be there buried somewhere. Who
9 knows. But right now I won't take that. Okay.

10 Q. I'll ask the question in a different way. Did you reach
11 any opinions as to whether UF 250s are an effective means to
12 monitor and ensure officers' compliance with the constitution?

13 MS. COOKE: Objection, your Honor. Again, I don't
14 believe that that opinion is located in the report and I'd ask
15 for --

16 MR. HELLERMAN: It is and we'll find it at a break.

17 THE COURT: The plaintiffs believe that's there.
18 Conditionally I'll admit that. And hopefully they'll put on
19 the record where that opinion is found.

20 MS. COOKE: Thank you.

21 THE WITNESS: Yes, we did.

22 THE COURT: And that opinion was -- sorry. Yes, we
23 did reach that opinion?

24 THE WITNESS: Yes, we did reach that opinion.

25 Q. And is that opinion reflected in your reports?

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1 A. I believe it is, yes.

2 Q. But can you look through the reports and tell us where.

3 A. This might take a second.

4 THE COURT: Why don't we do that at the recess. Move
5 on for now. Could we do that.

6 MR. HELLERMAN: Sure.

7 THE COURT: Okay. Right now move on.

8 Q. And did you reach any opinions as to whether UF 250s were
9 generally accurate?

10 THE COURT: Did you say were generally accurate?

11 MR. HELLERMAN: Yes.

12 THE WITNESS: With respect to which pieces of
13 information?

14 Q. With respect to the reasons for the stop.

15 A. Yes. Again within the limits of the data.

16 THE COURT: I'm sorry. I didn't hear you.

17 THE WITNESS: Within the limits of the data.

18 Q. And is that reflected in your reports?

19 A. Yes.

20 Q. Professor, did you address in your analysis the extent to
21 which UF 250s reflected or contained information as to the
22 crime, or suspected crime with respect to which the stop was
23 made?

24 A. Yes, I did.

25 Q. And did you reach an opinion on that?

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1 A. We -- did I reach an opinion on that? Yes.

2 Q. Did you express any conclusions on that subject?

3 A. Yes, we did.

4 Q. And what was the conclusion?

5 A. We had -- I'm sorry. I'm not quite understanding the
6 question, counselor. Did we reach an opinion on what?

7 MR. HELLERMAN: I'll withdraw the question. We'll
8 come back and do this after the break when we identify the
9 sections of the report that address that.

10 THE WITNESS: Okay.

11 Q. Did you reach any opinions from your analysis of whether
12 the NYPD's stop and frisk activities had a disparate impact on
13 any racial group or ethnic group?

14 A. Yes, I did.

15 Q. Are they set forth in your reports?

16 A. Yes, they are.

17 Q. Can you summarize them?

18 A. Yes. We concluded on the question of disparate impact that
19 after controlling for crime rates and local crime conditions in
20 both police precincts, neighborhoods which are smaller units,
21 and census tracts, that the rate of stops for each -- both for
22 total crimes and for most crime-specific stop categories was
23 far greater than one would predict knowing the crime rate in
24 that neighborhood and that the predictor -- that above and
25 beyond the crime rate, racial composition of the neighborhood

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1 predicted the stop rate, again, after controlling for other
2 social and demographic characteristics of the neighborhood as
3 well as for patrol strength and police activities in the
4 neighborhood.

5 Q. Did you reach any conclusion with respect to which the
6 members of any racial or ethnic group were stopped more
7 frequently or were more likely to be stopped than others?

8 A. We conducted an analysis again using the same logic but
9 this time instead of looking at race as a function of racial
10 composition we examined the counts of stops of persons within
11 each of the -- well within the census tracts and also within
12 police precincts and we concluded the same, that black and
13 Hispanic persons were more likely to be stopped and more
14 frequently stopped within census tracts and police precincts
15 after controlling for the racial composition of the precinct,
16 the crime rate of the precinct, police patrol strength in the
17 precinct or in the census tract, and just about all other
18 factors related to crime and race.

19 Q. Did you perform any analysis of the comparative harshness
20 with which members of different racial or ethnic groups were
21 treated during stops?

22 A. Yes, I did.

23 MS. COOKE: Objection, your Honor. I just object to
24 the form of the question and the --

25 THE COURT: What does he mean by degree of harshness?

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1 MS. COOKE: Yes.

2 THE COURT: How did you define harshness?

3 THE WITNESS: Well we used different criteria.

4 Do you want me to expand, counselor?

5 THE COURT: Sorry. I wanted you to explain what you
6 meant by harshness.

7 THE WITNESS: We used two different criteria. One was
8 the use of force within a given stop. And another was the --
9 if a legal sanction was to be given to the suspect pursuant to
10 the stop, whether that sanction involved an arrest versus an
11 issuance of a summons.

12 THE COURT: Okay.

13 THE WITNESS: And in each case we did the analysis
14 looking at the patterns across the stops. And we did it both
15 for police precincts and also for census tracts.

16 And we concluded with respect to the question of the
17 outcome, the legal outcome of the case, that if a suspect was
18 to be given any sanction whatsoever or any sanction at all,
19 that black and Hispanic suspects were far more likely to be
20 arrested compared to white suspects who were more likely to
21 receive a summons. And that was after controlling for the
22 severity of the -- the type of crime that was suspected in the
23 case as well as the -- as well as the crime conditions and
24 demographic and social conditions and policing conditions in
25 locations -- the location where the stop took place.

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1 We found the same was true with respect to the use of
2 force. Use of force was greater when black and Hispanic
3 suspects were stopped compared when white suspects were
4 stopped, again, controlling for the suspected crime and
5 conditions in the place where the stop took place.
6 Q. And are the specific rates at which Blacks were arrested as
7 opposed to Whites being arrested set forth in your report?
8 A. Yes. Blacks were -- compared to Whites, Blacks were about
9 30 percent more likely to be given -- to be arrested rather
10 than being given a summons, again, after controlling for all of
11 those factors associated with the stop and with the location
12 where the stop took place.

13 With respect to Hispanics, they were about six percent
14 more likely to be given a sanction -- to be arrested rather
15 than be given a summons.

16 Q. And is -- do your reports state the relative rates at which
17 force was used with respect to Blacks and Hispanics as opposed
18 to Whites?

19 A. Again, using the same analytic procedure where we control
20 for the suspected crime as well as the conditions in the
21 neighborhoods of the locations where the stop took place, we
22 found that black suspects were about 15 percent more likely to
23 have experienced use of force by the police officers in the
24 conduct of the stop compared to Whites.

25 THE COURT: Did you say 15?

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1 THE WITNESS: Roughly -- about 14 percent more likely.
2 And Hispanic suspects were about nine percent more
3 likely to have experienced use of force -- some use of force by
4 a police officer.

5 THE COURT: How do you define use of force? Would
6 that be handcuffing?

7 THE WITNESS: The information about use of force is
8 contained on the UF 250 database.

9 THE COURT: Just a check-off box?

10 THE WITNESS: It's a series of check-off boxes about
11 the particular type of force that was used.

12 THE COURT: Do you remember what any of them were?

13 THE WITNESS: Handcuffing, whether or not a weapon was
14 used, drawn by the police officer, hands on, where the officer
15 put the hands on the suspect.

16 THE COURT: So that includes a pat-down type frisk?
17 Outside of clothing?

18 THE WITNESS: Well that's a separate marker on the
19 form. We didn't consider a frisk to be use of force.

20 THE COURT: Okay. How about going inside clothing,
21 inside pockets?

22 THE WITNESS: That was part of the search category.
23 We didn't include that.

24 THE COURT: Did not.

25 THE WITNESS: No.

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1 THE COURT: Okay. Did you compare frisk and search
2 rates between Whites and non-Whites.

3 THE WITNESS: Somewhere in this report we did.

4 Q. Do you recall offhand where these figures are? If not
5 we'll come back.

6 A. Okay.

7 THE COURT: I'd be interested in that as the day
8 proceeds. If you find it.

9 Q. You testified earlier, Professor, that you analyzed and
10 formed opinions about a report published by the RAND
11 corporation in 2007 regarding NYPD stop-and-frisk activities.
12 Do you recall that?

13 A. Yes.

14 Q. And are those opinions set forth in your reports?

15 A. Yes, they are.

16 Q. Very briefly -- and we'll come back to it later -- could
17 you summarize your opinions on that -- your opinions on that
18 subject.

19 A. My overall opinion is that there were conclusions that RAND
20 reached that -- that most -- I think an experienced police
21 policy analyst could have looked at the opinions and the
22 underlying analyses in the RAND report and could not have
23 concluded what they concluded particularly with respect to the
24 questions of disparate treatment -- disparate impact.

25 Q. We'll come back to that and get into it in more detail.

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1 You also testified earlier that you reached an opinion
2 as to the number of burglaries in the vicinity of David Floyd's
3 home around the time that he was stopped.

4 Do you recall having testified to that?

5 A. Yes, I did.

6 Q. And just generally at this point could you summarize what
7 your opinion on that subject was.

8 A. Yes. I'm actually recalling what the opinion was.

9 THE WITNESS: Your Honor, may I consult the table in
10 the report?

11 THE COURT: Sure.

12 THE WITNESS: We concluded that in tract 66 there
13 was -- within the two months preceding the date of the stop of
14 Mr. Floyd that there was one burglary. And in census tract 214
15 there were zero burglaries.

16 Q. Thank you. We'll come back to that later and I'll ask you
17 more questions about that in detail.

18 You testified earlier, Professor, that you concluded
19 that -- I think you said approximately 88 percent of stops
20 resulted in no arrest or summons.

21 Do you recall that?

22 A. Correct.

23 Q. What did you do to enable you to reach that opinion?

24 A. We counted and sorted. We had a -- there are data elements
25 that talk about arrests versus other outcomes. And we counted

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1 and sorted the data.

2 Q. From what?

3 A. From the UF 250 data.

4 Q. Are the results of your analysis of arrests and summons
5 rates reported in your reports or declarations?

6 A. Yes. They are table 14 in the first report.

7 THE COURT: What page is that?

8 THE WITNESS: It's on page 64.

9 THE COURT: Page what?

10 THE WITNESS: Sixty-four.

11 THE COURT: Thank you.

12 THE WITNESS: And table 14 in Exhibit 417, which
13 appears on page 34.

14 THE COURT: Thirty-four you said?

15 THE WITNESS: Of Exhibit 417.

16 THE COURT: What's the difference between force any
17 and force two?

18 THE WITNESS: Force two removes a category of hands,
19 just cases where they just used hands -- scale where they just
20 used hands.

21 MS. COOKE: Can the witness speak up.

22 THE WITNESS: Sorry.

23 Force two is an index including all of the elements of
24 use of force except for use of hands.

25 Q. You testified earlier with respect to approximate rates at

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1 which NYPD stops resulted in arrests and summons during that
2 period.

3 Do you recall that?

4 A. Yes.

5 Q. And do the two table 14s reflect the specific rates that
6 you found for arrests and summonses?

7 A. Yes. Those were the specific rates before controlling for
8 any other factors statistically.

9 Q. What were those arrests and summons rates for the period
10 2004 to '09?

11 A. Approximately 5.37 were the arrest rates and 6.26 percent
12 were the summons rates.

13 Q. And have you done the math to add up those two percentages?

14 A. Yes, we have.

15 Q. And what is the sum of those two percentages?

16 A. 11.63.

17 Q. Did you find any stops in which a subject was both
18 summoned -- both received a summons and was arrested?

19 A. Yes, we did.

20 Q. And are the figures you just recited subject to that
21 caveat?

22 A. Yes. These figures, the 11.63 percent does not take into
23 account those who were issued both a summons and who also were
24 arrested.

25 THE COURT: Okay. Let's pause now and take our
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1 morning recess. Reconvene approximately quarter of.

2 (Recess)

3 MR. HELLERMAN: May I proceed, your Honor?

4 Q. Professor, just before the break you mentioned that there
5 was some UF 250s that reflected that there was both -- that a
6 person stopped was both arrested and given a summons.

7 Do you recall that?

8 A. Yes.

9 Q. And approximately how many stops was that?

10 A. To the best of my recollection about 7200 stops, somewhere
11 in that neighborhood.

12 Q. Thank you.

13 Would you take a look, please, at table 14 on page 34
14 of your second supplemental report, Exhibit 417.

15 A. Table 14?

16 Q. Fourteen.

17 A. Yes.

18 Q. And does table 14 reflect the actual figures that you
19 estimated earlier with respect to arrests and summons rates for
20 the period 2010 through June 2012?

21 A. Yes, it does.

22 Q. And what does it show with respect to arrests and summons
23 rates for that period?

24 A. In the 2010 to 2012 time period, which is 30 months,
25 6.26 percent of the stops resulted in arrest and a summons was

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1 issued in 6.25 percent of the stops.

2 Q. And have you done the math to add up those two percentages?

3 A. I did. With a calculator. 12.51. A hand-held calculator.

4 Q. Professor, do your reports reflect any analysis of the rate
5 at which Blacks or Hispanics were frisked as opposed to Whites?

6 A. No.

7 Q. You testified earlier that you concluded that very few
8 stops resulted in seizures of guns or weapons or contraband.

9 Do you recall that?

10 A. Yes.

11 Q. And what did you do to reach that -- reach an opinion on
12 that subject?

13 A. We analyzed the data, just simply counted up the number of
14 cases that resulted in a gun seizure. We isolated the elements
15 of the UF 250 that reflected seizure of any type of firearm.
16 We then looked at seizure of any other kind of weapon. And
17 also seizures of contraband. We tallied the number of cases.

18 Q. And are the results of your analysis of seizure rates
19 reported in your reports?

20 A. Yes. Table 15. Of each report.

21 Q. Table 15 of your first report, Exhibit 411, is at page 64?

22 A. Yes.

23 Q. And what were the total seizure rates for guns, other
24 weapons and contraband in the 2004 to '09 period?

25 A. Seizure rates were 15 one-hundredths of one percent for

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1 guns; less than one percent, .94 percent for other weapons, and
2 1.75 percent of all stops for contraband.

3 Q. And are the seizure rates for the period 2010 through
4 June 2012 reflected in your second supplemental report, Exhibit
5 417?

6 A. Yes. On page 35.

7 Q. And what were the results reflected there?

8 A. Gun seizures took place in 12 one-hundredths of one percent
9 for -- that's for guns. Other weapons in 1.18 percent. And
10 contraband was seized in 1.80 percent of the 1.624 million
11 stops.

12 Q. The question was asked earlier whether your opinion that
13 UF 250s are an ineffective way to monitor compliance with the
14 constitution. The question was raised as to whether that was
15 in any of your reports. And may I direct your attention to
16 page 55 of your first report, Exhibit 411.

17 THE COURT: You said 55, right?

18 MR. HELLERMAN: Fifty-five, yes.

19 THE WITNESS: Yes.

20 Q. And could you read the second sentence of --

21 THE COURT: Of what?

22 MR. HELLERMAN: I withdraw the question, your Honor.

23 THE COURT: Okay.

24 Q. Professor, could you read the second full paragraph. Of
25 page 55.

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- 1 A. "These results challenge the viability of the current
2 regulatory regime for assessing the presence of reasonable and
3 articulable suspicion in a pedestrian stop. The fact that the
4 legal sufficiency..." this is language before the Court had
5 ruled on the language "...of approximately 21 percent of all
6 stops cannot be shown suggests that the current regime for
7 regulating the constitutional sufficiency of the huge volume of
8 stops is ineffective and insensitive to the actual conduct of
9 stops."
10 Q. And can I direct your attention, Professor, to Exhibit 415.
11 A. Yes.
12 Q. Is this a declaration you -- that you signed dated
13 February 2, 2012?
14 A. Yes, it is.
15 Q. And may I direct your attention to paragraph 4(g).
16 A. Yes.
17 Q. Does that address the subject as well?
18 A. Yes, it does.
19 Q. Could you read it please?
20 A. "The NYPD's reliance on information provided by officers on
21 UF 250 forms to assess whether stops are based on reasonable
22 articulable suspicion is an ineffective way to regulate the
23 constitutionality of officers' stop and frisk practices."
24 Q. Thank you.

25 MS. GROSSMAN: Your Honor, I just want to object to
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1 this opinion coming into evidence because that is the ultimate
2 conclusion that your Honor is supposed to be determining. This
3 is not something that this witness is supposed to be opining
4 on.

5 THE COURT: I don't agree with that. That's what the
6 experts do. They give opinions. I'm careful to separate what
7 are pure legal issues. But he's the one who studies 4 point
8 whatever -- 4 point something million UF 250s. And so it's a
9 statistical matter. He's giving this opinion. I, of course,
10 will decide the issue at end of the day. I appreciate that
11 point, but I'll allow his testimony.

12 MR. HELLERMAN: Thank you.

13 Q. Turning to your classification analysis, Professor. What
14 did you do to reach your opinions that approximately 6 percent
15 of all stops are apparently justified based on lack of
16 reasonable suspicion and another 12 percent lack sufficient
17 information that enabled you to generalize about that?

18 A. We identified -- after reading of cases and interpreting
19 our own interpretation of case law, determined which of the
20 factors, as I said before, would on their own justify a stop,
21 other factors which would conditionally justify a stop if
22 articulated in the presence of another factor, another
23 conditionally justified factor, and which -- instances in which
24 there would be no apparently legal justification, which
25 combination of factors would constitute apparently no legal

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1 justification.

2 We did that analysis. And then constructed
3 categories, essentially sorting and counting of the 4.4 million
4 stops in the two separate analyses into those three categories
5 that we discussed before, apparently justified, not
6 generalizable, and apparently unjustified.

7 Q. And was that process all informed by rulings of the court?

8 A. Absolutely. Yes. We took into account rulings of the
9 Court following the February 2012 hearing.

10 And which -- I'm sorry February 11 -- I'm sorry March
11 of 2011, right? Go ahead.

12 Q. March of 2012.

13 A. March of 2012.

14 And we developed categories, specific combinations of
15 factors which would then fall into each one of those three
16 categories.

17 Q. Let me put up a demonstrative if I may.

18 MR. HELLERMAN: I'll represent that the source of this
19 is Defendants' Exhibit B8 and appendix B to Professor Fagan's
20 first report, Exhibit 411.

21 Q. Do you recognize what I put up on the screen, Professor?

22 A. Yes, I do.

23 Q. What is it?

24 A. It's a UF 250 -- it's side one of the UF 250 form.

25 Q. Focusing on -- how many pages does the UF 250 form have?

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1 A. There are two pages. One on one side, one on side two.

2 Q. Is the page that's currently up on the screen which
3 contains the words "What were the circumstances which led to
4 the stop," is that on page one or page two?

5 A. Page one.

6 Side one. Sorry.

7 Q. The page that's currently up on the screen which contains
8 the language "additional circumstances/factors" is that on side
9 one or side two?

10 A. Side two.

11 Q. In your classification analysis, what did you do with
12 respect to -- withdrawn.

13 Under the language, "What were circumstances which led
14 to the stop," and then under it, it says "must check at least
15 one box."

16 What appears under that language?

17 A. A series of categories of -- that describe -- that
18 characterize the reasons why an officer might form reasonable
19 suspicion in making a stop of a suspect.

20 Q. Do you have an understanding as to how the officer conveys
21 that information?

22 A. My understanding is that officers complete the information
23 after the stop has been concluded.

24 Q. I'm sorry. That's not what I asked you. How do they
25 convey that information?

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1 A. By checking off boxes.

2 Q. And what is the -- what follows the words "additional
3 circumstances/factors, check all that apply," on side two?

4 A. These are a set of, as the language suggests, additional
5 circumstances that might inform the officers rendering a
6 reasonable suspicion for a particular stop.

7 Q. How is that information conveyed?

8 A. It's whenever -- for whatever categories apply in a
9 particular case, the officer checks off the box. One or more
10 boxes.

11 Q. In your classification analysis --

12 A. Or none. I'm sorry. Either none -- either none, one, or
13 one or more than one box.

14 Q. In your classification analysis, did you use these boxes --
15 the information in these boxes on slide one and slide two?

16 A. In the analysis reported in the February -- I'm sorry in
17 the October 2010 report we used the information from side one.

18 And in the report in the October -- November 2012
19 report we used both side one and side two.

20 Q. Did you use side two in the '04-'09?

21 A. Actually don't recall. Have to go back and look.

22 I'm sorry. We did use it. Yes.

23 Q. Now what did you do with the -- withdrawn.

24 So you reviewed which boxes were checked on side one
25 and which boxes were checked on side two?

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1 A. Correct.

2 Q. You used the term conditionally justified --

3 A. Yes.

4 Q. -- a few moments ago. What does that mean?

5 A. That means a Court -- based on my reading of the case law
6 and the Court's opinion as well, we determined which stops
7 would be sufficient if -- insufficient on their own but would
8 be sufficient if checked off in conjunction with another stop
9 factor or possibly in conjunction with other additional
10 circumstances.

11 Q. And recognizing that it's up to the Judge to say which
12 side-one stop circumstances are conditionally justified --
13 withdrawn.

14 Which of the stop circumstances on side one did you
15 characterize as conditionally justified?

16 A. Well I could tell you the ones that we characterized as
17 being justified, which were actions indicative of engaging in a
18 drug transaction, actions indicative of engaging in violent
19 crimes, and actions indicative of casing a victim or a
20 location.

21 The others we concluded were only conditionally
22 justified. And those included carrying a suspicious object,
23 fitting a suspect description, acting as a lookout, wearing
24 clothing indicative of a violent crime, furtive movements, or
25 suspicious bulge in one's clothing as well as later on in the

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1 second analysis we included the other stop circumstances.

2 Q. How did you determine for 4.4 million UF 250s which boxes
3 were checked on side one or side two or some combination of
4 either?

5 A. The data were reported to us in the UF 250 databases that
6 were produced by the city for each stop, each one of these
7 categories was a specific variable in the database or an entry
8 in the database. And there was a yes or no for each one of
9 them.

10 Q. Do any of your reports identify which stop circumstances or
11 combinations of stop circumstances and/or additional
12 circumstances were categorized as apparently justified,
13 apparently unjustified, and nongeneralizable?

14 A. Yes. The criteria appear on page 50 of the October 2010
15 report and on page 25 in Exhibit 417 which is the November 2012
16 report.

17 Q. Are the actual tabulations of number of stops that you
18 classified in one of -- in each of those three categories
19 recorded for the period 2004 to 2009 anywhere in your reports
20 or declarations?

21 A. Yes. In table 12 of the October -- I'm sorry. Table 12 of
22 the October 2010 report, Exhibit 411. And table 12 -- 12C in
23 October -- in the November 2009, Exhibit 417.

24 Q. Were they also recorded for that period in your February 2,
25 2012 declaration, Exhibit 415?

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1 A. Yes, I believe they were.

2 Q. Direct --

3 THE COURT: I'm sorry. I'm missing table 12 in
4 Exhibit 411. Is there a table 12 in 411?

5 THE WITNESS: Yes, there is.

6 THE COURT: Where is that -- oh, I got it. Okay.
7 Thank you.

8 THE WITNESS: And in Exhibit 415. I believe it's
9 in -- I'm sorry.

10 MR. HELLERMAN: Can I direct your attention to
11 paragraphs 4(e) and (f) of Exhibit 415.

12 THE WITNESS: Yes. Thank you.

13 Q. Do the figures in paragraphs (e) and (f) -- 4(e) and (f) of
14 Exhibit 415 reflect findings that you made as a result of your
15 classification analysis of the 2004 through 2009 period?

16 A. Yes, they do.

17 Q. And what did you find?

18 A. Between 2004 and 2009, that six-year period, we reported
19 that approximately 170,000 stops, 6.41 percent of stops
20 overall, were apparently unjustified. And approximately
21 400,000 stops did not provide any sufficient justification to
22 determine the stop legality; in other words, they were not
23 generalizable.

24 Q. And what percentage of the stops were not generalizable?

25 A. Approximately 15 percent.

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1 Q. And what percentage of the stops were categorized as
2 apparently unjustified?

3 A. 6.41 percent overall.

4 Q. I believe you testified that table 12C of your second
5 supplemental report, Exhibit 417 reflects the results of your
6 classification for 2010 through June 2012; is that correct?

7 A. That's correct.

8 Q. And can you state the percentage of unjustified stops that
9 are reflected in that table?

10 A. In that table here we split the stops into radio runs. I
11 didn't -- don't have the composite figure at hand.

12 But we reported 4.91 percent of the radio runs were
13 apparently unjustified and 6.23 percent of the non-radio runs
14 were apparently unjustified.

15 Q. Did you do the math to calculate -- withdrawn.

16 According to table 12C what percentages of stops in
17 the 2010 through June 2012 period were categorized as not
18 generalizable?

19 A. 7.58 percent for radio runs and 5.67 percent for non-radio
20 runs.

21 Q. Now, with respect to the apparently unjustified, have you
22 done the math to convert these percentages into numbers?

23 A. Yes, we did. We took out a calculator and did a lot of
24 multiplication.

25 Q. Do you recall what the number of apparently unjustified

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1 stops were when you did that math?

2 A. Not off the top of my head.

3 Q. I'm going to put up a demonstrative and ask if it refreshes
4 your recollection.

5 A. Thank you.

6 (Continued on next page)

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1 Q. Can you see that?

2 A. For the most part. If you could slide it a little bit to
3 the right, that might help a little bit.

4 There we go. That's fine.

5 Q. Does this refresh your recollection as to how many stops in
6 the 2010 through June 2012 period were apparently unjustified?

7 A. Yes, we did this by, again, taking the total number of
8 stops and multiplying it by the percentages.

9 So for radio runs, approximately 20,000 stops, or
10 20,061 stops were apparently unjustified, among radio runs.
11 And among non-radio runs, approximately 75,747 stops were
12 apparently unjustified.

13 Q. For a total of how many unjustified stops, apparently
14 unjustified stops in this period?

15 A. 95,808.

16 Q. Now, when you did this arithmetic, are these numbers
17 subject to any kind of rounding error?

18 A. These numbers? Perhaps slightly, yes. These percentages
19 work out to more than two decimal points. So when you actually
20 do the math, you might lose stops on either side.

21 Q. What is the magnitude of the number of stops you might lose
22 for a rounding error?

23 A. Negligible.

24 Q. Can you state the number of non-generalizable stops in the
25 2010 through June 2012 period?

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- 1 A. There were 30,970 non-generalizable stops among radio runs,
2 and 68,938 non-generalizable stops among non-radio runs, for a
3 total of 99,908 stops that were not generalizable.
4 Q. Did you do the math to add up the figures for -- withdrawn.
5 What was the total percentage of apparently
6 unjustified stops for the 2010 to June 2012 period?
7 A. The total number of apparently justified or unjustified?
8 Q. Unjustified. Percentage.
9 A. The percentage, 5.89 percent composite.
10 Q. The percentage for non-generalizable?
11 A. 6.15 percent composite.
12 Q. Did you do the math to add up the total number of stops in
13 the three categories for the entire period 2004 through June
14 2012?
15 A. Yes.
16 Q. Do you remember what the results were?
17 A. Not in my head. I'm sorry. There is a lot in my head
18 right now and much of it is contagious I'm afraid.
19 MR. HELLERMAN: If I may put up a demonstrative.
20 Q. Before I put up the last one, can you tell me the
21 demonstrative that we were just discussing for the January 2010
22 through June 2012 period, what is this chart?
23 A. What is the chart?
24 Q. Yes.
25 A. It's a chart presenting the results of our classification

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1 analysis.

2 Q. Was this chart prepared under your supervision?

3 A. Yes.

4 Q. I have just put up a demonstrative that says stops
5 apparently justified based on reasonable suspicion, apparently
6 unjustified based on lack of reasonable suspicion and not
7 generalizable, January 2004 through June 2012. What is this
8 chart?

9 A. This chart combines the results of the two separate
10 analyses for the two distinct time periods.

11 Q. Was this prepared under your supervision?

12 A. Yes, it was.

13 Q. Does this chart refresh your recollection as to the number
14 of apparently unjustified stops for the entire period January
15 2004 through June 2012?

16 A. Yes, it does.

17 Q. What is that number?

18 A. The total number is 268,481 apparently unjustified stops,
19 roughly 6.06 percent of the 4.43 million stops that took place
20 during that time.

21 Q. Do you recall the number of non-generalizable stops for the
22 entire eight and a half year period?

23 A. Yes. We computed, adding the two periods together, 518,772
24 stops were apparently unjustified, or 11.71 percent of the 4.43
25 million stops that police officers made during that time.

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1 Q. The numbers as opposed to the percentages, are they subject
2 to any rounding error?

3 A. Yes. Again, the percentage -- the actual percentages run
4 out to many decimal places, so stops will get lost here, but
5 it's negligible as I mentioned before.

6 Q. Now, did you include in your classification analysis for
7 the later period, 2010 through June 2012, any type of
8 information that you didn't use for the 2004 to '09 period?

9 A. Yes. We included in the analysis that was reported in the
10 later time period, in Exhibit 417, an analysis of entries made
11 in the text strings associated with the other stop
12 circumstance.

13 Q. Were there particular categories of stops related to the
14 other stop circumstance that you analyzed with respect to this?

15 A. Yes. We identified a subset of cases where the
16 classification essentially would turn on what the contents of
17 that text string were.

18 Q. Could you explain what part of the UF-250, which I have
19 just put up on the screen, would contain that information?

20 A. On side one, in the box that says "what were circumstances
21 which led to the stop," at the very bottom it says "other
22 reasonable suspicion of criminal activity, specify." And when
23 that box is checked off, officers write down in narrative form
24 what their reasons were that didn't fall into one of the other
25 categories.

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1 Q. Now, you testified that there were certain categories of
2 stops where other was checked off as a side one circumstance
3 and there was handwritten information?

4 A. Yes.

5 Q. What were those categories of stops that you analyzed?

6 A. We identified a set of stops where we would
7 require -- where interpretation of the stop as a reasonable
8 suspicion determination would require some analysis of what
9 those other instances were.

10 Q. Were the categories of stops that you included in this
11 analysis identified in your second supplemental report?

12 A. Yes. On page 27. We state three categories. One, stops
13 where the only stop circumstance from side one was other. The
14 second category is when the other stop circumstance was checked
15 off on side one and one additional circumstance is checked off
16 on side two. And the third category that we included there was
17 whether there was only one conditionally justified stop
18 circumstance from side one and the other stop circumstance on
19 side one was checked off there as well.

20 Q. How did you determine how many stops combined those three
21 categories?

22 A. We simply used those criteria to sort through the data and
23 identify the universal stops.

24 Q. What was the size of the universal stops?

25 A. Approximately, 84,000.

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1 Q. Now, those three categories of stops, did you initially
2 characterize them as falling into one of the three
3 classifications before engaging in this exercise?

4 A. Not generalizable.

5 Q. Is the methodology for the analysis of the handwritten
6 narratives set forth on these 84,000 stops described in the
7 second supplemental report?

8 A. Yes, it is.

9 Q. On what pages, please?

10 A. It's described on page 27, and a little bit on page 28, and
11 there is some detail about the procedure in one of the
12 appendices to the report, which was Appendix C.

13 Q. I am not going to ask you to read all of that into the
14 record. Could you briefly summarize the methodology that you
15 followed to analyze these 84,000 stops?

16 A. Yes. Under my supervision, research associates and
17 paralegals read -- first we identified a sample of the 84,000
18 stops. We estimated a sample based on what could reasonably be
19 done and what could reliably be done within the time period
20 available to us. We identified a sample -- our target for the
21 sample was roughly between 3,000 and 4,000 stops.

22 We then constructed a sample, based on frequencies of
23 suspected crime among the 84,000 stops, and we chose samples
24 within each of the major crime categories that we used to sort
25 and classify the suspected crime in our stops.

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1 Q. How many suspected crime categories did you come up with?

2 A. The ones that we report on our tables. One, two, three,
3 four, five, six, seven.

4 Q. Are you referring to Appendix C?

5 A. Yes. So we identified -- we sampled within each of
6 those -- we sorted the 84,000 stops.

7 Q. Let me stop you, Professor. Approximately how many crime
8 categories are listed in Appendix C?

9 A. The analytic -- in Appendix C, the analytic categories we
10 used, there are seven.

11 Q. Was that seven extracted from a greater number of crime
12 categories?

13 A. Well, we used -- I think we described this in the first
14 report. We reduced the suspected crime categories from
15 approximately 131 to 20 smaller categories, and then in turn to
16 a set of seven, what we call meta categories. So the analysis
17 was done for the seven meta categories.

18 Q. Would you take a look at Appendix C2?

19 A. In the first report?

20 Q. In the second supplemental report.

21 A. OK.

22 Q. What is table C2?

23 A. Table C2 represents the results of our analysis and
24 classification of the text strings for the subset of text
25 strings associated with stops where the suspected crime was

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1 violence.

2 Q. Does table C2 list crime categories?

3 A. No. Table C2 lists the analytic -- the results of the
4 analysis of the text strings for that particular subset of
5 stops.6 Q. Is there anywhere in Appendix C a list of all the crime
7 categories?8 A. If you look in Appendix C at the major headings, A -- it's
9 actually misnumbered. There is no separate listing, but we
10 used violence, property crimes, which were extensive -- I am
11 leafing through here -- weapons offenses, drug offenses,
12 trespass stops, quality of life stops, and a residual set of
13 other stop categories.

14 Q. Would you take a look at table C3?

15 A. OK.

16 Q. The right most column is headed "inclusive
17 terms/subcategories"?

18 A. Yes.

19 Q. What information is captured in that column?

20 A. These are examples of text strings that we analyzed, that
21 we identified within that subset of stops.

22 THE COURT: I haven't found C3 yet.

23 THE WITNESS: It's on page 5 of Exhibit 417.

24 THE COURT: OK. C3. Go ahead.

25 A. So each one of these -- on the right-hand side, each one of

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1 these represents a text string. And under my supervision, we
2 sorted these text strings into what we thought were consistent
3 internally coherent categories, all of which were various
4 expressions of similar constructs.

5 So in this case, for example, number one is a
6 construct called actions indicative of burglary. And these
7 were particular text strings that we identified in the sample
8 of property crime stops which expressed the general notion of
9 actions indicative of burglary.

10 As you proceed down for each of the numbered
11 categories, number two is actions indicative of GLA, or grand
12 larceny auto, vehicle theft. These also were text strings that
13 seemed to be speaking to that particular category or that
14 particular inclusive construct.

15 Q. Do you know approximately how many text strings are in
16 table C3?

17 A. Table C3, I don't. I just know the overall number of text
18 strings for the entire analysis. I didn't add up just the ones
19 for C3. C3 was one of the most frequent categories.

20 Q. How large did you say the random sample you drew was?

21 A. 3710 cases was the final sample size.

22 Q. Do you have an opinion as to whether 3,710 is a big enough
23 sample?

24 A. We thought it was big enough. 3710 cases
25 ultimately -- 3710 cases allowed us to ultimately classify

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1 57,000 of the 84,000 stops.

2 Q. How did you extract the handwritten narrative information
3 from the sample?

4 A. We identified -- we sampled cases. We identified the
5 universe of cases. We sampled cases from within that universe.
6 We conducted -- we developed a stratified random sample,
7 meaning for each of the major crime categories -- violence,
8 property, drugs, weapons, etc. -- we randomly sampled cases
9 among the 84,000 with each one of those categories.

10 Q. I will ask you details about that in a moment. The content
11 of the text strings, is that something that the computer picked
12 up?

13 A. Yes. It's reported in the UF-250 databases.

14 Q. Did you have to read them?

15 A. Well, we did read them, yes.

16 Q. You read all 3,710?

17 A. I didn't. I had the process done under my supervision.

18 Q. So under your supervision, all 3,710 stops in the sample
19 somebody actually read them?

20 A. Yes.

21 Q. And then coded it into the computer?

22 A. One or more persons actually read them and coded them.

23 Q. After you got the sample of 3,710, what did you do with it?

24 A. We analyzed them using a text analysis, essentially read
25 each one of the text strings and identified what we thought to

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1 be a thematic category that would capture the meaning that we
2 could associate with each one of these other -- with each one
3 of the text strings.

4 Q. How many thematic categories?

5 A. We identified 2600, approximately 2600 thematic categories
6 out of 3710 cases.

7 Q. How did you get from 84,000 to 3,710?

8 A. We selected a stratified random sample of cases within the
9 84,000.

10 Q. Can you describe that stratified random sample process?

11 A. When we examined the 84,000 cases, we looked at the
12 distribution of those cases by the suspected crime. We
13 realized that there were three categories of suspected crime
14 that were very, I wouldn't say -- I suppose disproportionately
15 or heavily weighted in those samples, in other words, there
16 were many more within three categories than there were within
17 each of the others.

18 Q. What are the three categories that there were many more in?

19 A. My recollection is that they were property, trespass and
20 other. And so we set sampling parameters. Again, we were
21 trying to develop a sample between 3 and 4,000 cases, which was
22 what we thought was both sufficient for the kind of inductive
23 analysis we were doing and also can be done feasibly within the
24 time available and the resources.

25 So the sampling parameters, we took 5 percent of each

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1 of the property stops, 5 percent of the trespass stops, and 5
2 percent of the other crime stops. And then 3 percent of the
3 rest crime categories.

4 Q. Now, did you conduct an analysis of how many of these stops
5 could be categorized out of non-generalizable into some other
6 category?

7 A. Yes.

8 Q. What was that process?

9 A. We took the results of this coding exercise and took each
10 one of those categories, the interim categories that we
11 developed, and determined whether or not they would be either
12 apparently justified on their own, conditionally justified in
13 conjunction with another factor, or apparently unjustified.

14 And table C4, for example, shows the results where we
15 take the text strings, reduce them to the analytic categories
16 that were produced in the second column of table C3, and then
17 make a determination about the apparent justification of each
18 of those categories.

19 So we then apply those decisions back to the full
20 sample of the 84,000 stops and report the outcomes of that
21 classification.

22 Q. What was the outcome of those classifications?

23 A. We report the outcomes there in table 12B.

24 THE COURT: You said 12D?

25 THE WITNESS: B.

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1 THE COURT: Page 30 of?

2 THE WITNESS: Exhibit 417.

3 A. We show that the stops roughly split 50/50 once you examine
4 the text strings.

5 Q. 50/50 between what?

6 A. 50 percent become apparently justified and 50 percent is
7 sorted into apparently unjustified.

8 Q. Were you able to reclassify all of the 84,000 stops?

9 A. We were able to reclassify 57,000 of the 84,000 stops.

10 Q. Why were you unable to classify the remainder?

11 A. Because the text strings that were in the remainder of
12 those stops were not recognized by the coding scheme that we
13 had developed based on the analysis of the 3710.

14 Q. Do you have an opinion as to whether the results of your
15 analysis would be any different had you been able to analyze, I
16 guess, the difference between 84,000 and 57,000, which is about
17 26 and change, would you agree?

18 A. I have an opinion as such. At the end of the day, it
19 probably wouldn't have made a lot of difference, would be my
20 guess, but we really don't know until we actually read those
21 text strings.

22 Now, they were so unique or so different from the ones
23 that we sampled, that would suggest that there may be some
24 other kinds of utterances or interpretations or sort of
25 perceptions that were expressed in those text strings that we

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1 weren't able to classify. So it's very hard to say what
2 exactly, how the results would turn out for the others.

3 Q. You said the universe from which you drew the sample was
4 84,000 stops, correct?

5 A. Yes.

6 Q. Could I turn your attention to page 27 of your second
7 supplemental report?

8 A. Yes.

9 Q. The first full paragraph, does that identify the total
10 number of stops, the size of the universe that you worked with?

11 A. Yes. It was 84,000.

12 Q. On page 27 it says 156,090. Can you explain that
13 discrepancy?

14 A. Basically, it was the result of a typographical error.

15 Q. Do you have an opinion as to whether that typographical
16 error affected the results of the analysis in any way?

17 A. No. We had always done the analysis on the basis of
18 84,000. We had initially done the analysis with a different
19 set of categories. We realized that that set of categories was
20 not correct. But that initial set of categories would produce
21 the 156,000 stops. When we realized it wasn't correct, we did
22 the analysis based on the correct set of stops, which were
23 84,000, but, unfortunately, in drafting the report, we carried
24 forward the misstatement of the 156 from an earlier drafting to
25 the final draft.

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1 Q. It was just a typo?

2 A. It was a typo.

3 Q. When did you perform this analysis of the handwritten
4 narratives?

5 A. Mostly October and early November of 2012.

6 Q. Had you ever previously expressed a view as to the
7 reliability of any analysis of handwritten comments on UF-250s?

8 A. Yes, we did.

9 Q. What was the view that you had previously expressed?

10 A. Well, I thought it was a particularly methodologically
11 risky analysis to do. We thought that -- or I thought that it
12 would be extremely difficult and complicated and perhaps
13 inconclusive to analyze those text strings given the incredible
14 heterogeneity of the utterances that were contained in the text
15 strings. I thought they would be subjective interpretations,
16 not subject to any kind of verification. Again, it was simply
17 open-ended.

18 Q. Did you come to change or modify that view?

19 A. We did, obviously, because we did this analysis. I can go
20 into the thinking that went behind it, how we wound up at this
21 point.

22 Q. Please do.

23 MS. COOKE: Objection. This is beyond the scope of
24 his report. He didn't provide any of this thinking or thought
25 as to his change of approach or methodology.

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1 THE COURT: This isn't really an opinion. This is
2 more of an explanation.

3 MS. COOKE: As long as it doesn't get into an opinion
4 as to why it's reliable now and it wasn't reliable to rely on
5 before.

6 THE COURT: I don't consider it an opinion. I
7 consider it an explanation of the change. We have gone over it
8 before and we have all known about it for a long time. So I
9 will allow it.

10 MS. COOKE: I just note my objection for the record.
11 The explanation was not provided in the supplemental report
12 since he has changed his mind.

13 THE COURT: There are no surprises here. You have
14 known about this change for a long time.

15 Go ahead.

16 A. So in related litigation, in the Davis and Ligon cases, we
17 considered whether or not to do this kind of an analysis. And
18 we considered it and attempted it in part because those were
19 very, very narrow categories of stops. In each case, they were
20 trespass stops. So it was a prescribed universe where officers
21 would be writing down categories that would be reflective of
22 behaviors associated with a very specific type of alleged crime
23 violation, in this case, trespass. And so we thought it was
24 doable, or we attempted to do it, in the sense that we would
25 not have to worry about subjective interpretations of a

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1 multitude of crime categories and criminal activities. These
2 analyses were done with respect to a fairly narrow, again,
3 specific alleged crime violation.

4 And we proceeded to do it in each of those two cases.
5 It was complex, difficult, time-consuming. We had results that
6 were similar to the results that we obtained in this study, in
7 terms of the ability to classify and extrapolate from a sample
8 to a larger population. That was in the Davis case. In Ligon,
9 we were able to do it for the universe because the universe was
10 much smaller, about 1800 stops.

11 Q. How big was the universe in Davis?

12 A. I don't recall the number. It was a couple of hundred
13 thousand, as I recall.

14 And so we did it, and we thought, OK, this has some
15 reliability. This is by no means a perfect analysis. We
16 applied methods that were very well validated in social science
17 research, in terms of using inductive analysis to sort it
18 through qualitative data, in other words, narrative data. This
19 has been done for decades, including work that I have done
20 myself on other research.

21 So we used those fairly reliable methods to undertake
22 this classification in this case having been able to do it,
23 with some reservations, but been able to do it in the other
24 cases.

25 Q. What effect, if any, did doing the text string analysis in

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1 this case have on your previously expressed concern about the
2 methodological reliability of doing it?

3 A. Within the limits of the data, and accepting the
4 limitations and constraints on the data, we thought that this
5 had some value and some weight and, therefore, could inform a
6 broader analysis of a classification of stops.

7 Q. Do you have confidence in the reliability of your analysis
8 of these handwritten narratives?

9 A. I have confidence in the methodology that we used. It was
10 a rigorous methodology.

11 Q. Do you have confidence in the results?

12 A. Only as far as the quality of the data will take us.

13 Q. Now, moving on to another subject, you testified earlier
14 that it's your opinion that UF-250s are an ineffective way to
15 monitor officers' compliance with the Constitution. Do you
16 recall?

17 A. Yes.

18 Q. Can you tell us the basis or bases for that opinion?

19 THE COURT: I can't hear you. Can you tell us the
20 basis of?

21 Q. Can you tell us the basis or bases for that opinion?

22 A. We based it in totality on our analysis of the hit rates.
23 Evidently, the suspicion articulated by police officers making
24 stops didn't pay off a whole lot in arrests or sanctions of
25 seizures. We base it on the fairly large number of stops that

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1 apparently were apparently unjustified. But, also, we have
2 some doubts as to the reliability of several of the categories
3 that are used very frequently in the reports, which give us
4 caution about the interpretation of the data, and therefore the
5 overall reliability of the classification. In other words, to
6 use social science terminology, we think there is a lot of
7 measurement error on this data.

8 THE COURT: What does that mean?

9 THE WITNESS: Measurement error means that the data
10 are not expressing the concept that it purports to be
11 measuring.

12 THE COURT: How does that arise here?

13 Q. Please answer the judge's question.

14 A. For example, there are two particular categories that we
15 find to be used in an extremely high -- unusually high
16 proportion of stops. The category of furtive movements is
17 extremely common. I don't have the number. It's in the second
18 report. I have it in a figure in a table.

19 Q. May I refer --

20 A. I have it here.

21 So, for example, in the 2010 to 2012 --

22 MS. COOKE: Can you direct my attention to which page
23 you are referring to?

24 THE WITNESS: It's page 22 of Exhibit 417, table 11.

25 THE COURT: OK. Go ahead.

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1 A. So we find that, for example, if you scan across the line
2 for furtive movements, you see that the rate is far higher than
3 just about any other category of suspected crime.

4 THE COURT: Those are stop circumstances.

5 THE WITNESS: If you read across from the line for
6 furtive movements, this is the percentage within each suspected
7 crime category.

8 THE COURT: Furtive movements is always the highest
9 stop circumstance.

10 THE WITNESS: It's more than 50 percent -- it's
11 checked off in more than 50 percent of all stops and 71 and a
12 half percent of weapon stops, and so on.

13 So it's an extremely high rate of checking something
14 off, way above chance certainly. And it just makes you
15 wonder -- it made me wonder, and I will get to the reason why
16 in a second -- about its indiscriminate use.

17 The other is what we call high crime area, which is on
18 side two. The specific language is "area has high incidence of
19 reported crime."

20 THE COURT: Where is that?

21 THE WITNESS: This is on the second block of the
22 circumstances on page 11 -- sorry, table 11.

23 THE COURT: I am lost.

24 THE WITNESS: It's right here. Fourth line up from
25 the bottom is high crime area.

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1 THE COURT: I thought you said some other words.

2 THE WITNESS: High crime area is checked off overall
3 in 60 percent of the cases.

4 MS. COOKE: I think he was referring to the
5 demonstrative that is still on the screen.

6 THE COURT: OK.

7 THE WITNESS: We summarized those in a graph, which
8 should be in this version. It's in an appendix in this
9 version.

10 THE COURT: That's OK because we have to stop for
11 lunch. We will reconvene at 10 after 2.

12 What are we reconvening with?

13 MR. MOORE: We are going to finish with Sergeant
14 Hegney.

15 So you're going to have some downtime because he is
16 unavailable any other time. We are going to start with Hegney.

17 (Luncheon recess)

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D438FLO3

Fagan - direct
AFTERNOON SESSION

2:16 p.m.

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THE COURT: Please be seated.

RICHARD HEGNEY, resumed
DIRECT EXAMINATION CONTINUED
BY MR. MOORE:

Q. Good afternoon, Sergeant Hegney.

A. Hello.

Q. You may recall at the break yesterday we were talking about a document you received from the office of the chief of department which has been identified as Plaintiffs' Exhibit 251.

Do you recall testifying to that?

A. Yes.

Q. And the handwriting on that, is that your handwriting?

A. Yes, it is.

Q. And you got this referral from -- who in the 107th precinct gave you this investigation, was it integrity control, or the captain?

A. You know, I don't recall who would have specifically handed it to me. The general practice is it would be the administrative lieutenant.

Q. Did you tell your administrative lieutenant at the time that that was an officer that you supervised?

A. I don't recall.

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D439FLO4 Hegney - direct

- 1 Q. Did you tell him that at that point that maybe it's not a
2 good idea for you to do the investigation because you had
3 signed off on this individual's 250 form?
4 A. I don't recall that.
5 Q. Did you at any time say that once you --
6 A. I don't recall.
7 Q. You looked at the 250 form at some point in the course of
8 the investigation; is that correct?
9 A. The -- which one?
10 Q. The 250?
11 A. The computer generated or the scratch -- the worksheet?
12 I mean I signed the worksheet so obviously I saw it.
13 I don't recall during the course of the investigation if I saw
14 the actual computer-generated one.
15 Q. But you signed the worksheet, right?
16 A. Correct.
17 Q. And so you looked at that in the investigation, right?
18 A. Sure.
19 Q. And you noticed that you were the person who approved the
20 250, right?
21 A. Yes.
22 Q. And you didn't go to your administrative lieutenant at that
23 point and say maybe it's not a good idea for me to do the
24 investigation, did you?
25 A. I don't recall.

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1 Q. Do you recall receiving -- when you got the worksheet,
2 obviously it wasn't filled out with your handwriting, correct?

3 A. When you say the worksheet you mean this -- the document
4 I'm looking at?

5 Q. Yeah, the one you're looking at.

6 A. No.

7 Q. And you received, did you not, another document which had
8 the details of the complaint made by Mr. Ourlicht, correct?

9 A. I received the complaint, yes.

10 Q. And that was the document that would have come from the
11 CCRB, right?

12 A. Originally it would have been from CCRB, I believe.

13 Q. Let me show you what's been marked as Plaintiffs' Exhibit
14 108. See if you can identify this document. Particularly the
15 last two pages.

16 The first page is just a verification from CCRB that
17 these are the records. Look at page two and page three. Do
18 you recognize those?

19 A. Yes.

20 Q. Those are the documents that -- that's the document that
21 you received from the CCRB before -- at the commencement of
22 your investigation of --

23 A. Well this is the document I received from my lieutenant.

24 Q. Right?

25 A. Correct. Through channels originally at CCRB.

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1 Q. You understand that to be a CCRB document though, right?

2 A. Yes.

3 MR. MOORE: Judge move the admission of Plaintiffs'
4 Exhibit 108.

5 MR. MARUTOLLO: No objection as long as it's in line
6 with the Court's previous ruling that the initial complaint
7 narrative which is hearsay is only used for the effect on the
8 listener and not for the truth of the matter asserted.

9 THE COURT: That's correct. With that proviso the
10 exhibit is received.

11 MR. MARUTOLLO: Also, your Honor, I believe it has
12 dates of birth of Mrs. Ourlicht and David Ourlicht.

13 THE COURT: They should be redacted before they are
14 placed in the record.

15 MR. MOORE: All right.

16 (Plaintiffs' Exhibit 108 received in evidence)

17 Q. Let's look at the actual first page of the complainant
18 report. This is the document that you received from your
19 administrative lieutenant, correct?

20 A. Yes.

21 Q. And it that's details of the complaint. It shows the
22 complainant as Marybeth Ourlicht. And then it has the name of
23 the victim as David Ourlicht?

24 A. Right.

25 Q. Is that correct?

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1 A. Yes.

2 Q. And in terms of the -- for your purposes -- well, the name
3 of the officer complained about is Christopher Moran, correct?

4 A. Yes.

5 Q. You knew right away that that was an officer who you
6 supervised, right?

7 A. Yeah.

8 Q. Turn to the next page. There is a narrative portion that I
9 want you to look at, not necessarily for the truth of it, but
10 the narrative portion would be what you read and what you
11 relied on in doing your investigation, correct?

12 A. Yes.

13 Q. You never actually talked to David Ourlicht, did you?

14 A. No, I did not.

15 Q. You did talk to his mother on a couple of occasions, right?

16 A. I spoke to a woman on the phone who -- alleged to be
17 Marybeth Ourlicht.

18 Q. So this is the -- what you were told -- this is what you
19 knew, this is information you had when you commenced your
20 investigation of this complaint, correct?

21 A. This is information that I read, yes.

22 Q. And in this complaint it says -- it uses the pronoun "I" so
23 presumably that's referring to David Ourlicht, correct?

24 MR. MARUTOLLO: Objection.

25 MR. MOORE: In your mind what did you understand that
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1 to refer to?

2 THE COURT: I'll allow it. Is that what you thought?

3 THE WITNESS: Yes.

4 Q. So as far as you know from reading this, what you
5 understood, it was that David Ourlicht had made the initial
6 complaint, correct?

7 A. Correct.

8 Q. And it says, on Wednesday, on January 30, 2008, he was
9 walking from his girlfriend's house and was stopped by a police
10 officer in a scooter, correct?

11 A. Yes.

12 Q. And the officer said: What are you doing here?

13 Correct?

14 A. Right.

15 Q. And then according to this account Mr. Ourlicht said:
16 What?

17 And the officer then said: Do you go to school around
18 here?

19 And then Mr. Ourlicht said: Why?

20 And then he asked for Mr. Ourlicht's ID, correct?

21 MR. MARUTOLLO: Objection to the form.

22 THE COURT: That's what it says.

23 Q. Those were the facts that you had when you began your
24 investigation, correct?

25 A. Okay, yeah.

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D439FLO4 Hegney - direct

1 Q. And then he indicates later that there's some discussion of
2 a gun, that he was apparently acting suspicious, that's what,
3 according to this document, the officer told Mr. Ourlicht,
4 correct?

5 A. Yes.

6 Q. And then there is some kind of a frisk that occurred,
7 right?

8 A. I'm sorry?

9 Q. There's some kind of a frisk? He says he lightly patted me
10 I guess to see if I had a gun.

11 Do you see that?

12 A. I'm just looking.

13 Q. At the end of the first paragraph there?

14 A. Okay. Yep.

15 Q. And he told the officer that he was a student at St. John's
16 University, correct?

17 A. That's what it says.

18 Q. And then he says he gave the officer both his St. John's
19 University ID as well as his passport, correct?

20 A. Yes.

21 Q. And then at some point -- and I'm not saying this
22 necessarily happened but this is what you were operating on,
23 the facts that you were operating on -- at some point
24 Mr. Ourlicht said: Now that you're getting my information, I
25 want to get your information.

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D439FLO4 Hegney - direct

1 Correct?

2 A. Okay.

3 Q. And a citizen has a right to do that, right?

4 A. Yes.

5 Q. And officers are trained that when they're asked to provide
6 their identification they should provide it, correct?

7 A. Officers are trained that if somebody wants their
8 information they can have it. At no point does an officer have
9 to write it down to a piece of paper and hand it to them or
10 supply them with a pen or paper.

11 But, right, they're entitled to have your information.

12 Q. I'm not saying they have to write it out. I'm saying if a
13 citizen says I'd like to know your name and your badge number
14 for whatever reason --

15 A. Right here.

16 Q. -- then they have to -- the officer has to provide it,
17 right?

18 A. Correct.

19 Q. And based on what's in this report and what you were
20 operating on, at that point Mr. Ourlicht, or the officer says
21 to Mr. Ourlicht: Okay. Now you're going to get the full
22 treatment.

23 Have you ever heard that term before, full treatment?

24 A. Have I ever heard the term in any sense of it?

25 Q. In regard to police work.

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D439FLO4

Hegney - direct

1 A. No.

2 Q. Do you know what that means when a -- did you understand
3 what that meant when Mr. Ourlicht said the full treatment?

4 A. No.

5 Q. Well he provided -- at least this report provides some
6 information about that. It says he was placed up against --
7 the officer said get up against the wall and put your hands up.

8 That's what it says, right?

9 A. That's what it says.

10 Q. And that's what you were operating -- those are the facts
11 you were operating on when you began the investigation, right?

12 A. Okay.

13 Q. And then backup was called, right?

14 A. He says he called backup.

15 Q. And then he was searched -- and there was a search done of
16 Mr. Ourlicht in his pockets, correct?17 MR. MARUTOLLO: Objection, your Honor. That's not in
18 this complaint. He explicitly says he did not go into my
19 pockets.

20 MR. MOORE: No. It says -- that was initially.

21 THE COURT: At this point.

22 MR. MOORE: And then he says he calls backup. He
23 searched me through all my pockets.24 THE COURT: Right. That's true. Okay. So that's
25 what this says.

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D439FLO4 Hegney - direct

1 THE WITNESS: Right. It's what it says.

2 MR. MOORE: Once again this -- we're not saying this
3 is what happened. But this is the facts that you were relying
4 on, correct?

5 THE WITNESS: So far.

6 Q. And apparently the search didn't reveal anything according
7 to this account, right?

8 A. Correct.

9 Q. And then Mr. Ourlicht was, according to this, was told to
10 sit on the ground. He did as he was told. Correct?

11 A. Okay.

12 Q. Two additional officers came to the scene, right?
13 According to this account?

14 A. Yep.

15 Q. There was some discussion about where he lived, right?

16 A. Okay.

17 Q. And then according to this account Mr. Ourlicht was then
18 given a summons, correct? A ticket he called it. Getting a
19 ticket, right?

20 A. Right. Okay. A little later on, right, he gave him a
21 ticket.

22 Q. He gave him the ticket for disorderly conduct, right?

23 A. Okay.

24 Q. And then there's -- at least reported in here there's some
25 additional words exchanged between the officer and

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D439FLO4 Hegney - direct

1 Mr. Ourlicht, correct?

2 A. Right.

3 Q. And so that's what you were operating on as the complaint
4 that you were investigating when you got this handed to you by
5 your administrative sergeant, right?

6 A. Correct. Lieutenant.

7 Q. Lieutenant.

8 So, at some point -- tell me what steps you took in
9 your investigation. What did you do?

10 A. I reviewed the complaint. I reviewed the -- you know, at a
11 minimum the worksheet of the 250. I spoke to Marybeth
12 Ourlicht. I spoke to Officer Moran. And I was unable to speak
13 to David Ourlicht.

14 Q. Did you look at Officer Moran's memo book?

15 A. I don't recall.

16 Q. But you looked at the 250 form, correct?

17 A. I saw the UF 250 worksheet as well as Officer Moran's memo
18 book the day of the incident. I don't recall if I checked it
19 again two months later.

20 Q. So you're not sure whether after you got this referred to
21 whether you actually went back to check it, right?

22 A. Correct.

23 Q. Is that because you just happened to remember the incident?

24 A. I don't recall.

25 Q. You did speak to Officer Moran though, correct?

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D439FLO4

Hegney - direct

1 A. I did.

2 Q. And, in fact, on the form -- on your report of the
3 investigation you relate a conversation you had with Officer
4 Moran, correct?

5 A. Yes.

6 Q. Going back to -- 251, thank you, Plaintiffs' Exhibit 251.
7 In your handwriting you say Police Officer Moran states perp,
8 that is an abbreviation for -- that says perp, right?

9 A. I'll go with that. I almost can't read it myself.

10 Q. Fit the description of a man with a gun and had a bulge in
11 his waist under his arm?

12 A. Okay. Right.

13 Q. In any report that you saw that Officer Moran did on this
14 incident did you ever see any reference to fit the description?

15 A. In the forms that I've reviewed?

16 Q. Yes.

17 A. No. I don't recall.

18 Q. Going back once again to Plaintiffs' Exhibit 250 which is
19 the UF 250 data sheet.

20 Do you see there circumstances leading to stop?

21 A. Okay.

22 Q. Nothing there about fits the description, right?

23 A. Right.

24 Q. And you also said -- well, you knew Officer Moran had --

25 A. If I can expand on the previous 250. There's nothing there

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D439FLO4 Hegney - direct

- 1 that states fits the description of a perp. However, a male
2 with a bulge in his waistband is generally -- there is an
3 implication to the police that if there's a bulge in his
4 waistband triggered by also, I don't have it in front of me, I
5 believe it said furtive movements, you can reasonably suspect
6 that there could be a weapon in the waistband which would --
7 Q. Nothing in the UF 250 form where it's checked off, fits the
8 description?
9 A. Yes.
10 Q. And that's a specific category that the 250 form asks for:
11 Does the person fit the description, right? That's what's
12 asked --
13 A. I would have to see it.
14 Q. You would have to see the 250 form? All right.
15 A. To tell you if that's definitely one of the boxes, yeah.
16 Q. Exhibit 85. Do you see under there where -- what were
17 circumstances which led to stop?
18 Do you see that?
19 A. Yes.
20 Q. Do you see the second box on the left there?
21 A. Okay.
22 Q. What does that read?
23 A. That reads fits description.
24 Q. Fits description. All right.
25 So, nowhere did apparently did Officer Moran check the
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D439FLO4 Hegney - direct

1 box fits the description, right?

2 A. I don't recall.

3 Q. Well as far as --

4 A. As far as this generated copy, it is not on there. I don't
5 recall what the worksheet had on it or not.

6 Q. And you looked at -- at some point you looked at Officer
7 Moran's memo book, right?

8 A. Yes.

9 Q. Handing you what's been marked as Plaintiffs' Exhibit 249.
10 Can you take a look at that.

11 A. Okay.

12 Q. Does that appear to be excerpts from Officer Moran's memo
13 book for January 30, 2008?

14 A. Yes.

15 MR. MOORE: Judge, move the admission of Plaintiffs'
16 Exhibit 249.

17 MR. MARUTOLLO: No objection.

18 THE COURT: 249 received.

19 (Plaintiffs' Exhibit 249 received in evidence)

20 Q. Looking at the third page of this document, there's an
21 entry that begins at 1415. Do you see that?

22 A. I do.

23 Q. It says -- why don't you tell us what it says at 1415 since
24 it's police language.

25 A. Well it's not really police language.

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D439FLO4 Hegney - direct

- 1 It says 1415. I assume that's an M for M stopped.
2 Q. Meaning male, right?
3 A. That would be my assumption.
4 Q. That's why I said police language.
5 A. 164 85. Suspicious bulge.
6 Q. Those are the cross streets, right?
7 A. 164th Street. It could be, I don't know, 85th Road. 85th
8 Avenue. I don't know which one. Suspicious bulge. 93Q.
9 96 W7388.
10 Q. What do those numbers mean?
11 A. 93Q if I remember correctly would be you prepared a
12 noncriminal form which would be for the 250.
13 And 96 would be disposition as summons served.
14 Q. And then what does it say?
15 A. W7388.
16 Q. And then what's the language after that?
17 A. On the next line.
18 Q. Yeah?
19 A. Respondent was screaming and yelling in public. Looks like
20 using obscene language. Causing a crowd to gather.
21 Q. And that's all the entry -- that's the complete entry in
22 Officer Moran's memo book for January 30, 2008, correct?
23 A. At 1415.
24 Q. Related to this incident?
25 A. Right.

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D439FLO4 Hegney - direct

1 Q. And there is no mention in here of fits the description,
2 right, as a reason for the stop?

3 A. As a reference, or just in general?

4 Q. There is no mention in this memo book --

5 A. No specific mention of fits the description, correct.

6 Q. And, in fact, there is no description of the bulge, right,
7 just suspicious bulge?

8 A. Suspicious bulge.

9 Q. So, in fact, although officers are trained to put more
10 details in their memo book than in the UF 250 in this instance
11 the UF 250 actually has more information about the suspicious
12 bulge than the memo book does, right?

13 A. (No response).

14 Q. Do you follow my question?

15 A. I follow your question. I'd have to see how it was
16 described in the 250 to answer it.

17 Q. Take a look at Exhibit 250.

18 MR. MARUTOLLO: I'm just going to object to that
19 question. I think it's argumentative.

20 THE COURT: I'm sorry. Which question?

21 MR. MARUTOLLO: The last question before he pointed to
22 250.

23 THE COURT: So, in fact, although officers are trained
24 to put more details in their memo book than in the UF 250 in
25 this instance the UF 250 actually has more information about

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D439FLO4 Hegney - direct

1 the suspicious bulge than the memo book does, right?

2 That's the one you don't like?

3 MR. MARUTOLLO: Yes, your Honor.

4 THE COURT: Overruled. I think it's fine.

5 Q. Looking at Plaintiffs' Exhibit 250. Do you see a
6 description of suspicious bulge is actually a more detailed
7 description in the 250 than appears in the memo book?

8 THE COURT: That's what he's asking you.

9 Is the 250 more detailed than the memo book in your
10 opinion?

11 THE WITNESS: As to the bulge itself?

12 MR. MOORE: Yes.

13 THE WITNESS: In my opinion, it's not. It has a more
14 specific location to it, but the bulge itself is not.

15 MR. MOORE: All right. Fair enough.

16 Q. So, you conducted -- you made an attempt to get ahold of
17 Mr. Ourlicht and you were unable to do that, correct?

18 A. Yes.

19 Q. And based upon your investigation, based upon talking to --
20 how long was your -- do you recall how long your conversation
21 was with Officer Moran?

22 A. No.

23 Q. Do you recall reviewing any of his documents at the time
24 you talked to him, after you were assigned the investigation?

25 A. No. I don't recall.

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D439FLO4 Hegney - direct

1 Q. So based upon that you concluded in your report to whoever
2 asked you to do this investigation that -- you concluded the
3 disposition would be unfounded, correct?

4 A. Yes.

5 Q. And even though Officer Moran -- you concluded it was
6 unfounded even though Officer Moran gave you a story different
7 than the one that was in any of his written documents
8 previously, right?

9 A. I believe that in whole the story he gave me was pretty
10 much in his documents.

11 Q. He never said in any of his written materials which we've
12 looked at that one of the reasons that he stopped David
13 Ourlicht was because he fits a description, right?

14 A. Not in those terms, no.

15 Q. Did you observe -- do you council or instruct Officer Moran
16 that he had done an inadequate entry in his memo book?

17 A. I don't recall.

18 Q. Would you agree with me that the entry in his memo book was
19 contrary to what officers are trained to do with respect to
20 putting more details in their memo book than in the 250?

21 A. In my opinion?

22 Q. Yes.

23 A. In my opinion he could have had maybe more information. I
24 believe -- and I can't speak for what training he received, you
25 know, any training he would have received not in my presence --

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D439FLO4 Hegney - direct

1 I do believe they want details and pertinent information. What
2 he thinks is pertinent and what I think is pertinent could be
3 two different things.

4 Q. All right. In any event based on all that, all that you
5 looked at, you concluded that the investigation was unfounded,
6 right?

7 A. In my complete investigation, yes, I determined it to be
8 unfounded.

9 MR. MOORE: Nothing further, Judge.

10 THE COURT: Okay. Mr. Marutollo.

11 CROSS-EXAMINATION

12 BY MR. MARUTOLLO:

13 Q. Good afternoon, Sergeant Hegney.

14 How long were you employed by the New York City Police
15 Department?

16 A. Twenty years.

17 Q. And when did you join the NYPD?

18 A. April of 1991.

19 Q. And are you currently retired?

20 A. I am.

21 Q. And I believe you testified on direct that you retired on
22 April 30, 2011?

23 A. That's my official retirement date, yes.

24 Q. When did you actually leave active duty?

25 A. Early of January of that year.

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D439FLO4 Hegney - cross

1 Q. And what are you currently doing now?

2 A. I stay home. I have actually a newborn. I'm raising a
3 daughter.

4 Q. Did you attend the police academy?

5 A. I did.

6 Q. And when was that?

7 A. In April 1991 until October of 1991.

8 Q. Then did you graduate in October of 1991 from the police
9 academy?

10 A. Yes.

11 Q. After leaving the police academy what was your title?

12 A. Police officer.

13 Q. And did there come a time where you were promoted from the
14 position of police officer?

15 A. Yes.

16 Q. And what were you promoted to?

17 A. Sergeant.

18 Q. And when did you receive that promotion?

19 A. In December of 2000.

20 Q. How did you receive that promotion?

21 A. By passing a civil service exam.

22 Q. And upon being promoted to sergeant, did you receive any
23 training related to supervising officers?

24 A. Yes.

25 Q. And what training was that?

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D439FLO4 Hegney - cross

1 A. Approximately a five-week course. It's a basic leadership
2 course. Focused on supervision.

3 Q. And after the leadership course what precinct were you
4 assigned to?

5 A. The 107.

6 Q. And what area did the 107th precinct cover?

7 A. The 107 precinct is in Queens. It's a pretty large
8 precinct geographically. It covers part of Kew Gardens, Fresh
9 Meadows, part of Flushing, Jamaica Estates, part of Jamaica.

10 Q. I believe you testified on direct examination that you
11 served as a patrol sergeant and a school safety sergeant while
12 in the 107th precinct; is that right?

13 A. Yes.

14 Q. And then after that you were assigned to transit district
15 33?

16 A. Yes.

17 Q. And you remained there until you retired; is that right?

18 A. Correct. Yes.

19 Q. So turning your attention to the David Ourlicht incident?

20 A. Okay.

21 Q. Were you assigned to investigate that matter?

22 A. Yes.

23 Q. How did you conduct your investigation into this incident?

24 A. I reviewed -- prior to receiving the complaint I reviewed
25 the 250 worksheet. I reviewed Officer Moran's memo book.

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D439FLO4 Hegney - cross

1 Again, I spoke to Marybeth Ourlicht. I spoke to Officer Moran.

2 And you know I was unable to speak to David Ourlicht.

3 Q. Now, just going back for a moment. How many times did you
4 speak to Ms. Ourlicht?

5 A. I believe twice.

6 Q. And do you remember when that was?

7 A. The specific dates?

8 Q. I can show you if you need to have your memory refreshed.

9 A. I would like to see that. I believe it was April 14 and
10 15. But I would want to doublecheck if I'm wrong.

11 Q. That's correct.

12 Now, the first time you spoke with Ms. Ourlicht, what
13 did you learn, if anything, as a result of your conversation
14 with Ms. Ourlicht?

15 A. I learned that she was concerned that her son, David, was
16 going to have a warrant issued for his arrest in regards to the
17 summons that he was issued for disorderly conduct. By the time
18 I spoke to her she had told me that the summons was already
19 taken care of in court and she was wishing to withdraw her
20 complaint.

21 Q. And the second time you spoke to Ms. Ourlicht what, if
22 anything, did you learn from your conversation with her?

23 A. That she did not want me to speak with David Ourlicht. She
24 wouldn't furnish me with any of his contact information.

25 Q. So just to be clear what was the reason for calling

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1 Ms. Ourlicht that second time?

2 A. You know to the best of my recollection it would be to
3 speak with David.

4 Q. And why were you unable to speak with Mr. Ourlicht?

5 A. I didn't have a separate phone number for him. I believe
6 the two phone numbers on the report were the same. And
7 Marybeth Ourlicht wouldn't allow me to speak with him.

8 Q. Now, you also testified that you spoke to Officer Moran; is
9 that right?

10 A. Yes.

11 Q. Now, what did you learn, if anything, from your
12 conversation with Officer Moran regarding this incident
13 involving David Ourlicht?

14 A. That he had stopped David Ourlicht for suspicious --
15 suspicion of a weapon in the waistband. Upon the brief
16 investigation, David Ourlicht was becoming very loud, very
17 boisterous, I believe he might have been threatening the
18 officer.

19 Q. Why did you write in your complaint report, Plaintiffs'
20 Exhibit 251, that he fit the description of a man with a gun.
21 Why did you write that?

22 A. In the broad sense of the term fits the description, like I
23 said, if you have somebody -- he observed somebody standing on
24 a corner and that person would see the police and, you know,
25 turn his body, try to hide part of his body, you see a bulge.

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1 In the broad sense of the term, fitting the description, that
2 would lead me to believe that that person would probably be
3 trying to hide something, specifically if I see a bulge in his
4 waistband.

5 MR. MOORE: Judge, I'm going to object and ask that be
6 stricken. It wasn't responsive, first of all, to the question.
7 He said nothing about why that fit the description. He talked
8 about --

9 THE COURT: That's exactly what he answered. That's
10 his reason for saying fits the description. You can tear that
11 down if you wish at some point, but that's his idea of why it
12 does.

13 MR. MOORE: I understand.

14 THE COURT: Yeah, right. He said because the person
15 turned his body, he had a bulge.

16 Q. Now sergeant you testified earlier that you came to the
17 conclusion that the investigation was unfounded?

18 A. Right.

19 Q. And why did you come to that conclusion?

20 A. Based on my review of my speaking with Marybeth Ourlicht,
21 her -- I believe it's on here, her charges to this complaint
22 was a summons was issued for disorderly conduct.

23 In speaking with Officer Moran, I believe that in my
24 opinion that David Ourlicht was disorderly at the scene. And I
25 had no availability to have any other information furnished to

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1 me from David Ourlicht.

2 Q. Why couldn't you have any other information furnished to
3 you from David Ourlicht?

4 A. His mother would not let us speak to him.

5 Q. Now, you testified also on direct examination that you
6 don't specifically remember receiving formal training on stop,
7 question and frisk; is that right?

8 A. Okay.

9 Q. When you said specifically, did you mean that you don't
10 remember the date or time that you received the training?

11 MR. MOORE: Object to the form of the question, Judge.

12 THE COURT: I'll allow it.

13 MR. MOORE: It was kind of leading but.

14 THE COURT: Go ahead.

15 MR. MARUTOLLO: You can answer.

16 THE WITNESS: If you could just go again with it.

17 THE COURT: He's saying did you say that because you
18 can't remember the time and the place.

19 THE WITNESS: I can't remember the time and the place,
20 the instructor. I mean there's -- you know, stop and frisk
21 training at a lot of trainings that you go to. I went to the
22 range twice a year for 20 years. I can't tell you a specific
23 day and time I went to the range.

24 Q. Do you have a general memory of receiving training related
25 to stop, question and frisk?

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1 A. I have a -- you know I briefly recall, obviously when I
2 studied for the sergeant exam, the patrol guide, administrative
3 code.

4 Q. Now, I'd like to actually hand you Plaintiffs' Exhibit 348
5 just to refresh your recollection. You were asked questions
6 about this document during the direct examination.

7 MR. MOORE: What's the document?

8 MR. MARUTOLLO: This is the one that says lesson plan
9 coversheet.

10 This is already in evidence.

11 Q. You indicated during direct examination that you're
12 familiar with the contents of this document; is that right?

13 A. Sure.

14 Q. Now, so at some point during your NYPD career you were made
15 aware of the contents of this document; is that right?

16 A. Sure.

17 Q. So -- and just to be clear the contents of this document
18 include references to the levels of suspicion needed for a
19 stop?

20 A. (No response).

21 Q. On page two.

22 A. I'm looking, I'm looking.

23 Are you talking about at bottom where it says factors
24 needed?

25 Q. Yeah.

D439FLO4

Hegney - cross

1 A. Okay.

2 Q. And the contents of this document also include the factors
3 needed to stop and frisk an individual; is that right?

4 A. On the next page, yes.

5 Q. And also the contents include how to fill out a UF 250?

6 A. (No response).

7 Q. Is that right?

8 A. How to fill out a 250? Is that what you're asking me?

9 Q. Yes. The stop and frisk report reference on the page that
10 has 5857 at the bottom. Does it reference the stop and frisk
11 report in this document?

12 A. Right. It will tell you when --

13 Q. All right. And the contents also include references to the
14 NYPD's policy prohibiting racial profiling; is that right?

15 A. Right.

16 Q. You can put that to the side for a moment.

17 How did you ensure that officers under your
18 supervision were properly conducting stops, question, and
19 frisks?20 A. If you heard -- if I heard or observed the stop I would be
21 present when I could. If I couldn't be present, you know, I
22 could speak to other officers who were at the scene. I would
23 speak to other supervisors that were at the scene. Other
24 supervisors would come to me if they thought one of my guys had
25 done something good. They would approach me with it. I would

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1 monitor the radio. You know, review memo books and whatnot.

2 Q. Even when you were not desk sergeant would you review

3 UF 250s?

4 A. I would sometimes.

5 Q. And are you aware of the NYPD's policy prohibiting racial
6 profiling?

7 A. Yes.

8 Q. And what do you understand that policy to be?

9 A. It's obviously not tolerated. A police action will not be
10 taken solely based on a person's, you know, race, or color,
11 sexual orientation -- just racial profiling would be, you know,
12 ethnicity, color.

13 MR. MARUTOLLO: Can I have one moment, your Honor?

14 No further questions.

15 THE COURT: All right. Okay.

16 Mr. Moore, anything further for this witness?

17 MR. MOORE: Just two quick questions, your Honor.

18 REDIRECT EXAMINATION

19 BY MR. MOORE:

20 Q. Regardless of whether David Ourlicht's mother wanted to
21 cooperate or wanted him to go forward with the investigation,
22 if you saw that an officer under your supervision was violating
23 departmental policy, you had an obligation to point that out to
24 him and possibly discipline him for it, correct?

25 A. If I observed it?

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Hegney - redirect

1 Q. Yes.

2 A. Yes.

3 Q. And you would agree with me, would you not -- I thought you
4 agreed with me when I was asking you the questions before --
5 that Officer Moran's memo book entries were not what you said
6 he should have made for this incident, correct?

7 A. I believe I said that's not what I would have made. My
8 definition of what's detailed and pertinent could be different
9 than his.

10 Q. It's really -- doesn't matter what his definition or your
11 definition is. It's what the NYPD's definition of it is,
12 right?

13 THE COURT: What he's saying is did it not meet a
14 standard.

15 THE WITNESS: I don't know that there's a specific
16 standard laid out. You need detailed and pertinent
17 information. Now what he received at training that I did not
18 see, I don't know what he's been trained to.

19 THE COURT: I see. All right.

20 BY MR. MOORE:

21 Q. You're not aware of whether the NYPD says to officers in
22 their training and in their written documents they give them
23 that they're supposed to put more information in their memo
24 books than appears in the UF 250 with respect to a stop and
25 frisk. Are you not aware of that?

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D439FLO4 Hegney - redirect

1 A. I wouldn't say that I know that, no.

2 MR. MOORE: Okay. Nothing further, Judge.

3 THE COURT: Anything further?

4 MR. MOORE: Let me just say, Judge.

5 Q. When you say you're not aware of that, you're not aware of
6 that now and you weren't aware of that when you were a sergeant
7 at NYPD, correct?

8 A. That the details in the memo book need to be more detailed
9 than the 250?

10 Q. Right.

11 A. No.

12 MR. MOORE: Okay.

13 THE COURT: Anything further?

14 MR. MARUTOLLO: Just one quick question.

15 THE COURT: Go ahead.

16 RE-cross EXAMINATION

17 BY MR. MARUTOLLO:

18 Q. While you supervised officers as a sergeant were you aware
19 that those officers needed to put detailed entries in their
20 memo books?

21 A. I was aware that they needed detailed entries in their memo
22 books.

23 MR. MARUTOLLO: No further questions.

24 THE COURT: All right. You're done.

25 MR. MOORE: That's fine.

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Hegney - recross

1 THE COURT: We're done. Thank you.
2 THE WITNESS: Can we leave this up here?
3 MR. MOORE: I'll take it.
4 THE WITNESS: I don't know whose it is.
5 THE COURT: All right. We're returning.
6 MR. MOORE: Thank you for accommodating me.
7 (Witness excused)

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D439FLO4 Hegney - recross

1 (Continued on next page)

2 JEFFREY FAGAN, resumed.

3 DIRECT EXAMINATION CONTINUED

4 BY MR. HELLERMAN:

5 Q. Good afternoon, Professor Fagan.

6 A. Good afternoon. Could I get the exhibits.

7 THE COURT: Can you get what?

8 THE WITNESS: The book of the exhibits.

9 THE COURT: Oh, yes, you need that back. Right.

10 THE WITNESS: Thank you.

11 Q. In the course of your work as a criminologist have you come
12 across the definition of furtive movements?

13 A. As a criminologist, no.

14 Q. Have you ever come across the definition of furtive
15 movements?

16 A. No. Only in connection with this case and related cases.

17 Q. And what have you heard in connection with that?

18 A. It's one of the criteria that's used -- one of the bases
19 for reasonable suspicion that officers can check off on the
20 UF 250.

21 Q. You've never heard anybody define it?

22 A. Well it's in case law. When we started to do the case,
23 when we started to work on this case and do these -- do the
24 reports, we did review case law with respect to furtive
25 movements.

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1 Q. Have you ever heard a former member of the NYPD define the
2 term furtive movement?

3 A. Yes. There was a hearing in 2010, if I recall right, at
4 the New York City Bar Association where retired police sergeant
5 Peter Mancuso had a rather trenchant comment about furtive
6 movements. He said something to the effect of -- I'm going to
7 find the exact quote because I quoted it.

8 MS. COOKE: Objection, your Honor. I'm not sure what
9 the relevance of this is. It's potentially hearsay as well.

10 THE COURT: This person was, at that time was he an
11 active member or a former member at the time he made the
12 statement?

13 THE WITNESS: A former member at the time.

14 THE COURT: That can't come in then.

15 MS. COOKE: Thank you. Move to strike the portion --

16 THE COURT: Well he didn't get to say it yet. He was
17 looking for it to quote from -- well now here's a -- probably
18 an exhibit to the report and we just put the report in with all
19 the exhibits.

20 MR. CHARNEY: It is. And it's from a transcript of a
21 public hearing so I don't know --

22 THE COURT: Well the bigger problem is that it's
23 actually in the record of this trial now as an exhibit to the
24 report. There wasn't an objection to the report. I can't go
25 back.

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D439FLO4

Fagan - direct

1 MS. COOKE: Exhibit to the report or --

2 THE COURT: I think so. He's busy looking.

3 THE WITNESS: It is in the report.

4 THE COURT: I'm afraid it's there already in the
5 record. I can't start not looking at parts of the record. So
6 if you find it, tell me what -- first of all, are you looking
7 at the first report, 411?

8 THE WITNESS: Yes, it's in 411.

9 THE COURT: It's something on which the expert relied
10 and that's always an area that's not hearsay anyway, the
11 materials the expert considered.

12 MS. COOKE: It's not coming in for its truth at any
13 rate.

14 THE COURT: Well, we allow it in all the time. If
15 that's part of the basis of his opinion, something he
16 considered --

17 MS. COOKE: But not for the truth --

18 THE COURT: It's something he considered. He took it
19 into account. So that's the definition that he took into
20 account. That's the point. It's not for its truth, but that
21 he considered it so to speak. It's the definition he found
22 governed. But we're still looking for it. Not we, he.

23 MR. HELLERMAN: Professor, can I direct your
24 attention --

25 THE COURT: You know where it is?

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D439FLO4

Fagan - direct

1 MR. HELLERMAN: -- to page 53 of your first report.

2 THE COURT: Fifty-three.

3 THE WITNESS: Yes. It's a quote at the top of page
4 53.

5 THE COURT: I see. Mr. Mancuso stated that, quote,
6 furtive movements tells me that the cops are out there winging
7 it a bit. They're really not looking for individuals. And
8 that's quoted from the John Jay College of Criminal Justice.
9 New York Police Department stop and frisk policies. Transcript
10 of March 9, 2010. Association of the Bar of the City of
11 New York.

12 Anyway you took this into account?

13 THE WITNESS: I did.

14 THE COURT: Only for that purpose.

15 THE WITNESS: And it's my understanding also that a
16 similar statement was made by a witness in this case, Officer
17 Rodriguez.

18 THE COURT: In this trial here that we've just been
19 having these last couple weeks?

20 THE WITNESS: Yes.

21 THE COURT: Maybe. I don't know. If somebody can
22 find that statement. Plaintiffs have a big group. They'll
23 look for it.

24 MR. HELLERMAN: We'll look for it.

25 THE COURT: Look for it in Officer Rodriguez's

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D439FLO4 Fagan - direct

1 testimony. If you find it, can you point it out to me.

2 Q. Professor, did you ever determine the arrest rate for stops
3 for which furtive movement is checked and for which -- and
4 compare it to the rate at which -- for stops for which furtive
5 movement is not checked?

6 A. Yes, we did. I did.

7 Q. And what did you find?

8 A. I'm sorry. Unfortunately I think it's in one of the
9 appendices.

10 We found that the rate of arrests when furtive
11 movement was checked off was very low. I don't have the exact
12 figure in front of me, unfortunately.

13 Q. I can direct you -- may I direct you to page 52?

14 THE COURT: You may. Page 52.

15 MR. HELLERMAN: Page 52 of the first report.

16 THE WITNESS: Yes. 5.11 percent. The bottom of page.

17 THE COURT: I see the arrest rate in cases where
18 furtive movement was checked was 5.11 percent compared to
19 6.03 percent in cases where it is not checked, a difference of
20 18 percent.

21 Why is that a difference of 18 percent?

22 THE WITNESS: It's 18 percent off the base rate of
23 6.03. If you subtract 5.11 from 6.03 and you compute that as
24 the difference into a percent, as a percent of the 6.03, it's
25 18 percent.

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D439FLO4 Fagan - direct

1 Q. Have you looked at the extent to which the use of furtive
2 movements on UF 250s has increased over time?

3 A. Yes, we did. I believe that's in the report of
4 December 2010 which is Exhibit 412 and there it's in figure S2
5 on page 42.

6 Q. What does that show?

7 A. That figure shows that for all racial groups among the
8 suspects, the fraction of the stops where furtive movements was
9 checked off went from about two percent in the first year or so
10 of the -- that we studied, 2004, up to about more than
11 50 percent for black suspects who were the majority of suspects
12 and for Hispanic suspects by the end of the study period which
13 was the end of 2009.

14 THE COURT: I just wasn't able to follow where you
15 are.

16 THE WITNESS: Page 42 of Exhibit 412.

17 THE COURT: One moment I want to look at that.

18 Thank you.

19 THE WITNESS: So the rate increased substantially over
20 time. And almost a steady increase, something what we would
21 call in statistics, almost a monotonic increase, meaning it
22 increased by the same amount every year.

23 THE COURT: It increased for all these groups?

24 THE WITNESS: For all groups.

25 THE COURT: For white, Hispanic, black and others. It
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D439FLO4 Fagan - direct

1 increased for all of them.

2 THE WITNESS: Yes. It increased for every group.

3 THE COURT: So police officers were noting furtive
4 movements, more each year?

5 THE WITNESS: Yes.

6 Q. Do you know whether the use of furtive movements on UF 250s
7 has continued to rise after the period covered by your
8 supplemental report?

9 A. Yes. It did. In our last report we looked again at these
10 figures. I don't think we published a graph on it, but it did
11 continue to increase.

12 THE COURT: Is that 417 you're talking about?

13 THE WITNESS: Yes. Exhibit 417.

14 THE COURT: I don't know if you can. Can you find
15 where it says that? If it's too time consuming, it will wait.

16 THE WITNESS: It's a section on page 32 and a graph on
17 page 33.

18 THE COURT: Graph on page 32?

19 THE WITNESS: Text on 32.

20 We did --

21 THE COURT: I see the text. Where is the graph?

22 THE WITNESS: The graph is on the adjacent page.

23 THE COURT: The adjacent page?

24 THE WITNESS: Yes.

25 But this doesn't address the temporal issue of growth.

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D439FLO4 Fagan - direct

1 It did sustain at the same high rates. It might have gone up a
2 little bit over time. We didn't report specifically on this.

3 Q. In your work in this case have you determined what the most
4 commonly used stop factor on UF 250 is?

5 A. Furtive movement and high crime area.

6 Q. And which of those is used -- has been used more often?

7 A. High crime area.

8 Q. And is high crime area the stop factor that is most
9 commonly used?

10 A. It's the additional circumstance that's most commonly used.
11 And among all of the 20 factors, both on side one and side two,
12 stop factors and additional circumstances, it's the most
13 frequently used.

14 Q. Have you looked at the question of the hit rates for stops
15 where high crime area is not checked as opposed to the hit
16 rates for stops for which high crime area was checked?

17 A. The hit rates?

18 THE COURT: I don't know what you mean by hit rates.

19 MR. HELLERMAN: I'll withdraw the question.

20 Q. Have you compared the rate -- the number or rate of cases
21 in which high crime area was checked that resulted in an arrest
22 with the number or rate of cases where high crime area was
23 checked that did not result in an arrest?

24 A. I don't recall doing that but we did a huge number of
25 analyses and comparisons. It's entirely possible that I did.

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D439FLO4 Fagan - direct

1 Q. Would you take a look at page 52 of your first report.

2 A. Okay.

3 Q. The second full paragraph, the second --

4 A. Oh, yes. I'm sorry. Thank you for reminding me.

5 Yes. We did do that analysis. It was 5.14 percent in
6 cases where, arrest rate in cases where high crime area was
7 checked off compared to 6.27 percent in cases where it was not
8 checked off.

9 THE COURT: I'm sorry. Just one moment. Let me read
10 that.

11 THE WITNESS: This is text on page 52.

12 THE COURT: Again the difference between 5.14 and 6.27
13 is a lot of percentage points. Remember before you explained
14 to me that that was 18 percent.

15 THE WITNESS: Right.

16 THE COURT: For some other spread it was between five
17 and six, this would also be a big percentage difference?

18 THE WITNESS: Correct.

19 THE COURT: Like 20?

20 THE WITNESS: It's 22 percent. If you subtract 5.14
21 from 6.27, the difference is about 1.03, 1.13. And if you
22 divide that by 6.27 -- I'm sorry, by 5.14, you get 22 percent.

23 THE COURT: 22 percent difference.

24 Q. And in connection with your work in this case did you look
25 at or examine the percentage of stops for which high crime area

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1 is checked compared to the crime rate in a given area?

2 A. Yes. That was one of the analyses that we did to try and
3 establish the validity, or the measurement validity of this
4 particular stop factor.

5 And in figure 13, in Exhibit 411, which is on page 54.

6 THE COURT: Which report?

7 THE WITNESS: 411.

8 THE COURT: Then you said page 54.

9 THE WITNESS: Yes. And then again in Exhibit 417 on
10 page 33 of -- on page 33 of that exhibit. Again, it's labeled
11 figure 13.

12 THE COURT: Right.

13 THE WITNESS: In each case we took the -- we divided
14 the city into 20 percent brackets based on the amount of crime
15 in those places. Figure 13, in Exhibit 411 is based on the
16 city's police precincts, averaged over that period of time.
17 And on figure 13 in 417 is based on census tracts.

18 And what we did was divide the city -- we took the
19 total crime rate for each of the precincts and divided it into
20 20 percent brackets, the lowest 20 percent, and the next
21 20 percent, and the next 20 percent. And we compared the
22 frequency with which officers checked off high crime area in
23 each one of those brackets. And we found that there was almost
24 no difference in the rate in which officers would indicate high
25 crime area.

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1 So in the safest portions of the city, officers would
2 check off high crime area and in the -- at about the same rate
3 as they would in the most dangerous or high crime areas of the
4 city.

5 So it seemed, just simply looking at this particular
6 pattern, that there was no discriminatory -- what we call
7 discriminative validity in how that factor was used.

8 And in plain language discriminative validity means
9 basically the ability to actually tell two things apart. Or to
10 put it in ever plainer language, it may not mean exactly what
11 it says it means.

12 THE COURT: To put it another way, it's used
13 indiscriminately.

14 THE WITNESS: I think that was the opening salvo.

15 THE COURT: Right.

16 Q. Is the extent to which the use of high crime area on
17 UF 250s -- withdrawn.

18 Did you look at the extent to which the use of high
19 crime area has increased over time?

20 A. Yes, we did. I believe that's in 4 -- no, I'm sorry.
21 In -- yeah, it's in 417.

22 No. I take it back. It's in 412.

23 THE COURT: Yeah. That's where you had the furtive
24 movement change in time, right?

25 THE WITNESS: Yes.

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1 THE COURT: You did the same thing with high crime
2 area?

3 THE WITNESS: Yes. We showed a series of graphs in
4 this exhibit. So if you look at -- let me find the right
5 graph.

6 MR. HELLERMAN: May I help?

7 THE WITNESS: Yes. It's on page 45, figure S5.

8 THE COURT: Right.

9 THE WITNESS: And we show that there's a bit of
10 variation over time. But it does seem to be increasing over
11 time through the calendar quarters of the first report period.

12 So it's somewhere around average from about -- let's
13 say, for example, for black suspects it rises from 55 percent
14 to almost 60 percent. For Hispanic suspects, it rises from
15 50 percent to about 55 percent. So it's increasing for the two
16 groups -- the two groups -- the two racial and ethnic groups
17 that comprise the majority of the -- the large majority of
18 stops.

19 Q. Now are there any other stop factors or additional
20 circumstances on the UF 250 whose use you consider to be
21 indiscriminate?

22 A. Well, we certainly find rising crime -- very --
23 unexplainable increases in the use of certain factors over
24 time. So, for example, in 412, in figure S3 on page 43 --

25 THE COURT: Wait, wait. You got to go back. 412.

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1 Then you said where?

2 THE WITNESS: Page 43.

3 THE COURT: Thank you. Okay. Go ahead.

4 THE WITNESS: There is a similar increase in the use
5 of the factor "actions indicate violent crime." And those are
6 rising steadily over time, again, in statistically what appears
7 to be a monotonic function.

8 THE COURT: So what does that mean to you that these
9 three examples you've already shown me increasing over time,
10 furtive movements, high crime area, and actions indicate
11 violent crime, what does it mean to you that all three of these
12 are rising over time?

13 THE WITNESS: It suggests that there's a kind of
14 patterned response that appears to be kind of a comfortable
15 model mode of responding or indicating reasonable suspicion
16 that officers may be falling back on. It's a lot easier to
17 follow a script like this than it is to follow -- to do the
18 hard work of discerning what the actual real individualized
19 suspicion may be.

20 (Continued on next page)

21
22
23
24
25

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1 THE WITNESS: We note the same thing, your Honor, for
2 Figure S4.

3 THE COURT: Where is S4?

4 THE WITNESS: On page 44.

5 THE COURT: OK.

6 THE WITNESS: A rather inexplicable jump in the use of
7 evasive response to questioning in a very short period of time.
8 It looks almost as if it occurred in the eighth calendar
9 quarter of our study period, from about 5 percent of the cases
10 to nearly 20 percent of the cases.

11 THE COURT: Were the officers checking more boxes per
12 form over time, do you know that?

13 THE WITNESS: Yes, they did. We note in one of the
14 analyses, and I have to hunt around a little bit to get it, but
15 the number of factors checked off -- it's on page 40 of 412.

16 THE COURT: Wait.

17 THE WITNESS: I'm sorry. Wrong one.

18 We do note somewhere that the number of factors
19 checked off per stop does increase steadily over time.

20 THE COURT: Is that S6 on page 40?

21 THE WITNESS: Right below it.

22 THE COURT: Where it says additional circumstances
23 went from 1.53 to 1.9?

24 THE WITNESS: The stop circumstances jump by about 50
25 percent from 1 to nearly 1.5, and additional circumstances by

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1 about a third, from 1.53 to 1.93.

2 There is increased reliance on the number of factors,
3 officers are just checking many more factors per stop. And,
4 certainly, certain of them seem to be growing rather steadily
5 over time while others don't exhibit the same pattern.

6 Q. You used the term script. What do you mean by script?

7 A. Scripts are sort of convenient shorthands that people use
8 to express in language or in writing the expression of what may
9 be the phenomena that don't easily fall into discernible
10 categories, so they kind of fall back on what constitutes a
11 script. And most people have scripts in everyday lives, but in
12 this case, it seemed to be a script of suspicion that is
13 increasingly invoked over time.

14 Q. Have you formed any opinion based on the increased use of
15 this script over time?

16 A. Well, the increased reliance on a pattern or on this script
17 of responses seems to suggest that there is something a little
18 bit less than individualized in the articulation of
19 individualized and reasonable and articulable suspicion in the
20 conduct of stops.

21 THE COURT: But a checkoff in a form, where you just
22 have choices and you have to check one, would lend itself to
23 that problem no matter what, doesn't it?

24 THE WITNESS: It could be, your Honor. It's
25 convenient. It's a lot easier to check boxes off than to write

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1 out in detail. This is one of the concerns that this pattern
2 that we observe raises.

3 THE COURT: OK.

4 Q. On the basis of the matters we have just been discussing
5 and on the basis of your work in this case, have you reached
6 any opinion about the reliability of UF-250s?

7 A. For the reasons we talked about before, and I think that we
8 mentioned a little bit before the break, having to do with
9 fairly low arrest and seizure rates well below chance, I don't
10 think that the -- I don't think this particular method of
11 articulating suspicion is doing the work that it was designed
12 to do, in other words, getting at the individualized suspicion
13 in each case.

14 Q. Do you recall testifying earlier that you reached an
15 opinion about one race or ethnicity or other being treated more
16 harshly during stops than any other?

17 A. Yes. I think we discussed that this morning.

18 Q. What opinion did you reach with respect to that?

19 A. It appeared to us in both study periods that the odds of
20 being arrested compared to being summonsed, all other things
21 being equal, are greater for black and Hispanic suspects than
22 they are for white suspects. White suspects, controlling for
23 suspected crime, are more likely to be given a summons, if any
24 sanction, and black and Hispanic suspects are more likely to be
25 arrested. Again, this is controlling for the severity or the

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1 type of suspected crime in the case.

2 Q. I believe you also mentioned earlier that blacks were more
3 likely to be the subject of force?

4 A. Yes, that's the case. We did testify to that this morning.

5 Q. Are the results of your having looked at that question in
6 your report?

7 A. Yes, they are. They are in, Figure 14 shows the results of
8 that analysis, as does Table 16.

9 Q. Figure 14 of the first report on page 68?

10 A. That's correct. And Table 16 on page 67.

11 THE COURT: One moment, please.

12 I don't think I understand Figure 14.

13 THE WITNESS: Figure 14.

14 THE COURT: What are the boxes that go below the zero
15 percent? What does that mean?

16 THE WITNESS: That means they are less likely compared
17 to whites.

18 THE COURT: What is less likely?

19 THE WITNESS: Each box represents a particular group,
20 and the referenced group is white suspects. So the bar for
21 black suspects is blacks compared to whites. And these are
22 showing odd ratios.

23 So, for example, blacks are about 8 percent less
24 likely to be given any sanction pursuant to a stop. Hispanics
25 about even money with respect to being given any sanction

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1 pursuant to a stop. And other race suspects are 11 percent,
2 approximately 11 percent less likely compared to whites to be
3 given any sanction.

4 Now, if you move to the middle set of bars, that's
5 only for the group of people who are given any sanction. So we
6 set aside the ones who are given no sanction. And we see there
7 that, if a sanction is going to be given, blacks are about 31
8 and a half percent more likely to be arrested rather than being
9 given a summons compared to whites.

10 THE COURT: I see. OK.

11 THE WITNESS: You can draw the same conclusions for
12 Hispanics and other race suspects.

13 THE COURT: OK. Who falls in other race? Is it
14 Asian?

15 THE WITNESS: Mostly Asian, a scattering of American
16 Indians.

17 Q. What does Figure 14 say with respect to the use of force?

18 A. Force is used about 14 percent -- black suspects are 14
19 percent more likely to have force used by officers in a stop
20 compared to white suspects. It's about 9 percent for
21 Hispanics. And Asian or other race suspects are about 4
22 percent less likely to have force used in the conduct of a
23 stop.

24 Q. What is Table 16 of your first report?

25 A. Table 16 presents a logistic regression analysis that shows

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1 the results of each one of these analyses that produced the
2 results in Figure 14.

3 THE COURT: I haven't found Table 16.

4 THE WITNESS: Table 16 is on page 67.

5 THE COURT: What does it do?

6 THE WITNESS: Table 16 presents the results of what we
7 call a multilevel regression. And in a multilevel regression,
8 we simultaneously compare, in this particular instance, the
9 characteristics of a stop of an individual, both the
10 characteristics of the person and of the circumstances of the
11 stop, and simultaneously compare characteristics of the
12 location where the stop takes place.

13 So the set of regression results under suspect
14 characteristics, you can see what the list of them were that we
15 used in the regression. And under precinct conditions, because
16 we did this analysis at the precinct level, you can see which
17 particular characteristics of precincts we included as control
18 variables.

19 THE COURT: I don't understand the numbers.

20 THE WITNESS: Should I explain?

21 THE COURT: Yes.

22 THE WITNESS: So in this case, these are odds ratios.
23 Odds ratios, as it suggests, an odds ratio is how much more
24 likely than not are we --

25 THE COURT: This is like a bar chart? All compared to
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1 whites?

2 THE WITNESS: Yes. When you do a regression such as
3 this, you have to establish a reference group.

4 THE COURT: All these figures are compared to whites?

5 THE WITNESS: Correct.

6 THE COURT: What are the bracket numbers?

7 THE WITNESS: Those are standard errors, which
8 indicates the spread of the distribution of the results across
9 groups.

10 Q. Figure 14 depicts graphically the results of the regression
11 analysis that is shown on Table 16, is that correct?

12 A. Yes.

13 THE COURT: Except for the precinct condition part of
14 Table 16, which I don't totally understand.

15 THE WITNESS: Those are controlling for the
16 simultaneous effects of what is going on in the precinct where
17 the stop took place. So those wouldn't be shown in the bar.

18 THE COURT: Is that also compared to whites?

19 THE WITNESS: No. That's just a general comparison of
20 what is going on in the precinct.

21 THE COURT: I don't know what you mean, what those
22 numbers mean.

23 THE WITNESS: We take into account the amount of crime
24 in the precinct at the time the stop is made.

25 THE COURT: Could you be specific? Reading across on
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1 Table 16, it says, for example, complaints, land, log, and
2 there are three numbers. I don't understand the numbers at
3 all.

4 THE WITNESS: That particular set of numbers, for
5 example, of 1.166, that would mean that a sanction is about 16
6 percent more likely to take place given a one unit increase in
7 the number of crime complaints in the past year.

8 THE COURT: I don't understand. How about for the
9 other?

10 THE WITNESS: For percent black? The sanctions are
11 roughly -- just to preface this, a coefficient of 1.0 means
12 even money, even odds.

13 So under percent black in the precinct, because it's
14 .485 for the odds ratio, that means that a sanction is 51
15 percent less likely to occur for each increase of 1 percent in
16 the black population. That, by the way, is a huge effect.

17 THE COURT: And I don't understand it.

18 THE WITNESS: Basically, it means that as a precinct's
19 black population increases, the odds of a sanction being given
20 in any stop decreases dramatically.

21 THE COURT: As the percentage of blacks increases, the
22 chance of being sanctioned decreases?

23 THE WITNESS: Correct. At the end of the day, that's
24 the interpretation.

25 The same is true with patrol strength. Sanctions are

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1 given far more often as a patrol strength increases. That's
2 the 2.373 number.

3 We controlled out for whether or not the stops took
4 place in business precincts where the residential population is
5 quite low, and we found very little effect there.

6 THE COURT: What is the SCS factor?

7 THE WITNESS: It's a general factor which expresses
8 the conditions of poverty and socialized relation in a
9 precinct. And those odds ratios are so close to 1 that we
10 consider them to be even money.

11 Again, your Honor, the point of the table is to
12 control simultaneously for characteristics of the individual,
13 including the person's race, their age, as well as the
14 suspected crime in the stop. And that's one set of
15 comparisons. Then the precinct conditions are a second set of
16 comparisons. But again, all of them are being compared
17 simultaneously. Each coefficient is adjusted to the effects of
18 the other coefficients.

19 Q. Professor, what is Table 14 in your first report?

20 THE COURT: Table what?

21 MR. HELLERMAN: Table 14, page 64 of the first report.

22 A. Table 14 shows the base rates or the frequency in the
23 general population at which each of those stop outcomes takes
24 place. So those are not adjusted for any individual
25 characteristics. That's just simply the raw numbers.

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1 But the point of doing the regression model is to show
2 that these numbers would vary according to the location where
3 the stop takes place, and according to the characteristics of
4 the stop itself, and the purpose of doing the regression is to
5 introduce those other influences into those estimates.

6 Q. To clarify, Professor, when you say any sanction, what does
7 that mean?

8 A. That means either an arrest or summons.

9 Q. Did you do a regression analysis with respect to the
10 imposition of sanctions as a result of stops for the 2010
11 through June 2012 period?

12 A. Yes, we did. We did almost exactly the same model, except
13 where we looked at census tracts instead of police precincts.
14 And that is shown in Table 14 in Exhibit 417.

15 Q. That's on page 34?

16 A. Yes.

17 Q. Did you reach any conclusions on the basis of the results
18 shown in Table 16?

19 A. Of the first report?

20 Q. Yes.

21 A. Yes. We concluded that -- let me go back to the table
22 again. We concluded that there was a connection to reasonable
23 suspicion, that since the sanction rates were far lower for
24 blacks and for Hispanics than they were for whites, that this
25 reflected back on the reasonable suspicion criteria that we

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1 used to make the stop. And it suggested to us that the bases
2 of suspicion for the stop were far thinner because they were
3 significantly less likely to turn out in the form of any
4 sanction at all.

5 We also conclude from the table that there is
6 disparate treatment of blacks and Hispanics with respect to
7 whites in terms of what the outcome of the sanction would be,
8 if a sanction were to be given, all other things being equal.
9 And the same is true with force.

10 THE COURT: You say the outcome of the sanction?

11 THE WITNESS: Arrest versus summons.

12 THE COURT: You didn't study what happened after the
13 arrest?

14 THE WITNESS: No.

15 Q. Does Table 16 also show the odds of members of one race
16 being subjected to the use of force as compared to another?

17 A. Yes.

18 Q. What does it show?

19 A. Similar to the graph on the following page, that black and
20 Hispanic suspects were significantly more likely to experience
21 force during the conduct of the stop. 14 percent more likely
22 for blacks, 9 percent more likely for Hispanics.

23 Q. That's for the '04-'09 period?

24 A. Correct.

25 Q. How about for the 2010 through June 2012 period?

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1 A. We didn't do that analysis for two reasons. One is a
2 statistical reason. The other is a logistic reason.

3 The statistical reason is that we inspected the
4 distributions in Table 14 in 417 in the second report, second
5 supplemental report, and we found that the distributions were
6 almost identical. So it appeared to us the conditions had not
7 changed during that second period, that second 30-month period,
8 and so we felt that there was no real reason to conduct another
9 logistic regression of the sort we did in the first report.

10 The logistical reason was simply that these are
11 extremely, as we say, computationally intensive models, meaning
12 each model ties up the computer for roughly a 24-hour period.
13 And we decided, given what appeared to us to be a very strong
14 inference of no need to repeat the analysis, that we felt no
15 need to tie our computers up for 24 hours at a time.

16 Q. Now, earlier, Professor, you testified that you came to
17 certain opinions about the racial composition in an area
18 predicting stop rates and the frequency and likelihood with
19 respect to which members of one group would be stopped as
20 opposed to another group. Do you recall that?

21 A. Yes.

22 Q. Is the methodology or methodologies that you used to reach
23 those opinions set forth in your reports?

24 A. Yes. In great detail I might add. In 411, the methodology
25 goes on for several pages for this particular analysis.

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1 Q. Where does it start?

2 A. We talk about the data sources in the first several pages
3 of that report, beginning on page 6 and concluding on page 11.
4 And then we go into the modeling strategies beginning on page
5 12 and continuing through the middle of page 18.

6 Q. Did you use the same modeling strategies for the 2010 to
7 June 2012 period?

8 A. We used the same regression models -- we used the analytic
9 strategy. We did some changes in the data. We changed the
10 unit of analysis to the census tract, which we also did in 412,
11 which was our supplemental report. And we also changed the
12 time unit. We examined occurrences in the first report in
13 months -- I'm sorry, in calendar quarters. We switched to
14 months in the second report, and used months again in the
15 November 2012 report.

16 Q. I will ask you the reasons for those changes in just a few
17 minutes.

18 THE COURT: After the break. Let's have our ten
19 minute recess.

20 (Recess)

21 BY MR. HELLERMAN:

22 Q. Professor, I would like to take us back to Table 16 in the
23 first report, Exhibit 411.

24 THE COURT: What page is that on?

25 MR. HELLERMAN: It's on page 67.

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1 THE COURT: OK.

2 Q. With respect to the precinct percentage black figures on
3 Table 16, I understood you to say that as the black percentage
4 of a precinct increases, the likelihood of any sanction in a
5 stop goes down, is that correct?

6 A. Yes. So in the table, if you look, your Honor, where it
7 says precinct percent black, and you look at the .485 number,
8 basically, what that means is that the odds of a stop producing
9 any sanction, either an arrest or a summons, increase quite
10 dramatically -- decrease quite dramatically as the racial
11 concentration of black population in that precinct grows. In
12 other words, the more black -- the greater the black population
13 in the precinct, the lower the odds of a stop resulting in any
14 sanction, either arrest or summons.

15 Q. What, if anything, does that suggest to you?

16 A. It suggests that stops -- it's one of the indicia on which
17 we conclude that stops are being made in the absence of strong
18 reasonable suspicion.

19 Q. Does the extent to which stops are being made without
20 strong reasonable suspicion, does that increase as the
21 percentage of blacks in a precinct increases?

22 A. Let me say it again. The likelihood of a stop resulting in
23 any sanction decreases significantly as the percent black
24 population in that precinct increases.

25 Q. Again, on the precinct percent black line, what does the

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1 1.328 number in the any force column mean?

2 A. That means that the likelihood of a stop resulting in the
3 use of force is significantly higher as the percentage of the
4 black population in a precinct increases.

5 Q. Let me take you back to Table 14 of the first report, page
6 64.

7 A. Yes.

8 Q. Could you read us the numbers under the force any column
9 for blacks and Hispanics and for whites?

10 A. For blacks and Hispanics, it is 24.12 percent of all stops.
11 And for Hispanics it's 24.75 percent of all stops. That's the
12 percent that results in the use of any force. For white
13 suspects, that comparable number is 17.85 percent. So there is
14 roughly about a six point -- I don't know. I can't do the math
15 in my head without my handheld calculator. It's about a six
16 and change percent difference.

17 Q. That's before controls?

18 A. Before introducing any controls about the crime conditions
19 where the stop took place or any aspect of the stop including
20 the reason for the stop. This is an average across all the
21 stops.

22 Q. You previously testified that after such controls are put
23 into the model, the likelihood of blacks being subjected to the
24 use of force in a stop is considerably higher than that, is
25 that right?

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1 A. Yes. After adjusting for all the factors that are listed
2 in Table 16, the odds are significantly higher.

3 Q. I think you said it was 14 percent?

4 A. For force it's about 14 percent for blacks and about 9
5 percent for Hispanics.

6 Q. Would you look at Table 14 in your second supp report,
7 Exhibit 417, Table 14 on page 34?

8 A. Yes. The differences are about the same. It's 15.5
9 percent, roughly, for use of force in stops involving whites.
10 For stops involving black suspects, it's 21.34 percent, roughly
11 about a 30 percent increase, maybe a third. And for Hispanic
12 suspects, it's almost 24 percent, 23.8 percent. And that's an
13 increase of almost 50 percent in the base rate over the rate
14 for whites.

15 Q. Let's go back to the portions of your reports that describe
16 the methodologies that you used to reach your opinions that
17 racial composition in an area predicts stops over and above
18 crime and blacks and Hispanics are more likely to be stopped
19 and are stopped more frequently than whites.

20 You told us where those methodologies are set forth in
21 your first report. Are they set forth in any of your other
22 reports?

23 A. Yes. In 412 we show a series of alternate analyses or
24 different analyses. The methodologies are set forth on page 9
25 of 412, and continuing through the middle of page 15.

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1 And we also have a methodological discussion in 417
2 that begins on page 2, in the middle of the page, section C,
3 and continues through page 7, with respect to the Fourteenth
4 Amendment analysis.

5 Q. I am not going to ask you to read all of that into the
6 record.

7 A. Thank you.

8 Q. Could you briefly summarize the methodologies that you used
9 to reach those disparate impact opinions?

10 A. Briefly. OK. We conducted a series of regression models.
11 Regression models -- first of all, we began by asking a very
12 simple question, which is to look at -- as is, I think,
13 appropriate in any kind of statistical analysis of any
14 phenomena. We just simply looked at the way the data were
15 arrayed in the universe of all stops. We particularly were
16 concerned with two parameters. One was the number of stops in
17 a neighborhood -- well, three parameters. One was the number
18 of stops, which was the outcome; second was the number of
19 crimes in the neighborhood; and third was the racial
20 composition of the neighborhood.

21 So we simply looked at the ratio of stops to crimes,
22 controlling for the racial composition of the neighborhood.
23 And we show those in a series of graphs both in 411 and in 417.
24 And the graphs basically show that, without getting into the
25 details, that almost in every graph the number of stops for

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1 every crime, per crime, in other words, controlling for the
2 crime rate, or in sort of RAND language, using crime rate as a
3 benchmark, that the number of stops in black neighborhoods was
4 consistently higher per crime than it is in Hispanic or in
5 white neighborhoods. And we did this for a variety of
6 different types of crimes -- weapons offenses, violent
7 offenses, so on. And we varied the benchmark for total crime,
8 weapons crimes, violent crimes.

9 So beginning with those analyses, we saw graphically,
10 in very simple, unadorned ways, that there were significant, or
11 appeared to be on inspection significant differences in the
12 stop per crime ratios in each of these neighborhoods. So
13 either there were more stops -- there were more stops per crime
14 in black neighborhoods and Hispanic neighborhoods, fewer stops
15 per crime in white neighborhoods.

16 By the way, just as an aside, one of the issues that
17 comes up both in law and criminology on these matters is
18 whether or not a neighborhood is over-policed or under-policed.
19 And it seems to hint to us a bit of under-policing in white
20 neighborhoods. We don't know if one is over-policed or the
21 other is under-policed, but certainly something along those
22 lines.

23 So then we proceeded to say, let's do some regression
24 models to unpack the question about whether or not crime rates
25 are predicting stop rates, whether there is a significant

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1 prediction when we control for all of the variables of interest
2 and relevance in this case, which included all of the crime
3 conditions in a neighborhood, all of the social and demographic
4 conditions of the neighborhood, for example, the number of poor
5 people, the number of immigrants and so on. We included
6 benchmarks for racial composition of the neighborhood as well
7 as benchmarks for crime. We measured the patrol strength that
8 was present in the neighborhood, the number of officers who
9 were on patrol or who were making stops. And used a regression
10 model that essentially is called a negative binomial
11 regression, which is specifically designed to measure and
12 analyze counts of events, and in this case we were counting
13 stops. And again, the control variables there were the crime
14 rate in the neighborhood and the number of -- in various
15 models, the number of crimes or the distribution of crime by
16 type of crime, and also all the other control variables that I
17 mentioned before.

18 Also, what I believe is a standard methodology in just
19 about any social science discipline and statistical analysis,
20 we conducted a series of sensitivity analyses, which basically
21 says, if you vary the conditions that you're studying, do the
22 results hold up? So we asked, just to give two examples,
23 whether or not the conditions that we observed were present in
24 neighborhoods with very low population such as business
25 districts? And we found that that was the case. And we also

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1 asked for examples in other sensitivity analyses. We
2 controlled for land area, understanding that certain precincts
3 are spread out so the density of crime and population would be
4 a bit more diffused compared to very dense areas. And so we
5 controlled for land area in one of the models. And virtually,
6 no matter how we poked and prodded at the analyses, we came up
7 with the same results, by and large the same results.
8 So that was one family of models. The other family of
9 models used the kind of simultaneous individual and area
10 controls that we described for Table 16. And there we counted
11 the number of stops of persons of each racial group -- blacks,
12 Hispanics and other race people -- and used the stops of whites
13 as the reference point. So we did the same regression models
14 that allowed us to say whether or not black and Hispanic and
15 other race people were stopped more often as individuals in
16 those places, controlling for characteristics of the stop and
17 controlling for characteristics of the location of where the
18 stop took place. That's the general methodological framework.
19 Q. Are you aware of other uses of regression models that test
20 for disparate impact for stop and frisk activities?
21 A. For stop and frisk activities?
22 Q. Yes.
23 A. Well, ours.
24 Q. Other than in this case?
25 A. There is only one analysis that I know of that uses

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1 regression models for stop activities. They are for pedestrian
2 stops that were done in Los Angeles. I believe we cite it
3 somewhere in one of our footnotes.

4 Q. Did you use information from the UF-250 database in your
5 regression analyses for disparate impact?

6 A. Yes, we did. We used data, obviously, on the demographic
7 characteristics of the person who was stopped, and we used
8 information on the suspected crime. And I think for the
9 Fourteenth Amendment analysis, that was the extent of the use
10 of the 250 data.

11 Q. What other data did you use?

12 A. We used data on the racial composition of the neighborhood,
13 that came from the U.S. Census. We used data from crime
14 complaints in the neighborhood to estimate the volume of crime.

15 Q. Where did that data come from?

16 A. That data came from the NYPD. It was the crime complaint
17 data file.

18 We used patrol strength data that was supplied to us
19 by the NYPD.

20 Q. Where did you get the data for the socioeconomic variables
21 that you used?

22 A. The U.S. Census for the most part.

23 In the first report, we also used data from something
24 called the Housing and Vacancy Survey, which is also a U.S.
25 Census Bureau survey. That is an interesting survey that

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1 reports on the conditions of buildings in neighborhoods,
2 whether or not there are broken windows, vacant lots,
3 delapidated buildings, and so on. And that's a measure of
4 disorder. And disorder is one of the underlying narratives of
5 a policing model in New York, one of the underlying narratives.
6 We felt it was important to control for disorder.

7 Q. Are you familiar with the term benchmark?

8 A. Yes.

9 Q. What does benchmark mean in connection with the type of
10 analyses that we are discussing?

11 A. Benchmark basically is a way to provide an indicator that
12 would predict to you, as the analyst, whether changes in one
13 variable would predict, in a regression sense, predict changes
14 in another variable. So it gives you a sense of some marker
15 against which you could make judgments about the trends that
16 you're observing.

17 Q. Did you use a benchmark in your disparate impact regression
18 analyses in this case?

19 A. We used two benchmarks. We used a benchmark of the crime
20 rate in the neighborhood and we broke down crime rate in the
21 neighborhood by the number of crimes overall, as well as the
22 percentage of crimes specific to the suspected crime for which
23 the person was stopped. So, for example, if a person was
24 stopped on suspicion of drugs, if that was the suspected crime,
25 some kind of drug transaction, we included both the overall

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1 crime rate and the percentage of crime complaints which were
2 for drug offenses. And we did that across the seven crime
3 categories that I mentioned earlier today.

4 Q. In your answer you just referred to neighborhoods. Did you
5 also look at precincts and census tracts?

6 A. We used precincts, neighborhoods and census tracts and
7 various analyses.

8 Q. What is the purpose of the crime complaint component of
9 your benchmark?

10 A. We operated under the assumption, based on some
11 articulations that we observed over periods of time, that stop
12 activity was allocated in accordance with crime problems and
13 crime activities or criminal activity in particular
14 neighborhoods. So we used the crime rate in the neighborhood.
15 More crimes, more stops. We did this for precincts,
16 neighborhoods and census tracts.

17 Q. What did you use crime complaints to measure?

18 A. Volume of crime.

19 Q. Why did you choose to include a local population component
20 in your benchmark?

21 A. Populations give you a sense of the total volume of people
22 who are out on the street, or at times are out in the street,
23 and who are available for stops. It gives you a sense of
24 population density, which is another parameter of criminal
25 activity. And, of course, it gives you a sense of the racial

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1 composition of the neighborhood.

2 Q. Are you aware of any other regression analyses of police
3 activities that used local population as a benchmark or part of
4 its benchmark.

5 A. Of police activities?

6 Q. Yes.

7 A. Yes. There are plenty of studies that look at arrest
8 activity, sure.

9 Q. Did you use local population as part of a benchmark in any
10 previous disparate impact studies relating to stop and frisk?

11 A. Did I?

12 Q. Yes.

13 A. We used it in the 1999 attorney general's report.

14 Q. Anywhere else?

15 A. Well, I have used it in the research that we have done
16 using the UF-250 or these databases. So, for example, when
17 Professor Gelman and I did our secondary analysis of the 1999
18 data, we used population as well as crime rate, both.

19 Q. When and in what was that published?

20 A. Journal of the American Statistical Association, 2007.

21 Q. Did you use local population in anything that was
22 published, as part of a benchmark regarding stop and frisk
23 activities, in anything that was published in the Journal of
24 Empirical Legal Studies?

25 A. Yes, twice. Once for the analysis by Professor Geller and

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1 myself of marijuana stop activity. And once with myself and
2 Professor Garth Davies for an analysis of stops in public
3 housing.

4 And Professor Davies and I published an article in
5 2000, where we also reanalyzed the 1999 data and used both
6 population, disorder and crime, all three of them together, as
7 benchmarks in a paper published in the Fordham Urban Law
8 Journal.

9 Q. With whom and when was the article in the Journal of
10 Empirical Legal Studies published?

11 A. The marijuana article was published in 2010. Amanda Geller
12 and Jeffrey Fagan were the authors. And the analysis of
13 disparate impact in public housing stops was published in 2012.
14 Jeffrey Fagan and Garth Davies were the authors of that.

15 Q. Do you have any understanding as to the views of other
16 researchers who conduct disparate treatment analyses as to the
17 value or utility of the benchmark that you used in this case?

18 A. There are a lot of controversy about benchmarks. Some
19 people believe you should never use population; you should only
20 use crime. Some people use crime and population together.
21 Some people have only used population.

22 Q. Is there a weight of opinion?

23 A. I think the weight of opinion would probably be against
24 using population by itself.

25 Q. By using population?

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1 A. By itself without any other benchmark.

2 Q. How about with respect to using population with crime
3 statistics?

4 A. I think that's generally accepted. When I say generally
5 accepted, generally accepted within our universe of research
6 studies. There is not a huge volume of research studies on
7 this.

8 Q. You said that you used three areas: Precinct, neighborhood
9 and census tract. Which area did you use in your first report?

10 A. Precinct. In the second report we used census tract. We
11 wanted to show that we were observing the same patterns across
12 different areas of different sizes. So in the December 2010
13 report, we showed the same analyses for police precincts,
14 neighborhoods, which is a configuration of a cluster of several
15 census tracts that was designed by Department of City Planning,
16 City of New York, and then we used census tracts. And we
17 observed the same findings regardless of which of those three
18 units of analysis.

19 Q. You just referred to a September 2010 report.

20 A. I said December 2010.

21 Q. I misheard you.

22 Why did you use precincts as the spatial unit in your
23 first report?

24 A. I don't recall. One reason was because we used precincts
25 in the 1999 report. We used precincts because the data were

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1 initially reported to us in precincts. I actually don't recall
2 the reason for that.

3 Q. Did it have anything to do with the way the NYPD analyzed
4 the stop and frisk data?

5 A. Well, some of their initial reports, the bound reports that
6 were released publicly, did report things by precinct, yes. We
7 had these big books that were produced to us at one point,
8 which were essentially prints of PDFs on stop and frisk
9 activity by precinct that the police department had generated.

10 Q. Did your use of precincts have anything to do with the way
11 police patrol resources are allocated?

12 A. Yes. One of the reasons we used precincts in the first
13 report was because the patrol strength data that we obtained
14 from the City of New York was reported strictly in precinct
15 level. So we didn't have any other information about patrol
16 strength in smaller units of analysis. It kind of
17 circumscribed what our choices were.

18 Q. Was the fact that the NYPD uses precincts for managing and
19 evaluating officer performance have anything to do with your
20 use of precincts?

21 A. Our understanding was that several of the accountability
22 mechanisms that are used by the NYPD are focused on precincts.

23 Q. How many precincts are there?

24 A. 76.

25 Q. Did you use all 76 precincts?

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1 A. No. We did not use the 22nd Precinct which is Central
2 Park.

3 Q. Is that because nobody lives there?

4 A. The population there is close to zero. It's actually not
5 zero, which is surprising. Maybe they are counting squirrels.
6 I am not sure. But we allocated the stops that took place
7 there to -- I think I mentioned the allocation procedure, but
8 we did allocate them to other precincts nearby.

9 Q. Then you also analyzed neighborhoods. How many
10 neighborhoods are there in the city?

11 A. The neighborhood designation we used at that time actually
12 has changed according to the City Planning Web site, but at the
13 time -- and we give a Web site for where we got the
14 neighborhood boundaries from -- there were approximately 275
15 neighborhood boundaries.

16 Q. Has the change impacted your belief and the reliability of
17 your analysis?

18 A. No, not at all. In fact, the number of neighborhoods in
19 the new designations has shrunk to 192. And in this case I
20 think smaller is probably better. The 275 are actually smaller
21 per unit than are the 192. So I am comfortable, very
22 comfortable with using the 275.

23 Q. Census tracts, how many census tracts are there in the
24 city?

25 A. 2250, pretty much, by and large, and 2175 were usable.

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1 Q. So you got basically the same results whether you used the
2 75 precincts, the 270 something neighborhoods, or the 2200
3 something census tracts?

4 A. Yes. If you look at Table S1 in 412 on page 17 --

5 Q. What page?

6 A. Page 17 in 412.

7 This table replicates Table 5 from the first report,
8 but it varies the units of analysis. And you can see there are
9 separate models for police precincts, for neighborhoods and for
10 census tracts. Each model attempts to explain the distribution
11 of stops. In each precinct in the first model, in each
12 neighborhood in the second model, each census tract in the
13 third model. And the controls there, as you can see, are the
14 crime in the total of complaints and the racial composition of
15 the neighborhood.

16 Q. We will get to Table 5. I don't know that we can do much
17 meaningfully with it in the time that we have left today.

18 Let me ask you, did you use a measure of time in your
19 benchmark in the disparate events that you did in this case?

20 A. In the second supplemental report?

21 Q. In any of them.

22 A. Yes, we used time. In the first report, in 411, we used
23 calendar quarters. In the second report, I believe we switched
24 to months. We controlled for both years and months. And in
25 the third report, we used, in 417 we used months.

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1 Q. Why did you use quarters in the first analysis?

2 A. Two reasons. One was the patrol strength data were
3 reported to us in quarters. We really couldn't comfortably --
4 given our understanding that patrol strength is allocated and
5 reallocated as an ongoing process, at least at the monthly
6 level, based on results of CompStat meetings, we thought month
7 would have been better, but we didn't have the data at the
8 month level. So we did calendar quarters the first time.

9 One of the reasons why the analyses in Table S1 in 412
10 does not include patrol strength is because at the time this
11 report was analyzed, we didn't have data on patrol strength at
12 the monthly level.

13 Q. Does the use of quarters avoid serial correlation problems?

14 A. Well, the use of any time unit, and we used something
15 called an AR(1) covariance, which is a way of controlling for
16 the temporal dependence of crime, meaning, basically, the
17 strongest predictor of what happens tomorrow is what happens
18 today. So we controlled for that serial dependence over time.
19 That's why there is a time parameter in every study.

20 Quarters had an advantage, apart from being matched up
21 to the data, which often an analyst has to fit what they do to
22 the data, but it also has the advantage of controlling out for
23 some very spiky changes from month to month in the data. And I
24 think at various times in our reports we show that the numbers
25 are really jumping up and down in frequency from one month to

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1 the next. And if you do a model that is based on very tightly
2 spaced time units, you wind up picking up a lot of noise from
3 the data from that random walk up and down of crime data, as
4 well as stop data.

5 So we were kind of comfortable using calendar quarters
6 because it smoothed out that spikiness. Given the fact that we
7 were dealing with 32 quarters -- I really am paralyzed without
8 a computer -- six years, four quarters, 24 time periods, we
9 were comfortable that a quarterly analysis would pick up the
10 trends over that period of time.

11 Q. Did you have the same confidence with respect to months?

12 A. Absolutely. It's a little noisier, but we put in the right
13 statistical controls and it certainly is going to pick up the
14 noise in the data. So we stand by either model.

15 This is one of those things called the sensitivity
16 check. If you vary the time period and you still get the same
17 results, that's showing you that there is a fairly strong
18 pattern inside of the data that poking and prodding at it is
19 not going to undo.

20 Q. Why did you analyze using months in later reports?

21 A. Well, we were subject to criticism by the city's experts,
22 among others, for using quarters instead of months, and 412
23 actually responds to that criticism. And we didn't want to
24 hear the criticism again in the later reports so we did it by
25 months.

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1 There was another reason. One of the other reasons is
2 we do know that there is updating by the police department in
3 how they view crime and respond to crime problems. We know
4 that that updating is probably tied overall to CompStat
5 meetings, which take place generally monthly, and we thought
6 that this was matching up with the updating process correctly.
7 Q. Is it fair to say you used months in your second
8 supplemental report in order to test the city's criticisms of
9 your use of quarters?
10 A. We weren't testing their criticism; we were accommodating
11 it. But again, if you look at the first supplemental report,
12 basically, it doesn't matter.
13 Q. And what was the reason for your change in spatial unit?
14 A. A similar concern. There is a general consensus in
15 policing that policing does correspond to the locations that
16 have higher crime rates than others. It's not to say that all
17 places don't have some amount of crime, but there is this
18 concept called hot spots. There are places that have, again,
19 higher rates. Our understanding, and again, we were subject to
20 criticism by the city's experts for using an area that is too
21 broad so we used a smaller unit of analysis. It corresponded
22 to the criminological prevailing ideas and theories in criminal
23 justice at the time, and still do. So we used the smaller
24 area, and again, we were comfortable in using the smaller area.
25 And Table S1 in 412 basically shows that it doesn't matter.

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1 You get the same results no matter what lens, no matter what
2 spatial lens you use.

3 Q. Did the city also criticize the benchmark that you used?

4 A. The city continues to insist that we don't use a crime
5 benchmark. I am quite mystified by that concept, but we use a
6 crime benchmark.

7 Q. Were you criticized for not using crime suspect data as a
8 benchmark?

9 A. That was something -- yeah, there was some claim about
10 that.

11 Q. Why didn't you use crime suspect data?

12 A. Crime suspect data would tell you what the racial
13 composition of the suspect pool is. However, the crime suspect
14 identification was missing in a very large percentage of all of
15 the crime complaints. So we would have no information
16 whatsoever about crime suspects. For example, in most property
17 crimes, there is no crime suspect. It's rarely identified.
18 The same is true in a number of other -- this kind of grab bag
19 of other crimes. There is simply very little data about how
20 many crime suspects there were. So we thought rather than
21 using incomplete data, where we have to do some kind of
22 statistical magic to accommodate the extent of missing data, we
23 would use the full data set and full information.

24 (Continued on next page)

25

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1 Q. Do you know in approximately what percentage of crimes the
2 race was unknown for at the time of your first report?

3 A. Yeah, I think we reported that in somewhere in the first
4 report. And I'm stalling for time while I find it.

5 Q. Might it be table 18?

6 A. Sorry.

7 Q. Might it be table 18? On page 76?

8 A. I'm there. Got it. Yes.

9 I think table 18 shows, for example, that the
10 percentage of cases where race is either unknown or missing, in
11 all crime -- in other crime -- in total crimes, it's about
12 68 percent of the crimes.

13 384,000 crimes in 2005.

14 385,000 crimes in 2006.

15 And that's an unacceptably high rate of missing data.
16 We certainly wouldn't want to make any attributions given the
17 heterogeneity of the crimes that are suspected in the course of
18 these stops with respect to what the other 30 or 31 percent
19 look like.

20 Q. What do you mean by attributions?

21 A. We wouldn't want to extrapolate.

22 Q. Why wouldn't you want to extrapolate?

23 A. Because we don't have enough data to make the
24 extrapolation. I think the simple lay term would be
25 extrapolation. The technical term is interpolation.

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1 THE COURT: What's the difference between race missing
2 and race unknown?

3 THE WITNESS: There are several cases where race is
4 missing. There's simply no race indicated for the suspect
5 race.

6 THE COURT: Sometimes they actually check race
7 unknown?

8 THE WITNESS: Sometimes they check race unknown, yes.

9 THE COURT: But they probably -- the two boil down to
10 the same thing?

11 THE WITNESS: For our purposes, yes.

12 I'm sorry. Counsel, the question?

13 Q. And so on the last line of table 18 in the first report,
14 you totaled race unknown and race missing, right?

15 A. Yes.

16 Q. And for -- so for total all crimes, it was race unknown or
17 missing was in 68.58 percent of all crimes?

18 A. Correct.

19 Q. And in the next year it was 69.54 percent?

20 A. Correct.

21 Q. Now have you also used the word impute?

22 A. Yes.

23 Q. Does that mean the same as extrapolate as you've been using
24 it?

25 A. It means to say, yeah, imputation. Imputation means

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1 basically we would impute to a missing value some other value.
2 We would make essentially a statistical prediction of what that
3 value would be based on other parameters.

4 Q. What would -- is there any kind of bias that would be
5 introduced if you imputed from the known suspect race
6 information that you had to the race information that you
7 didn't have?

8 A. Imputation only works if you have a really rich set of
9 predictors, other data about those events as well as the subset
10 of events where the missing item is known. You need to have a
11 pretty rich set of predictors. And here we had pretty sparse
12 predictors.

13 Q. Are you familiar with the term selection bias?

14 A. Yes.

15 Q. What is selection bias?

16 A. Selection bias means that you erroneously conclude that a
17 pattern that you observe for one group applies to another group
18 even though the two groups are not randomly selected.

19 Q. And what effect does selection bias have on the validity of
20 the results?

21 A. Well it gives you misleading results. It biases the
22 results towards the cases that were observed. And it leads to
23 a fallacy. Basically you're assuming that what you didn't see
24 is going to look like what you did see. And you can't always
25 assume that what you didn't see is going to look like what you

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1 did see.

2 Q. Now, at the time that you submitted your second
3 supplemental report, did you have information as to the
4 percentage of crimes in which the race of the suspect was known
5 and unknown?

6 A. By the time we submitted the second supplemental report?

7 Q. Yes.

8 A. Well, we had the same data. The city had provided another
9 dataset for 2010 and 2011 that claimed to show the racial
10 composition of crime suspects in each -- for each -- whatever
11 the unit of analysis was. Per crime complaint.

12 Q. And in what percentage of cases was the crime suspect data
13 missing or unknown at the time you did your second supplemental
14 report?

15 A. I need to look in the report.

16 In appendix -- on page -- appendix -- it's page --
17 appendix page 2, appendix B of the second supplemental report.

18 THE COURT: Why don't we pick up here tomorrow. It's
19 4:30. So if you could remember to start at the same place,
20 I'll look at that.

21 MR. HELLERMAN: All right, your Honor.

22 THE COURT: I'll look at that exhibit tomorrow. Feel
23 better. See you tomorrow. Same time.

24 How much longer do you think the direct part of this
25 might be?

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1 MR. HELLERMAN: I expect to finish sometime tomorrow
2 morning, hopefully before the break.

3 THE COURT: Okay. I wanted to get a guess at it.

4 MR. HELLERMAN: Of course I can't be --

5 THE COURT: No, no.

6 MR. HELLERMAN: I can't guarantee it, but that's my
7 guess.

8 (Adjourned to April 4, 2013 at 10:00 a.m.)
9

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