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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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FIVE BOROUGH BICYCLE CLUB, SHARON  
BLYTHE, JOSH GOSCIAK, KENNETH T.  
JACKSON, MADELINE NELSON, ELIZABETH SHURA  
and LUKE SON,

Plaintiffs

vs.

THE CITY OF NEW YORK; RAYMOND KELLY, Police  
Commissioner of The New York City Police  
Department; JAMES TULLER, Commanding  
Officer, Patrol Borough Manhattan South,  
THOMAS GRAHAM, New York City Police  
Department Disorder Control Unit Commander,  
DANIEL ALBANO, Lieutenant, New York City  
Police Department Legal Bureau, STEPHEN  
PARAGALLO, Deputy Chief, New York City  
Police Department Patrol Borough Manhattan  
South, and LT. JOHN DOE and CAPTAIN JANE  
DOE, New York City Police Department,

Defendants.

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DEPOSITION OF JAMES TULLER  
New York, New York  
Wednesday, March 11, 2009

Reported by: David Henry  
JOB NO. 21294

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March 11, 2009  
9:39 a.m.

Deposition of JAMES TULLER, held at the offices of Debevoise & Plimpton, LLP, 919 Third Avenue, New York, New York, pursuant to Subpoena, before David Henry, a Notary Public of the State of New York.

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A P P E A R A N C E S:

DEBEVOISE & PLIMPTON, LLP  
Attorneys for Plaintiffs  
919 Third Avenue  
New York, New York 10022  
BY: STEVE VACCARO, ESQ.  
AND: EMILY J. MATHIEU, ESQ.

NEW YORK CITY LAW DEPARTMENT  
OFFICE OF THE CORPORATION COUNSEL  
Attorneys for Defendants  
100 Church Street  
New York, New York 10007-2601  
BY: MARK MUSCHENHEIM, ESQ.  
AND: NICHOLAS CIAPPETTA, ESQ.

ALSO PRESENT:

JOSH LIPSON, Videographer

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Tuller  
JAMES TULLER, called as a witness, having been duly sworn, was examined and testified as follows:  
EXAMINATION BY MR. VACCARO: 09:39:30  
Q. Good morning, Chief Tuller. Could you please state your name and business address for the record.  
A. Good morning. I am Chief James Tuller and my business address is One Police Plaza, New York, New York. 09:39:39  
Q. Have you been deposed in civil litigation previously?  
A. Yes.  
Q. How many times? 09:39:55  
A. Four.  
Q. Can you describe those four proceedings, the subject matter?  
A. One involved the Latino Officers Association concerning personnel issues, one involved Macy's, and a parade. The other one, the other two involved -- I'm at a blank. I actually don't remember.  
Q. Do you recall any more details regarding the civil litigation relating to 09:40:43

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Tuller  
the Macy's parade?  
A. Yes. There was a balloon that hit a lamp and crashed on some folks.  
Q. You've given sworn testimony in connection with criminal prosecutions? 09:40:59  
A. Yes.  
Q. Several times?  
A. Yes.  
Q. You are a graduate of the Police Academy? 09:41:08  
A. Yes.  
Q. When did you graduate?  
A. I graduated in 1974, and that was the Housing Police Academy. 09:41:20  
Q. Do you hold any other degrees?  
A. I have a Bachelor's degree and I have a Master's degree.  
Q. And when did you receive the Master's degree? 09:41:34  
A. In 2000.  
Q. And was there a particular subject matter for that Master's degree?  
A. Public administration.  
Q. And do you hold any other 09:41:44

1 Tuller  
 2 professional certification or degrees other  
 3 than the ones you've mentioned?  
 4 A. No.  
 5 Q. Your current rank is that of 09:41:52  
 6 assistant chief?  
 7 A. That's correct.  
 8 Q. And your current position is  
 9 commander within Patrol Borough Manhattan  
 10 South? 09:42:02  
 11 A. I'm the patrol borough commander  
 12 for Manhattan South.  
 13 Q. And if I refer to Manhattan South  
 14 going forward, you will know that I mean  
 15 Patrol Borough Manhattan South? 09:42:14  
 16 A. Yes.  
 17 Q. How long have you been commander  
 18 Manhattan South?  
 19 A. A little over two years.  
 20 Q. Do you know what month you 09:42:20  
 21 assumed the a position of commander Patrol  
 22 Borough Manhattan South?  
 23 A. February.  
 24 Q. So that would be February of  
 25 2007? 09:42:30  
 TSG Reporting - Worldwide (877) 702-9580

1 Tuller  
 2 A. That's correct.  
 3 Q. What post did you hold prior to  
 4 that?  
 5 A. I was the patrol borough 09:42:36  
 6 commander for Queens North.  
 7 Q. And do you recall when you  
 8 assumed the post of commander of Patrol  
 9 Borough Queens North?  
 10 A. Yes. 09:42:55  
 11 Q. And when was that?  
 12 A. July of 1999.  
 13 Q. And what was your rank within the  
 14 NYPD when you assumed the post of commander  
 15 Patrol Borough Manhattan South? 09:43:11  
 16 A. Assistant chief.  
 17 Q. And what was your rank when you  
 18 assumed the post of commander Patrol  
 19 Borough Queens North?  
 20 A. Assistant chief. 09:43:18  
 21 Q. Prior to taking the role of  
 22 Commander Queens North, were you assigned  
 23 to any post within the borough of  
 24 Manhattan?  
 25 A. Yes. 09:43:39  
 TSG Reporting - Worldwide (877) 702-9580

1 Tuller  
 2 Q. Can you tell me what post or  
 3 posts those were?  
 4 A. I was the executive officer for  
 5 Manhattan North. 09:43:45  
 6 Q. During what period of time?  
 7 A. 1996 until I went to Queens  
 8 North.  
 9 Q. Apart from your post as executive  
 10 officer Manhattan North, did you serve in 09:44:05  
 11 any other posts within the borough of  
 12 Manhattan?  
 13 A. Over my career?  
 14 Q. Yes.  
 15 A. Yes. 09:44:15  
 16 Q. Can you describe any of those  
 17 posts?  
 18 A. I was the commanding officer for  
 19 police service area number five. I was a  
 20 sergeant of police area number five, I was 09:44:27  
 21 a lieutenant in police area number five.  
 22 Q. Ask you explain what police area  
 23 number five is?  
 24 A. Yeah, it's Housing Police  
 25 Department, that's the equivalent of a 09:44:39  
 TSG Reporting - Worldwide (877) 702-9580

1 Tuller  
 2 precinct.  
 3 Q. And can you roughly describe the  
 4 geographic boundaries of police area five?  
 5 A. That basically went up, on the 09:44:57  
 6 west side of Manhattan, that basically went  
 7 up to 55th Street, and then -- so that's  
 8 the southern end, 55th Street, and then  
 9 going north roughly to 116th Street and  
 10 then going east to the river. 09:45:13  
 11 Q. Was Chief Smolka your predecessor  
 12 as commander Manhattan North?  
 13 MR. CIAPPETTA: Objection.  
 14 Q. I will rephrase. Was Chief  
 15 Smolka your predecessor as commander 09:45:35  
 16 Manhattan South?  
 17 A. Correct.  
 18 Q. You are aware that there is an  
 19 event conducted within Manhattan South  
 20 known as Critical Mass? 09:45:48  
 21 A. Yes.  
 22 Q. Have you personally observed it?  
 23 A. Yes.  
 24 Q. On how many occasions?  
 25 A. Once. 09:45:56  
 TSG Reporting - Worldwide (877) 702-9580

1 Tuller  
 2 Q. Do you recall the date on which  
 3 you observed it?  
 4 A. No, I don't.  
 5 Q. Can you recall the year in which 09:46:03  
 6 you observed it?  
 7 A. It was in 2007.  
 8 Q. Can you recall for what period of  
 9 time you were on the scene during the  
 10 Critical Mass event in 2007? 09:46:24  
 11 MR. CIAPPETTA: Objection.  
 12 A. Roughly about an hour.  
 13 Q. Do you recall if the -- can you  
 14 describe the scene that you observed when  
 15 you first arrived at the Critical Mass ride 09:46:45  
 16 in 2007 that you observed?  
 17 A. Roughly I recall it took place at  
 18 Union Square Park and there was activity at  
 19 the park and there was bikes at the park.  
 20 Q. Do you recall whether there was a 09:47:16  
 21 group of bicyclists proceeding at the time  
 22 you arrived at the scene of that Critical  
 23 Mass event?  
 24 A. The bikes were stationary.  
 25 Q. And at some point during the time 09:47:30  
 TSG Reporting - Worldwide (877) 702-9580

1 Tuller  
 2 that you were at the scene, did the  
 3 bicyclists begin to proceed as a group in  
 4 the roadway?  
 5 A. Yes. 09:47:39  
 6 Q. And did you observe them begin to  
 7 proceed as a group in the roadway?  
 8 A. When I observed them they were  
 9 already on the move.  
 10 Q. And do you recall following the 09:47:55  
 11 bicyclists after they began to proceed in  
 12 the group as on the roadway?  
 13 A. Yes.  
 14 Q. Did you follow them on foot or in  
 15 a vehicle? 09:48:06  
 16 A. In a vehicle.  
 17 Q. And do you recall for what  
 18 distance approximately you followed the  
 19 bicyclists?  
 20 A. I would imagine I followed them 09:48:12  
 21 into the 30's, the 40's.  
 22 Q. Did the cyclists proceed  
 23 northbound from Union Square Park on that  
 24 occasion?  
 25 A. Yes. 09:48:35  
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1 Tuller  
 2 Q. And you believe you followed them  
 3 in a vehicle from the Union Square vicinity  
 4 north somewhere as far north as perhaps  
 5 40th Street? 09:48:47  
 6 MR. CIAPPETTA: Objection.  
 7 A. Well, I drove around that day.  
 8 Q. And do you recall seeing the  
 9 group of bicyclists proceed as far north as  
 10 40th Street? 09:49:04  
 11 A. I saw some of the bikes go as far  
 12 as 40th Street. I didn't directly follow  
 13 them to 40th Street, roughly. I don't  
 14 recall exactly what street I was on.  
 15 Q. Do you recall on which street the 09:49:21  
 16 bicyclists were proceeding when you  
 17 followed them from Union Square?  
 18 A. I just remember leaving on Park  
 19 Avenue.  
 20 Q. You believe that the bicyclists 09:49:31  
 21 preceded north on Park Avenue from Union  
 22 Square on that occasion?  
 23 A. Yes.  
 24 Q. Did you observe the group of  
 25 bicyclists splinter at any point? 09:49:43  
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1 Tuller  
 2 MR. CIAPPETTA: Objection.  
 3 A. I observed different groups of  
 4 bikes at different locations.  
 5 Q. Did you at any time while you 09:50:55  
 6 were observing a group of bicyclists  
 7 observe them split up into two or more  
 8 groups?  
 9 A. What I recall is seeing them at  
 10 different locations. 09:51:08  
 11 Q. Is it the case then that you do  
 12 not recall seeing a group of bicyclists  
 13 split up into two or more groups?  
 14 MR. CIAPPETTA: Objection.  
 15 A. That's the case. 09:51:23  
 16 Q. Apart from your personal  
 17 observations in connection with that  
 18 Critical Mass ride, what are your sources  
 19 of information regarding Critical Mass?  
 20 MR. CIAPPETTA: Objection. 09:51:45  
 21 A. I get briefed, or I read  
 22 narratives.  
 23 Q. And by whom are you briefed  
 24 regarding Critical Mass?  
 25 A. It's usually the person that was 09:51:58  
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1 Tuller  
 2 in charge of the event on the day of the  
 3 event.  
 4 Q. And when you say in charge of the  
 5 event, are you referring to the incident 09:52:10  
 6 commander or the aid to the incident  
 7 commander or other individuals in  
 8 connection with Critical Mass details?  
 9 A. The person that was in command of  
 10 the event. 09:52:27  
 11 Q. Okay, and is that -- is your  
 12 understanding that that is the individual  
 13 who is on the scene for the duration of the  
 14 detail?  
 15 A. Yes. 09:52:37  
 16 Q. And have you received briefings  
 17 of that nature from Inspector Dequatro?  
 18 A. No.  
 19 Q. Have you received briefings of  
 20 that nature from Inspector Hughes? 09:52:54  
 21 A. I don't recall, no.  
 22 Q. Have you received briefings of  
 23 that nature from Deputy Chief Anger?  
 24 A. Yes.  
 25 Q. Have you received briefings of 09:53:09  
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1 Tuller  
 2 that nature from Deputy Chief Paragallo  
 3 gala?  
 4 A. Yes.  
 5 Q. Are there any other individuals 09:53:17  
 6 that I haven't asked you about from whom  
 7 you've received such briefings?  
 8 A. Not that I can recall.  
 9 Q. So all of the briefings that you  
 10 have received regarding Critical Mass that 09:53:27  
 11 you can recall were made by Deputy Chief  
 12 Anger or Deputy Chief Paragallo?  
 13 A. That's correct.  
 14 Q. And is it your understanding that  
 15 Deputy Chief Anger or Deputy Chief 09:53:46  
 16 Paragallo have been on the scene for the  
 17 duration of the Critical Mass details that  
 18 occurred while you were commander of  
 19 Manhattan South?  
 20 A. That's correct. 09:54:02  
 21 Q. You mentioned also that you have  
 22 read narratives regarding Critical Mass, is  
 23 that correct?  
 24 A. That's correct.  
 25 Q. And can you describe the 09:54:28  
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1 Tuller  
 2 narratives regarding Critical Mass that  
 3 you've reviewed?  
 4 MR. CIAPPETTA: Objection.  
 5 A. It's a from-to communication, and 09:54:37  
 6 it outlines the event and what happened  
 7 during the event.  
 8 Q. Are these narratives sometimes  
 9 called unusual reports?  
 10 A. That's correct. 09:54:53  
 11 MR. VACCARO: Let the record  
 12 reflect that Mr. Muschenheim has  
 13 joined.  
 14 Q. Are there any narratives other  
 15 than what you would call unusual reports 09:55:29  
 16 that you've read regarding Critical Mass?  
 17 A. I'm sorry, ask me that question  
 18 again.  
 19 Q. Are there any narratives other  
 20 than documents that you would call an 09:55:44  
 21 unusual report that you have reviewed  
 22 regarding Critical Mass?  
 23 A. It's the unusual or the from-to.  
 24 Q. Can you describe in greater  
 25 detail the type of document you mean by the 09:56:03  
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1 Tuller  
 2 from-to?  
 3 A. It was who is reporting and who  
 4 it's addressed to, the subject matter and 09:56:18  
 5 then there is paragraphs describing the  
 6 incident.  
 7 Q. And the from-to is different than  
 8 what you would consider an unusual report?  
 9 A. Yes.  
 10 Q. And can you the authors of any 09:56:34  
 11 from-to's that you have reviewed?  
 12 A. No.  
 13 Q. Are you the addressee of any of  
 14 the from-to's that you have reviewed?  
 15 A. Yes. 09:56:54  
 16 Q. Are there addressees other than  
 17 you on any from-to's that you have  
 18 reviewed?  
 19 A. Not that I recall.  
 20 Q. Are there carbon copy recipients 09:57:01  
 21 noted on any of the from-to's that you've  
 22 reviewed?  
 23 A. No.  
 24 Q. Do the from-to's contain  
 25 information that is different than that in 09:57:14  
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1 Tuller  
 2 the unusual reports?  
 3 A. No.  
 4 Q. Do you have an understanding of  
 5 what the purpose of the from-to memorandum 09:57:24  
 6 is?  
 7 A. Yes.  
 8 Q. What is the purpose?  
 9 A. To inform the next higher command  
 10 of the details of an event. 09:57:37  
 11 Q. And what is the purpose of the  
 12 unusual report?  
 13 A. The unusual report is a caption  
 14 form basically with the same information.  
 15 Q. What is the purpose of the 09:57:46  
 16 unusual report?  
 17 MR. CIAPPETTA: Objection.  
 18 A. To fill the blanks.  
 19 Q. Is the purpose of the unusual  
 20 report to inform the next higher officer in 09:58:04  
 21 command of the details of an event?  
 22 A. Yes.  
 23 Q. Then is it the case that the  
 24 from-to memorandum and the unusual report  
 25 regarding the Critical Mass event serve the 09:58:17  
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1 Tuller  
 2 same purpose?  
 3 A. Yes.  
 4 Q. Why are there two different  
 5 reports to serve the same purpose? 09:58:22  
 6 A. The unusual is usually something  
 7 that the -- that maybe somebody of a lower  
 8 rank, a sergeant might prepare. The  
 9 narrative is a narrative, free flowing, the  
 10 thoughts of the author. 09:58:46  
 11 Q. With respect to a particular  
 12 Critical Mass event, it's your  
 13 understanding that both an unusual report  
 14 and a from-to are prepared?  
 15 MR. CIAPPETTA: Objection. 09:59:17  
 16 A. It's usually the narrative, the  
 17 from-to.  
 18 Q. Have there been Critical Mass  
 19 events of which you are aware where there  
 20 have been both an unusual report and a 09:59:29  
 21 from-to prepared?  
 22 A. I can't recall.  
 23 Q. Do you keep copies of the  
 24 from-to's concerning Critical Mass rides  
 25 that you receive? 09:59:41  
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1 Tuller  
 2 A. No.  
 3 Q. What do you do with them?  
 4 A. I read them and I forward them.  
 5 Q. To whom do you forward them? 09:59:46  
 6 A. Some remain with me and some go  
 7 to the next higher command.  
 8 Q. Do you -- the ones that remain  
 9 with you, do you keep them in a folder in  
 10 your office? 10:00:00  
 11 A. Yes.  
 12 Q. Who are the high ranking  
 13 commanders who on occasion receive these  
 14 from-to narratives?  
 15 A. The communications that leave my 10:00:24  
 16 office go to the chief of patrol in most  
 17 cases.  
 18 Q. Are there any from-to memoranda  
 19 that go directly from officers subordinate  
 20 to you to the chief of patrol without your 10:00:36  
 21 receiving a copy?  
 22 A. No.  
 23 Q. Any unusual reports that are  
 24 prepared in connection with Critical Mass  
 25 events, are any of those forwarded directly 10:00:49  
 TSG Reporting - Worldwide (877) 702-9580

1 Tuller  
 2 from officers subordinate to you to the  
 3 chief of patrol without your receiving a  
 4 copy?  
 5 A. Not that I am aware of, no. 10:00:57  
 6 Q. Do you on occasion retain copies  
 7 of unusual reports that you receive  
 8 regarding Critical Mass events?  
 9 A. No.  
 10 Q. What do you do with them? 10:01:07  
 11 A. I forward them to my  
 12 administrative staff.  
 13 Q. Do you know who specifically in  
 14 your administrative staff that you forward  
 15 them to? 10:01:17  
 16 A. I forward them to a Lieutenant  
 17 Turco or a sergeant.  
 18 Q. Presently, at the present time,  
 19 who would that lieutenant or sergeant be,  
 20 if you can say? 10:01:30  
 21 A. It would be either Lieutenant  
 22 Beattie or Sergeant Bruno.  
 23 Q. Could you spell Lieutenant  
 24 Beattie's name, please?  
 25 A. B-E-A-T-T-I-E. 10:01:38  
 TSG Reporting - Worldwide (877) 702-9580

Page 22

1 Tuller

2 Q. And Bruno is spelled B-R-U-N-O?

3 A. That's correct.

4 Q. And do you have an understanding

5 of what Lieutenant Beattie or Sergeant 10:01:49

6 Bruno do with the unusual reports that you

7 forward to them?

8 A. They probably file them, yes.

9 Q. Do you know for a fact that they

10 file them? 10:02:06

11 MR. CIAPPETTA: Objection.

12 A. I believe they file them, yes.

13 Q. Have you ever forwarded to them

14 unusual reports regarding Critical Mass

15 events with instructions that the reports 10:02:13

16 be shredded?

17 MR. CIAPPETTA: Objection.

18 A. No.

19 Q. Have you ever forwarded Critical

20 Mass unusual reports to them with 10:02:19

21 instructions that the documents be

22 destroyed in any way?

23 MR. CIAPPETTA: Objection.

24 A. No.

25 Q. Have you ever forwarded to 10:02:26

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Page 24

1 Tuller

2 A. No.

3 Q. Do you know whether any members

4 of your staff have directed Lieutenant

5 Beattie or Sergeant Bruno to shred or 10:03:23

6 destroy documents concerning Critical Mass?

7 A. No.

8 Q. Is there a policy regarding the

9 shredding or destruction of documents

10 within Patrol Borough Manhattan South? 10:03:44

11 MR. CIAPPETTA: Objection.

12 A. No.

13 Q. Would Deputy Chief Anger be

14 authorized to direct the shredding of

15 documents concerning Critical Mass? 10:04:03

16 MR. CIAPPETTA: Objection.

17 A. No.

18 Q. Have you ever authorized Deputy

19 Chief Anger to direct the shredding of

20 documents concerning Critical Mass? 10:04:13

21 MR. CIAPPETTA: Objection.

22 A. No.

23 Q. Have you ever learned that Deputy

24 Chief Anger directed the shredding of

25 documents concerning Critical Mass? 10:04:23

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Page 23

1 Tuller

2 Lieutenant Beattie or Sergeant Bruno copies

3 of the from-to narratives that you

4 described earlier?

5 A. Have I ever forwarded to them 10:02:35

6 from-to narratives, yes.

7 Q. And what is your understanding of

8 what Lieutenant Beattie or Sergeant Bruno

9 do with those documents that you forward to

10 them? 10:02:50

11 A. They file them.

12 Q. Have you ever forwarded to them

13 from-to narratives regarding Critical Mass

14 rides with instructions that the documents

15 be shredded? 10:02:58

16 A. No.

17 Q. Have you ever instructed

18 Lieutenant Beattie or Sergeant Bruno to

19 destroy any of those documents?

20 A. No. 10:03:08

21 Q. Can you recall ever instructing

22 Lieutenant Beattie or Sergeant Bruno to

23 destroy any documents concerning Critical

24 Mass that you have forwarded to them?

25 MR. CIAPPETTA: Objection. 10:03:18

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Page 25

1 Tuller

2 MR. CIAPPETTA: Objection.

3 A. No.

4 Q. Chief Tuller, I will show you a

5 document that's been premarked Tuller 2. 10:05:43

6 (Tuller Exhibit 2, NYC027036-37,

7 marked for identification.)

8 And I will ask you to review it

9 and I will have some questions for you on

10 it. 10:06:03

11 Chief Tuller, is this document

12 that's been marked Tuller 2 a document that

13 you would refer to as a from-to?

14 A. Yes.

15 Q. And you would not refer to this 10:07:32

16 as an unusual report?

17 A. Yes.

18 Q. I asked an inartful question.

19 Can you describe the difference in the

20 format of an unusual report as compared to 10:07:43

21 the document Tuller 2, if you can?

22 A. What's in front of me is a

23 narrative. The unusual is a caption form.

24 Q. And an unusual does not contain a

25 narrative? 10:08:00

TSG Reporting - Worldwide (877) 702-9580

1 Tuller  
 2 A. There is a space for the  
 3 narrative on that caption form.  
 4 Q. Are there other spaces on the  
 5 unusual report form? 10:08:10  
 6 A. Yes.  
 7 Q. Can you recall what any of them  
 8 are?  
 9 A. They ask for date and time of an  
 10 incident. There's probably numbers that go 10:08:21  
 11 on, control numbers that go on it.  
 12 Q. Can you recall receiving an  
 13 unusual report in connection with any  
 14 Critical Mass event?  
 15 MR. CIAPPETTA: Objection. 10:08:36  
 16 A. No.  
 17 Q. Are you certain?  
 18 MR. CIAPPETTA: Objection.  
 19 A. I don't recall.  
 20 Q. This on page 2 of Exhibit Tuller 10:08:45  
 21 2, do you see under paragraph five the  
 22 statement, the following were present,  
 23 Assistant Chief James Tuller, do you see  
 24 that?  
 25 A. Yes. 10:09:04  
 TSG Reporting - Worldwide (877) 702-9580

1 Tuller  
 2 Q. Do you believe based on -- well,  
 3 does this document refresh your  
 4 recollection as to whether it was the  
 5 March 30, 2007, Critical Mass ride that you 10:09:13  
 6 observed?  
 7 A. What do you mean by refresh my  
 8 memory.  
 9 Q. Bring to mind a recollection that  
 10 it was in fact the March 30, 2007, Critical 10:09:31  
 11 Mass ride that you were present at and  
 12 observed.  
 13 A. Well, I know that I was -- that I  
 14 recall being at one event, and this gives  
 15 me the day that I was there. 10:09:47  
 16 Q. And do you recall observing any  
 17 of the events described in the narrative  
 18 contained in Tuller 2?  
 19 A. I don't recall any of the events.  
 20 Q. Do you recall ever reviewing the 10:10:04  
 21 document we've marked Tuller 2 previously?  
 22 MR. CIAPPETTA: Objection.  
 23 A. Do I recall, yes.  
 24 Q. Okay. When do you recall  
 25 reviewing it? 10:10:31  
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1 Tuller  
 2 A. Yesterday.  
 3 Q. And is it the practice within  
 4 Manhattan South that if a from-to is  
 5 prepared concerning a Critical Mass event, 10:10:47  
 6 that you would receive a copy?  
 7 MR. CIAPPETTA: Objection.  
 8 A. If I would receive a copy of a  
 9 from-to?  
 10 Q. During the time that you were 10:10:58  
 11 commander of Manhattan South, yes.  
 12 A. I should receive a copy, yes.  
 13 Q. It's your expectation that if a  
 14 document such as Tuller 2, a from-to  
 15 regarding a Critical Mass event is 10:11:09  
 16 prepared, that it will -- that you will  
 17 receive a copy?  
 18 MR. CIAPPETTA: Objection.  
 19 A. That's correct.  
 20 Q. And Exhibit Tuller two is 10:11:23  
 21 addressed to the chief of patrol, correct?  
 22 A. Yes.  
 23 Q. And that's currently Chief  
 24 Gianelli?  
 25 A. That's correct. 10:11:47  
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1 Tuller  
 2 Q. Are the from-to's customarily  
 3 addressed to the chief of patrol?  
 4 A. Unusually, yes.  
 5 Q. I note that there is no carbon 10:12:03  
 6 copied list on Exhibit Tuller 2, would you  
 7 agree with me on that?  
 8 MR. CIAPPETTA: Objection.  
 9 A. Yes.  
 10 Q. Do you know what the customary 10:12:11  
 11 distribution of from-to's such as Tuller 2  
 12 is?  
 13 MR. CIAPPETTA: Objection.  
 14 A. It goes to the next level, the  
 15 chief of patrol. 10:12:30  
 16 Q. But it also customarily would go  
 17 to you, correct?  
 18 A. It should.  
 19 Q. You're not listed explicitly as a  
 20 recipient of this memo, is that correct? 10:12:37  
 21 A. That's correct.  
 22 Q. Are there any other individuals  
 23 who are not listed explicitly as recipients  
 24 in the from-to memos who to your knowledge  
 25 receive them? 10:12:50  
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1 Tuller  
 2 MR. CIAPPETTA: Objection.  
 3 A. I don't know.  
 4 Q. So your understanding would be  
 5 that Tuller 2 would be prepared by the 10:13:02  
 6 author who signs at the bottom?  
 7 MR. CIAPPETTA: Objection.  
 8 A. It may be prepared by the author.  
 9 Q. And it would then be forwarded on  
 10 to whoever appears in the from line at the 10:13:26  
 11 top as well as to you?  
 12 A. Yes.  
 13 Q. I'm going to modify that last  
 14 question. It would then be sent to whoever  
 15 appeared in the to line at the top as well 10:13:48  
 16 as to you?  
 17 A. That's correct.  
 18 Q. Now, the from line of this  
 19 exhibit Tuller 2 is from executive officer  
 20 midtown precinct south? 10:14:02  
 21 A. Right.  
 22 Q. To your understanding, is that --  
 23 in March 30, 2007, was that captain Edward  
 24 Winski?  
 25 A. Yes. 10:14:16  
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1 Tuller  
 2 Q. Have you ever been contacted by  
 3 the chief of patrol regarding Critical  
 4 Mass?  
 5 A. No. 10:14:28  
 6 Q. Have you ever discussed Critical  
 7 Mass with the chief of patrol?  
 8 A. No.  
 9 Q. Have you ever discussed Critical  
 10 Mass with the chief of department? 10:14:37  
 11 A. No.  
 12 Q. Have you ever discussed Critical  
 13 Mass with the commissioner or any of his  
 14 staff?  
 15 MR. CIAPPETTA: Objection. 10:14:48  
 16 A. No.  
 17 Q. Have you ever provided written  
 18 information regarding Critical Mass to the  
 19 chief of department?  
 20 A. No. 10:15:06  
 21 Q. Have you ever provided written  
 22 information regarding Critical Mass to the  
 23 commissioner or any of his staff?  
 24 MR. CIAPPETTA: Objection.  
 25 A. No. 10:15:15  
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1 Tuller  
 2 Q. When I say by his staff, I mean  
 3 anyone under his direct supervision. Does  
 4 that clarify any ambiguity in commissioner  
 5 and his staff? 10:15:30  
 6 A. There is no ambiguity. I think I  
 7 understand your question.  
 8 Q. Have you ever heard of a document  
 9 called a detail folder?  
 10 MR. CIAPPETTA: Objection. 10:15:50  
 11 MR. VACCARO: What is the  
 12 objection?  
 13 MR. CIAPPETTA: It assumes that  
 14 there is a document called a detail  
 15 folder. 10:16:00  
 16 Q. Have you ever heard of a document  
 17 called a detail folder?  
 18 A. No.  
 19 Q. Are folders of material  
 20 customarily prepared for the incident 10:16:15  
 21 commanders for details assigned in  
 22 Manhattan South?  
 23 A. Yes.  
 24 Q. Do you know whether such folders  
 25 are prepared in connection with Critical 10:16:24  
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1 Tuller  
 2 Mass details?  
 3 A. There is a detailed report. I  
 4 don't understand the question about the  
 5 folder. 10:16:37  
 6 Q. By folder, I am describing a  
 7 collection of documents that are provided  
 8 to an incident commander prior to the  
 9 event. Are you aware that there is a  
 10 practice of providing such a collection of 10:16:51  
 11 materials to incident commanders prior to  
 12 the event for which the detail is  
 13 organized?  
 14 MR. CIAPPETTA: Objection.  
 15 A. The event, the commander of the 10:17:04  
 16 event gets the report concerning the event.  
 17 Q. And when you say the report  
 18 concerning the event, is that a document  
 19 that sets forth the detail to be assigned  
 20 to the event? 10:17:28  
 21 A. Yes.  
 22 Q. Do you know if the commander for  
 23 the event receives other materials  
 24 customarily besides the report?  
 25 A. It's usually the report of the 10:17:41  
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1 Tuller  
 2 event.  
 3 Q. So the answer would be you are  
 4 not aware of other materials provided to  
 5 incident commanders than the report you are 10:17:50  
 6 describing?  
 7 A. Well, there may be maps that are  
 8 included in the folder. Depends on what  
 9 the event is.  
 10 Q. So there may be a folder prepared 10:18:08  
 11 for an event that would contain a report  
 12 for the detail as well as potentially maps  
 13 or other materials?  
 14 A. There may be, pertaining to the  
 15 event, right. 10:18:22  
 16 Q. Have you ever seen in connection  
 17 with any detail organized in Manhattan  
 18 South a folder that contained more than the  
 19 detail report prepared for the incident  
 20 commander? 10:18:35  
 21 A. Yes.  
 22 Q. And have you ever seen such a  
 23 folder prepared in connection with a  
 24 Critical Mass event?  
 25 A. I've seen the detail report, yes. 10:18:52  
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1 Tuller  
 2 Q. And have you seen a folder  
 3 containing a detail report that was  
 4 prepared in connection with a Critical Mass  
 5 event? 10:19:01  
 6 A. Possibly.  
 7 Q. Have you ever seen such a folder  
 8 that contained more than the detail report  
 9 for the event?  
 10 A. Not that I recall. 10:19:11  
 11 (Recess taken: 10:19-10:30 a.m.)  
 12 MR. VACCARO: And just for the  
 13 record, I will note that up until now  
 14 Mr. Ciappetta has been making the  
 15 objections and other comments for 10:30:03  
 16 defense counsel, whereas going forward  
 17 it appears that Mr. Muschenheim will  
 18 be doing so.  
 19 MR. MUSCHENHEIM: Yes.  
 20 FURTHER EXAMINATION BY MR. VACCARO: 10:30:15  
 21 Q. I will show you the document  
 22 marked 13, Chief Tuller.  
 23 (Tuller Exhibit 13,  
 24 NYC0002846-50, marked for  
 25 identification.)  
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1 Tuller  
 2 And I ask you to take a look at  
 3 it and I will have a couple of questions  
 4 for you.  
 5 MR. MUSCHENHEIM: Can I just 10:30:32  
 6 state a Tuller Exhibit 2 is a two-page  
 7 document, NYC027036 to 37, and that  
 8 Tuller 13 begins at NYC 002846 and  
 9 ends at 50.  
 10 Q. Chief Tuller, is the document 10:31:15  
 11 marked Tuller 13 what you would call a  
 12 detail report?  
 13 A. Yes.  
 14 Q. Sometimes known as a detail  
 15 request? 10:31:33  
 16 A. Yes.  
 17 Q. And to your knowledge is a  
 18 document like this prepared in connection  
 19 with each Critical Mass event?  
 20 A. Yes. 10:31:48  
 21 Q. And if you go to the last page  
 22 ending Bates reference 850, you see that  
 23 your name appears at the bottom?  
 24 A. Yes.  
 25 Q. Do you have any role in preparing 10:31:59  
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1 Tuller  
 2 the detail reports for Critical Mass rides?  
 3 MR. MUSCHENHEIM: Objection as  
 4 to form, but you can answer.  
 5 A. What do you mean by role? 10:32:16  
 6 Q. Well for example, do you type  
 7 them?  
 8 A. No.  
 9 Q. Do you authorize them?  
 10 A. Yes. 10:32:22  
 11 Q. And are they generally prepared  
 12 in final form for you to authorize by  
 13 others?  
 14 A. Yes.  
 15 Q. Who generally prepares them? 10:32:33  
 16 A. The operations unit.  
 17 Q. Is there an individual in  
 18 operations unit of Manhattan South who  
 19 customarily prepares the detail reports for  
 20 your review? 10:32:47  
 21 MR. MUSCHENHEIM: Objection,  
 22 you can answer.  
 23 A. There are individuals.  
 24 Q. And presently who are those  
 25 individuals if you know? 10:32:55  
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1 Tuller  
 2 A. The people that work in the  
 3 operations unit?  
 4 Q. Who prepare the detail reports.  
 5 A. The detail reports are prepared 10:33:05  
 6 usually by sergeants, so I have a Sergeant  
 7 Capone, I have a Sergeant Stremmel, a  
 8 Sergeant Dillon, and I'm running at a blank  
 9 on my fourth sergeant, first name is Frank,  
 10 I can't remember the last name. 10:33:33  
 11 Q. And where do those sergeants get  
 12 the information that they put into the  
 13 draft detail reports that they provide to  
 14 you for review?  
 15 MR. MUSCHENHEIM: Objection as 10:33:56  
 16 to the characterization. You can  
 17 answer it.  
 18 A. The information is compiled by  
 19 the event, the time is given to them.  
 20 Depends on the event. The number of people 10:34:11  
 21 assigned to it is given to them.  
 22 Q. Just to take a step back to make  
 23 sure there isn't any ambiguity, when you  
 24 receive a detailed report for a Critical  
 25 Mass event, customarily would there be a 10:34:32  
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1 Tuller  
 2 draft line at the top indicating that the  
 3 document is in draft form?  
 4 MR. MUSCHENHEIM: Objection as  
 5 to the characterization. 10:34:41  
 6 A. It may or may not.  
 7 Q. You recall that you have seen  
 8 detail reports that indicate on them  
 9 explicitly that they are in draft form?  
 10 A. At some point, yes. 10:34:55  
 11 Q. And have you ever seen such a  
 12 draft detail report for a Critical Mass  
 13 event?  
 14 A. Not that I recall.  
 15 Q. Do you know what happens to the 10:35:08  
 16 draft forms of detail reports?  
 17 A. Could you ask me that question  
 18 again?  
 19 Q. Sure. Do you know what happens  
 20 to draft detail reports? 10:35:26  
 21 A. No, I don't.  
 22 Q. Do you believe that they are  
 23 destroyed?  
 24 A. I don't know.  
 25 Q. Do you know if they are retained? 10:35:39  
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1 Tuller  
 2 A. I don't know.  
 3 Q. Can you ever recall making a  
 4 change in a detail report provided to you  
 5 concerning a Critical Mass event? 10:35:59  
 6 A. I don't recall.  
 7 Q. Can you ever recall directing  
 8 that a change be made in a detail report  
 9 prepared for a Critical Mass event?  
 10 A. I don't recall. 10:36:13  
 11 Q. Can you recall any officer under  
 12 your supervision making a change in a  
 13 detail report prepared in connection with a  
 14 Critical Mass event?  
 15 A. I can't recall. 10:36:21  
 16 Q. Is it your understanding that in  
 17 connection with Critical Mass rides there  
 18 is a detail folder prepared that contains  
 19 detail reports such as Tuller 13?  
 20 A. Yes. 10:36:46  
 21 Q. And can you recall any other  
 22 contents you have ever seen in a detail  
 23 folder for a Critical Mass ride?  
 24 MR. MUSCHENHEIM: Objection as  
 25 to the characterization. You can 10:36:58  
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1 Tuller  
 2 answer.  
 3 A. Could you ask me the question  
 4 again?  
 5 Q. Sure. Can you recall any other 10:37:03  
 6 contents that you have seen in a detail  
 7 folder prepared for a Critical Mass event?  
 8 A. I actually can't, no.  
 9 Q. Are you familiar with a document  
 10 at Manhattan South known as daily sheets? 10:37:30  
 11 A. No.  
 12 Q. Is there a printed document  
 13 circulated within Manhattan South each day  
 14 that lists significant events that are  
 15 expected to occur within the patrol bureau? 10:37:44  
 16 MR. MUSCHENHEIM: Objection,  
 17 but you can answer.  
 18 Q. What do you call that document?  
 19 A. The daily events.  
 20 Q. And on the last Friday of the 10:37:59  
 21 month, have you ever noted that the daily  
 22 events contains information concerning a  
 23 Critical Mass ride?  
 24 A. Could you ask me that question  
 25 again? 10:38:23  
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1 Tuller  
 2 Q. I will rephrase it. Is it your  
 3 expectation that on the last Friday of the  
 4 month, the daily events document for that  
 5 date would reference an anticipated 10:38:36  
 6 Critical Mass event?  
 7 A. There is a daily -- I'm not sure  
 8 as to the date, but there is a daily event,  
 9 that sheet that's prepared.  
 10 Q. And for the last Friday of the 10:38:54  
 11 month, would the daily events sheet contain  
 12 some reference to an anticipated Critical  
 13 Mass event?  
 14 A. The daily event sheet should.  
 15 Q. And that's because typically 10:39:10  
 16 there is a detail that is assigned in  
 17 connection with Critical Mass events on the  
 18 last Friday of the month?  
 19 A. That's right.  
 20 Q. And what information regarding 10:39:20  
 21 Critical Mass does the daily events sheet  
 22 contain?  
 23 A. It contains the time and the  
 24 location of the event basically, time,  
 25 location, and the personnel assigned to the 10:39:41  
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1 Tuller  
 2 event.  
 3 Q. Does it indicate who the incident  
 4 commander will be?  
 5 A. On the daily event sheet? 10:39:51  
 6 Q. Yes, that's my question.  
 7 A. Not that I can recall, no.  
 8 Q. Does it simply list a single  
 9 number of individual members of service who  
 10 are assigned to the event? 10:40:07  
 11 A. Yes.  
 12 Q. Does it indicate the anticipated  
 13 tour of duty for the event, that is the  
 14 start and stop time?  
 15 A. Yes. 10:40:20  
 16 Q. Does it indicate the number of  
 17 participants, civilian participants  
 18 expected for the event?  
 19 A. It may.  
 20 Q. And have you seen that 10:40:36  
 21 information noted with respect to Critical  
 22 Mass event listings in the daily events?  
 23 A. Yes.  
 24 Q. And what figures do you recall  
 25 being listed in the daily events sheets for 10:40:50  
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1 Tuller  
 2 anticipated participants in Critical Mass  
 3 events?  
 4 A. I don't recall any figures.  
 5 Q. But you believe that those daily 10:41:02  
 6 sheets on occasion do list figures?  
 7 A. On occasion, yes.  
 8 Q. Is there any description in the  
 9 daily events as to the nature of the  
 10 particular events? 10:41:22  
 11 MR. MUSCHENHEIM: Objection,  
 12 but you can answer.  
 13 A. What do you mean by nature?  
 14 Q. Well, if a picket line in  
 15 connection with a labor dispute was 10:41:38  
 16 occurring and there was a detail assigned  
 17 to monitor it, would the daily events  
 18 indicate that it was a labor dispute?  
 19 A. Yes.  
 20 Q. And if there was a parade up 10:41:56  
 21 Fifth Avenue with floats and other  
 22 traditional parade attributes, would the  
 23 nature of that event be described in the  
 24 daily events sheet?  
 25 A. The nature being the title of the 10:42:12  
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1 Tuller  
 2 event.  
 3 Q. Nothing more than the title of  
 4 the event?  
 5 A. Other than what I just said? 10:42:19  
 6 Other than what I recalled?  
 7 Q. Can you recall any information  
 8 other than the title of the event being  
 9 listed in the daily events report?  
 10 A. Any other information? 10:42:31  
 11 Q. Yes. Can you recall any?  
 12 A. The times of the event, the  
 13 number of officers assigned to the event,  
 14 the title of the event. That's what I  
 15 recall. 10:42:44  
 16 Q. And on occasion does the daily  
 17 events document contain a description of  
 18 the nature of the event beyond the title of  
 19 the event?  
 20 A. My recollection is it just talks 10:42:59  
 21 about the title of the event.  
 22 Q. In connection with Critical Mass  
 23 events, is the listing typically Critical  
 24 Mass with no further description of the  
 25 nature of the event? 10:43:11  
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1 Tuller  
 2 A. That's my recollection, yes.  
 3 Q. Do you know what happens to the  
 4 daily events sheets after they're  
 5 distributed? 10:43:32  
 6 A. After they're distributed?  
 7 Q. Yes.  
 8 A. To individuals?  
 9 Q. Yes.  
 10 A. They get a copy of the daily 10:43:42  
 11 events sheet.  
 12 Q. What do you do with the copies of  
 13 daily events sheets that you personally  
 14 receive?  
 15 A. I probably throw them away. 10:43:57  
 16 Q. Do you know who prepares the  
 17 daily events sheets?  
 18 A. The operations unit.  
 19 Q. And do you know who in the  
 20 operations unit has responsibility to 10:44:04  
 21 prepare the daily events sheets?  
 22 A. No.  
 23 Q. Do you know whether copies of  
 24 daily events sheets are retained?  
 25 A. Probably. 10:44:19  
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1 Tuller  
 2 Q. Who would be responsible for  
 3 preserving copies of daily events sheets?  
 4 A. The operations unit.  
 5 Q. Is it your expectation that if 10:44:25  
 6 you needed to, you could ask the operations  
 7 unit for daily events sheet for an event a  
 8 year ago and they would be able to provide  
 9 it to you?  
 10 A. Probably. 10:44:39  
 11 Q. Have you ever had occasion to  
 12 make such a request?  
 13 A. No.  
 14 Q. You are familiar with a facility  
 15 at Manhattan South known as the wheel? 10:44:52  
 16 A. What do you mean by facility?  
 17 Q. A group of individuals and  
 18 operations known as the wheel.  
 19 A. Yes.  
 20 Q. What is the wheel? Can you 10:45:05  
 21 describe it?  
 22 A. Yes. It's a police officer  
 23 answering phones, gathering information and  
 24 disseminating information concerning events  
 25 in Manhattan South. 10:45:20  
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1 Tuller  
 2 Q. And does the wheel make -- well,  
 3 is the police officer that you just  
 4 described known as the wheel when  
 5 performing that function? 10:45:38  
 6 A. The wheel is the location.  
 7 Q. And in connection with the  
 8 operation of the wheel, are log entries  
 9 kept?  
 10 A. Yes. 10:45:54  
 11 Q. Part of the operation of the  
 12 wheel is to record information received by  
 13 Manhattan South from officers in the field?  
 14 MR. CIAPPETTA: Objection to  
 15 form. You can answer. 10:46:07  
 16 A. Yes.  
 17 Q. Do you ever review the log  
 18 entries made by the wheel?  
 19 A. Yes.  
 20 Q. Do you do it regularly? 10:46:18  
 21 A. Yes.  
 22 Q. Do you do it daily?  
 23 A. No.  
 24 Q. Do you do it weekly?  
 25 A. I don't do it on any fixed 10:46:27  
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1 Tuller  
 2 schedule.  
 3 Q. Have you ever seen a log entry  
 4 made by the wheel with respect to a  
 5 Critical Mass detail? 10:46:43  
 6 A. Yes.  
 7 Q. What information is recorded by  
 8 the wheel with respect to Critical Mass  
 9 events?  
 10 A. Usually the time that it started 10:46:53  
 11 and ended and anything that occurred at the  
 12 event.  
 13 Q. Would arrests at the event be  
 14 listed in the log kept by the wheel?  
 15 A. Yes. 10:47:07  
 16 Q. Would summonses issued at the  
 17 event be listed in the log kept by the  
 18 wheel?  
 19 A. Yes.  
 20 Q. Who at the Critical Mass detail 10:47:16  
 21 is responsible for notifying the wheel of  
 22 these events?  
 23 A. It's usually a supervisor.  
 24 Q. Would there be a single  
 25 supervisor in connection with a Critical 10:47:36  
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1 Tuller  
 2 Mass detail who would report all events to  
 3 the wheel?  
 4 A. It could be any supervisor.  
 5 Q. If events reportable to the wheel 10:47:48  
 6 occur at multiple disparate locations in  
 7 connection with a Critical Mass ride, do  
 8 the supervisors on the scene at each of  
 9 those disparate locations each make a  
 10 report to the wheel? 10:48:13  
 11 MR. MUSCHENHEIM: Objection,  
 12 you can answer.  
 13 A. No.  
 14 Q. Customarily would there be one  
 15 supervisor for a detail who would be 10:48:20  
 16 responsible for reporting information to  
 17 the wheel?  
 18 MR. MUSCHENHEIM: Objection,  
 19 but you can answer.  
 20 A. Yes. 10:48:30  
 21 Q. Do you know if the logs kept by  
 22 the wheel are preserved?  
 23 MR. MUSCHENHEIM: Objection.  
 24 You can answer.  
 25 A. Yes. 10:48:46  
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1 Tuller  
 2 Q. Are they preserved?  
 3 A. What do you mean by preserved?  
 4 Q. Kept in a manner such that they  
 5 can be retrieved at a later date if 10:48:55  
 6 necessary.  
 7 A. Yes.  
 8 Q. And have you ever had occasion to  
 9 have a log kept by the wheel retrieved?  
 10 A. Not that I can recall. 10:49:10  
 11 Q. But it's your expectation that if  
 12 you needed to retrieve a log kept by the  
 13 wheel as much as a year ago, that that  
 14 would -- that is something that could be  
 15 retrieved? 10:49:25  
 16 A. Yes.  
 17 Q. Did you testify earlier that you  
 18 keep some documents concerning Critical  
 19 Mass accessible to you in your personal  
 20 workspace or office? 10:49:49  
 21 A. I don't believe I did.  
 22 Q. Okay. Do you?  
 23 A. No.  
 24 Q. When you assumed the post of  
 25 commander Manhattan South, did you receive 10:50:10  
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1 Tuller  
 2 any files or other written material from  
 3 Chief Smolka?  
 4 A. No.  
 5 Q. Did you receive any files or 10:50:19  
 6 other written material from anyone else  
 7 upon assuming the post of commander  
 8 Manhattan South?  
 9 A. Not that I recall.  
 10 Q. Are there any files or other 10:50:30  
 11 written materials that you keep accessible  
 12 to you in your personal office or work  
 13 space that you use in connection with  
 14 managing Critical Mass?  
 15 A. No. 10:50:50  
 16 Q. Do you have an NYPD e-mail  
 17 account?  
 18 A. I do.  
 19 Q. And do you use it to send and  
 20 receive e-mail? 10:50:58  
 21 A. I don't.  
 22 Q. Are you aware that others use  
 23 your NYPD e-mail account to send and  
 24 receive information?  
 25 A. To receive information. 10:51:11  
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1 Tuller  
 2 Q. Can you recall receiving  
 3 information via an e-mail account regarding  
 4 Critical Mass?  
 5 A. I can't recall, no. 10:51:22  
 6 Q. If a member of service is injured  
 7 in connection with a detail, is that an  
 8 event that is typically reported to the  
 9 wheel?  
 10 A. It should. 10:51:41  
 11 Q. If a participant in an event to  
 12 which a detail has been assigned sustains a  
 13 serious injury, is that an event that would  
 14 typically be reported to the wheel?  
 15 MR. MUSCHENHEIM: Objection as 10:52:02  
 16 to form. You can answer.  
 17 A. If it's significant.  
 18 Q. Can you recall receiving any  
 19 information regarding the rules concerning  
 20 permits for parades? 10:52:21  
 21 MR. MUSCHENHEIM: Objection to  
 22 the form. You can answer.  
 23 (Recess taken: 10:52-11:02 a.m.)  
 24 FURTHER EXAMINATION BY MR. VACCARO:  
 25 Q. I will just mention for the 11:02:04  
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1 Tuller  
 2 record that a question was pending when a  
 3 fire drill was announced over the PA system  
 4 here at the location for the deposition.  
 5 After a brief recess we have resumed in 11:02:13  
 6 hopes that there will be no further  
 7 interruptions. I'm going to withdraw the  
 8 last question.  
 9 Chief Tuller, you are aware that  
 10 there are provisions of law applicable in 11:03:21  
 11 New York City regarding the issuance of  
 12 permits in connection with parades?  
 13 A. Yes.  
 14 Q. And what is your understanding of  
 15 the nature of events that require parade 11:03:36  
 16 permits?  
 17 MR. MUSCHENHEIM: At which  
 18 time?  
 19 MR. VACCARO: At the present  
 20 time. 11:03:47  
 21 A. If there is going to be a parade  
 22 with 50 or more participants, then somebody  
 23 has to apply for a permit.  
 24 Q. And may an event of 50 or more  
 25 participants be conducted without a permit 11:04:08  
 TSG Reporting - Worldwide (877) 702-9580

1 Tuller  
 2 being issued?  
 3 MR. MUSCHENHEIM: Objection as  
 4 to the form. You can answer.  
 5 A. Can you rephrase that? 11:04:26  
 6 Q. Is it your understanding that a  
 7 permit is required in order to conduct an  
 8 event in the roadway with 50 or more  
 9 persons?  
 10 A. Yes. 11:04:39  
 11 Q. Do NYPD officers have the  
 12 authority to waive application of the  
 13 permit requirement on the scene?  
 14 MR. MUSCHENHEIM: Objection,  
 15 you can answer. 11:04:55  
 16 A. No.  
 17 Q. Do NYPD officers have the  
 18 discretion to decline to enforce the parade  
 19 rules against a procession of 50  
 20 individuals proceeding in the roadway? 11:05:11  
 21 MR. MUSCHENHEIM: Objection.  
 22 A. I'm sorry, but I have to ask you  
 23 to repeat the question.  
 24 (The record was read.)  
 25 THE WITNESS: By decline you 11:05:38  
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1 Tuller  
 2 mean?  
 3 Q. To decline to take law  
 4 enforcement action.  
 5 A. No. 11:05:47  
 6 Q. Your understanding is that an  
 7 NYPD officer does not have discretion to  
 8 decline to enforce the parade rules? I'm  
 9 sorry, to decline to enforce the permit  
 10 requirement against a procession of 50 or 11:06:05  
 11 more without a permit?  
 12 MR. MUSCHENHEIM: Objection.  
 13 You can answer.  
 14 A. When there is a violation of law,  
 15 there has to be enforcement. 11:06:23  
 16 Q. As a general matter, would you  
 17 agree that NYPD officers have the  
 18 discretion to decline to enforce the law  
 19 with respect to violations that they might  
 20 observe? 11:06:43  
 21 MR. MUSCHENHEIM: Objection,  
 22 but you can answer.  
 23 A. There is discretion.  
 24 Q. But your understanding is that  
 25 there is no discretion with respect to 11:06:53  
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1 Tuller  
 2 violations of the law requiring permits for  
 3 events defined at parades?  
 4 MR. MUSCHENHEIM: Objection,  
 5 but you can answer. 11:07:07  
 6 A. There should be some sort of  
 7 enforcement.  
 8 Q. So there is no discretion allowed  
 9 on the part of NYPD officer when it comes  
 10 to enforcing the law against violators of 11:07:23  
 11 the rule requiring parade permits?  
 12 MR. MUSCHENHEIM: Objection,  
 13 it's been asked and answered. You can  
 14 answer.  
 15 A. There is discretion. 11:07:37  
 16 Q. What is the nature of that  
 17 discretion?  
 18 A. Well, if there is no permit for  
 19 the parade, it is discretion as to allow it  
 20 to continue, not allow it to continue, to 11:07:58  
 21 enforce regulations.  
 22 Q. Those are three options that are  
 23 available to NYPD officers when they  
 24 observe a procession of 50 or more in the  
 25 roadway that doesn't have a permit? 11:08:20  
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1 Tuller  
 2 A. Yes.  
 3 Q. And are you aware whether  
 4 officers assigned to Critical Mass details 11:08:32  
 5 have received instructions as to how they  
 6 are to exercise their discretion with  
 7 respect to processions of 50 or more in the  
 8 roadway?  
 9 A. There is some sort of briefing  
 10 that goes out to the police officers. 11:09:14  
 11 Q. You are referring to a briefing  
 12 of police officers assigned to Critical  
 13 Mass details?  
 14 A. Correct.  
 15 Q. And you believe that that 11:09:30  
 16 briefing includes briefing with respect to  
 17 the exercise of discretion in enforcement,  
 18 the law requiring parade permits?  
 19 MR. MUSCHENHEIM: Objection,  
 20 but you can answer. 11:09:42  
 21 A. I haven't attended those  
 22 briefings.  
 23 Q. Do you know whether those -- any  
 24 of those briefings have addressed the topic  
 25 of the exercise of discretion in enforcing 11:09:57  
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1 Tuller  
 2 the law concerning parade permits?  
 3 A. No, I don't.  
 4 Q. Have you ever discussed with  
 5 Chief Paragallo or Chief Anger the issue of 11:10:10  
 6 the discretion of police officers in  
 7 enforcing the parade permit requirements at  
 8 Critical Mass events?  
 9 A. Yes.  
 10 Q. And what do you recall of those 11:10:29  
 11 discussions?  
 12 A. What I recall is that the actual  
 13 enforcement that takes place takes place  
 14 via summoning or arrest.  
 15 Q. And do you recall having that 11:10:52  
 16 discussion with respect to enforcement of  
 17 the rules requiring parade permits?  
 18 A. Yes.  
 19 Q. And it's your understanding that  
 20 at Critical Mass details the options 11:11:08  
 21 available to officers that observe  
 22 violations of the rule requiring parade  
 23 permits are either summoning or arrest?  
 24 MR. MUSCHENHEIM: Objection.  
 25 You can answer. 11:11:28  
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1 Tuller  
 2 A. Either summons or an arrest,  
 3 right.  
 4 Q. Is there the option available to  
 5 the officers assigned to the Critical Mass 11:11:38  
 6 detail of declining to enforce the rules  
 7 regarding permit requirements?  
 8 A. There is discretion in that.  
 9 Q. Do you know whether the officers  
 10 assigned to Critical Mass details have ever 11:11:56  
 11 exercised the discretion in that regard?  
 12 A. Well, they make either an arrest  
 13 or a summons pertaining to the actions in  
 14 the event.  
 15 Q. And those are the only two 11:12:16  
 16 options available to them if they observe a  
 17 violation of the rules requiring a parade  
 18 permit?  
 19 A. That's the discretion that we  
 20 have. 11:12:28  
 21 Q. Either a summons or an arrest?  
 22 A. Right.  
 23 Q. Is there discretion to give a  
 24 warning rather than to issue a summons or  
 25 make an arrest? 11:12:46  
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1 Tuller  
 2 A. Is there discretion in that?  
 3 Yes.  
 4 Q. But do you know whether the  
 5 officers assigned to Critical Mass details 11:12:59  
 6 are permitted to merely warn for violation  
 7 of the parade rules rather than to summons  
 8 or arrest violators of the parade rules?  
 9 A. What do you mean by officers?  
 10 Q. Any member of service. 11:13:21  
 11 A. The officers are instructed to  
 12 either summons or arrest. They are  
 13 instructed to either summons or arrest.  
 14 Q. Do you know whether the members  
 15 of service assigned to public events other 11:13:55  
 16 than Critical Mass have different level of  
 17 discretion in terms of enforcing the parade  
 18 rules?  
 19 MR. MUSCHENHEIM: Objection.  
 20 You can answer. 11:14:08  
 21 A. There is always discretion, yes.  
 22 Q. There is always discretion on  
 23 those other events?  
 24 A. On events, right.  
 25 Q. You are aware of a series of 11:14:23  
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1 Tuller  
 2 demonstrations held in May, 2008 concerning  
 3 the shooting of Sean Bell?  
 4 A. Yes.  
 5 Q. And were you specifically 11:14:58  
 6 involved in NYPD's management of those  
 7 demonstrations?  
 8 A. Yes.  
 9 Q. Do you recall that any of those  
 10 demonstrations involved processions of 50 11:15:17  
 11 or more individuals proceeding in the  
 12 roadway?  
 13 A. I recall that there was  
 14 individuals in the roadway.  
 15 Q. Can you recall the number of 11:15:32  
 16 individuals you saw proceeding together in  
 17 the roadway during any of those  
 18 demonstrations?  
 19 A. I can't recall a number, no.  
 20 Q. Can you recall whether you ever 11:15:41  
 21 saw a group that you believed was greater  
 22 than 50 individuals proceeding in the  
 23 roadway in connection with any of those  
 24 demonstrations?  
 25 A. I don't recall a number. 11:15:52  
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1 Tuller  
 2 Q. Even if you don't recall a  
 3 precise number, can you recall seeing a  
 4 group proceeding in the roadway in  
 5 connection with those demonstrations that 11:16:03  
 6 you believed numbered greater than 50?  
 7 MR. MUSCHENHEIM: Objection.  
 8 You can answer.  
 9 A. That I believed? I don't recall  
 10 a number. I remember individuals in the 11:16:12  
 11 roadway.  
 12 Q. Do you know whether a permit was  
 13 issued by NYPD for any of the  
 14 demonstrations concerning the Sean Bell  
 15 shooting in May, 2008? 11:16:32  
 16 A. Not to my knowledge.  
 17 Q. Can you recall whether the rules  
 18 concerning parade permits were enforced in  
 19 connection with any of the demonstrations  
 20 in May, 2008 concerning the Sean Bell 11:16:45  
 21 shooting?  
 22 MR. MUSCHENHEIM: Objection.  
 23 You can answer.  
 24 A. No.  
 25 Q. Do you have any information as to 11:16:52  
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1 Tuller  
 2 whether the parade rules were enforced  
 3 against those Sean Bell demonstrators?  
 4 A. I don't believe they were.  
 5 Q. Why not? 11:17:10  
 6 MR. MUSCHENHEIM: Objection.  
 7 But you can answer.  
 8 A. What I recall is that the group  
 9 blocked traffic and they were arrested for  
 10 blocking traffic. 11:17:24  
 11 Q. Do you recall that demonstrators  
 12 in connection with those events blocked  
 13 traffic at particular East River crossings?  
 14 A. I recall that there was blocking  
 15 traffic, yes. 11:17:53  
 16 Q. Do you recall specifically that  
 17 some of the demonstrators blocked traffic  
 18 that was coming into Manhattan on the  
 19 Brooklyn Bridge?  
 20 A. Coming into Manhattan on the 11:18:05  
 21 Brooklyn Bridge, yes.  
 22 Q. Did you personally observe that  
 23 occur?  
 24 A. Yes.  
 25 Q. Do you recall that the 11:18:17  
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1 Tuller  
 2 individuals who engaged in that traffic  
 3 blockage began their demonstration at a  
 4 location other than the foot of the  
 5 Brooklyn Bridge? 11:18:25  
 6 A. Yes.  
 7 Q. And do you recall that the  
 8 individuals engaged in that traffic  
 9 blockage proceeded together from their  
 10 origination point to the foot of the 11:18:38  
 11 Brooklyn Bridge?  
 12 A. Yes.  
 13 Q. And can you recall the number of  
 14 individuals who did that?  
 15 A. No. 11:18:51  
 16 Q. Do you believe it was more than  
 17 50?  
 18 A. It may have been, yes.  
 19 Q. Do you know whether the rules  
 20 concerning parade permits were enforced 11:19:01  
 21 against the individuals as they proceeded  
 22 from their origination point to the foot of  
 23 the Brooklyn Bridge?  
 24 MR. MUSCHENHEIM: Objection.  
 25 You can answer. 11:19:12  
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1 Tuller  
 2 A. I don't believe they were  
 3 enforced, no.  
 4 Q. Were the individuals proceeding  
 5 in the roadway from their origination point 11:19:18  
 6 to the foot of the Brooklyn Bridge?  
 7 A. Could you read that back again.4.  
 8 (The last question was read.)  
 9 THE WITNESS: Were they  
 10 proceeding in the roadway, yes. 11:19:38  
 11 Q. Do you agree with me then that  
 12 the procession that you just described in  
 13 the roadway reflected an instance in which  
 14 NYPD declined to enforce the parade rules?  
 15 MR. MUSCHENHEIM: Objection, 11:20:05  
 16 but you can answer.  
 17 A. We enforced other rules.  
 18 Q. And you declined to enforce the  
 19 parade rules, correct?  
 20 MR. MUSCHENHEIM: Objection. 11:20:15  
 21 You can answer.  
 22 A. Yes.  
 23 Q. Why did you decline to enforce  
 24 them?  
 25 MR. MUSCHENHEIM: Objection. 11:20:23  
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1 Tuller  
 2 That's been asked and answered, but  
 3 you can answer it again.  
 4 A. There was laws broken. We used  
 5 our discretion which laws to enforce. 11:20:35  
 6 Q. Prior to the blockage at the foot  
 7 of the Brooklyn Bridge, what laws were  
 8 broken by that group?  
 9 A. Prior to the blocking?  
 10 Q. Yes. 11:21:01  
 11 MR. MUSCHENHEIM: Objection.  
 12 You can answer.  
 13 A. None that I can recall.  
 14 Q. Well, didn't that group violate  
 15 the rules regarding parade permits when 11:21:12  
 16 they proceeded from their origination point  
 17 in the roadway to the foot of the Brooklyn  
 18 Bridge?  
 19 MR. MUSCHENHEIM: Objection.  
 20 A. And they were arrested for 11:21:22  
 21 blocking traffic.  
 22 Q. At the foot of the Brooklyn  
 23 Bridge?  
 24 A. Yes.  
 25 Q. But why was there no enforcement 11:21:29  
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1 Tuller  
 2 until they blocked traffic at the foot of  
 3 the Brooklyn Bridge?  
 4 MR. MUSCHENHEIM: Objection.  
 5 A. My recollection is that it 11:21:39  
 6 happened pretty fast, and they blocked the  
 7 traffic. When they blocked the traffic is  
 8 when we started to make the arrests.  
 9 Q. Do you recall where the  
 10 origination point of the group was from 11:21:53  
 11 which they proceeded to the foot of the  
 12 Brooklyn Bridge?  
 13 A. Yes.  
 14 Q. Was it One Police Plaza?  
 15 A. Yes. 11:22:01  
 16 Q. And approximately how many blocks  
 17 did the group proceed in the roadway from  
 18 One Police Plaza to the foot of the  
 19 Brooklyn Bridge?  
 20 A. Maybe a half a block. 11:22:13  
 21 Q. Half of one block?  
 22 A. Yes.  
 23 Q. Was there an agreement with the  
 24 demonstrators beforehand that they would be  
 25 permitted to reach the Brooklyn Bridge 11:22:27  
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1 Tuller  
 2 before there would be any law enforcement  
 3 action?  
 4 A. No.  
 5 Q. Was there any discussion between 11:22:35  
 6 the organizers of the demonstration and the  
 7 NYPD regarding when law enforcement would  
 8 take place?  
 9 A. Not to my knowledge, no.  
 10 Q. Did you participate in any 11:22:48  
 11 discussions with the organizers of that  
 12 demonstration?  
 13 MR. MUSCHENHEIM: Objection.  
 14 You can answer.  
 15 A. No. 11:22:55  
 16 Q. Did any officers under your  
 17 supervision engage in discussions with  
 18 organizers of that demonstration?  
 19 A. Not that I can recall.  
 20 Q. Do you recall that NYPD officers 11:23:11  
 21 were assigned to block motor vehicle  
 22 traffic so that the demonstrators could  
 23 proceed in the roadway from One Police  
 24 Plaza to the foot of the Brooklyn Bridge?  
 25 A. I don't recall. 11:23:25  
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1 Tuller  
 2 Q. Would such activity by NYPD  
 3 officers at that demonstration have been  
 4 consistent with your directives for that  
 5 event? 11:23:39  
 6 MR. MUSCHENHEIM: Objection.  
 7 A. No.  
 8 Q. Do you have a personal digital  
 9 assistant such as a Blackberry device?  
 10 A. Do I have one, yes. 11:24:13  
 11 Q. Do you use it for any  
 12 communications with other individuals at  
 13 NYPD?  
 14 A. No.  
 15 Q. Were you aware that NYPD was 11:24:29  
 16 required to search for documents concerning  
 17 this litigation?  
 18 A. Yes.  
 19 Q. And do you know what steps were  
 20 taken to conduct that search? 11:24:39  
 21 A. No.  
 22 Q. Do you know what individuals were  
 23 involved in conducting that search?  
 24 A. No.  
 25 Q. Do you know whether any documents 11:24:48  
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1 Tuller  
 2 in your possession were subject to such a  
 3 search?  
 4 MR. MUSCHENHEIM: Objection.  
 5 You can answer. 11:24:59  
 6 A. Not that I am aware of.  
 7 Q. Have you ever created an  
 8 electronic document concerning Critical  
 9 Mass?  
 10 A. No. 11:25:15  
 11 Q. And by electronic document I mean  
 12 either an e-mail or a textual document, a  
 13 spreadsheet, any electronic document at  
 14 all. With that explicit definition in  
 15 mind, I will ask again, have you ever 11:25:30  
 16 created a document concerning Critical  
 17 Mass?  
 18 A. I haven't.  
 19 Q. Other than the detail reports,  
 20 any unusual report and the detail reports 11:25:52  
 21 that we discussed previously, can you  
 22 recall any other document concerning  
 23 Critical Mass that you have seen?  
 24 A. Not that I recall, no.  
 25 Q. Have you seen press accounts 11:26:03  
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1 Tuller  
 2 concerning Critical Mass?  
 3 A. Perhaps.  
 4 Q. Do you keep clippings of press  
 5 accounts of Critical Mass? 11:26:19  
 6 A. No.  
 7 Q. Have any ever been circulated to  
 8 you at NYPD?  
 9 A. Probably.  
 10 Q. What is the source of press 11:26:30  
 11 clippings circulated to you at NYPD? And  
 12 this is press clippings regarding any  
 13 matter?  
 14 A. Through DCPI.  
 15 Q. You regularly receive press 11:26:39  
 16 clippings from DCPI?  
 17 MR. MUSCHENHEIM: Objection,  
 18 but you can answer.  
 19 A. Not at this time.  
 20 Q. Was there a time that you did? 11:26:48  
 21 A. Yes.  
 22 Q. When was that?  
 23 A. Probably about two months ago.  
 24 Q. Do you know the reason that you  
 25 no longer receive regular clippings from 11:26:59  
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1 Tuller  
 2 DCPI?  
 3 MR. MUSCHENHEIM: Objection.  
 4 You can answer.  
 5 A. If I want the clippings, I have 11:27:10  
 6 to go into the computer and receive them  
 7 myself.  
 8 Q. So they are distributed  
 9 electronically?  
 10 A. Yes. 11:27:18  
 11 Q. As of two months ago?  
 12 A. Roughly. I am guessing that.  
 13 Q. Prior to approximately two months  
 14 ago, they were distributed on paper?  
 15 A. Yes. 11:27:27  
 16 Q. And what did you do with the  
 17 clippings that you received distributed on  
 18 paper after you had reviewed them?  
 19 A. Threw them away.  
 20 Q. Can you recall seeing any video 11:27:50  
 21 or audio recordings concerning Critical  
 22 Mass events?  
 23 A. No.  
 24 Q. Did you review any in connection  
 25 with preparing for this deposition? 11:28:01  
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1 Tuller  
2 A. No.  
3 Q. I believe you testified that you  
4 received oral reports from officers under  
5 your supervision regarding Critical Mass. 11:28:20  
6 A. I believe I testified as to  
7 specific people.  
8 Q. And the specific people were  
9 Chief Paragallo when he was at Manhattan  
10 South as well as Chief Anger? 11:28:38  
11 A. That's correct.  
12 Q. And I don't believe you could  
13 recall any other individuals from whom you  
14 received oral reports regarding events at  
15 Critical Mass? 11:28:49  
16 A. That's correct, I don't recall.  
17 Q. Do you customarily receive a  
18 report, an oral report following each  
19 Critical Mass ride?  
20 MR. MUSCHENHEIM: Objection, 11:29:06  
21 but you can answer.  
22 A. Not necessarily.  
23 Q. Can you recall that after most  
24 Critical Mass rides you've received an oral  
25 report of what occurred? 11:29:18  
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1 Tuller  
2 from that report?  
3 A. Generally it's basically what's  
4 on the narrative. We just go over that,  
5 generally. Not always. 11:30:36  
6 Q. So the oral reports you receive  
7 regarding events at Critical Mass rides can  
8 occur in connection with reviewing the  
9 written reports for those rides?  
10 A. It may. 11:30:53  
11 MR. MUSCHENHEIM: Objection.  
12 Q. You can recall that happening on  
13 occasion?  
14 A. Possibly.  
15 Q. Well, can you recall it happening 11:30:59  
16 on occasion?  
17 A. Yes.  
18 Q. How many such oral reports -- can  
19 you estimate how many oral reports you  
20 received regarding Critical Mass rides in 11:31:16  
21 2008?  
22 A. An estimate?  
23 Q. Yes.  
24 A. Maybe six.  
25 Q. And would you have the same 11:31:27  
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1 Tuller  
2 A. Not necessarily.  
3 Q. Can you recall the last oral  
4 report that you received regarding a  
5 Critical Mass ride? 11:29:30  
6 A. I can't recall an exact, no.  
7 Q. Well, can you recall the  
8 individual who reported -- who made the  
9 most recent oral report to you regarding  
10 Critical Mass? 11:29:48  
11 A. It was probably Chief Anger.  
12 Q. And can you recall whether that  
13 was in 2009?  
14 A. Yes.  
15 Q. Can you recall whether it 11:29:57  
16 concerned the February, 2009 Critical Mass  
17 ride?  
18 A. No, I can't.  
19 Q. It may have concerned the  
20 January, 2009 Critical Mass ride? 11:30:09  
21 A. Possibly.  
22 Q. What do you recall learning from  
23 that report?  
24 A. I don't recall specifics.  
25 Q. Do you recall anything generally 11:30:23  
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1 Tuller  
2 estimate for 2007?  
3 A. Roughly.  
4 Q. And apart from these oral  
5 reports, have you received any information 11:31:51  
6 regarding Critical Mass from discussions  
7 with anyone else within the NYPD?  
8 A. Not that I recall.  
9 Q. Can you recall having discussions  
10 with individuals from the legal bureau at 11:32:06  
11 NYPD regarding Critical Mass?  
12 A. Not that I recall, no.  
13 Q. And can you recall any  
14 discussions with individuals at the chief  
15 of patrol's department regarding Critical 11:32:20  
16 Mass?  
17 A. No.  
18 Q. Do you recall any discussions  
19 with individuals from the intelligence  
20 division regarding Critical Mass? 11:32:31  
21 A. I can't recall, no.  
22 Q. Do you recall any discussions  
23 with individuals from the disorder control  
24 unit concerning Critical Mass?  
25 A. I can't recall, no. 11:32:41  
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1 Tuller  
 2 Q. Do you recall learning at any  
 3 time that the oral reports you received  
 4 regarding Critical Mass events were in any  
 5 way inaccurate? 11:32:57  
 6 A. No.  
 7 Q. Did you generally consider the  
 8 reports that you received from Chief  
 9 Paragallo and Chief Anger regarding the  
 10 Critical Mass events to be reliable? 11:33:08  
 11 MR. MUSCHENHEIM: Objection as  
 12 to the form, but you can answer.  
 13 A. Yes.  
 14 Q. Is it your understanding that  
 15 Paragallo and Anger have observed more 11:33:21  
 16 Critical Mass rides than you have?  
 17 A. Yes.  
 18 Q. And you are aware that inspectors  
 19 Dequatro and Hughes have also witnessed  
 20 more Critical Mass rides than you have? 11:33:33  
 21 A. Yes.  
 22 Q. Would you defer to their views  
 23 regarding the manner in which the Critical  
 24 Mass bicycle rides proceed?  
 25 MR. MUSCHENHEIM: Objection as 11:33:44  
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1 Tuller  
 2 to the form. You can answer.  
 3 A. I might.  
 4 Q. Have you ever had any reason not  
 5 to defer to the views articulated by 11:33:52  
 6 Paragallo, Anger, Hughes, or Dequatro  
 7 regarding the manner in which Critical Mass  
 8 bicycle rides proceed?  
 9 A. Well, to my recollection, I've  
 10 always spoken to Anger and Paragallo. So 11:34:08  
 11 as it pertains this them, yes. What was  
 12 the question?  
 13 Q. I will withdraw it, and I will  
 14 ask, can you recall in any instance not  
 15 deferring to the views of Anger or 11:34:36  
 16 Paragallo regarding the manner in which  
 17 Critical Mass bicycle rides are conducted?  
 18 A. No, I can't recall.  
 19 Q. You believe they have superior  
 20 knowledge based on their observation of the 11:34:54  
 21 Critical Mass rides as compared to you?  
 22 MR. MUSCHENHEIM: Objection as  
 23 to the form, but you can answer.  
 24 A. They're better informed.  
 25 Q. With respect to the issue of 11:35:04  
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1 Tuller  
 2 whether group bicycle rides raise issues of  
 3 public safety or traffic disruption, would  
 4 you agree that Chiefs Paragallo and Anger  
 5 are better informed than you? 11:35:22  
 6 MR. MUSCHENHEIM: Objection.  
 7 A. As it pertains to Critical Mass.  
 8 Q. Well, with respect to Critical  
 9 Mass, would your answer be yes to that  
 10 question? 11:35:33  
 11 A. Yes.  
 12 Q. Do you believe you are better  
 13 informed than either Paragallo or Anger  
 14 with respect to the public safety or  
 15 traffic disruption effects of group rides 11:35:43  
 16 other than Critical Mass?  
 17 A. I believe that they would be  
 18 better informed.  
 19 Q. Can you recall any disagreement  
 20 that you have had with either Anger or 11:35:59  
 21 Paragallo regarding the public safety or  
 22 traffic disruption effects of any group  
 23 bicycle ride?  
 24 A. No, I can't.  
 25 Q. Have you ever consulted sources 11:36:10  
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1 Tuller  
 2 of information on the internet regarding  
 3 Critical Mass?  
 4 A. No.  
 5 Q. You mentioned -- turning to 11:36:44  
 6 Exhibit Tuller 13, you mentioned that  
 7 this -- documents of this type are prepared  
 8 by the operations sergeants at Manhattan  
 9 South.  
 10 A. Yes. 11:36:56  
 11 Q. And you mentioned that they  
 12 receive information from others in  
 13 preparing these documents.  
 14 A. Yes.  
 15 Q. From whom do they receive 11:37:08  
 16 information?  
 17 A. Well, depending on the event,  
 18 whoever is involved in the event. Whoever  
 19 is going to be in charge of the event.  
 20 Q. So for example in connection with 11:37:22  
 21 Tuller 13, is it your understanding that  
 22 the operations officers would have received  
 23 information from either Chief Paragallo or  
 24 inspector Hughes that they would use in  
 25 preparing this document? 11:37:37  
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1 Tuller  
 2 A. That would be my presumption.  
 3 Q. Have you ever supplied  
 4 information to the sergeants in operations  
 5 for use in preparing Critical Mass detail 11:37:46  
 6 reports?  
 7 A. I don't recall that, no.  
 8 Q. Have you ever discussed with  
 9 Paragallo or Anger the contents of a detail  
 10 report for a Critical Mass event? 11:38:13  
 11 A. On an overview?  
 12 Q. In any way whatsoever, have you  
 13 ever discussed the contents of a detail  
 14 report for a Critical Mass event with  
 15 either Paragallo or Anger? 11:38:29  
 16 A. I don't recall any specific  
 17 report, no.  
 18 Q. But do you have a general  
 19 recollection of having spoken with either  
 20 Paragallo or Anger concerning detail 11:38:42  
 21 reports for Critical Mass events?  
 22 A. Not a specific event day.  
 23 Q. But generally speaking, not with  
 24 respect to a particular event or day, do  
 25 you have a recollection of discussing 11:38:56  
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1 Tuller  
 2 detail reports for Critical Mass events  
 3 with either Paragallo or Anger?  
 4 A. We discussed the Critical Mass  
 5 event, yes. 11:39:08  
 6 Q. Is one of the issues that you  
 7 have discussed with Paragallo or Anger the  
 8 appropriate level of staffing for a  
 9 Critical Mass event?  
 10 MR. MUSCHENHEIM: Objection as 11:39:20  
 11 to the form, but you can answer.  
 12 A. Yes.  
 13 Q. You've participated in  
 14 discussions about how many officers should  
 15 be assigned to a Critical Mass detail? 11:39:27  
 16 A. I may have, yes.  
 17 Q. And those discussions included  
 18 chief Anger?  
 19 A. Yes.  
 20 Q. Have you had such discussions 11:39:39  
 21 that included Chief Paragallo?  
 22 A. Yes.  
 23 Q. Can you recall any other  
 24 participants in such discussions?  
 25 A. No. 11:39:45  
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1 Tuller  
 2 Q. What factors are considered in  
 3 deciding the number of members of service  
 4 to assign to a Critical Mass detail?  
 5 A. The amount of participants, the 11:40:09  
 6 weather, the time of year, what happened in  
 7 the last event.  
 8 Q. Can you think of any other  
 9 factors?  
 10 A. No. 11:40:26  
 11 Q. In the case of the season of the  
 12 year, generally speaking would you  
 13 authorize a smaller detail for a February  
 14 Critical Mass ride than for a June Critical  
 15 Mass ride? 11:40:44  
 16 MR. MUSCHENHEIM: Objection,  
 17 but you can answer.  
 18 A. That's possible.  
 19 Q. Well, in cold weather you would  
 20 expect a smaller number of bicyclists, is 11:40:56  
 21 that correct?  
 22 A. Yes.  
 23 Q. And in reviewing and authorizing  
 24 the detail request, you would take that  
 25 into account? 11:41:04  
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1 Tuller  
 2 MR. MUSCHENHEIM: Objection as  
 3 to the characterization. You can  
 4 answer.  
 5 A. Yes. 11:41:07  
 6 Q. You do review these detail  
 7 requests before the day of the event,  
 8 correct?  
 9 A. No.  
 10 Q. Have you on occasion reviewed a 11:41:17  
 11 detail report for a Critical Mass event  
 12 prior to the event taking place?  
 13 A. I probably have, yes.  
 14 Q. Generally speaking if you are  
 15 going to have input into the size of a 11:41:36  
 16 Critical Mass detail, the time for that  
 17 input would be prior to the event, right?  
 18 A. I don't review all the Critical  
 19 Mass events.  
 20 Q. But if you want as commander of 11:42:20  
 21 Manhattan South to have input into the  
 22 decision as to the number of officers  
 23 assigned to a Critical Mass event, you  
 24 would need to make your views known prior  
 25 to the events, correct? 11:42:32  
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1 Tuller  
 2 A. Yes.  
 3 Q. Can you ever recall having done  
 4 that?  
 5 A. No. 11:42:41  
 6 Q. You don't believe you have ever  
 7 expressed a view as to the appropriate size  
 8 for a Critical Mass detail prior to that  
 9 detail attending the event?  
 10 A. I don't recall. 11:42:54  
 11 Q. You mentioned that events at the  
 12 prior Critical Mass ride were a factor that  
 13 you took into account in determining the  
 14 number of officers to assign to the next  
 15 month's Critical Mass detail. 11:43:25  
 16 MR. MUSCHENHEIM: Objection to  
 17 the characterization, but you can  
 18 answer.  
 19 A. I believe the question, what  
 20 factors would be involved, anybody that is 11:43:36  
 21 involved in putting a detail together such  
 22 as Critical Mass, that's one example,  
 23 Critical Mass, I know we're talking about  
 24 Critical Mass here, but those are factors  
 25 that would go into events. 11:43:51  
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1 Tuller  
 2 Q. Do you recall that in the summer  
 3 of 2008, there was a collision between a  
 4 bicyclist and an officer named Patrick  
 5 Pogan in the Times Square vicinity? 11:44:03  
 6 A. I do.  
 7 Q. Do you recall that collision  
 8 receiving press coverage?  
 9 A. I do.  
 10 Q. Do you recall that a video 11:44:11  
 11 depicting the collision was widely viewed  
 12 on the internet?  
 13 MR. MUSCHENHEIM: Objection,  
 14 but you can answer.  
 15 A. Can you read that one back to me? 11:44:34  
 16 (The record was read.)  
 17 THE WITNESS: Yeah, I think I'm  
 18 aware of a video, yes.  
 19 Q. Did you ever watch that video?  
 20 A. I don't recall. 11:44:45  
 21 Q. Was that event a factor that was  
 22 considered in determining how many officers  
 23 to assign to the Critical Mass detail in  
 24 the subsequent month?  
 25 A. It probably was, yes. 11:45:01  
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1 Tuller  
 2 Q. Can you recall that in fact it  
 3 was?  
 4 A. I believe it was, yes.  
 5 Q. Did you participate in the 11:45:13  
 6 determination of the number of officers  
 7 that were assigned to the Critical Mass  
 8 detail in the month following that incident  
 9 with Officer Pogan?  
 10 A. I believe I was, yes. 11:45:24  
 11 Q. And do you recall who else was  
 12 involved in that determination?  
 13 A. I remember the discussions, but  
 14 specifically I don't remember who.  
 15 Q. Do you recall from whom you 11:45:50  
 16 received information regarding the Pogan  
 17 incident?  
 18 A. I'm going to assume that -- I  
 19 assume it was -- see, I don't remember  
 20 specifically who, but I do remember getting 11:46:10  
 21 the information.  
 22 Q. Do you believe you received it  
 23 from an executive officer at Manhattan  
 24 South?  
 25 A. Yes. 11:46:22  
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1 Tuller  
 2 Q. And was that Chief Anger?  
 3 A. That's what I'm trying to  
 4 remember. I think he was there and he  
 5 should have been involved but I don't 11:46:27  
 6 remember specifically talking to him, but  
 7 yes, he should have been involved.  
 8 Q. Do you remember getting any  
 9 written information regarding the Pogan  
 10 incident? 11:46:36  
 11 A. I probably did.  
 12 Q. Do you generally rely on your  
 13 executive officers to supply you with  
 14 information regarding incidents occurring  
 15 in Manhattan South? 11:46:47  
 16 A. Yes.  
 17 MR. MUSCHENHEIM: Objection.  
 18 Q. Do you recall receiving a  
 19 document that you've described as a from-to  
 20 that referenced the Pogan incident? 11:47:06  
 21 A. I'm sure I did.  
 22 Q. And so the information in the  
 23 from-to would have been used by you in  
 24 determining the staffing for the Critical  
 25 Mass detail for the subsequent month? 11:47:23  
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1 Tuller  
 2 MR. MUSCHENHEIM: Objection,  
 3 but you can answer.  
 4 A. Possibly, yes.  
 5 Q. Is the coincidence of a holiday 11:47:42  
 6 with the last Friday of the month a factor  
 7 that is considered in determining the size  
 8 of the Critical Mass detail?  
 9 A. Yes.  
 10 Q. So if the last Friday of the 11:48:04  
 11 month is Christmas day, that would be a  
 12 factor that would be considered in deciding  
 13 how many officers to assign to that  
 14 Critical Mass detail?  
 15 A. Yes. 11:48:20  
 16 Q. And can you ever recall that  
 17 issue coming up?  
 18 A. Yes.  
 19 Q. And would the coincidence of  
 20 Christmas day and the last Friday of the 11:48:28  
 21 month be a factor weighing in favor of a  
 22 smaller Critical Mass detail?  
 23 MR. MUSCHENHEIM: Objection as  
 24 to the form.  
 25 A. It may. 11:48:38  
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1 Tuller  
 2 Q. Can you recall an instance in  
 3 which it was not?  
 4 A. No.  
 5 Q. Can you recall an instance in 11:48:46  
 6 which the last Friday of the month  
 7 coincided with New Years Eve?  
 8 A. Yes.  
 9 Q. And in that instance, was that a  
 10 factor that was taken into account in 11:49:02  
 11 determining how many officers to assign to  
 12 Union Square on that date?  
 13 A. Yes.  
 14 Q. And can you recall whether the  
 15 coincidence of New Years Eve and the last 11:49:15  
 16 Friday of the month was a factor weighing  
 17 in favor of a larger presence of NYPD  
 18 officer assigned to that detail?  
 19 A. I don't recall the size of the  
 20 detail. 11:49:28  
 21 Q. Can you recall any changes made  
 22 in connection with a detail for a Critical  
 23 Mass ride held on December 31 of any year?  
 24 A. I've only been there two years.  
 25 So no, I -- what's the question again, I'm  
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1 Tuller  
 2 sorry?  
 3 MR. VACCARO: Can I have a  
 4 readback.  
 5 (The last question was read.)  
 6 THE WITNESS: No.  
 7 Q. In determining the number of  
 8 officers to assign to a Critical Mass  
 9 detail, do you consider whether there will  
 10 be a public figure speaking at Union Square 11:50:11  
 11 that evening?  
 12 MR. MUSCHENHEIM: Objection as  
 13 to the characterization, but you can  
 14 answer.  
 15 A. Yes. 11:50:18  
 16 Q. Can you recall learning that the  
 17 Reverend Al Sharpton spoke at Union Square  
 18 on the last Friday of a month in 2008?  
 19 A. Yes.  
 20 Q. Can you recall that that occurred 11:50:33  
 21 on the last Friday of May, 2008?  
 22 A. I don't remember the specific  
 23 month.  
 24 Q. Did you learn that Reverend  
 25 Sharpton was to give that speech in advance 11:50:46  
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1 Tuller  
 2 of the speech being made?  
 3 A. Yes.  
 4 Q. Do you recall how you learned  
 5 that? 11:50:54  
 6 A. No.  
 7 Q. Do you recall that that was a  
 8 factor that was specifically considered in  
 9 preparing the detail report for that event?  
 10 A. Yes. 11:51:06  
 11 Q. Can you recall discussing that  
 12 factor with anyone else at NYPD?  
 13 A. I recall speaking about it, yes.  
 14 Q. Do you know with whom you spoke  
 15 about it? 11:51:21  
 16 A. I don't recall.  
 17 Q. Do you believe it would have been  
 18 an XO of Manhattan South at the time?  
 19 A. Yes.  
 20 Q. Do you know if there were any 11:51:38  
 21 other individuals who were involved in that  
 22 discussion either by name or by post?  
 23 A. I don't recall, no.  
 24 Q. Was it your view at the time that  
 25 the Critical Mass event might be more 11:51:47  
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1 Tuller  
 2 heavily attended as a result of Reverend  
 3 Sharpton speaking?  
 4 A. Yes.  
 5 Q. Do you recall learning after the 11:51:58  
 6 event that that was in fact the case?  
 7 A. That he spoke?  
 8 Q. That the Critical Mass event was  
 9 more heavily attended than would otherwise  
 10 be expected. 11:52:13  
 11 A. I don't recall.  
 12 Q. Do you rely on your staff to  
 13 provide you with information about whether  
 14 a noteworthy speaker might be appearing at  
 15 Union Square on the last Friday of the 11:52:26  
 16 month?  
 17 MR. MUSCHENHEIM: Objection,  
 18 but you can answer.  
 19 A. Yes.  
 20 Q. Which members of your staff would 11:52:32  
 21 you receive that information from?  
 22 A. My staff?  
 23 Q. Yes.  
 24 A. My staff, would probably be one  
 25 of my XO's. 11:52:43  
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1 Tuller  
 2 Q. You can't think of another  
 3 individual than an XO at Manhattan South  
 4 from whom you would expect to receive such  
 5 information? 11:52:51  
 6 A. No.  
 7 Q. And can you recall receiving such  
 8 information from individuals at the  
 9 intelligence division of NYPD?  
 10 MR. MUSCHENHEIM: Just answer 11:53:00  
 11 that yes or no.  
 12 A. No.  
 13 Q. Would the number of bicyclists  
 14 who attended a preceding Critical Mass  
 15 event be a factor that would be taken into 11:53:27  
 16 account in deciding how many officers to  
 17 assign to the subsequent Critical Mass  
 18 detail?  
 19 A. It may.  
 20 Q. Can you recall participating in 11:53:36  
 21 discussions in which that factor was  
 22 considered in connection with such a  
 23 determination?  
 24 A. I'm sure I haven't specifically,  
 25 no. 11:53:47  
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1 Tuller  
 2 Q. But you believe that you have  
 3 considered that factor in the context of  
 4 discussions about how many officers to  
 5 assign to a Critical Mass detail? 11:53:53  
 6 A. Yes.  
 7 Q. So would an unusually large  
 8 participation by businesses in one month  
 9 lead you to consider increasing the number  
 10 of officers assigned to the Critical Mass 11:54:10  
 11 detail in the subsequent month?  
 12 A. It would be a factor in the final  
 13 decision.  
 14 Q. And where do you get the  
 15 information regarding the number of 11:54:23  
 16 participants in the Critical Mass event?  
 17 A. We may get it from Intel, from  
 18 the precincts.  
 19 Q. Is that information contained in  
 20 from-to documents as we've described them? 11:54:48  
 21 A. Not that I am aware of. In other  
 22 words I'm not aware of how Intel --  
 23 Q. Well --  
 24 MR. VACCARO: The witness can  
 25 finish his answer. 11:55:04  
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1 Tuller  
 2 A. Not that I am aware of. I can't  
 3 recall.  
 4 Q. Have you ever received in written  
 5 form advice concerning the number of 11:55:09  
 6 participants at a Critical Mass event?  
 7 A. Not that I can recall.  
 8 Q. How have you received information  
 9 concerning the number of participants at a  
 10 critical mass event from the intelligence 11:55:24  
 11 division?  
 12 MR. MUSCHENHEIM: Objection as  
 13 to the characterization. I think we  
 14 need to take a break to determine  
 15 whether this is privileged 11:55:39  
 16 information.  
 17 MR. VACCARO: Are you  
 18 instructing the witness not to answer  
 19 the question?  
 20 MR. MUSCHENHEIM: No, I am 11:55:46  
 21 saying that we need to take a break to  
 22 determine whether this is privileged  
 23 information. And after that break, I  
 24 will tell you whether we're going to  
 25 instruct the witness not to answer. 11:55:55  
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1 Tuller  
 2 MR. VACCARO: I don't  
 3 understand how any privilege could  
 4 attach. You need to identify for me  
 5 the privilege and why you believe it 11:56:06  
 6 might attach to the witness's --  
 7 MR. MUSCHENHEIM: A law  
 8 enforcement privilege.  
 9 MR. VACCARO: You are saying  
 10 that the law enforcement privilege 11:56:13  
 11 would attach to the witness's response  
 12 to the question of how he has received  
 13 information from the intelligence  
 14 division?  
 15 MR. MUSCHENHEIM: It may, yes. 11:56:23  
 16 MR. VACCARO: If I narrow the  
 17 question and ask whether it is in  
 18 written or oral format and the witness  
 19 limits his answer to that, are you  
 20 saying it is still covered by the 11:56:35  
 21 privilege?  
 22 MR. MUSCHENHEIM: If you want  
 23 to break it down that way, we can  
 24 answer it. I will permit the witness  
 25 to answer that question. 11:56:42  
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1 Tuller  
 2 BY MR. VACCARO:  
 3 Q. Have you received oral  
 4 information from the intelligence division  
 5 regarding the number of participants in 11:56:48  
 6 Critical Mass events?  
 7 MR. MUSCHENHEIM: Yes or no.  
 8 You can only answer yes or no.  
 9 A. No.  
 10 Q. Have you received written 11:56:58  
 11 information from the intelligence division  
 12 regarding the number of participants at  
 13 Critical Mass events?  
 14 MR. MUSCHENHEIM: Same  
 15 instruction. 11:57:06  
 16 A. The answer is no.  
 17 Q. It's not the same question, just  
 18 to be clear. The question is whether you  
 19 have received written information from the  
 20 intelligence division regarding the number 11:57:18  
 21 of participants at Critical Mass events.  
 22 MR. MUSCHENHEIM: Only yes or  
 23 no.  
 24 A. No.  
 25 Q. Have you received any information 11:57:32  
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1 Tuller  
 2 from the intelligence division regarding  
 3 the number of participants in any Critical  
 4 Mass event?  
 5 MR. MUSCHENHEIM: Yes or no. 11:57:41  
 6 A. No.  
 7 Q. Can you name any source of  
 8 information available to you regarding the  
 9 number of participants in Critical Mass  
 10 events? 11:58:23  
 11 MR. MUSCHENHEIM: At what time?  
 12 Before an event or after an event?  
 13 Q. After the event occurs.  
 14 (The record was read.)  
 15 THE WITNESS: No. 11:58:53  
 16 Q. I will turn your attention back  
 17 to Exhibit Tuller 2.  
 18 A. Two?  
 19 Q. Yes. And I will draw your  
 20 attention to the first paragraph of Exhibit 11:59:08  
 21 Tuller 2, the second sentence, which reads  
 22 approximately 200 bicyclists participated  
 23 in this demonstration.  
 24 A. Right.  
 25 Q. Do you agree with me that this 11:59:25  
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1 Tuller  
 2 report purports to indicate the number of  
 3 participants in the Critical Mass event  
 4 held on March 30, 2007?  
 5 A. An approximate number. 11:59:40  
 6 Q. And does this refresh your  
 7 recollection as to whether the from-to  
 8 memoranda that you reviewed contained such  
 9 information generally?  
 10 A. Yes. 11:59:53  
 11 Q. Generally speaking, is there an  
 12 approximate number or estimate of the  
 13 participants in the Critical Mass  
 14 demonstration included in these from-to  
 15 memos? 12:00:07  
 16 A. Usually.  
 17 Q. And is that information that you  
 18 use in developing an understanding of the  
 19 Critical Mass events in Manhattan South?  
 20 A. It's information I may use. 12:00:21  
 21 Q. Can you recall specifically not  
 22 using that information or declining to use  
 23 it?  
 24 A. No.  
 25 Q. Can you recall specifically that 12:00:28  
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1 Tuller  
 2 you have used it?  
 3 A. No. I'm sorry, what was --  
 4 Q. Can you recall specifically that  
 5 you have used it? 12:00:34  
 6 A. I can't recall specifically.  
 7 Q. Can you ever recall learning that  
 8 the estimate of the number of participants  
 9 in a Critical Mass event recorded in a  
 10 from-to memo ended up being significantly 12:00:54  
 11 inaccurate?  
 12 MR. MUSCHENHEIM: Objection.  
 13 A. No, I can't recall.  
 14 Q. Have you also received oral  
 15 reports from Chief Anger or Chief Paragallo 12:01:27  
 16 regarding the number of participants in  
 17 Critical Mass events?  
 18 A. Yes.  
 19 Q. And on occasion have you received  
 20 such reports while at the same time 12:01:39  
 21 receiving the written from-to memo  
 22 regarding that event?  
 23 A. Yes.  
 24 Q. Is there any other source of  
 25 information that you rely upon than the 12:01:51  
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1 Tuller  
 2 oral reports of your executive officers and  
 3 the from-to memoranda in terms of the  
 4 number of participants in particular  
 5 Critical Mass rides? 12:02:08  
 6 A. Yes.  
 7 Q. What are those other sources of  
 8 information?  
 9 A. They could be internal sources,  
 10 they could be through the precincts. 12:02:16  
 11 Q. Can you recall a specific  
 12 instance of an internal source of  
 13 information concerning the number of  
 14 participants at a Critical Mass ride?  
 15 A. The number, no. 12:02:29  
 16 Q. Can you recall any information  
 17 that you received concerning a Critical  
 18 Mass ride from an internal source other  
 19 than a from-to memo or a report from an  
 20 executive officer? 12:02:42  
 21 MR. MUSCHENHEIM: Just answer  
 22 that yes or no.  
 23 A. No.  
 24 Q. Can you recall a specific  
 25 instance of receiving information from an 12:03:03  
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1 Tuller  
 2 internal source regarding Critical Mass  
 3 other than from an executive officer or a  
 4 from-to memo?  
 5 A. No. 12:03:15  
 6 Q. Do you believe that generally  
 7 speaking, you have received information  
 8 regarding Critical Mass from internal  
 9 sources other than executive officers or  
 10 from-to memoranda? 12:03:29  
 11 A. Yes.  
 12 Q. Can you recall whether you  
 13 received that information orally or in  
 14 writing?  
 15 A. Orally. 12:04:02  
 16 Q. From whom have you received that  
 17 information?  
 18 A. Probably from the operations  
 19 unit.  
 20 Q. And can you recall any specific 12:04:13  
 21 individuals in the operations unit from  
 22 whom you have received such information?  
 23 A. Specifically, no.  
 24 Q. Can you recall the subject matter  
 25 of any information regarding Critical Mass 12:04:31  
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1 Tuller  
 2 that you have received from personnel in  
 3 the operations unit?  
 4 A. Specifically no.  
 5 Q. You can't recall the general 12:04:41  
 6 subject matter?  
 7 A. Yes, I can.  
 8 Q. And what is the general subject  
 9 matter of the information you received from  
 10 the operations unit personnel? 12:04:49  
 11 A. As it pertains to Critical Mass.  
 12 Q. As it pertains to Critical Mass?  
 13 A. Critical Mass.  
 14 Q. You can't recall if it concerned  
 15 a number of participants? 12:05:00  
 16 A. Well, not specifically, no.  
 17 Q. Can you recall if it concerned  
 18 the number of summonses or arrests in  
 19 connection with a particular event?  
 20 A. Not specifically. 12:05:08  
 21 Q. Can you recall receiving oral  
 22 reports from any personnel within NYPD  
 23 other than your commanding officer, your  
 24 executive officers and operations unit  
 25 personnel regarding contracts? 12:05:23  
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1 Tuller  
 2 A. No, I can't recall.  
 3 MR. VACCARO: We'll take a short  
 4 break to change the tape.  
 5 (Recess taken: 12:05-12:20 p.m.) 12:05:30  
 6 FURTHER EXAMINATION BY MR. VACCARO:  
 7 Q. Chief Tuller, we've talked about  
 8 some of the factors that are considered in  
 9 determining how many officers to assign to  
 10 a Critical Mass detail. I wanted to ask 12:20:57  
 11 you about one other factor. Are the number  
 12 of summonses or arrests that occur at a  
 13 Critical Mass event a factor that is  
 14 considered in determining how many officers  
 15 to assign to the event in a subsequent 12:21:17  
 16 month?  
 17 A. No.  
 18 Q. And why not?  
 19 A. It never occurred to me.  
 20 Q. So if for example turning to 12:21:34  
 21 Exhibit Tuller 2, there is a report, do you  
 22 see at the end of paragraph two that a  
 23 total of 45 B summonses were issued at  
 24 various locations throughout Manhattan  
 25 South for VTL violations. In addition one 12:22:07  
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1 Tuller  
 2 C summons was issued for disorderly  
 3 conduct. Do you see that reference at the  
 4 bottom of paragraph two, Exhibit Tuller 2?  
 5 A. Yes. 12:22:20  
 6 Q. And when you receive oral reports  
 7 regarding the Critical Mass rides from your  
 8 executive officer, do those oral reports  
 9 sometimes include information about the  
 10 number of summonses or arrests that arrive? 12:22:41  
 11 A. Yes.  
 12 Q. And do you rely on that  
 13 information in any way in preparing the  
 14 detail requests for subsequent Critical  
 15 Mass rides? 12:23:03  
 16 MR. MUSCHENHEIM: Objection to  
 17 the characterization, but you can  
 18 answer.  
 19 A. I don't.  
 20 Q. Do you rely on that information 12:23:12  
 21 in determining the law enforcement  
 22 strategies or tactics that will be used at  
 23 Critical Mass rides?  
 24 A. Yes.  
 25 Q. In what way? 12:23:39  
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1 Tuller  
 2 A. Well, if you know there is  
 3 traffic violations, you know that you're  
 4 going to use summonses.  
 5 Q. And Exhibit Tuller 2 tells you 12:23:52  
 6 that there were traffic violations by  
 7 participants in a Critical Mass event?  
 8 A. Yes.  
 9 Q. And based on that information,  
 10 what if any impact is there on the strategy 12:24:13  
 11 or tactics used in connection with policing  
 12 Critical Mass events going forward?  
 13 A. If you know there's going to be  
 14 traffic violations, then you will have  
 15 traffic strategies. 12:24:31  
 16 Q. So if you receive the report of  
 17 the traffic violation, that tells you there  
 18 is likely to be traffic violations at  
 19 future Critical Mass rides?  
 20 A. Yes. 12:24:47  
 21 Q. Do you ever recall learning the  
 22 specific nature of the traffic violations  
 23 that are the subject of summonses issued by  
 24 Critical Mass details?  
 25 A. Yes. 12:25:11  
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1 Tuller  
 2 Q. Do you know generally what are  
 3 the summonses issued?  
 4 A. They're usually in the form of  
 5 blocking traffic. 12:25:22  
 6 Q. Can you recall any other specific  
 7 types of activity that are the subject of  
 8 summonses issued by officers on Critical  
 9 Mass details?  
 10 A. Maybe equipment violations. 12:25:32  
 11 Q. Specifically headlights and  
 12 taillights, are you aware that that is a  
 13 subject of summonsing activity?  
 14 A. Yes.  
 15 Q. Are you aware of any other 12:25:42  
 16 specific or types of violations that are  
 17 the subject of significant summonsing  
 18 activity by Critical Mass details?  
 19 MR. MUSCHENHEIM: Objection as  
 20 to form, but you can answer. 12:26:00  
 21 A. Not that I can recall, no.  
 22 Q. And what are your sources of  
 23 information regarding the types of activity  
 24 for which summonses are issued by officers  
 25 on Critical Mass details? 12:26:13  
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1 Tuller  
 2 A. Usually through my XO.  
 3 Q. That would be an oral report?  
 4 A. Yes.  
 5 Q. And can you recall the most 12:26:24  
 6 recent oral report you received from your  
 7 XO regarding the nature of the summonses  
 8 that were issued by a Critical Mass detail?  
 9 A. I can't recall.  
 10 Q. Can you recall learning over time 12:26:41  
 11 that there was a change in the nature of  
 12 the violations that gave rise to the  
 13 summonses issued by the Critical Mass  
 14 details?  
 15 A. I don't recall. 12:26:53  
 16 Q. Well, do you believe that the  
 17 nature of the violations for which  
 18 summonses were issued remained consistent  
 19 over the time that you were the commander  
 20 of Manhattan South? 12:27:05  
 21 A. No.  
 22 Q. Can you recall any specific  
 23 changes in the nature of the violations  
 24 that were the basis for summonses issued by  
 25 the Critical Mass details? 12:27:34  
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1 Tuller  
 2 A. I need to hear that question  
 3 again.  
 4 (The record was read.)  
 5 THE WITNESS: I can't recall, 12:27:51  
 6 no.  
 7 Q. You can't recall specific changes  
 8 in the nature of the violations over time,  
 9 but you do believe that there were such  
 10 changes, is that correct? 12:28:05  
 11 A. I don't think I said that.  
 12 Q. Okay, well, I'm just trying to  
 13 understand your testimony, so let's back  
 14 up. Do you believe that there were changes  
 15 over the two years you've served as 12:28:18  
 16 commander Manhattan South in the nature of  
 17 the violations giving rise to the summonses  
 18 issued by the Critical Mass details?  
 19 A. No.  
 20 Q. So then do you believe that the 12:28:31  
 21 nature of the violations giving rise to the  
 22 summonses has been consistent over that  
 23 two-year period of time?  
 24 A. Yes.  
 25 Q. And you base that belief on the 12:28:41  
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1 Tuller  
 2 oral reports you've received from your  
 3 executive officer?  
 4 A. Yes.  
 5 Q. Is there any other source of 12:28:56  
 6 information that you have regarding the  
 7 nature of the violations that lead to  
 8 summonses on Critical Mass details?  
 9 A. Can I hear that one again?  
 10 (The record was read.) 12:29:22  
 11 THE WITNESS: So the reports  
 12 that I get and the briefings that I  
 13 get from my XO.  
 14 Q. Have you ever received written  
 15 summaries that break down the summonses 12:29:30  
 16 issued at Critical Mass rides into  
 17 categories by type of violation? Have you  
 18 ever seen anything like that?  
 19 A. I don't recall, no.  
 20 Q. You may have seen something like 12:29:43  
 21 that, but you don't recall whether you did?  
 22 A. I don't recall, no.  
 23 Q. It's your understanding that  
 24 Critical Mass generally occurs on the last  
 25 Friday of the month? 12:30:13  
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1 Tuller  
 2 A. Yes.  
 3 Q. And is it your understanding that  
 4 it begins some time after 7:00 p.m. on that  
 5 day? 12:30:20  
 6 A. Yes.  
 7 Q. And it's your understanding that  
 8 it originates from Union Square Park?  
 9 A. Yes.  
 10 Q. And does it begin with a 12:30:34  
 11 gathering of bicyclists at Union Square  
 12 Park?  
 13 A. Yes.  
 14 Q. What is the nature of that  
 15 gathering? 12:30:44  
 16 MR. MUSCHENHEIM: Objection as  
 17 to the form, but you can answer.  
 18 A. People arrive with their bikes.  
 19 Q. And are there any activities that  
 20 the people who have arrived with their 12:30:59  
 21 bikes engage in prior to the start of the  
 22 Critical Mass bicycle ride?  
 23 A. Not that I am aware of.  
 24 Q. Apart from the one Critical Mass  
 25 ride that you -- well, do you recall 12:31:19  
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1 Tuller  
 2 observing the bicyclists gathered at Union  
 3 Square Park on the evening that you  
 4 observed the Critical Mass ride in 2007?  
 5 A. I recall some people being there 12:31:36  
 6 with bikes.  
 7 Q. Can you recall what you saw them  
 8 doing?  
 9 A. Not specifically, no.  
 10 Q. Can you recall seeing any of them 12:31:43  
 11 engaged in unlawful conduct as they were  
 12 gathered in Union Square Park?  
 13 A. I don't recall.  
 14 Q. Can you recall any law  
 15 enforcement activity directed at bicyclists 12:31:57  
 16 gathered in Union Square Park?  
 17 A. I don't recall.  
 18 Q. Do you have a general  
 19 understanding of the number of participants  
 20 in Critical Mass events over the two years 12:32:19  
 21 that you have been commander at Manhattan  
 22 South?  
 23 A. Yes.  
 24 Q. Can you give me a range of  
 25 numbers of participants that you believe 12:32:31  
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1 Tuller  
 2 describes the number of participants in the  
 3 rides over those two years?  
 4 A. Yes.  
 5 Q. What range would you give? 12:32:40  
 6 A. Anywhere from 12 to 200.  
 7 Q. Can you recall, when was the last  
 8 event involving as many as 200  
 9 participants?  
 10 A. No. 12:33:00  
 11 Q. Do you know whether there has  
 12 been any law enforcement activity that has  
 13 occurred while the bicyclists are gathered  
 14 in Union Square Park as distinct from when  
 15 they are in the roadway? 12:33:22  
 16 MR. MUSCHENHEIM: Law  
 17 enforcement activity against those who  
 18 are gathered?  
 19 MR. VACCARO: Yes.  
 20 A. I don't recall. 12:33:32  
 21 Q. Do you know if bicyclists are  
 22 ever summonsed for riding within Union  
 23 Square Park?  
 24 A. I'm not aware.  
 25 Q. Are you aware of whether there 12:33:50  
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1 Tuller  
 2 has been any enforcement of Parks  
 3 Department permit requirements against  
 4 individuals gathered in Union Square Park  
 5 on the last Friday of the month? 12:34:05  
 6 A. I'm not aware.  
 7 Q. Have you ever heard any  
 8 discussions regarding enforcement of law  
 9 against the bicyclists when gathered in  
 10 Union Square Park? 12:34:20  
 11 A. I don't recall.  
 12 Q. Do you recall hearing that there  
 13 was the arrest of an individual in Union  
 14 Square Park while the bicyclists were  
 15 gathered there who had been reciting the 12:34:43  
 16 First Amendment?  
 17 A. I don't recall.  
 18 Q. You don't recall hearing that an  
 19 individual named Reverend Billy was  
 20 arrested for reciting the First Amendment 12:34:57  
 21 loudly to a group of police officers?  
 22 A. I don't recall.  
 23 Q. Have you ever discussed with  
 24 anyone at NYPD whether reciting the First  
 25 Amendment without more can be the basis for 12:35:16  
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1 Tuller  
 2 an arrest?  
 3 A. Not that I recall, no.  
 4 Q. Can you ever recall that arising  
 5 as an issue within Manhattan South? 12:35:23  
 6 A. Not that I recall, no.  
 7 Q. Is it your belief that an  
 8 individual who in public recites the First  
 9 Amendment without more can be arrested for  
 10 that conduct? 12:35:43  
 11 MR. MUSCHENHEIM: Objection.  
 12 Calls for a legal conclusion, but you  
 13 can answer.  
 14 A. It's not my belief.  
 15 Q. Do you recall hearing of an 12:35:56  
 16 arrest for reckless skateboarding that  
 17 occurred during a gathering of bicyclists  
 18 on Union Square on the last Friday of the  
 19 month?  
 20 A. I don't recall. 12:36:13  
 21 Q. Do you recall the arrest of a  
 22 person who road a skateboard over the  
 23 American flag at Union Square on the last  
 24 Friday of the month?  
 25 A. I don't recall. 12:36:25  
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1 Tuller  
 2 Q. Have you ever heard a report that  
 3 unlawful activity has occurred in  
 4 connection with a gathering of bicyclists  
 5 at Union Square on the last Friday of the 12:36:51  
 6 month?  
 7 MR. MUSCHENHEIM: Objection as  
 8 to the form.  
 9 A. I don't understand the question.  
 10 Q. Leaving aside the question of 12:37:02  
 11 group bicycling, have you ever heard that  
 12 bicyclists gathered at Union Square on the  
 13 last Friday of the month have engaged in  
 14 unlawful activity?  
 15 A. I don't recall. 12:37:16  
 16 Q. Is it your understanding that  
 17 there is a problem with unlawful activity  
 18 by bicyclists while they are gathered at  
 19 Union Square on the last Friday of the  
 20 month? 12:37:39  
 21 A. Can I hear that again?  
 22 (The record was read.)  
 23 THE WITNESS: Not that I am  
 24 aware of.  
 25 Q. Do you know whether bicyclists 12:38:02  
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1 Tuller  
 2 gather at Union Square Park on nights of  
 3 the month other than the last Friday?  
 4 A. I'm not aware.  
 5 Q. You don't have any information on 12:38:18  
 6 that topic?  
 7 A. No.  
 8 Q. To your understanding, what form  
 9 does Critical Mass take other than a  
 10 gathering at Union Square Park on the last 12:38:41  
 11 Friday of the month?  
 12 MR. MUSCHENHEIM: Objection to  
 13 the form, but you can answer.  
 14 A. The form that they take is a  
 15 group of bicyclists together, is the form 12:38:54  
 16 that they take.  
 17 Q. Proceeding in the roadway  
 18 together?  
 19 A. Yes.  
 20 Q. Is it your understanding that on 12:39:05  
 21 occasion the bicyclists gathered at Union  
 22 Square will leave Union Square as a group  
 23 and proceed in the roadway?  
 24 A. Yes.  
 25 Q. Do you know whether there have 12:39:25  
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1 Tuller  
 2 been instances where less than all of the  
 3 bicyclists gathered at Union Square on the  
 4 last Friday of the month leave to go to  
 5 ride in the roadway? 12:39:42  
 6 A. Can I hear that question again?  
 7 (The record was read.)  
 8 THE WITNESS: No, I don't.  
 9 Q. Is it your understanding that all  
 10 of the bicyclists who gather at Union 12:40:04  
 11 Square on the last Friday of the month join  
 12 in a single group ride after the gathering?  
 13 A. No.  
 14 Q. Your belief is that less than all  
 15 of the bicyclists at the gathering 12:40:29  
 16 participate in the group riding activity?  
 17 A. No.  
 18 Q. Do you have any information on  
 19 that subject at all?  
 20 MR. MUSCHENHEIM: Objection to 12:40:42  
 21 the form, but you can answer.  
 22 A. Yes.  
 23 Q. What information is that?  
 24 A. That they leave the park in  
 25 different groups. 12:40:51  
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1 Tuller  
 2 Q. And do you believe that every  
 3 individual with a bicycle who gathers at  
 4 Union Square on the last Friday of the  
 5 month leaves the park in different groups? 12:41:04  
 6 A. I don't know.  
 7 Q. It's possible that some of the  
 8 individuals with bicycles who gather on the  
 9 last Friday of the month at Union Square do  
 10 not participate in a group bicycle ride? 12:41:22  
 11 A. It's possible.  
 12 Q. Have you ever investigated the  
 13 extent to which that has occurred?  
 14 A. No.  
 15 Q. Do you have any understanding of 12:41:33  
 16 the extent to which that has occurred?  
 17 A. No.  
 18 Q. If an individual participates in  
 19 the gathering but not in any group bicycle  
 20 ride afterwards, would you consider that 12:41:55  
 21 person a participant in the Critical Mass  
 22 event?  
 23 MR. MUSCHENHEIM: Objection.  
 24 You can answer.  
 25 A. Yes. 12:42:08  
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1 Tuller  
 2 Q. Why?  
 3 A. He has a bicycle and he's there  
 4 with the group.  
 5 Q. So you would consider an 12:42:36  
 6 individual who was passing by Union Square  
 7 on the last Friday of the month with a  
 8 bicycle, saw a bunch of bicyclists and  
 9 stopped, looked at them to figure out what  
 10 was going on and then proceeded on their 12:42:51  
 11 way as an individual to be a participant in  
 12 the Critical Mass event?  
 13 MR. MUSCHENHEIM: Objection,  
 14 hypothetical, but you can answer.  
 15 A. If he or she is with the group 12:43:04  
 16 and had a bike, I would consider them a  
 17 participant.  
 18 MR. VACCARO: Can I ask that  
 19 the witness step outside for a moment.  
 20 I need to make a statement or have a 12:43:16  
 21 discussion with counsel without the  
 22 witness.  
 23 (Witness excused.)  
 24 MR. VACCARO: Mark, my view is  
 25 that objection, hypothetical is a 12:43:38  
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1 Tuller  
 2 completely improper objection. Not  
 3 only is it a speaking objection, but  
 4 it is not a valid objection, even to  
 5 form. There is absolutely nothing 12:43:47  
 6 wrong with asking a witness a question  
 7 based on assumed facts, and the only  
 8 purpose I can see for stating  
 9 objection, hypothetical can be to  
 10 signal the witness to answer the 12:44:02  
 11 question in a particular way. So I  
 12 would request that you no longer make  
 13 the objection, "objection,  
 14 hypothetical."  
 15 MR. MUSCHENHEIM: I will take 12:44:15  
 16 your request under advisement. I  
 17 can't guarantee that I'm going to  
 18 abide by that. I don't agree with  
 19 your take on -- your conclusions about  
 20 the appropriateness or 12:44:27  
 21 inappropriateness of raising an  
 22 objection on hypothetical grounds.  
 23 (Witness returns.)  
 24 FURTHER EXAMINATION BY MR. VACCARO:  
 25 Q. Chief Tuller, you mentioned I 12:45:18  
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1 Tuller  
 2 believe your understanding that on occasion  
 3 the bicyclists gathered at Union Square on  
 4 the last Friday of the month will leave the  
 5 park in multiple groups, is that correct? 12:45:28  
 6 A. They may.  
 7 Q. What do you know about those  
 8 bicyclists who are part of the Union Square  
 9 gathering leaving in two or more groups?  
 10 A. That they ride on to the roadway 12:45:54  
 11 and they ride in a fashion that blocks  
 12 traffic.  
 13 Q. And that is your understanding of  
 14 the behavior of groups of bicyclists that  
 15 depart from Union Square on the last Friday 12:46:13  
 16 of the month?  
 17 A. All groups?  
 18 Q. Yes. Let's change the question  
 19 to be all groups.  
 20 A. I would have to be there to 12:46:30  
 21 observe it and to ultimately observe a  
 22 violation of law.  
 23 Q. But you receive reports regarding  
 24 the behavior or conduct of groups of  
 25 bicyclists that leave from Union Square on 12:46:43  
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1 Tuller  
 2 the last Friday of the month, do you not?  
 3 A. Do I, yes.  
 4 Q. And based on those reports, do  
 5 you have an understanding of the conduct of 12:46:52  
 6 those groups as they proceed in the  
 7 roadway?  
 8 A. Yes.  
 9 Q. And what is that understanding?  
 10 A. That they proceed in such a 12:47:01  
 11 manner that they are blocking traffic,  
 12 potentially blocking traffic, where they're  
 13 not in the bike lanes, as the law  
 14 prescribes.  
 15 Q. When you refer to bike lanes in 12:47:28  
 16 your last response, can you describe  
 17 exactly what you are referring to?  
 18 A. Off to the side of the roadway.  
 19 Q. So when you refer to a bike lane,  
 20 you are not necessarily referring to a 12:47:50  
 21 portion of the roadway with a painted  
 22 stripe and a decal on it with a picture of  
 23 a bicycle?  
 24 A. May or may not.  
 25 Q. And your understanding is that 12:47:59  
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1 Tuller  
 2 bicyclists are required to proceed in what  
 3 you are calling the bike lane when they are  
 4 proceeding in the roadway?  
 5 A. Well, they can't block traffic. 12:48:12  
 6 That's my understanding of the law, that  
 7 they have to ride in such a manner as not  
 8 to block traffic.  
 9 Q. Is a bicyclist permitted to  
 10 proceed in the center of the traffic lane? 12:48:29  
 11 MR. MUSCHENHEIM: Objection.  
 12 You can answer.  
 13 A. No.  
 14 Q. Why not?  
 15 A. Because the law prescribes that 12:48:53  
 16 they go to either side of the roadway, in  
 17 the direction that the road goes.  
 18 Q. And your view is that if the  
 19 bicyclist is in the center of a traffic  
 20 lane, they are outside of the zone that the 12:49:07  
 21 law requires them to ride in?  
 22 MR. MUSCHENHEIM: Objection.  
 23 You can answer.  
 24 A. Yes.  
 25 Q. On streets where there is a lane 12:49:18  
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1 Tuller  
 2 of parked cars along the curb, how close to  
 3 the lane of parked cars is the bicyclist  
 4 required to proceed in order to be in  
 5 compliance with the law? 12:49:43  
 6 MR. MUSCHENHEIM: Objection,  
 7 but you can answer.  
 8 A. Three feet.  
 9 Q. You're saying that legally the  
 10 bicyclist can proceed up to three feet away 12:49:58  
 11 from the face of the parked cars that are  
 12 in the lane of parked cars?  
 13 MR. MUSCHENHEIM: Objection.  
 14 You can answer.  
 15 A. Yes. 12:50:14  
 16 Q. But not beyond three feet?  
 17 MR. MUSCHENHEIM: Objection.  
 18 A. No, they should not be.  
 19 Q. Turning back for a moment to a  
 20 different topic, is there a policy 12:50:35  
 21 currently in effect with respect to the  
 22 enforcement of the rules requiring parade  
 23 permits at Critical Mass events?  
 24 MR. MUSCHENHEIM: Objection,  
 25 but you can answer. 12:50:49  
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1 Tuller  
 2 A. Yes.  
 3 Q. What is that policy?  
 4 A. The policy is that we'll enforce  
 5 the laws and we'll use the discretion on 12:51:29  
 6 which laws to enforce. So what we do is  
 7 it's either an arrest or it's a summons,  
 8 and that's what we're going to use.  
 9 Q. So you are not aware of a policy  
 10 currently in effect under which officers 12:51:55  
 11 assigned to Critical Mass details are  
 12 directed not to enforce the rules requiring  
 13 permits for parades?  
 14 MR. MUSCHENHEIM: Objection,  
 15 but you can answer. 12:52:14  
 16 A. I am aware that we will use  
 17 discretion and the laws that we will follow  
 18 are the traffic regulations or any other,  
 19 blocking traffic, that sort of thing.  
 20 That's what we're going to enforce. 12:52:27  
 21 MR. VACCARO: Could I have a  
 22 readback of the last question.  
 23 (The last question was read.)  
 24 THE WITNESS: We're going to  
 25 enforce traffic regulations. 12:52:54  
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1 Tuller  
 2 Q. Can you answer my question as to  
 3 whether there is a policy such as I  
 4 described in my last question in fact?  
 5 MR. MUSCHENHEIM: Objection, 12:53:10  
 6 but you can answer.  
 7 A. Yes. We're going to enforce the  
 8 traffic regulations.  
 9 Q. So is there a policy of not  
 10 enforcing the rules concerning permits for 12:53:20  
 11 parades?  
 12 MR. MUSCHENHEIM: Objection,  
 13 but you can answer.  
 14 A. We have the discretion of which  
 15 laws to apply and we're going to apply the 12:53:30  
 16 traffic regulations.  
 17 Q. Do the officers who are currently  
 18 assigned to Critical Mass details have the  
 19 discretion to enforce the law regarding  
 20 permits for parades? 12:53:53  
 21 A. No.  
 22 Q. Why are they not permitted to  
 23 exercise such discretion?  
 24 MR. MUSCHENHEIM: Objection,  
 25 but you can answer. 12:54:06  
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1 Tuller  
 2 A. There are a number of laws that  
 3 have been broken and we're enforcing the  
 4 traffic regulations.  
 5 Q. Who decided that it would be the 12:54:14  
 6 traffic regulations and not the rules  
 7 regarding permits for parades that would be  
 8 enforced at Critical Mass events?  
 9 A. I don't know.  
 10 Q. But this is a policy that's 12:54:25  
 11 followed under your command at Manhattan  
 12 South?  
 13 MR. MUSCHENHEIM: Objection,  
 14 but you can answer.  
 15 A. Since I've been there, that's the 12:54:37  
 16 way it's done.  
 17 Q. Who told you that it has been  
 18 done this way?  
 19 A. I believe it was Chief Paragallo.  
 20 Q. And did he explain a reason to 12:54:53  
 21 you for why it was done this way?  
 22 A. Basically there's discretion when  
 23 laws are broken, so to more efficiently  
 24 process this, we do it via summonses or  
 25 arrests, whatever applies. 12:55:20  
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1 Tuller  
 2 Q. Are you aware that an NYPD police  
 3 officer is able to issue a summons or to  
 4 arrest an individual for a violation of the  
 5 rule requiring permits for parades? 12:55:34  
 6 MR. MUSCHENHEIM: Objection,  
 7 but you can answer.  
 8 A. Yes.  
 9 Q. What is the reason for directing  
 10 officers on Critical Mass details not to 12:55:46  
 11 issue summonses or to arrest individuals  
 12 for violations of the rule requiring  
 13 permits for parades?  
 14 MR. MUSCHENHEIM: Objection,  
 15 but you can answer. 12:55:59  
 16 A. It's just more efficient to issue  
 17 a summons for traffic violations.  
 18 Q. What makes it more efficient?  
 19 A. The process that the  
 20 individuals -- the violators have to go. 12:56:13  
 21 They have to go into traffic court.  
 22 Q. The concern underlying the policy  
 23 against enforcing the rule for parade  
 24 permits is the efficiency and convenience  
 25 of the violators? 12:56:36  
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1 Tuller  
 2 MR. MUSCHENHEIM: Objection.  
 3 A. No.  
 4 Q. What is the concern underlying  
 5 the policy against enforcing the rule 12:56:45  
 6 requiring permits for parades?  
 7 MR. MUSCHENHEIM: Objection.  
 8 Can you read that back, please.  
 9 (The record was read.)  
 10 THE WITNESS: Our offices are 12:57:04  
 11 used to issuing traffic violations.  
 12 They're used to making arrests. So it's  
 13 more efficient for the process for the  
 14 officers. They know exactly how to issue a  
 15 summons or make an arrest. 12:57:21  
 16 Q. And you're not aware of any other  
 17 reason for the policy against officers  
 18 assigned to Critical Mass detail issuing  
 19 summonses or making arrests for violation  
 20 of the parade permit rule? 12:57:39  
 21 A. No.  
 22 Q. What is the basis of your  
 23 understanding that the groups of bicyclists  
 24 who depart from Union Square on the last  
 25 Friday of the month block traffic? 12:58:41  
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1 Tuller  
 2 A. What is the basis?  
 3 Q. Yes.  
 4 A. That as a group they are in the  
 5 roadway. 12:58:49  
 6 Q. But what is the source of  
 7 information that you have drawn upon in  
 8 reaching that belief?  
 9 A. When I was initially briefed.  
 10 Q. Any other sources of information 12:59:05  
 11 you've drawn on in reaching that belief?  
 12 A. And what I've been briefed on.  
 13 Q. The oral reports and the from-to  
 14 memoranda?  
 15 A. Yes. 12:59:20  
 16 Q. And any unusual reports you've  
 17 received on Critical Mass rides?  
 18 A. Yes.  
 19 Q. You mentioned an initial  
 20 briefing. When did that occur? 12:59:32  
 21 A. Some time when I arrived at  
 22 Manhattan South.  
 23 Q. Do you recall who participated in  
 24 that briefing?  
 25 A. I believe it was Chief Paragallo. 12:59:45  
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1 Tuller  
 2 Q. Do you recall whether there were  
 3 any written materials referred to during  
 4 that briefing?  
 5 A. I don't recall. 12:59:53  
 6 Q. Do you recall the substance of  
 7 Chief Paragallo's initial briefing?  
 8 A. Yes.  
 9 Q. And what did he tell you in  
 10 substance? 13:00:00  
 11 A. Critical Mass gathers at Union  
 12 Square Park and then they proceed in the  
 13 roadway and they block traffic.  
 14 Q. Anything else?  
 15 A. And the -- I think he gave me the 13:00:12  
 16 tactics that was used to stop them, that we  
 17 use scooters.  
 18 Q. What else about the tactics did  
 19 Chief Paragallo describe?  
 20 MR. MUSCHENHEIM: Objection, 13:00:39  
 21 but you can answer.  
 22 A. Part of the tactics was to make  
 23 sure that the bikes actually broke the law  
 24 in a significant manner. In other words  
 25 that they are allowed to go on the roadway. 13:00:56  
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1 Tuller  
 2 And until the law is -- it's clear that  
 3 they're blocking traffic, and then that's  
 4 when they get pulled over for the  
 5 violations. 13:01:09  
 6 Q. Is it your understanding that  
 7 when Critical Mass bicyclists are pulled  
 8 over for violations, it is always because  
 9 they are blocking traffic?  
 10 A. Primarily. 13:01:24  
 11 Q. Are you aware that Critical Mass  
 12 bicyclists have been pulled over for  
 13 equipment violations?  
 14 A. Yes.  
 15 Q. Are you aware that a significant 13:01:33  
 16 number of the summonses issued by Critical  
 17 Mass details have been for violations of  
 18 the equipment regs?  
 19 MR. MUSCHENHEIM: Objection.  
 20 A. I am aware that there are 13:01:51  
 21 summonses issued for violations of the  
 22 equipment regulations.  
 23 Q. Do you know what the response is  
 24 of the NYPD offices on the Critical Mass  
 25 details when the bicyclists first leave 13:02:05  
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1 Tuller  
 2 Union Square in a group?  
 3 A. What do you mean by response?  
 4 Q. Well, what do the NYPD officers  
 5 do when a group of bicyclists leave Union 13:02:16  
 6 Square on the last Friday of the month, do  
 7 you know?  
 8 A. I know that they're followed and  
 9 that, you know, they're pulled over when  
 10 there is a clear violation of the law. 13:02:34  
 11 Q. And they are directed to follow  
 12 the groups leaving from Union Square by  
 13 their superiors, correct?  
 14 A. Yes.  
 15 Q. Do you know what size groups are 13:02:45  
 16 followed by the officers in this manner?  
 17 A. No.  
 18 Q. Do you know whether there is a  
 19 minimum size of group that will be followed  
 20 by NYPD officers in this manner? 13:03:02  
 21 A. No.  
 22 Q. Do you know whether groups as  
 23 small as five bicyclists have been followed  
 24 by NYPD officers in this manner?  
 25 A. I'm not aware. 13:03:15  
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1 Tuller  
 2 Q. Do you know whether groups as  
 3 small as two bicyclists have been followed  
 4 by NYPD officers in this manner?  
 5 A. I'm not aware. 13:03:22  
 6 Q. Do you believe it's an  
 7 appropriate use of NYPD resources to follow  
 8 a group of two bicyclists who depart from  
 9 Union Square on the last Friday of the  
 10 month? 13:03:42  
 11 MR. MUSCHENHEIM: Objection to  
 12 the form, but you can answer.  
 13 A. If the law is broken, my belief  
 14 is that the law can be enforced.  
 15 Q. What if two bicyclists leave from 13:03:50  
 16 Union Square on the last Friday of the  
 17 month in a manner that is in compliance  
 18 with the law? Is it appropriate for NYPD  
 19 officers to follow those two bicyclists?  
 20 MR. MUSCHENHEIM: Objection. 13:04:04  
 21 You can answer.  
 22 A. The question is, is it  
 23 appropriate?  
 24 Q. Yes.  
 25 A. Yes. 13:04:10  
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1 Tuller  
 2 Q. Why is that appropriate?  
 3 MR. MUSCHENHEIM: Objection.  
 4 You can answer.  
 5 A. Because based on what the group 13:04:18  
 6 is known to do, they may regather. So we  
 7 need to know the direction that they're  
 8 going.  
 9 Q. So one of the purposes of  
 10 following a small group of bicyclists that 13:04:35  
 11 departs from Union Square on the last  
 12 Friday of the month is to determine whether  
 13 they regather with other bicyclists at  
 14 another location?  
 15 A. It could be. 13:04:48  
 16 Q. Well, do you know whether that is  
 17 one of the purposes for assigning officers  
 18 to follow small groups of bicyclists under  
 19 those circumstances?  
 20 A. Yes. 13:04:58  
 21 Q. And in fact that is one of the  
 22 purposes, correct?  
 23 A. Yes.  
 24 Q. And those officers are directed  
 25 to enforce the traffic rules on those small 13:05:08  
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1 Tuller  
 2 groups of bicyclists as they follow them,  
 3 isn't that correct?  
 4 MR. MUSCHENHEIM: Objection.  
 5 You can answer. 13:05:21  
 6 A. I'm not sure.  
 7 Q. You don't know what orders the  
 8 officers are given when they are directed  
 9 to follow small groups of bicyclists  
 10 leaving Union Square? 13:05:30  
 11 A. That specific one, no.  
 12 Q. Have you heard of officers  
 13 enforcing the law on small groups of  
 14 bicyclists leaving from Union Square?  
 15 A. No. 13:05:38  
 16 Q. Do you believe that monitoring  
 17 small groups of bicyclists for a potential  
 18 regathering is the sole purpose for which  
 19 NYPD officers follow small groups of  
 20 bicyclists leaving Union Square? 13:05:58  
 21 MR. MUSCHENHEIM: Objection,  
 22 but you can answer.  
 23 A. Yes.  
 24 Q. You don't know of any other  
 25 purpose for assigning them to follow small 13:06:03  
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1 Tuller  
 2 groups?  
 3 A. Not that I can recall.  
 4 Q. Have you ever discussed with your  
 5 executive officer the purposes for which 13:06:25  
 6 small groups of bicyclists are followed  
 7 from Union Square?  
 8 A. Yes.  
 9 Q. And with which executive officers  
 10 have you discussed that topic? 13:06:39  
 11 A. It would have been Paragallo.  
 12 Q. And what do you recall of the  
 13 substance of that discussion?  
 14 A. The tactics that we used when the  
 15 group left the park, the tactic that I 13:06:59  
 16 described of making sure that they in fact  
 17 break the law.  
 18 Q. If the bicyclists in the small  
 19 groups being followed by the NYPD officers  
 20 break the law, are they subject to law 13:07:20  
 21 enforcement?  
 22 MR. MUSCHENHEIM: Objection.  
 23 A. They may be.  
 24 Q. You say that they may be. What  
 25 are the contingencies on which that turns? 13:07:26  
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1 Tuller  
 2 MR. MUSCHENHEIM: Objection,  
 3 but you can answer.  
 4 A. If there is a belief that they're  
 5 going to get together with additional 13:07:40  
 6 riders from the Critical Mass, that may be  
 7 the contingency.  
 8 Q. But if the small group of  
 9 bicyclists do not appear to be seeking to  
 10 get together with additional riders from 13:08:03  
 11 Critical Mass, are they still subject to  
 12 law enforcement?  
 13 MR. MUSCHENHEIM: Objection.  
 14 A. No, there is discretion there.  
 15 Q. So the level of the discretion of 13:08:20  
 16 the officers in enforcing the law with  
 17 respect to the small groups of bicyclists  
 18 they're following turns on whether the  
 19 bicyclists appear to be seeking to gather  
 20 with additional riders from Critical Mass? 13:08:43  
 21 MR. MUSCHENHEIM: Objection.  
 22 A. There is discretion in that, yes.  
 23 MR. VACCARO: Could I have a  
 24 readback of my last question, please.  
 25 (The record was read.) 13:09:19  
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1 Tuller  
 2 Q. Is that a yes?  
 3 A. I thought I answered the question  
 4 before.  
 5 Q. You just nodded. Is that --  
 6 A. No, this time I nodded. I'm  
 7 sorry, I thought you just wanted him to  
 8 reread it.  
 9 MR. VACCARO: I wanted him to  
 10 reread it, but I need to know what 13:09:32  
 11 your answer is, if you can, in a yes  
 12 or no.  
 13 MR. MUSCHENHEIM: Wait, wait.  
 14 Can we also have a readback of the  
 15 witness' answer, please. 13:10:01  
 16 (The record was read.)  
 17 Q. So is it true that the level of  
 18 discretion the officers following the  
 19 riders have in enforcing the law turns on  
 20 whether the bicyclists appear to be seeking 13:10:11  
 21 to regroup with other Critical Mass  
 22 bicyclists?  
 23 MR. MUSCHENHEIM: Objection.  
 24 A. Yes.  
 25 Q. When we're talking about 13:10:22  
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1 Tuller  
 2 enforcing the law, we're talking about  
 3 enforcing the traffic laws?  
 4 A. Yes.  
 5 Q. Have you ever heard a report that 13:10:34  
 6 the bicyclists gathered at Union Square on  
 7 the last Friday of the month departed in a  
 8 single group as opposed to multiple groups?  
 9 A. I don't recall that.  
 10 Q. Do you know whether the Critical 13:11:03  
 11 Mass participants agree upon a set route  
 12 for their ride before they start riding?  
 13 A. No.  
 14 Q. Is it your understanding that  
 15 there is no set route for the Critical Mass 13:11:33  
 16 bicycle rides?  
 17 A. Yes.  
 18 Q. Do you know whether there are  
 19 designated leaders for Critical Mass  
 20 bicycle rides who will lead the ride for 13:11:50  
 21 its duration?  
 22 A. I'm not aware of any leaders.  
 23 Q. And you don't believe that there  
 24 are leaders or others who have the power to  
 25 direct the route of the ride? 13:12:07  
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1 Tuller  
 2 MR. MUSCHENHEIM: Objection,  
 3 but you can answer.  
 4 A. I believe there are.  
 5 Q. So you do believe that there are 13:12:18  
 6 leaders or others who have the power to  
 7 direct the route of the ride?  
 8 A. Yes.  
 9 Q. And how does that work? How do  
 10 they exercise that power? 13:12:28  
 11 A. I don't know.  
 12 Q. And what do you base that on?  
 13 A. My assumption that there has to  
 14 be leaders.  
 15 Q. Have you received any reports of 13:12:43  
 16 specific information on that topic from eye  
 17 witnesses to Critical Mass events?  
 18 A. No.  
 19 Q. Have you received any written  
 20 reports addressing that topic? 13:12:55  
 21 A. No.  
 22 Q. Do you believe that the Critical  
 23 Mass events have organizers?  
 24 A. Yes.  
 25 Q. What information do you have 13:13:20  
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1 Tuller  
 2 concerning the organizers of Critical Mass  
 3 events and how they organize the events?  
 4 A. None.  
 5 Q. What is the basis of your belief 13:13:31  
 6 that there are organizers for Critical Mass  
 7 events?  
 8 A. That they refuse to talk to us.  
 9 Q. Who is the they in your preceding  
 10 answer? 13:13:44  
 11 A. I don't know who the they are.  
 12 Q. Because unknown persons refuse to  
 13 talk to you, you conclude that there are  
 14 organizers for Critical Mass events?  
 15 A. I do. 13:14:00  
 16 Q. Can you take me through the  
 17 logical steps that lead you to conclude  
 18 that there are organizers for Critical Mass  
 19 events based on the fact that there are  
 20 unknown individuals who do not speak to 13:14:10  
 21 you?  
 22 MR. MUSCHENHEIM: Objection,  
 23 but you can answer.  
 24 A. The fact that they gather at  
 25 Union Square. 13:14:18  
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1 Tuller  
 2 Q. That's a fact from which you  
 3 infer that there are organizers for the  
 4 events?  
 5 A. It's a fact. 13:14:27  
 6 Q. Are there any other facts?  
 7 A. My information is that when they  
 8 gather, they talk.  
 9 Q. Where did you get that  
 10 information? 13:14:39  
 11 A. From my initial briefing.  
 12 Q. Did you learn anything about what  
 13 the bicyclists gathered at Union Square on  
 14 the last Friday of the month talk about?  
 15 A. No. 13:14:53  
 16 Q. Is there anyone at Manhattan  
 17 South who knows about the bicyclists  
 18 gathered at Union Square talk about?  
 19 A. Not that I am aware of?  
 20 Q. Do you believe that the 13:15:11  
 21 discussions amongst the bicyclists gathered  
 22 at Union Square on the last Friday of the  
 23 month are a method by which the Critical  
 24 Mass events are organized?  
 25 A. Yes. 13:15:41  
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1 Tuller  
 2 Q. And do you know of any other  
 3 methods that are used to organize the  
 4 Critical Mass events?  
 5 A. No. 13:15:51  
 6 Q. Do you have an understanding as  
 7 to whether when the Critical Mass  
 8 bicyclists are riding in a group they  
 9 comply with the red and green traffic  
 10 signals? 13:16:36  
 11 A. Yes.  
 12 Q. What is your understanding?  
 13 A. That they don't comply.  
 14 Q. And what is the source of your  
 15 belief? 13:16:50  
 16 A. My initial briefing.  
 17 Q. Have you received any information  
 18 since your initial briefing on that topic?  
 19 A. No.  
 20 Q. Have you in subsequent briefings 13:17:08  
 21 with an executive officer received  
 22 information regarding Critical Mass  
 23 bicyclists proceeding through steady red  
 24 traffic signals?  
 25 A. Not that I recall. 13:17:22  
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1 Tuller  
 2 Q. Can you recall learning from any  
 3 written records that Critical Mass  
 4 bicyclists proceeded through steady red  
 5 signals? 13:17:58  
 6 A. I believe so.  
 7 Q. You think you recall seeing in a  
 8 to-from report that Critical Mass  
 9 bicyclists went through steady red signals?  
 10 A. No. 13:18:15  
 11 Q. What was the nature of the  
 12 written report that you believe contained  
 13 information about Critical Mass bicyclists  
 14 proceeding through steady red signals?  
 15 A. My understanding is that some of 13:18:39  
 16 the summonses are for going through the red  
 17 light.  
 18 Q. And how do you get information  
 19 about the nature of those summonses?  
 20 A. I may be briefed on them. 13:18:52  
 21 Q. But have you ever received  
 22 information in written form indicating that  
 23 Critical Mass bicyclists have received  
 24 summonses for going through red lights?  
 25 A. Not that I recall. 13:19:06  
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1 Tuller  
 2 Q. If you wanted to confirm your  
 3 belief that Critical Mass bicyclists  
 4 proceed through steady red signals, to what  
 5 source would you go for confirmation? 13:19:30  
 6 A. To the summonses.  
 7 Q. Do you have a view as to the  
 8 extent to which bicyclists not  
 9 participating in Critical Mass rides were  
 10 not observing traffic signals? 13:19:49  
 11 MR. MUSCHENHEIM: Objection,  
 12 but you can answer.  
 13 A. No.  
 14 Q. In your view is there a  
 15 compliance problem belong bicyclists in New 13:19:54  
 16 York City generally with respect to  
 17 observing steady red signals?  
 18 MR. MUSCHENHEIM: Objection.  
 19 A. Is there a compliance, no.  
 20 Q. Is there a compliance problem? 13:20:08  
 21 A. Oh, problem, how would you define  
 22 the problem?  
 23 Q. A significant percentage of  
 24 bicyclists in New York City disregarding  
 25 steady red signals as they proceed in the 13:20:22  
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1 Tuller  
 2 roadways.  
 3 MR. MUSCHENHEIM: Just note my  
 4 objection, but you can answer.  
 5 A. I don't have that information. 13:20:28  
 6 Q. Is that information that is  
 7 collected by Manhattan South?  
 8 A. Not that I am aware of.  
 9 Q. Are you familiar with a system  
 10 called Trafficstat? 13:20:39  
 11 A. Yes.  
 12 Q. Does Trafficstat collect  
 13 information regarding compliance with  
 14 traffic signals?  
 15 MR. MUSCHENHEIM: Objection. 13:20:57  
 16 You can answer that.  
 17 A. I am not aware.  
 18 Q. So you don't have any view as to  
 19 whether a significant percentage of  
 20 bicyclists proceeding in the roadways of 13:21:03  
 21 New York City disregard red traffic  
 22 signals?  
 23 MR. MUSCHENHEIM: Objection,  
 24 asked and answered. You can answer it  
 25 again. 13:21:12  
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1 Tuller  
 2 A. By view, you mean?  
 3 Q. A view, a viewpoint, an opinion.  
 4 A. An opinion, I have an opinion,  
 5 yes. 13:21:20  
 6 Q. And what is your opinion?  
 7 A. I believe that bikes go through  
 8 lights.  
 9 Q. Is that something that you have  
 10 observed happening just as you've walked 13:21:31  
 11 along the streets of New York City?  
 12 A. Yes.  
 13 Q. Is it something that you have  
 14 observed in your years in the NYPD?  
 15 A. Not that I could recall. 13:21:43  
 16 Q. But do you believe it's happened?  
 17 MR. MUSCHENHEIM: Objection.  
 18 You can answer.  
 19 A. I believe it's happened, yes.  
 20 Q. Do you know whether in your 13:21:56  
 21 career you have ever issued a summons to a  
 22 bicyclist?  
 23 A. Yes, I know the answer.  
 24 Q. And what is the answer?  
 25 A. No. 13:22:09  
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1 Tuller  
 2 Q. Can you ever recall a specific  
 3 instance of declining to issue a summons to  
 4 a bicyclist for a violation of law that you  
 5 observed? 13:22:22  
 6 A. I don't recall.  
 7 Q. Do you have an understanding of  
 8 the extent to which participants in  
 9 Critical Mass events are in compliance with  
 10 the laws regarding lighting equipment at 13:22:44  
 11 night?  
 12 MR. MUSCHENHEIM: Objection,  
 13 you can answer.  
 14 A. I'm not sure I understood the  
 15 question. 13:22:52  
 16 MR. VACCARO: Can I have a  
 17 readback.  
 18 (The last question was read.)  
 19 THE WITNESS: No.  
 20 Q. Have you ever heard that a 13:23:08  
 21 significant percentage of participants in  
 22 Critical Mass events fail to mount both a  
 23 headlight and a taillight on their  
 24 bicycles?  
 25 MR. MUSCHENHEIM: Objection. 13:23:26  
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1 Tuller  
 2 You can answer.  
 3 A. No.  
 4 Q. Is it your understanding that  
 5 that is the case? 13:23:28  
 6 MR. MUSCHENHEIM: Objection.  
 7 A. Yes.  
 8 Q. And what is the basis of that  
 9 understanding?  
 10 A. The violations. 13:23:35  
 11 Q. The violations as reflected in  
 12 the summonses issued by the Critical Mass  
 13 details?  
 14 A. Yes.  
 15 Q. Have you ever received 13:23:50  
 16 information regarding the summonses issued  
 17 for equipment violations at Critical Mass  
 18 details?  
 19 A. I'm sorry, have I ever received  
 20 what? 13:24:11  
 21 MR. VACCARO: May I have a  
 22 readback, please.  
 23 (The record was read.)  
 24 THE WITNESS: Yes.  
 25 Q. And has that information ever 13:24:22  
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1 Tuller  
 2 been in written form?  
 3 A. Summonses.  
 4 Q. Have you personally reviewed the  
 5 summonses? 13:24:33  
 6 MR. MUSCHENHEIM: Objection.  
 7 You can answer.  
 8 A. No.  
 9 Q. Have you personally reviewed  
 10 summaries of the summonses? 13:24:42  
 11 MR. MUSCHENHEIM: Objection,  
 12 but you can answer.  
 13 A. I can't recall.  
 14 Q. I asked you before as to whether  
 15 you had an opinion with respect to whether 13:25:00  
 16 bicyclists proceeding generally in New York  
 17 City traffic have a compliance issue in  
 18 terms of steady red signals. Do you  
 19 remember that question before?  
 20 A. Yes. 13:25:21  
 21 Q. Do you have an opinion as to  
 22 whether bicyclists generally proceeding in  
 23 New York City traffic present a compliance  
 24 issue in terms of the requirement that they  
 25 have a headlight and taillight mounted and 13:25:30  
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1 Tuller  
 2 operating a half hour after sunset?  
 3 MR. MUSCHENHEIM: Objection to  
 4 the form, but you can answer.  
 5 A. No. 13:25:38  
 6 Q. You have no opinion as to the  
 7 level of compliance by New York City  
 8 bicyclists generally with the requirement  
 9 of headlights and taillights at night?  
 10 A. No. 13:25:53  
 11 Q. In the one Critical Mass event  
 12 that you observed, did you observe the  
 13 bicyclists blocking any emergency vehicles?  
 14 A. Not that I recall.  
 15 Q. Have you ever heard reports that 13:26:23  
 16 participants in Critical Mass events have  
 17 blocked emergency vehicles?  
 18 A. Not that I recall.  
 19 Q. Do you have a view as to whether  
 20 Critical Mass bicyclists have a greater 13:26:42  
 21 tendency to violate traffic laws than  
 22 general bicyclists in New York City  
 23 traffic?  
 24 MR. MUSCHENHEIM: Objection,  
 25 but you can answer. 13:26:50  
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1 Tuller  
 2 A. A view meaning opinion?  
 3 Q. Yes.  
 4 A. Yes.  
 5 Q. And what is that opinion? 13:26:55  
 6 A. That they intentionally block  
 7 traffic.  
 8 Q. And what is that opinion based  
 9 on?  
 10 A. Based on my briefings. 13:27:03  
 11 Q. The initial briefing with Chief  
 12 Paragallo?  
 13 A. Yes.  
 14 Q. As well as the subsequent  
 15 briefings you've received from your 13:27:13  
 16 executive officers?  
 17 A. Yes.  
 18 Q. If Chief Paragallo gave sworn  
 19 testimony that he did not believe Critical  
 20 Mass bicyclists violated the law more than 13:27:38  
 21 other bicyclists proceeding individually in  
 22 traffic, would you have any reason to doubt  
 23 that testimony?  
 24 MR. MUSCHENHEIM: Objection,  
 25 but you can answer. 13:27:47  
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1 Tuller  
 2 THE WITNESS: Can I hear that  
 3 one again?  
 4 (The last question was read.)  
 5 THE WITNESS: No. 13:28:11  
 6 Q. In a case where the bicyclists  
 7 gathered at Union Square on the last Friday  
 8 of the month depart from the park  
 9 individually and go in separate directions,  
 10 would you consider that exodus of 13:28:32  
 11 bicyclists from the park individually as a  
 12 Critical Mass bicycle ride?  
 13 MR. MUSCHENHEIM: Objection.  
 14 That's hypothetical. You may answer.  
 15 THE WITNESS: I can answer it? 13:28:44  
 16 MR. MUSCHENHEIM: Yes.  
 17 THE WITNESS: I'm going to have  
 18 to hear the question again, I'm sorry.  
 19 (The record was read.)  
 20 THE WITNESS: I may. 13:29:21  
 21 Q. And upon what factors would you  
 22 base a determination as to whether or not  
 23 that exodus of individual bicyclists  
 24 constituted a Critical Mass bicycle ride?  
 25 MR. MUSCHENHEIM: Objection, 13:29:31  
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1 Tuller  
 2 but you can answer.  
 3 A. That they may regroup to break  
 4 the law again.  
 5 Q. And to the extent that you 13:29:39  
 6 suspect the individually departing  
 7 bicyclists have an intent to regroup, you  
 8 would consider them to be participating in  
 9 a group in a Critical Mass bicycle ride as  
 10 they departed from the park individually? 13:29:55  
 11 MR. MUSCHENHEIM: Objection.  
 12 Can I have that read back, please.  
 13 (The record was read.)  
 14 THE WITNESS: I don't know what  
 15 that means. 13:30:23  
 16 MR. MUSCHENHEIM: Would you  
 17 rephrase the question, please.  
 18 Q. I'll ask a different question.  
 19 On what basis would you determine  
 20 a bicyclist leaving from Union Square Park 13:30:34  
 21 on the last Friday of the month as an  
 22 individual had an intention to regroup with  
 23 other bicyclists?  
 24 MR. MUSCHENHEIM: Note my  
 25 objection, but you can answer. 13:30:49  
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1 Tuller  
 2 A. It's my belief that that is the  
 3 strategy, their strategy.  
 4 Q. Is it presumed then that a  
 5 bicyclist leaving Union Square on the last 13:31:04  
 6 Friday of the month individually intends to  
 7 regroup with other bicyclists?  
 8 MR. MUSCHENHEIM: Objection.  
 9 A. They may.  
 10 Q. And based on that presumption, 13:31:13  
 11 are bicyclists followed as they depart from  
 12 Union Square?  
 13 MR. MUSCHENHEIM: Objection.  
 14 A. They may.  
 15 Q. They may be followed by NYPD 13:31:23  
 16 officer to see if they'll be meeting with  
 17 other bicyclists?  
 18 A. They may.  
 19 Q. And while they're being followed,  
 20 they will be subject to appropriate law 13:31:34  
 21 enforcement action?  
 22 A. They may.  
 23 Q. Well, if they commit traffic  
 24 violations or if they have an equipment  
 25 violation, will they be subject to law 13:31:46  
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1 Tuller  
 2 enforcement action?  
 3 MR. MUSCHENHEIM: Objection.  
 4 You can answer.  
 5 A. They may. 13:31:51  
 6 Q. They may depending on what  
 7 factors?  
 8 MR. MUSCHENHEIM: Objection.  
 9 Go ahead. You can answer.  
 10 A. Whatever the officer that is 13:32:00  
 11 following that individual perceives.  
 12 Q. Has it ever come to your  
 13 attention -- I will step back for a moment.  
 14 Is it your understanding that there is a  
 15 briefing given to officers participating in 13:32:33  
 16 Critical Mass details before the event  
 17 starts?  
 18 A. Yes.  
 19 Q. Have you ever observed such a  
 20 briefing? 13:32:46  
 21 A. Not that I recall.  
 22 Q. Specifically do you recall  
 23 observing such a briefing in connection  
 24 with the 2007 ride that you personally  
 25 observed? 13:32:54  
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1 Tuller  
 2 A. I don't recall.  
 3 Q. Do you have any information as to  
 4 the content of that briefing that is given  
 5 at the Critical Mass details? 13:33:04  
 6 A. No.  
 7 Q. Do you have any idea of what  
 8 topics are covered during those briefings?  
 9 MR. MUSCHENHEIM: Objection,  
 10 but you can answer. 13:33:20  
 11 A. Idea being? What do you mean by  
 12 idea? A guess or an opinion or --  
 13 Q. No, do you have any specific  
 14 information as to the content of the  
 15 briefings that are given? 13:33:31  
 16 A. I don't recall having any  
 17 specific information, no.  
 18 Q. Have you ever discussed with your  
 19 executive officers the content of the  
 20 briefings that are given at Critical Mass 13:33:44  
 21 details?  
 22 A. I don't recall.  
 23 Q. Do you know whether officers are  
 24 provided with lists of suggested violations  
 25 for which summonses can be written during 13:34:03  
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1 Tuller  
 2 the briefings at the Critical Mass details?  
 3 A. No.  
 4 Q. Do you know whether officers  
 5 receive instructions as to the particular 13:34:15  
 6 types of violations on which they may write  
 7 summonses at Critical Mass events?  
 8 A. That is my belief.  
 9 Q. And what do you base that belief  
 10 on? 13:34:34  
 11 A. The fact that they are having a  
 12 briefing.  
 13 Q. That is a topic that you would  
 14 expect to be covered in the briefings held  
 15 at the Critical Mass details? 13:34:43  
 16 A. I would assume.  
 17 Q. But you don't have specific  
 18 information as to the substance of the  
 19 briefing?  
 20 MR. MUSCHENHEIM: Objection. 13:34:54  
 21 You can answer.  
 22 A. No.  
 23 Q. Are there any other topics that  
 24 you believe are covered in the briefings to  
 25 the officers at the Critical Mass details 13:35:11  
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1 Tuller  
 2 other than the specific nature of the  
 3 violations on which they can take law  
 4 enforcement action?  
 5 A. No. 13:35:24  
 6 Q. Can you name any other public  
 7 gathering in Manhattan South at which NYPD  
 8 has a policy of following participants as  
 9 they leave in small groups to monitor them  
 10 for traffic violations? 13:35:42  
 11 MR. MUSCHENHEIM: Objection,  
 12 but you can answer.  
 13 A. I don't recall any others.  
 14 Q. You spent a significant amount of  
 15 time in an important command post in Queens 13:35:54  
 16 as well as your current command post,  
 17 correct?  
 18 A. Yes.  
 19 Q. Are you aware of any public  
 20 gatherings anywhere within New York City as 13:36:04  
 21 to which it has been NYPD's policy to  
 22 follow individuals who leave in small  
 23 groups from the events to monitor them for  
 24 traffic violations?  
 25 MR. MUSCHENHEIM: Objection. 13:36:16  
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1 Tuller  
 2 You can answer.  
 3 A. I don't recall.  
 4 Q. Do you know if NYPD follows  
 5 groups of pedestrians as they leave the 13:36:27  
 6 Puerto Rican Day parade to monitor them for  
 7 offenses such as jay-walking?  
 8 A. Not that I am aware of.  
 9 Q. Can you confirm that it is NYPD's  
 10 policy not to follow small groups of 13:36:43  
 11 pedestrians as they depart from the Puerto  
 12 Rican Day parade to monitor them for  
 13 traffic violations?  
 14 MR. MUSCHENHEIM: Objection.  
 15 You can answer. 13:36:52  
 16 A. I am not aware of any.  
 17 Q. You are not aware of any such  
 18 policy?  
 19 A. For traffic violation.  
 20 Q. In the case of the Sean Bell 13:37:05  
 21 related demonstrations that we discussed  
 22 earlier, can you recall whether NYPD  
 23 officers were assigned to monitor  
 24 demonstration participants after they left  
 25 the event for traffic violations? 13:37:22  
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1 Tuller  
 2 A. I'm not aware of that.  
 3 Q. You don't believe NYPD followed  
 4 small groups of individuals as they  
 5 dispersed from the Sean Bell demonstrations 13:37:39  
 6 to monitor them for traffic violations?  
 7 A. I am not aware of that.  
 8 Q. Can you think of any public  
 9 events in which NYPD has followed groups of  
 10 participants as they leave the event to 13:37:58  
 11 monitor for any type of violation?  
 12 MR. MUSCHENHEIM: Objection,  
 13 but you can answer.  
 14 A. What do you mean by violation?  
 15 Q. A violation of the City 13:38:09  
 16 Administrative Code or of the traffic  
 17 regulations.  
 18 A. My answer has to be no.  
 19 Q. Are there events in which NYPD  
 20 will follow and monitor individuals when 13:38:41  
 21 they leave the event for crimes more  
 22 serious than violations of the traffic  
 23 rules or the Administrative Code?  
 24 MR. MUSCHENHEIM: Objection,  
 25 but you can answer. 13:38:57  
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1 Tuller  
 2 A. Yes.  
 3 Q. Can you describe such an event?  
 4 A. When we perceive that a group of  
 5 people may enter into some criminal 13:39:12  
 6 activity, then we will follow them away  
 7 from the event.  
 8 Q. And -- but when you describe  
 9 criminal activity, you are not talking  
 10 about violation of the traffic laws? 13:39:34  
 11 A. Not that I am aware of.  
 12 MR. VACCARO: It's now 1:41  
 13 and I would suggest a brief lunch  
 14 break. It now seems like a good time.  
 15 (Luncheon adjournment: 1:40 p.m.)  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

1 Tuller  
 2 AFTERNOON SESSION  
 3 (Time noted: 2:30 p.m.)  
 4 JAMES TULLER, resumed  
 5 and testified as follows:  
 6 CONTINUED EXAMINATION BY MR. VACCARO:  
 7 Q. Good afternoon, Chief Tuller.  
 8 A. Good afternoon.  
 9 Q. Can you recall during your time  
 10 as commander of Queens North a 14:34:32  
 11 demonstration involving correctional  
 12 officers in vehicles near Hazan Street and  
 13 the bridge to Rikers Island?  
 14 A. Yes.  
 15 Q. What do you recall of that 14:34:56  
 16 demonstration?  
 17 A. That the corrections officers  
 18 backed traffic up going into Rikers Island.  
 19 Q. And do you know if that was some  
 20 sort of labor dispute, or what the issue 14:35:16  
 21 was?  
 22 A. I believe it was a labor dispute.  
 23 Q. And do you recall how that --  
 24 well, so that I understand the nature of  
 25 the event, it was a number of correction 14:35:41

1 Tuller  
 2 officers, each driving in a motor vehicle  
 3 in the same location?  
 4 A. Yes.  
 5 Q. Was it essentially a motorcade? 14:35:50  
 6 MR. MUSCHENHEIM: Objection to  
 7 the form, but you can answer.  
 8 A. I wouldn't call it a motorcade.  
 9 Q. How would you describe it?  
 10 A. Corrections officers going to 14:36:03  
 11 work and driving into their facility.  
 12 Q. And were they driving into their  
 13 facility to go to work in exactly the same  
 14 manner that they ordinarily had done on  
 15 prior days? 14:36:17  
 16 MR. MUSCHENHEIM: Objection.  
 17 You can answer.  
 18 A. I don't recall.  
 19 Q. You had mentioned that there was  
 20 a blockage of traffic that resulted from 14:36:30  
 21 the event?  
 22 A. Yes.  
 23 Q. Do you recall being aware that it  
 24 was a blockage of traffic that had  
 25 ordinarily occurred every time when the 14:36:40

1 Tuller  
 2 officers went to work at Rikers Island?  
 3 MR. MUSCHENHEIM: Objection.  
 4 A. No.  
 5 Q. Was it an extraordinary blockage 14:36:47  
 6 of traffic?  
 7 MR. MUSCHENHEIM: Objection.  
 8 A. I don't know what extraordinary  
 9 means in this sense.  
 10 Q. Extraordinary in the sense of not 14:37:02  
 11 ordinary.  
 12 MR. MUSCHENHEIM: Objection.  
 13 A. It wasn't normal as far as I  
 14 know.  
 15 Q. And do you know how many 14:37:13  
 16 correction officers participated in that  
 17 activity?  
 18 A. I don't recall.  
 19 Q. Do you know whether there were  
 20 ten? 14:37:23  
 21 A. I don't recall.  
 22 Q. Could it have been less than ten?  
 23 A. I just don't recall.  
 24 Q. Do you recall the period of time  
 25 for which the traffic was blocked? 14:37:34

1 Tuller  
 2 A. I don't recall.  
 3 Q. Do you recall any steps taken by  
 4 NYPD to remedy the traffic blockage that  
 5 resulted? 14:37:44  
 6 A. I don't recall.  
 7 Q. Do you recall any law enforcement  
 8 action with respect to participants in that  
 9 blocking activity?  
 10 A. I don't recall. 14:37:53  
 11 Q. So is it possible that  
 12 participants in that correctional officers  
 13 demonstration were arrested?  
 14 A. I don't recall.  
 15 Q. So the answer is yes, there may 14:38:09  
 16 have been arrests?  
 17 A. I don't recall.  
 18 Q. Do you know whether the rules  
 19 concerning the issuance of permits for  
 20 parades were enforced in connection with 14:38:28  
 21 that event?  
 22 MR. MUSCHENHEIM: Objection.  
 23 You can answer.  
 24 A. Were they issued? Is that the  
 25 question? 14:38:38  
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1 Tuller  
 2 Q. Well, actually, you know, your  
 3 request for clarification brings up a good  
 4 point. Do you know whether there was a  
 5 permit issued for the activity that the 14:38:46  
 6 correctional officers engaged in on that  
 7 occasion?  
 8 A. No.  
 9 Q. Do you believe that no permit was  
 10 issued for that activity? 14:38:56  
 11 A. Yes.  
 12 Q. Do you know whether the law  
 13 requiring a permit to conduct a parade was  
 14 enforced against the officers who engaged  
 15 in that activity? 14:39:09  
 16 A. It wasn't a parade.  
 17 Q. What was it?  
 18 A. It was corrections officers  
 19 driving into their facility for their tour,  
 20 as far as I remember. 14:39:31  
 21 Q. And that activity created unusual  
 22 blockage of traffic, is that correct?  
 23 A. That's my understanding.  
 24 Q. And do you know the reason why  
 25 that activity created an unusual blockage 14:39:42  
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1 Tuller  
 2 of traffic?  
 3 A. I don't recall.  
 4 Q. Do you know whether the officers,  
 5 the correctional officers engaged in 14:39:55  
 6 activity were intentionally blocking  
 7 traffic?  
 8 MR. MUSCHENHEIM: Objection,  
 9 but you can answer.  
 10 A. Yeah, I don't recall. I don't 14:40:03  
 11 know.  
 12 Q. Well, it was a demonstration in  
 13 connection with a labor dispute, right?  
 14 A. Yes.  
 15 Q. So they were trying to make a 14:40:09  
 16 point, right?  
 17 A. Yes.  
 18 Q. And they made their point by  
 19 blocking traffic, is that right?  
 20 MR. MUSCHENHEIM: Objection. 14:40:18  
 21 You can answer.  
 22 A. Yeah, I just don't recall what  
 23 the strategy was.  
 24 Q. But regardless of their strategy  
 25 for blocking traffic, one of their 14:40:38  
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1 Tuller  
 2 strategies for getting their point across  
 3 was blocking traffic, is that correct?  
 4 MR. MUSCHENHEIM: Objection.  
 5 You can answer. 14:40:46  
 6 A. My recollection is the traffic  
 7 was backed up.  
 8 Q. And that was as a result of the  
 9 intentional blocking activity by the  
 10 correctional officers, right? 14:40:58  
 11 MR. MUSCHENHEIM: Objection.  
 12 A. I don't recall what actually  
 13 caused the backup.  
 14 Q. But the backup was caused as a  
 15 result of the demonstration in connection 14:41:09  
 16 with the labor dispute by the correctional  
 17 officers, right?  
 18 MR. MUSCHENHEIM: Objection.  
 19 You can answer.  
 20 A. I don't consider it a 14:41:18  
 21 demonstration.  
 22 Q. You considered it activity in  
 23 connection with a correctional officer  
 24 labor dispute?  
 25 A. Yes. 14:42:18  
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1 Tuller  
 2 Q. And why do you believe the  
 3 correctional officers created the unusual  
 4 traffic blockage?  
 5 MR. MUSCHENHEIM: Objection. 14:42:29  
 6 You can answer.  
 7 A. This is opinion?  
 8 Q. Yes.  
 9 A. They were drawing attention to  
 10 their issues. 14:42:41  
 11 Q. By creating an unusual traffic  
 12 blockage?  
 13 A. Yes.  
 14 Q. Isn't that what Critical Mass  
 15 bicyclists sometimes do? 14:42:59  
 16 MR. MUSCHENHEIM: Objection.  
 17 A. In what sense?  
 18 Q. In exactly the sense you meant it  
 19 in response to my last question?  
 20 A. A labor dispute? 14:43:08  
 21 Q. No. In the sense that they are  
 22 bringing attention to their issues by  
 23 blocking -- by creating an unusual blockage  
 24 of traffic.  
 25 MR. MUSCHENHEIM: Note my 14:43:26  
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1 Tuller  
 2 objection. You can answer.  
 3 A. It may be.  
 4 Q. Can you recall during -- at any  
 5 time during your post as the commander of a 14:44:26  
 6 patrol borough anywhere in New York City,  
 7 being aware of group activity that created  
 8 an unusual blockage of traffic in order to  
 9 bring attention to issues?  
 10 A. Yes. 14:44:51  
 11 Q. Would you agree that the  
 12 demonstration surrounding the Sean Bell  
 13 shooting that we discussed earlier are  
 14 examples of that?  
 15 A. Yes. 14:45:05  
 16 Q. Would you agree that the  
 17 correctional officers' activity that we  
 18 discussed earlier is an example of that?  
 19 A. Yes.  
 20 Q. Can you give me an example of 14:45:17  
 21 such activity in which NYPD enforced the  
 22 rules regarding the need for a permit to  
 23 conduct a parade?  
 24 A. Can I give you an example of when  
 25 we do this? 14:45:40  
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1 Tuller  
 2 Q. Of an instance in which it was  
 3 done.  
 4 A. Granting a permit?  
 5 Q. No, enforcing the rules against 14:45:48  
 6 individuals creating unusual traffic  
 7 blockages without a permit.  
 8 A. We talked about Sean Bell.  
 9 Q. Were the rules regarding the need  
 10 for a permit to conduct a parade enforced 14:46:07  
 11 in connection with those May, 2008 Sean  
 12 Bell demonstrations?  
 13 A. No.  
 14 Q. Can you name any event involving  
 15 an unusual traffic blockage against which 14:46:19  
 16 the rules requiring permits for parades  
 17 were enforced?  
 18 MR. MUSCHENHEIM: Objection.  
 19 You can answer.  
 20 A. I'm sorry, what was enforced, the 14:46:37  
 21 permit?  
 22 Q. The permit requirement.  
 23 A. No, I can't think of anything  
 24 that I'm aware of.  
 25 Q. Has that happened on Critical 14:46:50  
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1 Tuller  
 2 Mass bicycle rides, the enforcement of the  
 3 rules requiring a permit to conduct a  
 4 parade?  
 5 MR. MUSCHENHEIM: At what time? 14:47:06  
 6 Q. At any time during your two years  
 7 as commander Manhattan South.  
 8 A. No.  
 9 Q. Do you have an understanding as  
 10 to the method a police officer should use 14:47:34  
 11 to make a traffic stop on a bicyclist?  
 12 MR. MUSCHENHEIM: Objection. I  
 13 think there is a foundation issue, but  
 14 you can answer.  
 15 A. Is there -- well, I don't 14:47:57  
 16 understand the question.  
 17 Q. If an officer observes a  
 18 bicyclist commit a violation of law and the  
 19 officer decides he or she wants to take  
 20 some sort of action, is there a procedure 14:48:14  
 21 the officer should use to stop of bicyclist  
 22 from proceeding?  
 23 MR. MUSCHENHEIM: Just note my  
 24 objection, but you can answer.  
 25 A. Yeah, I'm not aware of any 14:48:27  
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1 Tuller  
 2 procedures that we have for bikes. There  
 3 may be, but I'm not aware of it.  
 4 Q. As a general matter with respect  
 5 to traffic stops, are officers required to 14:48:36  
 6 use commands to stop or gestures to get a  
 7 person in traffic to stop before using any  
 8 kind of physical force?  
 9 MR. MUSCHENHEIM: Objection as  
 10 to the form, but you can answer. 14:48:55  
 11 A. Well, as a practical matter,  
 12 officers can use commands.  
 13 Q. Officers can use commands to make  
 14 a traffic stop. You agree with that?  
 15 A. Yes. 14:49:12  
 16 Q. Is it required that an officer  
 17 use verbal commands or gestures to command  
 18 an individual to stop in connection with a  
 19 traffic violation prior to that officer  
 20 using physical force? 14:49:29  
 21 MR. MUSCHENHEIM: Objection,  
 22 but you can answer.  
 23 A. In most instances, there should  
 24 be some sort of direction. But not always.  
 25 Q. Why as a general matter is it 14:49:44  
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1 Tuller  
 2 preferable for the command to stop to be  
 3 used before any kind of physical action is  
 4 used?  
 5 A. To get compliance. 14:49:54  
 6 Q. The verbal command or gesture is  
 7 more effective in obtaining compliance when  
 8 making a traffic stop in your view?  
 9 MR. MUSCHENHEIM: Objection.  
 10 You can answer. 14:50:09  
 11 A. The verbal command or gesture is  
 12 more --  
 13 Q. Do you believe it's more  
 14 effective in obtaining compliance than the  
 15 use of the application of some kind of 14:50:20  
 16 physical force?  
 17 A. Yes.  
 18 Q. And it's also safer, right?  
 19 A. Yes.  
 20 Q. Safer for the officer? 14:50:32  
 21 A. Yes.  
 22 Q. Safer for the individual being  
 23 stopped?  
 24 A. Yes.  
 25 Q. And is that general preference 14:50:39  
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1 Tuller  
 2 for use of verbal commands or gestures  
 3 before applying physical force and making a  
 4 traffic stop applicable to the stopping of  
 5 bicyclists for traffic violations? 14:50:58  
 6 A. Yes.  
 7 MR. MUSCHENHEIM: I should have  
 8 objected to that last question, tardy.  
 9 Q. You recall our discussion earlier  
 10 concerning the officer Patrick Pogan? 14:51:37  
 11 A. Yes.  
 12 Q. You are aware that there are  
 13 reports and allegations that he  
 14 deliberately knocked over a bicyclist?  
 15 A. Yes. 14:51:57  
 16 Q. Has NYPD done anything to  
 17 communicate to its officers that traffic  
 18 stops on bicyclists should not be made by  
 19 knocking them over?  
 20 MR. MUSCHENHEIM: Objection. 14:52:15  
 21 A. Has NYPD? Not that I am aware  
 22 of.  
 23 Q. So were there any specific steps  
 24 taken following the incident involving  
 25 Officer Pogan to confirm the NYPD 14:52:33  
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1 Tuller  
 2 preference for using verbal commands or  
 3 gestures to stop bicyclists in the first  
 4 instance?  
 5 A. Not that I am aware of, no. 14:52:49  
 6 Q. Apart from the incident involving  
 7 Officer Pogan, are you aware of any  
 8 incidents during your time as commander of  
 9 Manhattan South in which an officer has  
 10 been alleged to have wrongfully used 14:53:15  
 11 physical force to stop a bicyclist?  
 12 A. Not that I am aware of.  
 13 Q. Have you heard any such  
 14 allegations concerning the use of physical  
 15 force to make a stop on a Critical Mass 14:53:32  
 16 bicyclist?  
 17 A. No.  
 18 Q. Has it been brought to your  
 19 attention that physical force was used to  
 20 make a traffic stop on a Critical Mass 14:53:49  
 21 bicyclist during your time as commander of  
 22 Manhattan South?  
 23 A. No.  
 24 Q. Have you ever heard that Chief  
 25 Smolka personally used physical force to 14:54:11  
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1 Tuller  
 2 make traffic stops on bicyclists while he  
 3 was commander of Manhattan South?  
 4 MR. MUSCHENHEIM: Objection,  
 5 but you can answer. 14:54:20  
 6 A. No.  
 7 Q. Have you ever heard that Chief  
 8 Paragallo used physical force to stop  
 9 bicyclists for traffic violations while he  
 10 was at Manhattan South? 14:54:31  
 11 MR. MUSCHENHEIM: Objection.  
 12 A. No.  
 13 Q. So as far as you know, NYPD  
 14 officers have not used physical force to  
 15 make traffic stops on bicyclists in 14:54:51  
 16 connection with Critical Mass events?  
 17 MR. MUSCHENHEIM: Objection.  
 18 A. As far as I know.  
 19 Q. During the time that Chief  
 20 Paragallo was executive officer at 14:55:07  
 21 Manhattan South, did he have primary  
 22 responsibility for the Critical Mass  
 23 details?  
 24 MR. MUSCHENHEIM: Objection,  
 25 but you can answer. 14:55:18  
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1 Tuller  
 2 A. Yes.  
 3 Q. And was Inspector Dequatro Chief  
 4 Paragallo's primary aid for those details?  
 5 MR. MUSCHENHEIM: Same 14:55:28  
 6 objection.  
 7 A. I don't know that to be true.  
 8 Q. Do you recall Inspector Dequatro  
 9 serving as an aid to Chief Paragallo at  
 10 Critical Mass rides? 14:55:37  
 11 A. Yes.  
 12 Q. More than once?  
 13 A. I believe so.  
 14 Q. Can you recall any other  
 15 individuals who served as aides to Chief 14:55:45  
 16 Paragallo in connection with Critical Mass  
 17 details?  
 18 A. I believe Inspector Hughes was  
 19 also there.  
 20 Q. And you believe that Inspector 14:55:56  
 21 Hughes may have served as the aide for  
 22 Chief Paragallo in connection with some of  
 23 the Critical Mass details?  
 24 A. Yes. In fact that's what Tuller  
 25 13 indicates. 14:56:17  
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1 Tuller  
 2 Q. Do you know whether Inspector  
 3 Hughes or Inspector Dequatro -- as between  
 4 Inspectors Hughes and Dequatro, do you know  
 5 which of them served most often as aides to 14:56:35  
 6 Chief Paragallo in connection with Critical  
 7 Mass rides?  
 8 A. No.  
 9 Q. At a certain point in time Chief  
 10 Paragallo left Manhattan South? 14:56:50  
 11 A. Yes.  
 12 Q. At that time did Chief Anger  
 13 become primarily responsible for the  
 14 Critical Mass details?  
 15 MR. MUSCHENHEIM: Objection, 14:57:00  
 16 but you can answer.  
 17 A. Yes.  
 18 Q. Are you aware of any changes in  
 19 NYPD's objectives with respect to the 14:57:12  
 20 Critical Mass details that occurred in the  
 21 transition from Chief Paragallo to Chief  
 22 Anger?  
 23 MR. MUSCHENHEIM: Objection.  
 24 You can answer.  
 25 A. No. 14:57:21  
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1 Tuller  
 2 Q. And what was your understanding  
 3 of the objectives of NYPD for the Critical  
 4 Mass details when you started as commander  
 5 Manhattan South? 14:57:33  
 6 A. To make sure that if there was  
 7 any violations of the law, that, especially  
 8 if they create a hazard or a safety  
 9 condition, to make sure that we enforced  
 10 the law. 14:57:51  
 11 Q. Was there an additional objective  
 12 in terms of attempting to prevent  
 13 bicyclists from riding in large groups on  
 14 the last Friday of the month within  
 15 Manhattan South? 14:58:12  
 16 MR. MUSCHENHEIM: Objection.  
 17 A. To prevent them by enforcing the  
 18 law.  
 19 Q. Did those objectives change at  
 20 any time during the course of your time as 14:58:34  
 21 commander of Manhattan South?  
 22 A. No.  
 23 Q. There are strategies that are  
 24 used by the NYPD officers on the Critical  
 25 Mass detail to implement those objectives, 14:58:54  
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1 Tuller  
 2 correct?  
 3 A. Yes.  
 4 Q. Do you recall a change in  
 5 strategies in the transition from Chief 14:59:00  
 6 Paragallo to Chief Anger?  
 7 A. No.  
 8 Q. And in implementing those  
 9 strategies with respect to the Critical  
 10 Mass rides, there may be tactics that NYPD 14:59:16  
 11 uses. Do you recall any change in tactics  
 12 with the transition from Chief Paragallo to  
 13 Chief Anger?  
 14 MR. MUSCHENHEIM: Objection.  
 15 You may answer. 14:59:32  
 16 A. I don't recall any.  
 17 Q. Was the goal to maintain a  
 18 consistent practice despite the change in  
 19 personnel who had primary responsibility  
 20 for the Critical Mass detail? 14:59:48  
 21 MR. MUSCHENHEIM: Objection.  
 22 You can answer.  
 23 A. Well, yes.  
 24 Q. I will show you a document that's  
 25 been previously marked as Exhibit Winski 9. 15:00:23  
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1 Tuller  
 2 Chief Tuller, do you recall seeing this  
 3 particular document before?  
 4 A. No.  
 5 Q. Do you agree with me that this 15:01:42  
 6 document begins with a from line and a to  
 7 line?  
 8 A. Yes.  
 9 Q. Is this a kind of document that  
 10 you would describe as a from-to memo? 15:01:53  
 11 A. Yes.  
 12 Q. And it appears to be from Chief  
 13 Paragallo, Patrol Borough Manhattan South,  
 14 dated June 29, 2007, right?  
 15 A. Yes. 15:02:12  
 16 Q. And it's addressed to the chief  
 17 of patrol?  
 18 A. Yes.  
 19 Q. Would you have received a copy of  
 20 a memorandum from Chief Paragallo to the 15:02:19  
 21 chief of patrol that was issued on June 29,  
 22 2007?  
 23 A. I don't recall it.  
 24 Q. I understand that you don't  
 25 recall seeing this, but my question to you 15:02:33  
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1 Tuller  
 2 is would it have been your expectation in  
 3 June, 2007 that if Chief Paragallo was  
 4 sending a memo to the chief of patrol  
 5 regarding Critical Mass summonses, that you 15:02:43  
 6 would have received a copy?  
 7 A. Yes.  
 8 Q. Based on that, do you have a  
 9 belief as to whether or not you received  
 10 this memorandum? 15:03:04  
 11 MR. MUSCHENHEIM: Objection,  
 12 but you can answer.  
 13 A. I may not have received it.  
 14 Q. But you may have?  
 15 A. I may have, yes. 15:03:17  
 16 Q. Can you recall receiving  
 17 documents in this format that attached  
 18 summonses issued at Critical Mass details  
 19 at any time as commander of Manhattan  
 20 South? 15:03:35  
 21 A. No, I don't recall.  
 22 Q. Do you know why Chief Paragallo  
 23 sent this memorandum to the chief of  
 24 patrol?  
 25 A. No. 15:04:01  
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1 Tuller  
 2 Q. Were you aware of any interest on  
 3 the part of the chief of patrol in the  
 4 June, 2007 time frame with respect to  
 5 Critical Mass summonses? 15:04:12  
 6 MR. MUSCHENHEIM: Objection as  
 7 to the form, but you can answer.  
 8 A. No.  
 9 Q. Did you ever supply information  
 10 to the chief of patrol regarding summonses 15:04:21  
 11 issued by Critical Mass details in the  
 12 June, 2007 time frame?  
 13 A. I don't recall.  
 14 Q. Did you supply information to the  
 15 chief of patrol regarding summonses issued 15:04:36  
 16 by Critical Mass details at any time while  
 17 commander of Manhattan South?  
 18 A. Other than what goes through the  
 19 normal channels.  
 20 Q. Well, can you tell me what 15:04:56  
 21 information you're talking about going  
 22 through normal channels?  
 23 A. This.  
 24 Q. And you are motioning to  
 25 Tuller -- what number is that? 15:05:05  
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1 Tuller  
 2 A. The events, Tuller number 26789.  
 3 Q. Tuller 2, thanks. Does this memo  
 4 indicate to you that there were 34  
 5 summonses issued to participants in a 15:05:31  
 6 Critical Mass ride in June, 2007?  
 7 MR. MUSCHENHEIM: Objection.  
 8 The document speaks pour itself, but  
 9 you can answer.  
 10 A. Well, the first paragraph says 15:05:45  
 11 24. And --  
 12 Q. I agree with you, it is  
 13 ambiguous. You take this document to  
 14 indicate that 24 B summonses were issued to  
 15 participants in Critical Mass events? 15:06:06  
 16 A. Yes, if I counted them all up at  
 17 this point.  
 18 Q. And are the nature of the  
 19 violations listed here consistent with your  
 20 understanding of the types of violations 15:06:19  
 21 committed by participants in Critical Mass  
 22 group bicycle rides?  
 23 A. Yes.  
 24 (Tuller Exhibit 3, NYC027945-47,  
 25 marked for identification.) 15:07:04  
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1 Tuller  
 2 Q. I show you a document marked  
 3 Tuller 3. Please take a moment to review  
 4 it and I will have some questions for you.  
 5 Chief Tuller, would you agree 15:08:05  
 6 with me that the first two pages of Exhibit  
 7 Tuller 3 appear to be identical to the  
 8 first two pages of Exhibit Winski 9 with  
 9 the exception of some handwriting on them?  
 10 A. Yes. 15:08:20  
 11 Q. Have you ever seen Exhibit Tuller  
 12 3 before?  
 13 A. Not that I recall.  
 14 MR. MUSCHENHEIM: Can we just  
 15 note that this document, Tuller 3 is 15:08:35  
 16 NYC 027945-47, and that the prior  
 17 document Winski Exhibit 9 was NYC  
 18 002060 through 72.  
 19 Q. How do you interpret the  
 20 handwritten information that appears to the 15:09:02  
 21 left of the summonses on the bottom of the  
 22 first page of Tuller 3?  
 23 MR. MUSCHENHEIM: Objection,  
 24 but you can answer.  
 25 A. I'm sorry, at the bottom of 15:09:10  
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1 Tuller  
 2 the -- notes at the bottom.  
 3 Q. The handwritten notes to the  
 4 left.  
 5 A. To the left, yes. 15:09:17  
 6 Q. How do you interpret that  
 7 information?  
 8 A. It looks like dispositions.  
 9 Q. Are you aware of anyone gathering  
 10 disposition information with respect to 15:09:29  
 11 summonses issued at Critical Mass rides  
 12 while you were commander of Manhattan  
 13 South?  
 14 A. I don't recall.  
 15 Q. Do you ever recall discussing 15:09:45  
 16 with Chief Paragallo the investigation of  
 17 the disposition of summonses issued at  
 18 Critical Mass rides?  
 19 A. I don't recall.  
 20 Q. Do you ever recall learning from 15:09:57  
 21 anyone information regarding the  
 22 disposition of summonses issued at Critical  
 23 Mass rides?  
 24 A. I don't recall.  
 25 Q. Do you have a belief as to the 15:10:06  
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1 Tuller  
 2 nature of the dispositions of summonses  
 3 issued at Critical Mass rides?  
 4 MR. MUSCHENHEIM: Objection.  
 5 You can answer. 15:10:23  
 6 A. So the question is? I don't  
 7 understand the question.  
 8 (The record was read.)  
 9 THE WITNESS: No.  
 10 Q. Is it your belief that summonses 15:10:45  
 11 issued at Critical Mass rides tend  
 12 generally to result in pleas of guilt?  
 13 MR. MUSCHENHEIM: Objection,  
 14 but you can answer.  
 15 A. Belief is opinion? 15:11:01  
 16 Q. Yes.  
 17 A. Yes.  
 18 Q. You do believe that generally  
 19 speaking, summonses issued at Critical Mass  
 20 rides tend to result in pleas of guilt? 15:11:15  
 21 A. In pleas of guilt, no.  
 22 Q. Do you have a belief or an  
 23 opinion as to the pleas that are entered by  
 24 individuals issued summonses by Critical  
 25 Mass details? 15:11:36  
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1 Tuller  
 2 MR. MUSCHENHEIM: Note my  
 3 objection, but you can answer.  
 4 A. Yes.  
 5 Q. And what is your belief in that 15:12:08  
 6 regard?  
 7 A. That some people plead guilty and  
 8 some don't.  
 9 Q. Do you have any understanding as  
 10 to the relative percentages of those that 15:12:14  
 11 plead guilty versus those that don't?  
 12 A. Not at all.  
 13 Q. Has anyone ever supplied  
 14 information addressing that issue to you?  
 15 A. Not that I recall. 15:12:25  
 16 Q. Have you ever discussed that  
 17 issue with anyone at NYPD?  
 18 A. Not that I recall.  
 19 Q. Have you ever discussed with  
 20 anyone at NYPD the ultimate disposition of 15:12:41  
 21 summonses issued by Critical Mass details  
 22 where the individual pleads not guilty?  
 23 A. I'm sorry, I lost that one  
 24 completely.  
 25 MR. VACCARO: Can I have a  
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1 Tuller  
 2 readback, please.  
 3 (The record was read.)  
 4 THE WITNESS: No, not that I  
 5 recall. 15:13:11  
 6 Q. Do you have any source of  
 7 information with respect to the ultimate  
 8 disposition of such summonses?  
 9 MR. MUSCHENHEIM: Objection,  
 10 but you can answer. 15:13:19  
 11 A. Not that I am aware of, no.  
 12 Q. Has it ever been brought to your  
 13 attention that pleas of not guilty to  
 14 Critical Mass summonses were resulting in  
 15 dismissals by judges in traffic court? 15:13:40  
 16 A. Not that I am aware of, no.  
 17 Q. I will show you an exhibit that's  
 18 been previously marked Winski 11. For the  
 19 record, I will identify it as -- the Bates  
 20 stamps appear to have been cut off. Please 15:14:26  
 21 take a moment, Chief Tuller, to review it  
 22 and I will have a question or two for you.  
 23 Chief Tuller, is the exhibit  
 24 marked Winski 11 the from-to memo that  
 25 corresponds to the same June, 2007 Critical 15:16:10  
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1 Tuller  
 2 Mass event addressed in Exhibit Tuller 3?  
 3 A. It appears that way.  
 4 Q. Do you agree with me that the  
 5 first paragraph of Exhibit Winski 11 15:17:10  
 6 reports that 34 summonses were issued by  
 7 the Critical Mass detail for the June 29,  
 8 2007, Critical Mass ride?  
 9 MR. MUSCHENHEIM: Objection.  
 10 A. Yes. 15:17:26  
 11 Q. And in light of that reference to  
 12 34 summonses in the first paragraph of  
 13 Winski 11, would you then agree with me  
 14 that Exhibit Winski 9 reports 34 summonses  
 15 issued to Critical Mass participants on 15:17:55  
 16 June 29, 2007?  
 17 MR. MUSCHENHEIM: Objection.  
 18 A. Yes.  
 19 Q. There is also a report of one  
 20 arrest. Do you see that? 15:18:07  
 21 A. Yes.  
 22 Q. And when you turn to the third  
 23 page of Exhibit Tuller 3, there is some  
 24 kind of computer printout there dated  
 25 September 18, 2007. Do you see that? 15:18:24  
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1 Tuller  
 2 A. Which one am I looking at?  
 3 Q. I'm sorry, Exhibit Tuller 3.  
 4 A. Yes.  
 5 Q. And you see that printout? 15:18:41  
 6 A. Yes.  
 7 Q. Do you recognize the format of  
 8 the information on that page ending Bates  
 9 reference number 947?  
 10 A. Do I recognize the format as -- 15:18:52  
 11 Q. Do you recognize the format as  
 12 one you've seen before?  
 13 A. I don't recall having seen one of  
 14 these before.  
 15 Q. Does this appear to you to be a 15:19:05  
 16 printout of electronic information from the  
 17 NYPD information system?  
 18 MR. MUSCHENHEIM: Objection.  
 19 A. Yes.  
 20 Q. What does it appear -- what 15:19:19  
 21 information does it appear to present?  
 22 MR. MUSCHENHEIM: Objection.  
 23 A. It appears to present information  
 24 concerning the docket number, the arrest  
 25 number, the status of the case and the 15:19:36  
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1 Tuller  
 2 judge that handled it.  
 3 Q. And without mentioning the name  
 4 of the individual, it appears to mention  
 5 the name of the arrestee, correct? 15:19:46  
 6 A. Yes.  
 7 Q. And I will show you an article  
 8 that's been marked Exhibit Tuller 10.  
 9 (Tuller Exhibit 10, Article,  
 10 marked for identification.)  
 11 I ask you to take a moment to  
 12 read it and I will have a question or two  
 13 for you.  
 14 You have had a chance to review  
 15 the article, Chief Tuller? 15:22:36  
 16 A. I have.  
 17 Q. Without stating the name of the  
 18 individual, would you agree with me that  
 19 the name of the individual in the second  
 20 paragraph of the article appears to be the 15:22:42  
 21 same name identified as the arrestee on the  
 22 third page of Exhibit Tuller 3?  
 23 A. Yes.  
 24 Q. And the article indicates that  
 25 the individual was arrested at Union Square 15:22:52  
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1 Tuller  
 2 Park in June, 2007?  
 3 A. Yes.  
 4 Q. And having reviewed the article,  
 5 does it bring to mind any recollection of 15:23:12  
 6 the events described in the article?  
 7 A. No.  
 8 Q. So having reviewed the article,  
 9 is it your belief that you have never heard  
 10 that an individual was arrested at Union 15:23:28  
 11 Square on the last Friday of the month for  
 12 reciting the First Amendment?  
 13 A. I don't recall.  
 14 Q. Are you saying you don't recall  
 15 ever hearing that? 15:23:44  
 16 A. Ever hearing that an individual  
 17 was arrested, I don't recall.  
 18 Q. Are you concerned by this press  
 19 report which indicates that an individual  
 20 was arrested for reciting the First 15:24:05  
 21 Amendment at Union Square Park by NYPD  
 22 officers?  
 23 MR. MUSCHENHEIM: Objection.  
 24 A. I'm concerned that there must be  
 25 more details to this that I'm not aware of. 15:24:29  
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1 Tuller  
 2 Q. What details that you are not  
 3 aware of do you believe exist?  
 4 A. I don't know.  
 5 Q. Based on the details available to 15:24:43  
 6 you from the article, does the arrest  
 7 appear to have been justified?  
 8 MR. MUSCHENHEIM: Objection.  
 9 A. Based on what's here, I can't  
 10 tell. 15:24:58  
 11 Q. Based on what's in the article  
 12 marked Tuller 10, it's possible the arrest  
 13 was justified?  
 14 MR. MUSCHENHEIM: Objection.  
 15 A. I'm going to assume it was 15:25:08  
 16 justified.  
 17 (Tuller Exhibit 1, NYC027305-06,  
 18 marked for identification.)  
 19 Q. I show you an exhibit marked  
 20 Tuller 1. For the record, Tuller 1 is 15:25:57  
 21 Bates stamped NYC 027305 through 06.  
 22 Please takes a moment to review it, Chief  
 23 Tuller.  
 24 Chief Tuller, do you recall  
 25 seeing what we've marked as Tuller 1 15:27:27  
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1 Tuller  
 2 previously?  
 3 A. No, I don't.  
 4 Q. It's what you would call a detail  
 5 report? 15:27:33  
 6 A. Yes.  
 7 Q. And it concerns a Time's Up  
 8 bicyclist memorial ride to be held  
 9 January 6, 2008, do you agree with me  
 10 there? 15:27:49  
 11 A. Yes.  
 12 Q. Can you recall any information  
 13 regarding this particular group bicycle  
 14 ride?  
 15 A. No. 15:28:01  
 16 Q. Can you recall who prepared this  
 17 detail report?  
 18 A. No.  
 19 Q. Can you recall authorizing this  
 20 detail report? 15:28:15  
 21 A. No.  
 22 Q. Does this detail report indicate  
 23 the officers who will be responsible for  
 24 managing the event?  
 25 MR. MUSCHENHEIM: Objection to 15:28:38  
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1 Tuller  
 2 the form, but you can answer.  
 3 A. No.  
 4 Q. Turning bank to Exhibit Tuller 13  
 5 as we previously observed, the incident 15:29:05  
 6 commander and aid for the event addressed  
 7 by that detail report are listed there,  
 8 aren't they?  
 9 A. Tuller 13?  
 10 Q. Yes. 15:29:16  
 11 A. Yes.  
 12 Q. Is it customary to list personnel  
 13 who will be incident commander or otherwise  
 14 on the scene for an event in the detail  
 15 report for that event? 15:29:34  
 16 MR. MUSCHENHEIM: Objection to  
 17 the form, but you can answer.  
 18 A. Can you ask me that question  
 19 again? If there is somebody in command --  
 20 Q. Does the fact that there is 15:30:16  
 21 no-one listed as incident commander on  
 22 Exhibit Tuller 1 indicate that there was  
 23 no-one in command for the detail for this  
 24 event?  
 25 MR. MUSCHENHEIM: Objection, 15:30:26  
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1 Tuller  
 2 but you can answer.  
 3 A. There was a supervisor assigned  
 4 to it.  
 5 Q. And when you make the distinction 15:30:38  
 6 between a commander and a supervisor, you  
 7 mean it would be an individual of a  
 8 particular rank?  
 9 A. Yes.  
 10 Q. Can you tell from Exhibit Tuller 15:30:46  
 11 1 the rank of the individual who was  
 12 supervising this detail?  
 13 A. Yes.  
 14 Q. And is that a sergeant?  
 15 A. That's correct. 15:31:02  
 16 Q. Do you know whether there was a  
 17 permit issued for this event that's  
 18 addressed in Exhibit Tuller 1?  
 19 A. No, I don't.  
 20 Q. Do you know how many participants 15:31:23  
 21 there were in this particular event?  
 22 A. No, I don't.  
 23 Q. Do you know whether during any  
 24 portion of this event it took the form of a  
 25 procession of 50 or more bicyclists in a 15:31:32  
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1 Tuller  
 2 public roadway?  
 3 A. No, I don't.  
 4 Q. If it did, is that a fact that  
 5 you would expect to have reported to you? 15:31:41  
 6 MR. MUSCHENHEIM: Objection as  
 7 to the form.  
 8 A. Not necessarily.  
 9 Q. It is not your expectation that  
 10 officers would report to you a procession 15:31:54  
 11 of 50 or more bicyclists occurring within  
 12 Patrol Borough Manhattan South without a  
 13 permit?  
 14 A. Not necessarily.  
 15 Q. Would that be true where there 15:32:22  
 16 was a detail of officers specifically  
 17 assigned to monitor the event?  
 18 A. Can you ask me that question  
 19 again? Would that be the case --  
 20 Q. I will rephrase. Do you agree 15:32:35  
 21 with me that there was a detail assigned to  
 22 this particular event?  
 23 A. Yes.  
 24 Q. And does that change your view as  
 25 to whether the officers on this detail 15:32:47  
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1 Tuller  
 2 should have reported to you if the event  
 3 took the form of a procession of 50 or more  
 4 bicyclists proceeding in the roadway  
 5 without a permit? 15:33:00  
 6 A. No.  
 7 Q. Do you know how NYPD learned of  
 8 the event described in Tuller 1?  
 9 A. No.  
 10 Q. Are there individuals at 15:33:14  
 11 Manhattan South who are responsible for  
 12 gathering information regarding upcoming  
 13 public events that may take the form of a  
 14 procession of 50 or more individuals in the  
 15 roadway? 15:33:32  
 16 MR. MUSCHENHEIM: Objection as  
 17 to the form, but you can answer.  
 18 A. Yes.  
 19 Q. And who are those individuals at  
 20 Manhattan South? 15:33:39  
 21 A. The operations unit.  
 22 Q. How does the operations unit go  
 23 about gathering that information?  
 24 A. They may get it from the  
 25 precinct, they may get it from organizers 15:33:57  
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1 Tuller  
 2 of an event.  
 3 Q. Are you aware of any other  
 4 sources from which the operations unit may  
 5 gather that information? 15:34:13  
 6 A. If somebody applies for a permit.  
 7 Q. Are there any other sources you  
 8 can think of from which the information is  
 9 gathered?  
 10 A. Usually events come from the 15:34:28  
 11 organizers, and they either go to the  
 12 precinct or they come to the borough.  
 13 Normally the first stop is the precinct.  
 14 Q. Do you know whether there was a  
 15 permit issued for this event? 15:34:50  
 16 MR. MUSCHENHEIM: Objection. I  
 17 think that's been asked and answered,  
 18 but you can answer it again.  
 19 A. I don't.  
 20 Q. Is there anything on Exhibit 15:34:58  
 21 Tuller 1 that indicates whether a permit  
 22 was issued for this event?  
 23 A. I don't see anything.  
 24 Q. If this event took the form of a  
 25 procession of 50 or more bicyclists 15:35:24  
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1 Tuller  
 2 proceeding in Manhattan South, and no  
 3 permit was issued, would the group have  
 4 been in violation of the parade rules in  
 5 effect January 2, 2008? 15:35:43  
 6 A. If there was 50 or more, yes.  
 7 Q. Do you know whether the officers  
 8 or the supervisor assigned to this event  
 9 were given instructions with respect to the  
 10 enforcement of the rules regarding permits 15:36:06  
 11 for parades?  
 12 A. I don't.  
 13 Q. Is there paperwork at Manhattan  
 14 South that would show which officers  
 15 participated in this detail? 15:36:19  
 16 A. Yes.  
 17 Q. What is the nature of that  
 18 paperwork?  
 19 A. Well, it would probably be at the  
 20 precinct. So when you said Manhattan 15:36:33  
 21 South, I should have said the precinct.  
 22 This is like a local policing event.  
 23 Q. Now, just so I understand what  
 24 your testimony is, this is a Patrol Borough  
 25 Manhattan South detail, right? 15:36:55  
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1 Tuller  
 2 MR. MUSCHENHEIM: Objection,  
 3 but you can answer.  
 4 A. This is a detail with Manhattan  
 5 South, yes. 15:37:04  
 6 Q. It was assigned by Manhattan  
 7 South?  
 8 A. To the precinct.  
 9 Q. And when you say it was assigned  
 10 to the precinct, did that mean that an 15:37:22  
 11 officer at a local precinct was given  
 12 authority with respect to managing this  
 13 detail?  
 14 A. I may have, yes.  
 15 Q. Can you tell that from Tuller 1, 15:37:38  
 16 whether or not that happened?  
 17 A. No, I can't.  
 18 Q. Is there anything on Exhibit  
 19 Tuller 1 that indicates the involvement of  
 20 a precinct in this particular detail? 15:37:58  
 21 A. No.  
 22 Q. What is it that leads you to  
 23 believe that this detail was assigned to  
 24 the precinct?  
 25 A. The number of officers assigned 15:38:35  
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1 Tuller  
 2 to it. And that's not definite either.  
 3 Q. There are five officers assigned,  
 4 correct?  
 5 A. A sergeant and four. 15:38:48  
 6 Q. It's a small detail?  
 7 A. A small detail.  
 8 Q. And because it's a small detail,  
 9 it may be that the detail was put together  
 10 by Manhattan South but then assigned to a 15:38:57  
 11 precinct commander?  
 12 A. That's correct.  
 13 Q. Do you know whether an operations  
 14 unit in Manhattan South consults internet  
 15 sources of information to learn about 15:39:21  
 16 events occurring within Manhattan South?  
 17 A. They may, yes.  
 18 Q. Has it ever been brought to your  
 19 attention in a specific instance that they  
 20 have? 15:39:41  
 21 A. Nothing that I could recall.  
 22 Q. Have you ever instructed the  
 23 operations unit that they are to search  
 24 public sources of information such as the  
 25 internet or press for reports of events 15:39:54  
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1 Tuller  
 2 occurring within Manhattan South?  
 3 A. Not that I recall.  
 4 Q. Is it your understanding that  
 5 patrol borough -- that the operations unit 15:40:09  
 6 in fact does so?  
 7 A. I'm under the impression that  
 8 they do.  
 9 Q. You'll notice that the subject  
 10 line is details for the Time's Up bicyclist 15:40:29  
 11 memorial ride?  
 12 A. Yes.  
 13 Q. Have you ever heard the phrase  
 14 Time's Up before in connection with  
 15 bicycling? 15:40:39  
 16 A. Not that I recall.  
 17 Q. Have you ever heard of an  
 18 organization named Time's Up?  
 19 A. Not that I recall.  
 20 Q. Are you aware of a lawsuit 15:40:47  
 21 brought by the City of New York against  
 22 individuals involved with Time's Up that  
 23 concerned Critical Mass?  
 24 A. Not that I recall.  
 25 Q. Are you aware of any litigation 15:41:02  
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1 Tuller  
 2 that the City of New York or the NYPD has  
 3 brought in an attempt to enjoin Critical  
 4 Mass bicycle rides?  
 5 A. No, not that I recall, no. 15:41:16  
 6 Q. Are you aware of any judicial  
 7 opinions that have been reviewed regarding  
 8 NYPD action in connection with Critical  
 9 Mass rides?  
 10 A. Not that I recall. 15:41:32  
 11 (Exhibit Tuller 4, NYC001987-08,  
 12 marked for identification.)  
 13 Q. I show you Exhibit Tuller 4  
 14 previously marked. It's Bates stamp NYC  
 15 001987 through 08. 15:42:10  
 16 MR. MUSCHENHEIM: Through 2008.  
 17 Q. And Exhibit Tuller 4 is another  
 18 memorandum in the from-to format that  
 19 attaches summonses issued by a Critical  
 20 Mass mass detail, would you agree with me 15:43:02  
 21 on that?  
 22 A. Yes.  
 23 Q. And it specifically addresses  
 24 summonses issued by the Critical Mass  
 25 detail for the September 28, 2007, event, 15:43:09  
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1 Tuller  
 2 right?  
 3 A. Yes.  
 4 Q. And it indicates that 59  
 5 summonses were issued to Critical Mass 15:43:25  
 6 bicyclists on that date?  
 7 MR. MUSCHENHEIM: Objection as  
 8 to the characterization.  
 9 A. Yes.  
 10 Q. Do you recall receiving any 15:43:42  
 11 reports regarding traffic violations by  
 12 Critical Mass bicyclists at the  
 13 September 28, 2007, Critical Mass event?  
 14 A. I do not recall.  
 15 Q. Is the information reported in 15:43:56  
 16 Tuller 4 and attached to it consistent with  
 17 your understanding that Critical Mass  
 18 bicyclists intend to violate the law?  
 19 MR. MUSCHENHEIM: Objection.  
 20 A. That's an assumption. 15:44:53  
 21 Q. Is that an assumption that you  
 22 make?  
 23 A. Yes.  
 24 (Exhibit Tuller 5, Multi-page  
 25 document, marked for identification.) 15:45:18  
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1 Tuller  
 2 Q. I will show you a document marked  
 3 Tuller 5. Chief Tuller, I ask you to  
 4 compare for a moment the format of Exhibit  
 5 Tuller 3 to that of Exhibit Tuller 5. Have 15:46:16  
 6 you got 3 and 5?  
 7 A. I have 3 and 5.  
 8 Q. And one of the differences in the  
 9 format between the two documents is that  
 10 there is an additional column on Exhibit 15:46:33  
 11 Tuller 5 entitled disposition. Do you see  
 12 that?  
 13 A. I do.  
 14 Q. Otherwise the documents are  
 15 substantially similar in format? 15:46:43  
 16 A. Yes.  
 17 Q. And under the disposition column,  
 18 there appears to be information regarding  
 19 disposition of the summonses, is that  
 20 correct? 15:46:58  
 21 MR. MUSCHENHEIM: Exhibit 5  
 22 you're talking about?  
 23 MR. VACCARO: Exhibit 5, yes.  
 24 A. Yes.  
 25 Q. Do you recall receiving 15:47:05  
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1 Tuller  
 2 disposition information regarding summonses  
 3 issued at a September, 2007 Critical Mass  
 4 mass event?  
 5 A. No. 15:47:18  
 6 Q. Were you aware that in September,  
 7 2007, Chief Paragallo was gathering  
 8 information regarding the summonses, the  
 9 disposition of summonses issued at the  
 10 September, 2007 Critical Mass event? 15:47:37  
 11 MR. MUSCHENHEIM: Objection.  
 12 A. And I don't recall that.  
 13 Q. And you see that there is a fax  
 14 line at the top of Exhibit Tuller 5 with a  
 15 date of January 14, 2008. Do you see that? 15:48:05  
 16 A. Yes.  
 17 Q. And then across from that it says  
 18 NYPD in the fax line.  
 19 A. Yes.  
 20 Q. And were you aware that in the 15:48:20  
 21 January, 2008 time frame, Chief Paragallo  
 22 was gathering disposition information  
 23 regarding summonses issued by the  
 24 September, 2007 Critical Mass detail?  
 25 MR. MUSCHENHEIM: Objection. 15:48:40  
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1 Tuller  
 2 You can answer.  
 3 A. I wasn't aware of it, no.  
 4 Q. I show you an exhibit that's been  
 5 previously marked as Exhibit Winski 15. 15:49:08  
 6 For the record, Winski 15 is not Bates  
 7 stamped or the Bates stamp has been cut  
 8 off. Chief Tuller, you have had a moment  
 9 to review Winski 15?  
 10 A. Yes. 15:51:17  
 11 Q. And this is the from-to  
 12 memorandum for the September 28, 2007,  
 13 Critical Mass event, correct?  
 14 A. Yes.  
 15 Q. This is a document you would have 15:51:27  
 16 received?  
 17 A. I should have received it.  
 18 Q. Do you recall receiving it?  
 19 A. No, I don't.  
 20 Q. And is it true that paragraph one 15:51:39  
 21 of Exhibit Winski 15 confirms the report in  
 22 Exhibit Tuller 4 that were there 59  
 23 summonses issued to participants in the  
 24 Critical Mass event?  
 25 MR. MUSCHENHEIM: Objection as 15:51:59  
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1 Tuller  
 2 to the characterization.  
 3 A. Yes.  
 4 Q. And is Exhibit Winski 15 an  
 5 example of the kind of document on which 15:52:10  
 6 you base your on conclusion that Critical  
 7 Mass bicyclists tend to block traffic?  
 8 MR. MUSCHENHEIM: Objection to  
 9 the form.  
 10 A. Yes. 15:52:32  
 11 Q. And is Exhibit Tuller 4 the cover  
 12 memo as well as the attached summonses  
 13 additional examples of the kind of  
 14 documents on which you base your conclusion  
 15 that Critical Mass bicyclists tend to block 15:52:43  
 16 traffic?  
 17 MR. MUSCHENHEIM: Objection,  
 18 but you can answer.  
 19 A. Yes.  
 20 Q. I show you an exhibit marked 15:53:20  
 21 Winski 13. For the record, Winski 13 has  
 22 Bates stamps NYC002027 through 2046.  
 23 Chief Tuller, would you agree  
 24 with me that Winski 24 is another from-to  
 25 memorandum that purports to attach 15:54:14  
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1 Tuller  
 2 summonses to Critical Mass demonstrators?  
 3 MR. MUSCHENHEIM: Objection.  
 4 A. Yes.  
 5 Q. Do you recall seeing Winski 13 15:54:21  
 6 before?  
 7 A. I do not.  
 8 Q. Is Winski 13 including its  
 9 attachments more evidence that Critical  
 10 Mass mass cyclists tend to block traffic in 15:54:40  
 11 your mind?  
 12 MR. MUSCHENHEIM: Objection,  
 13 but you can answer.  
 14 A. Yes.  
 15 Q. I will show you an exhibit that's 15:55:26  
 16 been marked Winski 12. For the record,  
 17 Winski 12 was produced as NYC001337 through  
 18 38. Have you had a moment to review  
 19 Exhibit Winski 12, Chief Tuller?  
 20 A. I have. 15:57:27  
 21 Q. Does Exhibit Winski 12 confirm  
 22 the indication in Exhibit Winski 13 that at  
 23 the July 27, 2007, Critical Mass event, 50  
 24 summonses were issued to Critical Mass  
 25 demonstrators? 15:57:39  
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1 Tuller  
 2 MR. MUSCHENHEIM: Objection as  
 3 to the characterization.  
 4 A. Yes.  
 5 Q. And Winski 12 is a document that 15:57:50  
 6 you would have received?  
 7 A. I should have.  
 8 Q. I show you a document that's been  
 9 marked Tuller 6.  
 10 (Exhibit Tuller 6, NYC001341-42, 15:58:29  
 11 marked for identification.)  
 12 For the record, Tuller 6 has  
 13 Bates number stamps NYC001341 through 42.  
 14 Chief Tuller, have you had a  
 15 minute to review Exhibit Tuller 6? 15:59:46  
 16 A. Yes.  
 17 Q. And Tuller 6 is a from-to report  
 18 concerning the August 31, 2007, Critical  
 19 Mass event?  
 20 A. Yes. 16:00:03  
 21 Q. And this is a document that you  
 22 would have received?  
 23 A. I should have.  
 24 Q. Does this document purport to  
 25 indicate that 45 summonses were issued to 16:00:18  
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1 Tuller  
 2 Critical Mass demonstrators?  
 3 MR. MUSCHENHEIM: Objection to  
 4 the characterization.  
 5 A. Yes. 16:00:32  
 6 Q. And do you take this document as  
 7 evidence to support your view that Critical  
 8 Mass bicyclists tend to block traffic?  
 9 MR. MUSCHENHEIM: Objection,  
 10 but you can answer. 16:00:45  
 11 A. Yes.  
 12 Q. I show you an exhibit previously  
 13 marked Winski 16. Chief Tuller, do you  
 14 take the document marked Winski 16 as  
 15 supporting your view that Critical Mass 16:02:33  
 16 bicyclists tend to block traffic?  
 17 MR. MUSCHENHEIM: Objection,  
 18 but you can answer.  
 19 A. Yes.  
 20 (Recess taken: 4:02-4:11 p.m.) 16:02:45  
 21 FURTHER EXAMINATION BY MR. VACCARO:  
 22 Q. Chief Tuller, I will show you a  
 23 document that's been marked as Tuller 8.  
 24 (Tuller Exhibit 8, NYC027951-53,  
 25 marked for identification.)  
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1 Tuller  
 2 For the record, Tuller eight has  
 3 been produced with Bates stamps NYC027951  
 4 through 53. Do you recall seeing any of  
 5 the pages of Exhibit 8 before, Chief 16:12:02  
 6 Tuller?  
 7 A. I do not.  
 8 Q. Prior to receiving Tuller 8, did  
 9 you have an understanding as to whether  
 10 there were summonses or arrests at the 16:12:12  
 11 Critical Mass events held January, February  
 12 and March of 2008?  
 13 A. I don't recall.  
 14 Q. Based on -- well, can you recall  
 15 ever receiving an oral report from anyone 16:12:30  
 16 at NYPD that there was a Critical Mass  
 17 event that occurred without there being any  
 18 summonses or arrests?  
 19 A. I don't recall.  
 20 Q. Based on the pages in Exhibit 16:12:47  
 21 Tuller 8 which are three separate  
 22 memoranda, do you conclude that there were  
 23 no summonses issued or arrests made in  
 24 connection with Critical Mass events held  
 25 January, February and March, 2008? 16:13:07  
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1 Tuller  
 2 A. Yes.  
 3 Q. Do you recall any discussions in  
 4 advance of the April, 2008 Critical Mass  
 5 event as to the staffing that would be 16:13:21  
 6 appropriate for the April, 2008 Critical  
 7 Mass detail?  
 8 A. Can you ask me that question  
 9 again?  
 10 Q. I will rephrase it. At any time 16:13:43  
 11 in April, 2008, do you recall discussing  
 12 with others at NYPD the appropriate level  
 13 of staffing for the April, 2008 Critical  
 14 Mass detail?  
 15 A. Yes. 16:13:58  
 16 Q. What do you recall of those  
 17 discussions?  
 18 A. I recall speaking to Chief Anger  
 19 concerning the detail.  
 20 Q. And can you recall the substance 16:14:17  
 21 of the communication?  
 22 A. I believe it concerned the  
 23 numbers of the police officers that would  
 24 be on the detail.  
 25 Q. What do you recall about the 16:14:35  
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1 Tuller  
 2 discussion regarding the number of officers  
 3 who would be on that April, 2008 Critical  
 4 Mass detail?  
 5 A. If I recall correctly, it had to 16:14:43  
 6 do with the number of officers that were  
 7 going to be assigned to the detail.  
 8 Q. Can you recall anything more than  
 9 that about the discussion?  
 10 A. No, I can't. 16:15:07  
 11 Q. Can you recall when the  
 12 discussion took place?  
 13 A. It had to be some time before the  
 14 event, but no, I don't remember when.  
 15 Q. Can you recall if anyone else 16:15:20  
 16 participated in the discussion between you  
 17 and Chief Anger on that topic?  
 18 A. I don't recall.  
 19 Q. Can you recall whether Chief  
 20 Anger recommended that a larger number of 16:15:34  
 21 officers be assigned to the April, 2008  
 22 Critical Mass event than you believed were  
 23 appropriate?  
 24 A. Which date did you say?  
 25 (The record was read.) 16:16:09  
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1 Tuller  
 2 THE WITNESS: The question is if  
 3 he recommended more officers? I don't  
 4 recall that.  
 5 Q. Do you recall if it was the case 16:16:17  
 6 that you were recommending more officers  
 7 for that event than Chief Anger believed  
 8 was appropriate?  
 9 A. I don't recall that.  
 10 Q. Can you recall the factors that 16:16:31  
 11 you and Chief Anger considered in  
 12 attempting to reach a determination of the  
 13 appropriate number of officers for that  
 14 detail?  
 15 A. It was probably the same factors 16:16:42  
 16 that we take into consideration at the time  
 17 of the year, was one of the factors.  
 18 Q. And when you listed the factors  
 19 previously in your testimony that you took  
 20 into account in making a decision, did you 16:17:00  
 21 include in that list summoning activity in  
 22 the preceding Critical Mass events?  
 23 MR. MUSCHENHEIM: Objection.  
 24 Q. I will withdraw that question.  
 25 Do you recall whether in April, 2008 when 16:17:37  
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1 Tuller  
 2 you spoke with Chief Anger regarding  
 3 staffing for the April, 2008 Critical Mass  
 4 detail, you took into account the fact that  
 5 no summonses were issued during the 16:17:48  
 6 January, February and March, 2008 Critical  
 7 Mass rides?  
 8 A. I don't recall that, no.  
 9 Q. As you testified here today, do  
 10 you think that that is a relevant factor 16:18:00  
 11 that should have been considered in making  
 12 that determination?  
 13 MR. MUSCHENHEIM: Objection as  
 14 to the form, but you can answer.  
 15 A. I don't recall talking about 16:18:08  
 16 summonses to decide the number of people on  
 17 the detail.  
 18 (Tuller Exhibit 11, NYC027316-18,  
 19 marked for identification.)  
 20 Q. I show you an exhibit marked 16:19:57  
 21 Tuller 11. It's been produced as NYC  
 22 027316 through 18. Chief Tuller, you have  
 23 had a moment to review Exhibit 11?  
 24 A. Yes.  
 25 Q. And this is a to-from memorandum 16:22:31  
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1 Tuller  
 2 regarding the Sean Bell related  
 3 demonstrations that we discussed earlier?  
 4 A. Yes.  
 5 Q. You believe that this memorandum 16:22:45  
 6 specifically describes the demonstration  
 7 that you observed at the foot of the  
 8 Brooklyn Bridge?  
 9 MR. MUSCHENHEIM: Objection as  
 10 to form, but you can answer. 16:23:01  
 11 A. Yes.  
 12 Q. Based on the information reported  
 13 in Tuller 11 and your recollection, is it  
 14 the case that at the sites other than the  
 15 Brooklyn Bridge where the demonstrators 16:23:28  
 16 blocked traffic, that they also proceeded  
 17 in groups through the roadway from an  
 18 origination point to a blockage point?  
 19 MR. MUSCHENHEIM: Objection.  
 20 A. I wasn't at those other 16:23:47  
 21 locations.  
 22 Q. But there were other locations  
 23 involved in the demonstration that was in  
 24 Manhattan South, is that correct?  
 25 A. Yes. 16:23:56  
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1 Tuller  
 2 Q. There was a location where a  
 3 group of demonstrators blocked traffic at  
 4 the Midtown Tunnel, is that correct?  
 5 A. Yes. 16:24:06  
 6 Q. There also was a blockage of  
 7 traffic by demonstrators at the entrance to  
 8 the Holland Tunnel in Manhattan, is that  
 9 correct?  
 10 A. Yes. I just have to go back to 16:24:18  
 11 the Midtown Tunnel. I wasn't at these  
 12 other locations, and I'm looking at -- I  
 13 actually don't see it, maybe I missed it,  
 14 but -- oh, here it is. Okay.  
 15 Q. And do you see any other 16:25:11  
 16 locations within Manhattan South listed  
 17 here where blockage of traffic occurred  
 18 within those demonstrations besides  
 19 Brooklyn Bridge, Midtown Tunnel and the  
 20 Holland Tunnel? 16:25:25  
 21 A. No. I'm just going to make sure  
 22 I'm reading the whole thing. All right.  
 23 Q. Now, this report indicates the  
 24 approximate times of the obstructions in  
 25 paragraph 5 on the page ending 317, do you 16:25:55  
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1 Tuller  
 2 see that?  
 3 A. Yes.  
 4 Q. And do you see that it reports  
 5 the time for the obstruction at the Center 16:26:02  
 6 Street entrance to the Brooklyn Bridge as  
 7 1629 hours to 1729 hours?  
 8 A. Yes.  
 9 Q. That indicates a blockage of  
 10 traffic for a period of one hour? 16:26:15  
 11 MR. MUSCHENHEIM: Objection.  
 12 The document speaks for itself.  
 13 A. I'm going to have to go by the  
 14 document.  
 15 Q. So do you believe it's correct 16:26:47  
 16 that the demonstrators on May 7, 2008,  
 17 blocked traffic near the Center Street  
 18 entrance to the Brooklyn Bridge for a  
 19 period of approximately one hour?  
 20 MR. MUSCHENHEIM: Same 16:26:59  
 21 objection, but you can answer.  
 22 A. My belief is that they blocked  
 23 the traffic and it took us approximately an  
 24 hour to remove them.  
 25 Q. To remove them from the Center 16:27:17  
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1 Tuller  
 2 Street entrance to the Brooklyn Bridge?  
 3 A. Yes.  
 4 Q. You don't believe any portion of  
 5 that time from 1629 hours to 1729 hours 16:27:25  
 6 reflects the obstruction of traffic caused  
 7 by the demonstrators proceeding from One  
 8 Police Plaza to the Center Street entrance  
 9 of the Brooklyn Bridge?  
 10 A. That's part of it. 16:27:39  
 11 Q. Do you know what part?  
 12 A. I can't recall the exact times.  
 13 (Recess taken: 4:28-4:30 p.m.)  
 14 FURTHER EXAMINATION BY MR. VACCARO:  
 15 Q. Chief Tuller, will there ever be 16:30:09  
 16 a time when Manhattan South stops assigning  
 17 Critical Mass details to the Union Square  
 18 vicinity in the last Friday of the month?  
 19 MR. MUSCHENHEIM: Objection,  
 20 but you can answer. 16:30:21  
 21 A. Not at this time.  
 22 Q. What would have to occur in order  
 23 for Manhattan South to stop assigning  
 24 details to the Critical Mass event?  
 25 MR. MUSCHENHEIM: Objection. 16:30:39  
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1 Tuller  
 2 You can answer.  
 3 A. The type of detail.  
 4 MR. VACCARO: May I have a  
 5 readback of my question, please.  
 6 (The record was read.)  
 7 Q. Can you answer that question?  
 8 A. Not at this time.  
 9 Q. Do you foresee a set of  
 10 circumstances in which the type of detail 16:31:20  
 11 that Manhattan South sends to the Critical  
 12 Mass events might change?  
 13 A. I could envision that, yes.  
 14 Q. And what would be the  
 15 circumstances that would lead Manhattan 16:31:32  
 16 South to assign a different type of detail  
 17 to the Critical Mass events?  
 18 A. Meeting with the organizers of  
 19 the event and following the procedures for  
 20 this type of event. 16:31:45  
 21 Q. And by that do you mean obtaining  
 22 a permit from the NYPD to conduct the  
 23 event?  
 24 A. If that is the criteria that's  
 25 required under whatever circumstances they 16:31:58  
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1 Tuller  
 2 bring to us.  
 3 Q. Well, what if the Critical Mass  
 4 events dwindled in attendance to the point  
 5 where for a year or more they were 16:32:18  
 6 consistently well under 50 individuals?  
 7 Would you agree with me that in that  
 8 circumstance the Critical Mass events would  
 9 no longer require a parade permit?  
 10 MR. MUSCHENHEIM: Objection, 16:32:39  
 11 but you can answer.  
 12 A. That is a call that I will have  
 13 to make when the time comes.  
 14 Q. Do you believe that a group  
 15 bicycle ride open to the public that has 16:32:54  
 16 the possibility of drawing 50 individuals  
 17 is required to obtain a parade permit in  
 18 advance in order to proceed?  
 19 MR. MUSCHENHEIM: Objection,  
 20 calls for a legal conclusion, but you 16:33:10  
 21 can answer.  
 22 A. I believe the law says that it's  
 23 50 or more, you have to have a permit.  
 24 Q. As a practical matter, if  
 25 organizers plan a group bicycle ride open 16:33:20  
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1 Tuller  
 2 to the public, just show up and ride, and  
 3 there is a possibility of the ride drawing  
 4 50 or more participants, do you believe  
 5 that the ride organizers should obtain a 16:33:34  
 6 permit from NYPD for the event?  
 7 MR. MUSCHENHEIM: Objection.  
 8 You can answer.  
 9 A. 50 or more require a permit.  
 10 Q. What if there is uncertainty as 16:33:47  
 11 to whether there will be 50 or more at the  
 12 event? Do you believe event organizers  
 13 should obtain a permit from the NYPD for  
 14 the event?  
 15 MR. MUSCHENHEIM: Same 16:33:59  
 16 objection.  
 17 A. That is a decision that has to be  
 18 made at the time of the discussion.  
 19 Q. Which discussion are you  
 20 referring to? 16:34:16  
 21 A. With the organizers.  
 22 Q. It's a decision the organizers  
 23 need to make?  
 24 A. No, it's a decision they need to  
 25 inform us on, what they plan. 16:34:25  
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1 Tuller  
 2 Q. If organizers plan an event which  
 3 could exceed 50 participants, do you  
 4 believe that the organizers should advise  
 5 NYPD of the event? 16:34:40  
 6 MR. MUSCHENHEIM: Objection.  
 7 You can answer.  
 8 A. Could you ask me the question  
 9 again?  
 10 Q. Sure. If the organizers of a 16:34:54  
 11 group bicycle ride that is open to the  
 12 public believe that their event may exceed  
 13 50 participants, do you believe the  
 14 organizers should advise NYPD of their  
 15 event in advance? 16:35:10  
 16 MR. MUSCHENHEIM: Same  
 17 objection. You can answer.  
 18 A. Yes.  
 19 Q. Do you believe that the  
 20 organizers of such an event should apply 16:35:18  
 21 for a parade permit in advance of their  
 22 event?  
 23 MR. MUSCHENHEIM: Objection.  
 24 A. Yes.  
 25 Q. Is it true that if the organizers 16:35:27  
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1 Tuller  
 2 of a group bicycle ride end up with a group  
 3 of 50 or more individuals who come to their  
 4 event and the participants then proceed as  
 5 a group on a roadway, that they are subject 16:35:51  
 6 to law enforcement if they have failed to  
 7 obtain a permit?  
 8 MR. MUSCHENHEIM: Objection,  
 9 but you can answer.  
 10 A. If the organizers came to us in 16:36:19  
 11 good faith with the information that they  
 12 had and they were wrong, then at that point  
 13 they, you know, they're going to have their  
 14 event because we're there, we're go to have  
 15 a detail there and we're going to be able 16:36:40  
 16 to police it.  
 17 Q. Are you telling me that a group  
 18 bicycle ride of 50 or more individuals that  
 19 advises NYPD of their procession in advance  
 20 but does not obtain a parade permit is 16:37:01  
 21 permitted to conduct their procession?  
 22 MR. MUSCHENHEIM: Objection.  
 23 And it calls for a legal conclusion,  
 24 but you can answer.  
 25 A. It's all about what, you know -- 16:37:15  
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1 Tuller  
 2 it's all about the number. If it's 51 --  
 3 Q. Have you ever heard of Critical  
 4 Mass participants advising NYPD of their  
 5 route in advance? 16:37:39  
 6 A. I have not.  
 7 Q. If Critical Mass group rides were  
 8 conducted for a year and the participants  
 9 observed all traffic laws and there were no  
 10 summonses or arrests in connection with 16:38:03  
 11 those events, would that lead NYPD to  
 12 consider no longer sending details to  
 13 monitor Critical Mass group rides?  
 14 MR. MUSCHENHEIM: Objection. I  
 15 think we just went over this, but you 16:38:17  
 16 can answer it again.  
 17 A. We'd still have to have a detail.  
 18 Q. Why?  
 19 MR. MUSCHENHEIM: Objection.  
 20 You can answer. 16:38:57  
 21 A. We have to ensure the safety of  
 22 the participants, we have to look at the  
 23 route that they're going and what's on that  
 24 route, we have to look at things like the  
 25 time of day, when we meet with the 16:39:16  
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1 Tuller  
 2 organizers, there is an agreement.  
 3 Q. Would you be concerned regarding  
 4 safety issues or traffic disruption issues 16:39:37  
 5 if Critical Mass had demonstrated over the  
 6 course of a year that it could proceed  
 7 without violating traffic laws?  
 8 MR. MUSCHENHEIM: Objection.  
 9 A. I'd still be concerned, yes.  
 10 Q. Why? 16:40:07  
 11 MR. MUSCHENHEIM: Objection,  
 12 but you can answer.  
 13 A. Yeah, because of the safety and  
 14 the actual traffic disruptions.  
 15 Q. You believe that even if Critical 16:40:16  
 16 Mass proceeded in a completely law-abiding  
 17 manner repeatedly over a period as long as  
 18 a year, that there would still be concerns  
 19 regarding safety and traffic disruption  
 20 regarding the rides? 16:40:33  
 21 MR. MUSCHENHEIM: Objection,  
 22 but you can answer.  
 23 A. Yes. If it's a group ride, then  
 24 we need to know about it, and more than  
 25 likely we're going to assign a detail to 16:40:46  
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1 Tuller  
 2 that.  
 3 Q. Are you aware of a bicycle ride  
 4 known as the Montauk Century?  
 5 A. No. 16:40:57  
 6 Q. It's a group that starts at Penn  
 7 Station among other locations and runs all  
 8 the way out to Montauk on Long Island. Do  
 9 you recall hearing of that event?  
 10 A. No. 16:41:16  
 11 Q. Do you ever recall reviewing an  
 12 application for a permit to conduct the  
 13 Montauk Century ride?  
 14 A. No.  
 15 Q. But you'd agree with me that if 16:41:28  
 16 it begins at Penn Station and crosses over  
 17 one of the lower East River crosses, that  
 18 it occurs within Manhattan South?  
 19 A. Yes.  
 20 Q. And can you recall a detail ever 16:41:41  
 21 being assigned to a Montauk Century ride  
 22 event within Manhattan South?  
 23 A. I don't recall.  
 24 Q. I will represent to you that the  
 25 ride involves hundreds of individuals 16:42:02  
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1 Tuller  
 2 leaving from Penn Station and heading out  
 3 to Montauk beginning in the early morning  
 4 hours. Based on that representation, does  
 5 that sound like an event to which a detail 16:42:20  
 6 should be assigned?  
 7 MR. MUSCHENHEIM: Objection.  
 8 What date is it? It leaves in the  
 9 early morning hours of a weekday or a  
 10 weekend? 16:42:39  
 11 MR. VACCARO: A weekend.  
 12 MR. MUSCHENHEIM: Just note my  
 13 objection.  
 14 THE WITNESS: It depends on what  
 15 the organizers have told us. 16:42:46  
 16 Q. Okay. Under what circumstances  
 17 would Manhattan South not assign a detail  
 18 to a group bicycle ride involving hundreds  
 19 of individuals riding through Manhattan in  
 20 the early morning hours on a weekend? 16:43:03  
 21 MR. MUSCHENHEIM: Objection,  
 22 but you can answer.  
 23 A. Well, again, I spoke about safety  
 24 and if it's the early morning hours and  
 25 they're going to proceed without blocking 16:43:16  
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1 Tuller  
 2 traffic and obeying the traffic laws, then  
 3 it may -- I don't know the history of this  
 4 event. So it may be something that we're  
 5 not going to assign a detail to. 16:43:30  
 6 Q. If a permit is issued for such an  
 7 event, would it be the policy of Manhattan  
 8 South to assign an officer to monitor the  
 9 event for some period of time?  
 10 MR. MUSCHENHEIM: Objection, 16:43:48  
 11 you can answer.  
 12 A. I would have to say yes.  
 13 Q. Can you think of any events for  
 14 which parade permits have been issued with  
 15 anticipated attendance of hundreds of 16:44:03  
 16 individuals to which Manhattan South has  
 17 not assigned any police presence  
 18 whatsoever?  
 19 A. I don't recall.  
 20 MR. VACCARO: We need to go off 16:44:29  
 21 the record for a moment.  
 22 (Recess taken: 4:44-4:53 p.m.)  
 23 EXAMINATION CONTINUES BY MS. MATHIEU:  
 24 Q. Good afternoon, Chief Tuller.  
 25 A. Good afternoon. 16:53:08  
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1 Tuller  
 2 Q. Do you receive reports regarding  
 3 the cost of Critical Mass details?  
 4 A. The cost you said?  
 5 Q. That's right, the cost. 16:53:15  
 6 A. No.  
 7 Q. Are you aware of the cost to the  
 8 department of Critical Mass details?  
 9 A. No.  
 10 Q. Do you know whether any such 16:53:24  
 11 reports are generated within NYPD?  
 12 A. I do not.  
 13 Q. Do you know whether any reports  
 14 like that are generated with respect to  
 15 other group bike rides besides Critical 16:53:35  
 16 Mass?  
 17 A. I do not.  
 18 Q. So as far as you know, does  
 19 anyone in NYPD know what the cost of a  
 20 particular Critical Mass detail is? 16:53:45  
 21 A. I don't know.  
 22 Q. If you wanted to try to find out  
 23 that information, who would you speak to?  
 24 A. I would imagine it's Office of  
 25 Management and Budget. 16:54:02  
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1 Tuller  
 2 Q. Have you ever heard that NYPD has  
 3 a goal of limiting its costs that are  
 4 associated with Critical Mass?  
 5 A. No. 16:54:15  
 6 Q. Do you have authority to  
 7 determine the size of the details assigned  
 8 to Critical Mass?  
 9 A. Yes.  
 10 Q. What authority do officers under 16:54:23  
 11 your supervision have to determine the size  
 12 of details assigned to Critical Mass?  
 13 MR. MUSCHENHEIM: Objection to  
 14 form, but you can answer.  
 15 A. Who do you mean? 16:54:40  
 16 Q. Are there officers -- let me  
 17 rephrase the question. Are there officers  
 18 under your supervision who have the ability  
 19 to determine the size of the detail for  
 20 Critical Mass without getting your signoff 16:54:52  
 21 on it in advance?  
 22 A. Without getting my approval or  
 23 the executive officer's approval, no.  
 24 Q. So it might be possible for an  
 25 officer to get approval from the executive 16:55:06  
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1 Tuller  
 2 officer and not from you as to the size of  
 3 a Critical Mass detail?  
 4 A. That's correct.  
 5 Q. Are you aware whether the cost to 16:55:22  
 6 the department of a Critical Mass detail  
 7 depends in part on whether the detail is  
 8 staffed by officers on overtime?  
 9 A. Can you read that back to me?  
 10 (The last question was read.)  
 11 THE WITNESS: That might be a  
 12 simple question, but for some reason it's  
 13 not registering.  
 14 Q. Do you want me to rephrase it?  
 15 A. Please. 16:55:59  
 16 Q. Does the cost of a Critical Mass  
 17 detail depend at all on whether the  
 18 officers assigned to it are on overtime?  
 19 A. Does the cost depend on it, yes.  
 20 Q. How does it affect the cost? 16:56:09  
 21 A. If they're on overtime, it's  
 22 going to cost more money.  
 23 Q. Do you know how much more it  
 24 costs for an officer who is on overtime as  
 25 opposed to one who is not? 16:56:21  
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1 Tuller  
 2 A. I do not know the scale.  
 3 Q. Do you have any idea what the  
 4 range is?  
 5 A. I do not know the scale. 16:56:25  
 6 Q. Have you ever seen any report  
 7 about the extent to which a detail has been  
 8 staffed with officers who are on overtime?  
 9 A. Not that I can recall, no.  
 10 Q. Do you know whether such reports 16:56:46  
 11 exist?  
 12 A. I don't.  
 13 Q. Do you know of any documents  
 14 within NYPD about the issue of overtime  
 15 staffing at Critical Mass? 16:57:07  
 16 A. I do not, no.  
 17 Q. Apart from Critical Mass, do you  
 18 receive cost information about any other  
 19 details that Manhattan South puts together?  
 20 A. Cost information, not that I can 16:57:24  
 21 recall, no.  
 22 Q. Do you ever receive any reports  
 23 about overtime costs within Critical Mass?  
 24 MR. MUSCHENHEIM: Objection.  
 25 It was asked and answered, but you can 16:57:39  
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1 Tuller  
 2 answer it again.  
 3 THE WITNESS: Can you ask me the  
 4 question?  
 5 MS. MATHIEU: Would you read it  
 6 again, please.  
 7 (The record was read.)  
 8 THE WITNESS: No.  
 9 Q. Have you ever been asked by the  
 10 chief of patrol for information about 16:58:07  
 11 overtime costs in Manhattan South?  
 12 A. Not that I can recall.  
 13 Q. Have you ever been asked to  
 14 justify the amount of overtime staffing  
 15 within Manhattan South? 16:58:27  
 16 A. Can you ask me that question  
 17 again? Or can you rephrase it? Can you  
 18 rephrase it?  
 19 (The last question was read.)  
 20 THE WITNESS: To justify, no. 16:58:56  
 21 Q. So to your knowledge, the  
 22 overtime costs within Manhattan South are  
 23 not monitored by anyone within NYPD?  
 24 MR. MUSCHENHEIM: Objection,  
 25 but you can answer. 16:59:12  
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1 Tuller  
 2 A. There's some monitoring.  
 3 Q. Who performs that monitoring?  
 4 A. It has to do with the individual  
 5 officers, and all overtime, not just 16:59:38  
 6 specific to an event.  
 7 Q. Is there someone within Manhattan  
 8 South who monitors that information?  
 9 A. Yes.  
 10 Q. Who is that person? 16:59:54  
 11 A. That's Inspector Reilly.  
 12 Q. Does Inspector Reilly prepare  
 13 reports about that information?  
 14 A. Yes.  
 15 Q. And who does Inspector Reilly -- 17:00:08  
 16 does Inspector Reilly provide those reports  
 17 to anyone?  
 18 A. Yes.  
 19 Q. Who?  
 20 A. To me. 17:00:17  
 21 Q. And do those reports ever break  
 22 down information about specific details?  
 23 A. They're an accumulation of all  
 24 details for a month.  
 25 Q. Does it list specific details 17:00:30  
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1 Tuller  
 2 that are included in that report?  
 3 A. Yes.  
 4 Q. So have you ever seen a report  
 5 like that list Critical Mass as one of the 17:00:41  
 6 details that's included in the report?  
 7 A. It refers to specific officers  
 8 and what they've done for the month on any  
 9 detail, how they earn their overtime, to  
 10 include arrests. 17:00:56  
 11 Q. So have you seen some of those  
 12 reports include a reference to Critical  
 13 Mass?  
 14 A. Specifically I can't remember,  
 15 but it's a breakdown of all overtime 17:01:07  
 16 incurred by specific officers.  
 17 Q. So it's possible that some of  
 18 those reflect Critical Mass overtime, but  
 19 you don't recall?  
 20 A. It's possible, and I don't recall 17:01:17  
 21 specifically.  
 22 Q. Would you expect that some of  
 23 those reports reflect Critical Mass  
 24 overtime?  
 25 A. Yes. 17:01:29  
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1 Tuller  
 2 Q. Is there a budget for Manhattan  
 3 South?  
 4 A. Yes.  
 5 Q. Do you review it? 17:01:37  
 6 A. Yes.  
 7 Q. Is there a line in the budget for  
 8 overtime?  
 9 A. Yes.  
 10 Q. Is it your responsibility to stay 17:01:47  
 11 within budget?  
 12 A. To attempt to stay within budget.  
 13 Q. Are you able to seek supplements  
 14 to the amounts initially budgeted?  
 15 A. Well, by supplements you mean 17:02:05  
 16 what?  
 17 Q. Are you able to after the budget  
 18 is prepared go back and request additional  
 19 funds not in the budget?  
 20 MR. MUSCHENHEIM: I'm going to 17:02:19  
 21 object, but you can answer.  
 22 A. No, I can't request additional  
 23 money.  
 24 Q. Do you need to justify amounts  
 25 that are spent in excess of what's 17:02:34  
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1 Tuller  
 2 budgeted?  
 3 MR. MUSCHENHEIM: Objection,  
 4 but you can answer.  
 5 A. Can you repeat that question? 17:02:46  
 6 (The record was read.)  
 7 THE WITNESS: I need to explain  
 8 how we spent the money.  
 9 Q. And in providing those  
 10 explanations, have you ever cited Critical 17:03:03  
 11 Mass as a reason for going over budget?  
 12 MR. MUSCHENHEIM: Objection.  
 13 You can answer.  
 14 A. No, it doesn't work that way.  
 15 Q. What do you mean by that? 17:03:13  
 16 A. It means the officers working  
 17 their overtime and looking at what they did  
 18 for the month, it's the officers and the  
 19 different events what we look at, how they  
 20 earned their overtime, to include arrests, 17:03:26  
 21 by the way, and court appearances.  
 22 Q. So have you ever discussed with  
 23 anyone at NYPD the cost of Critical Mass  
 24 detail?  
 25 A. No. 17:03:37  
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1 Tuller  
 2 Q. Do you consider yourself to be  
 3 familiar with the laws regarding bicycling  
 4 in New York City?  
 5 MR. MUSCHENHEIM: Objection. 17:03:48  
 6 You can answer.  
 7 A. Not thoroughly.  
 8 Q. Do you recall on what date you  
 9 last reviewed the laws that applied to  
 10 bicyclists in New York? 17:04:00  
 11 A. No, I don't.  
 12 Q. Do you recall how recently it  
 13 was?  
 14 A. Many years ago.  
 15 Q. Do you know if you've reviewed 17:04:05  
 16 those laws since you became commander of  
 17 Manhattan South?  
 18 A. I don't recall reviewing any  
 19 laws.  
 20 Q. I believe you testified earlier 17:04:22  
 21 that it's your understanding that a  
 22 bicyclist isn't permitted to ride in the  
 23 middle of a traffic lane, is that correct?  
 24 A. Well, it depends. Depends what  
 25 the roadway is, I guess. 17:04:38  
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1 Tuller  
 2 Q. What do you mean by that?  
 3 A. If it's -- I guess if it's like a  
 4 two-way street, you can go and ride in the  
 5 roadway. If it's a one-way street, they 17:04:56  
 6 have to go to either side.  
 7 Q. Is it your understanding that in  
 8 a two-way street then, the cyclist is  
 9 allowed to proceed in the middle of a  
 10 traffic lane? 17:05:35  
 11 MR. MUSCHENHEIM: Objection to  
 12 the extent it calls for a legal  
 13 conclusion, but you can answer.  
 14 A. It's my understanding, if there  
 15 is bike lanes, they should be in the bike 17:05:45  
 16 lanes.  
 17 Q. What about if there's not a bike  
 18 lane?  
 19 A. Then they could ride.  
 20 Q. Can they ride in any traffic lane 17:05:56  
 21 going in the proper direction if there's no  
 22 bike lane?  
 23 MR. MUSCHENHEIM: On what type  
 24 of street, a one-way or a two-way?  
 25 Q. On a two-way street. 17:06:08  
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1 Tuller  
 2 A. If there is no bike lane, then  
 3 they can proceed in the roadway.  
 4 Q. But by contrast it's your  
 5 understanding that on a one-way street they 17:06:20  
 6 have to stay on either the right or the  
 7 left of the road, correct?  
 8 A. That's my understanding.  
 9 Q. Can a bicyclist on a one-way  
 10 street ride in the center of the road to 17:06:30  
 11 avoid the possibility that the door of a  
 12 parked car will be opened into its path?  
 13 MR. MUSCHENHEIM: Objection,  
 14 but you can answer.  
 15 A. Only if there is something that 17:06:41  
 16 he or she sees to make him think that  
 17 that's going to happen.  
 18 Q. Can a bicyclist ride in the  
 19 center of the roadway on a one-way street  
 20 because they're travelling alongside 17:07:05  
 21 another bicyclist?  
 22 MR. MUSCHENHEIM: Objection.  
 23 You can answer.  
 24 A. I'm actually not sure.  
 25 Q. Do you know whether there are any 17:07:15  
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1 Tuller  
 2 laws in New York City that say whether a  
 3 bicyclist can ride two abreast or more?  
 4 MR. MUSCHENHEIM: Objection.  
 5 You can answer. 17:07:32  
 6 A. If there is any law --  
 7 Q. Do you know whether in New York  
 8 City there are any laws that prevent  
 9 cyclists from riding two abreast?  
 10 A. That prevent them from riding two 17:07:46  
 11 abreast, that they can't ride two abreast?  
 12 Q. That's what I mean?  
 13 A. Not that I am aware of.  
 14 Q. So if a cyclist is riding two  
 15 abreast with another cyclist on a one-way 17:08:04  
 16 roadway, one of those cyclists will not be  
 17 riding all the way to the right or left of  
 18 the road, is that right?  
 19 MR. MUSCHENHEIM: Objection,  
 20 but you can answer. 17:08:20  
 21 A. I'm actually not sure.  
 22 Q. Well, without asking you right  
 23 now what's permitted by law, as a practical  
 24 matter if two cyclists are riding side by  
 25 side, one of those cyclists is not going to 17:08:34  
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1 Tuller  
 2 be riding all the way to the side of the  
 3 roadway, correct?  
 4 A. Correct.  
 5 Q. Do you know whether that cyclist 17:08:40  
 6 is violating a law by doing that?  
 7 MR. MUSCHENHEIM: Objection,  
 8 calls for a legal conclusion, but you  
 9 can answer.  
 10 A. I'm not sure. 17:08:47  
 11 Q. Would you agree with me that if  
 12 four cyclists are proceeding side by side,  
 13 they will take up more than one traffic  
 14 lane?  
 15 MR. MUSCHENHEIM: Objection, 17:09:07  
 16 but you can answer.  
 17 A. That they may take up one traffic  
 18 lane?  
 19 Q. More than one traffic lane.  
 20 A. They may. 17:09:17  
 21 Q. Do you know whether that is  
 22 permitted under the law?  
 23 MR. MUSCHENHEIM: Objection,  
 24 calls for a legal conclusion.  
 25 Q. You can answer the question.  
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1 Tuller  
 2 A. Which kind of roadway are we  
 3 talking about now?  
 4 Q. We're talking about I guess a  
 5 one-way roadway. 17:09:42  
 6 MR. MUSCHENHEIM: Same  
 7 objection, but you can answer.  
 8 A. They would have to stay to the  
 9 left or the right on a one-way.  
 10 Q. What about on a two-way roadway? 17:09:48  
 11 MR. MUSCHENHEIM: Same  
 12 objection, but you can answer.  
 13 A. My understanding is that if there  
 14 is no bike lane, then they can go on the  
 15 roadway, on a two-way. 17:10:09  
 16 Q. And on a two-way roadway if there  
 17 is no bike lane and four cyclists are  
 18 proceeding side by side, are they permitted  
 19 to take up more than one traffic lane?  
 20 MR. MUSCHENHEIM: Objection, 17:10:22  
 21 calls for a legal conclusion, but you  
 22 can answer.  
 23 A. This is a two-way, you said? If  
 24 they're moving with traffic?  
 25 Q. Yes. 17:10:31  
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1 Tuller  
 2 A. They're moving with traffic, yes.  
 3 Q. I'm now going to ask you to take  
 4 a look at what's been previously marked as  
 5 Winski Exhibit 7. 17:11:00  
 6 A. Do you want me to read over this?  
 7 Q. No, I'm going to direct your  
 8 attention to a particular portion. This is  
 9 section 412 of New York City Traffic Rules.  
 10 And I'm going to ask you specifically to 17:11:21  
 11 take a look at page 54, section (p)(3),  
 12 which is in the top third of the page.  
 13 Just let me know when have you had a chance  
 14 to look at it.  
 15 A. What are we looking at? 17:11:47  
 16 Q. Section (p)(3), about a third of  
 17 the way down the page.  
 18 A. Bicycles permitted on both sides?  
 19 Q. That's the one, yes. Is this the  
 20 provision that you believe would prohibit 17:12:21  
 21 four bicyclists on a one-way street from  
 22 riding side-by-side in two traffic lanes?  
 23 MR. MUSCHENHEIM: Objection,  
 24 but you can answer.  
 25 A. It sounds that way to me. 17:12:40  
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1 Tuller  
 2 Q. Do you agree with me that it says  
 3 that the cyclists may ride as near as is  
 4 practicable to either the left or ride hand  
 5 curb or edge of the road? 17:12:56  
 6 MR. MUSCHENHEIM: Objection,  
 7 but you can answer.  
 8 A. That's what it says.  
 9 Q. If four bicyclists are proceeding  
 10 side by side, is it practicable for them to 17:13:04  
 11 occupy only one lane of the roadway?  
 12 MR. MUSCHENHEIM: Objection,  
 13 calls for a legal conclusion. You can  
 14 answer.  
 15 A. Is it practicable for them to 17:13:17  
 16 ride four across? Is that what you're  
 17 asking?  
 18 Q. My question is if you have four  
 19 cyclists riding side-by-side on a one-way  
 20 roadway, is it practicable for them to take 17:13:37  
 21 up less than two lanes of traffic?  
 22 MR. MUSCHENHEIM: Same  
 23 objection.  
 24 A. Well, they could still ride to  
 25 either side in single file. 17:13:55  
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1 Tuller  
 2 Q. Do you believe that this  
 3 provision requires them to ride single file  
 4 rather than side-by-side?  
 5 A. If it's practical. 17:14:04  
 6 Q. Has anyone ever told you that  
 7 this provision prohibits cyclists from  
 8 riding four abreast in two traffic lanes?  
 9 A. Not that I can recall, no.  
 10 Q. Has anyone ever discussed with 17:14:23  
 11 you how this provision would be applied to  
 12 a group of bicyclists riding together?  
 13 A. No.  
 14 Q. This provision states what  
 15 cyclists may do, not what they shall do, 17:14:49  
 16 would you agree with that?  
 17 MR. MUSCHENHEIM: Objection.  
 18 A. Which provision?  
 19 Q. The provision we've been looking  
 20 at in which it says that cyclists may ride 17:15:00  
 21 as near as is practicable.  
 22 MR. MUSCHENHEIM: Are you  
 23 asking does the statute say may?  
 24 MS. MATHIEU: I'm just asking  
 25 what the statute says, yes. 17:15:11  
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1 Tuller  
 2 A. I took that may to read will  
 3 ride.  
 4 Q. Do you think it's significant  
 5 that it uses the word may rather than will 17:15:37  
 6 or shall?  
 7 MR. MUSCHENHEIM: Objection,  
 8 calls for a legal conclusion. You can  
 9 answer.  
 10 A. I don't think it's that 17:15:48  
 11 significant, no.  
 12 Q. I'd ask you to flip back one  
 13 page, to page 53, section (p)(1), bicycle  
 14 riders to use bicycle lanes, and tell me  
 15 when you have had a chance to take a look 17:16:07  
 16 at that section.  
 17 A. Okay.  
 18 Q. Do you agree with me that (p)(1)  
 19 states that "bicyclists shall use" bike  
 20 lanes except under certain circumstances? 17:16:51  
 21 MR. MUSCHENHEIM: Objection.  
 22 A. Bicycle riders shall use, yes.  
 23 Q. Do you think shall in this  
 24 provision means the same thing as may in  
 25 section (p)(3) which you were looking at a 17:17:11  
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1 Tuller  
 2 moment ago?  
 3 MR. MUSCHENHEIM: Objection.  
 4 Calls for a legal conclusion.  
 5 A. Well, I took the other section to 17:17:19  
 6 mean will, and certainly shall means will.  
 7 Q. Now having compared the two  
 8 sections, do you believe that may in  
 9 section (p)(3) means will?  
 10 MR. MUSCHENHEIM: Objection. 17:17:39  
 11 Same objection.  
 12 A. I'm not sure. I don't know what  
 13 the intent was.  
 14 Q. Have you ever discussed the  
 15 different wording of these two sections 17:17:57  
 16 with anyone before now?  
 17 A. No.  
 18 Q. Have you ever heard that traffic  
 19 court judges have dismissed summonses to  
 20 bicyclists under (p)(3) because the word 17:18:08  
 21 may means that the section doesn't prohibit  
 22 riding in the center of the traffic lane?  
 23 A. I don't recall that.  
 24 Q. Can a bicyclist riding on a  
 25 one-way street merge towards the center of 17:18:31  
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1 Tuller  
 2 the roadway to avoid double-parked  
 3 vehicles?  
 4 A. Yes.  
 5 Q. What about a bicyclist on a two 17:18:42  
 6 way roadway?  
 7 A. Can you give me the question  
 8 again?  
 9 Q. Can a bicyclist on a two-way  
 10 roadway merge toward the center of the 17:18:51  
 11 roadway to avoid double-parked vehicles?  
 12 A. Yes.  
 13 Q. Can a bicyclist merge toward the  
 14 center of the roadway to avoid a car that  
 15 is waiting to make a turn? 17:19:03  
 16 MR. MUSCHENHEIM: Objection.  
 17 You can answer.  
 18 A. Yes.  
 19 Q. If a bicyclist is riding down a  
 20 one-way roadway and wants to make a turn, 17:19:20  
 21 can the bicyclist merge across the entire  
 22 width of the roadway in order to make the  
 23 turn?  
 24 MR. MUSCHENHEIM: Objection,  
 25 but you can answer. 17:19:31  
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1 Tuller  
 2 A. If I understood that question  
 3 correctly, that's not practical.  
 4 Q. Well, let's say a bicyclist is  
 5 riding down the right-hand side of a 17:19:41  
 6 one-way roadway and wants to make a left  
 7 turn. Is that bicyclist allowed to merge  
 8 all the way to the left?  
 9 A. He wants to make a right-hand  
 10 turn. 17:19:53  
 11 Q. The bicyclist is riding in the  
 12 right-hand lane and wants to make a  
 13 left-hand turn. Is the bicyclist permitted  
 14 to merge all the way to the left part of  
 15 the roadway before making the turn? 17:20:02  
 16 A. Yes.  
 17 Q. And on a two-way roadway, can a  
 18 bicyclist riding in the right-hand lane who  
 19 wants to make a left turn merge to the  
 20 left-most lane riding in the same direction 17:20:22  
 21 of traffic before making the turn?  
 22 A. Yes.  
 23 Q. I believe you testified earlier  
 24 that you believe that a bicyclist is  
 25 required to stay within three feet of the 17:20:40  
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1 Tuller  
 2 edge of the roadway, is that right?  
 3 MR. MUSCHENHEIM: Objection to  
 4 the characterization.  
 5 A. I don't recall to what I 17:20:58  
 6 testified earlier.  
 7 Q. Do you recall testifying to some  
 8 requirement about where a cyclist should be  
 9 on the roadway that involved the distance  
 10 three feet? 17:21:10  
 11 A. Yes.  
 12 Q. And when do you think this  
 13 three-foot distance applies to a bicyclist?  
 14 A. I believe it applies to a  
 15 vehicle, parked vehicle. 17:21:32  
 16 Q. Meaning that a bicyclist has to  
 17 stay within three feet of a parked vehicle  
 18 when the bicyclist is going down the road?  
 19 MR. MUSCHENHEIM: Objection as to  
 20 the characterization. 17:21:46  
 21 A. Yes, I believe that's correct.  
 22 Q. And what is the source for your  
 23 belief that that is correct?  
 24 A. I have no idea.  
 25 Q. Do you know how long you believe 17:21:58  
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1 Tuller  
 2 that to you true?  
 3 A. Probably years, I don't know.  
 4 I'm not even sure.  
 5 Q. Do you know if it's written in 17:22:08  
 6 any law?  
 7 A. Nothing that I can recall.  
 8 Q. Are you aware of a recommendation  
 9 made by the Department of Transportation to  
 10 bicyclists that they stay a minimum of 17:22:19  
 11 three feet from parked cars?  
 12 A. No.  
 13 Q. Do you know if there is a minimum  
 14 speed limit for bicyclists on New York City  
 15 street? 17:22:37  
 16 A. No.  
 17 Q. Do you believe that a bicyclist  
 18 riding ten miles an hour in the center of a  
 19 traffic lane so that a motorist behind him  
 20 has to change lanes to pass is obstructing 17:22:46  
 21 traffic?  
 22 MR. MUSCHENHEIM: Objection,  
 23 but you can answer.  
 24 A. I'm not sure of that.  
 25 Q. What about if the bicyclist is 17:22:58  
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1 Tuller  
 2 moving at five miles an hour, would that  
 3 change your answer?  
 4 MR. MUSCHENHEIM: Same  
 5 objection. 17:23:04  
 6 A. I'm not sure.  
 7 Q. Generally speaking, does a  
 8 cyclist have the same right to be on the  
 9 road as a motor vehicle?  
 10 A. Generally speaking. 17:23:10  
 11 Q. Any circumstances you can think  
 12 of when it does not?  
 13 A. Unless there are signs  
 14 prohibiting it.  
 15 Q. You can put that to one side if 17:23:24  
 16 you like. I'm moving to a new topic.  
 17 Do you have an understanding as  
 18 to when Critical Mass rides began to occur  
 19 in New York City?  
 20 A. Yes. 17:23:45  
 21 Q. When was that?  
 22 A. I don't know. Some years back.  
 23 Q. Are you aware that there was a  
 24 large Critical Mass ride conducted in  
 25 connection with the Republic National 17:24:03  
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1 Tuller  
 2 Convention in August, 2004?  
 3 A. Yes.  
 4 Q. Do you know whether Critical Mass  
 5 rides had proceeded in New York City for 17:24:12  
 6 some time before that?  
 7 A. I'm not sure.  
 8 Q. What do you know about the ride  
 9 that took place in August, 2004, the  
 10 Critical Mass ride? 17:24:20  
 11 A. Specifically nothing.  
 12 Q. What do you know generally?  
 13 A. That there was a ride with a lot  
 14 of bikes.  
 15 Q. Are you aware that there was 17:24:31  
 16 arrests of hundreds of cyclists during the  
 17 ride?  
 18 A. Yes.  
 19 Q. And where did you get that  
 20 information? 17:24:42  
 21 A. I believe it was at an initial  
 22 briefing from Chief Paragallo.  
 23 Q. Do you know whether that briefing  
 24 included information about Critical Mass  
 25 rides that may have occurred before August, 17:24:59  
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1 Tuller  
 2 2004?  
 3 A. I don't recall that.  
 4 Q. So you don't know whether there  
 5 were any arrests at Critical Mass prior to 17:25:08  
 6 August, 2004?  
 7 A. I don't recall that.  
 8 Q. Are you aware that Commissioner  
 9 Kelly published op-eds in New York City  
 10 newspapers regarding Critical Mass? 17:25:27  
 11 A. I'm not.  
 12 Q. Do you have any understanding of  
 13 the reason for the mass arrests of  
 14 bicyclists at the RNC?  
 15 MR. MUSCHENHEIM: Objection as 17:25:40  
 16 to the form, but you can answer.  
 17 A. Laws were broken concerning the  
 18 bicyclists.  
 19 Q. Did you observe any of those  
 20 arrests? 17:25:49  
 21 A. No.  
 22 Q. Did you observe the bicyclists at  
 23 all during that ride?  
 24 A. No.  
 25 Q. What laws were broken to your 17:25:54  
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1 Tuller  
 2 understanding?  
 3 A. The blocking of traffic and the  
 4 equipment violations. That's my  
 5 understanding. 17:26:11  
 6 Q. And when you say blocking of  
 7 traffic, are you referring to traffic rule  
 8 violations?  
 9 A. Traffic rule violations.  
 10 Q. Following the RNC, are you aware 17:26:45  
 11 that there was a period of monthly mass  
 12 arrests of Critical Mass participants?  
 13 MR. MUSCHENHEIM: Objection.  
 14 You can answer.  
 15 A. I'm not aware of it. 17:26:56  
 16 Q. Are you aware that arrests took  
 17 place during Critical Mass rides after the  
 18 RNC?  
 19 A. I would assume so, yes.  
 20 Q. Do you know anything about what 17:27:08  
 21 number of people were arrested at those  
 22 rides?  
 23 A. No.  
 24 Q. Do you recall whether you  
 25 discussed that at all with Chief Paragallo? 17:27:21  
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1 Tuller  
 2 A. I don't recall specifically, no.  
 3 Q. Do you recall any source of  
 4 information you had for arrests at Critical  
 5 Mass prior to when you became commander of 17:27:33  
 6 Manhattan South?  
 7 A. I don't recall, no.  
 8 Q. Do you have any knowledge about  
 9 the disposition of charges on arrests at  
 10 Critical Mass after the RNC? 17:27:52  
 11 A. I do not.  
 12 THE WITNESS: Can we take a  
 13 break?  
 14 MS. MATHIEU: We can take a  
 15 break for a minute if you like. 17:28:17  
 16 (Recess taken: 5:28-5:34 p.m.)  
 17 FURTHER EXAMINATION BY MS. MATHIEU:  
 18 Q. Chief Tuller, are you aware that  
 19 there is a monthly Critical Mass ride that  
 20 takes place in Brooklyn? 17:34:16  
 21 A. No.  
 22 Q. Have you ever heard about other  
 23 Critical Mass rides in New York City aside  
 24 from the one that leaves from Union Square  
 25 on the last Friday of the month? 17:34:26  
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1 Tuller  
 2 A. Yes.  
 3 Q. What other rides have you heard  
 4 about?  
 5 A. My understanding is that there is 17:34:34  
 6 one in Brooklyn.  
 7 Q. What do you know about that ride?  
 8 A. Nothing.  
 9 Q. Well where did you learn about?  
 10 A. Probably in that initial briefing 17:34:42  
 11 with Chief Paragallo.  
 12 Q. Are you aware that it's conducted  
 13 in the same manner as a Manhattan ride  
 14 without a fixed route?  
 15 A. Well, I don't know the logistics 17:34:53  
 16 of that operation, no, I'm not aware.  
 17 Q. So you don't know whether the  
 18 Brooklyn ride has a fixed route?  
 19 A. I do not.  
 20 Q. Do you know whether the Brooklyn 17:35:07  
 21 Critical Mass ride has resulted in any  
 22 summonses?  
 23 A. I do not.  
 24 Q. Do you know whether it has  
 25 resulted in any arrests? 17:35:16  
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1 Tuller  
 2 A. I do not.  
 3 Q. Have you ever discussed with your  
 4 counterpart in the borough command in  
 5 Brooklyn how the Critical Mass rides there 17:35:23  
 6 were managed?  
 7 A. I do not recall having done that.  
 8 Q. Would you consider it valuable to  
 9 gather information about how Critical Mass  
 10 rides in Brooklyn are managed by NYPD? 17:35:35  
 11 MR. MUSCHENHEIM: Objection as  
 12 to the form, but you can answer.  
 13 A. I didn't think of it, but it  
 14 could be.  
 15 Q. If you were to learn that there 17:35:49  
 16 have been no arrests or summonses that have  
 17 taken place during the Brooklyn Critical  
 18 Mass ride, would that lead you to think it  
 19 would be worthwhile to talk to the borough  
 20 command in Brooklyn about how the rides are 17:36:03  
 21 managed?  
 22 MR. MUSCHENHEIM: Objection.  
 23 A. As I said, I didn't think of it,  
 24 but it must be --  
 25 Q. So do you think that NYPD's 17:36:17  
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1 Tuller  
 2 experience with Critical Mass in Brooklyn  
 3 is relevant to NYPD's experience with  
 4 Critical Mass rides in Manhattan?  
 5 MR. MUSCHENHEIM: Objection. 17:36:27  
 6 A. I don't know.  
 7 Q. It could be?  
 8 MR. MUSCHENHEIM: Same  
 9 objection. You can answer.  
 10 A. I don't know. 17:36:33  
 11 Q. Do you know whether any documents  
 12 are given to the officers who are assigned  
 13 to Critical Mass detail in connection with  
 14 the detail?  
 15 A. I'm not aware of that. 17:36:53  
 16 Q. I'm going to ask you to take a  
 17 look at what's been previously marked as  
 18 Winski Exhibit 2. And this is Bates  
 19 stamped NYC000355. And once you have had a  
 20 chance to review it, my question is if you 17:37:18  
 21 have ever seen this document before.  
 22 A. No. Not that I can recall.  
 23 Q. Do you know if a document like  
 24 this is given to police officers for  
 25 Critical Mass rides? 17:37:40  
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1 Tuller  
 2 MR. MUSCHENHEIM: Objection.  
 3 A. I'm not aware of it.  
 4 Q. If I could draw your attention to  
 5 the section that says bicycle/inline  
 6 skates, do you see where three lines of  
 7 that section have been crossed out with a  
 8 line drawn through them?  
 9 A. I see bicycles, inline skates and  
 10 there is three lines underlining the 17:38:01  
 11 sentences. Is that what -- oh, you're  
 12 talking about below, I got you, yes.  
 13 Q. Would you agree with me that all  
 14 three of those lines have a number 1, 2, 3,  
 15 4 in the second column? 17:38:13  
 16 A. Yes, it looks that way.  
 17 Q. Do you know what that 1, 2, 3, 4  
 18 refers to?  
 19 A. I do not, unless I read what it  
 20 says there. 17:38:34  
 21 Q. I'm sorry?  
 22 A. Unless I read what's crossed out.  
 23 Q. Please go ahead and take a look.  
 24 A. Okay.  
 25 Q. Having read those lines, do you 17:39:05  
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1 Tuller  
 2 have an understanding now as to what the  
 3 number 1, 2, 3, 4 refers to in those three  
 4 lines?  
 5 A. I know what this says. 17:39:14  
 6 Q. Do you know why it says 1, 2, 3,  
 7 4?  
 8 A. It's a section of the VTL.  
 9 Q. And are the three lines that are  
 10 crossed out describing offenses under that 17:39:31  
 11 section of the VTL?  
 12 A. Yes.  
 13 Q. Do you know why these three lines  
 14 have been crossed out on this document?  
 15 A. I do not. 17:39:45  
 16 Q. Do you know whether section 1, 2,  
 17 3, 4 applies in New York City?  
 18 A. I do not.  
 19 Q. Do you know whether it's ever  
 20 been enforced against cyclists 17:39:56  
 21 participating in Critical Mass?  
 22 A. Unless I read it, I do not.  
 23 Q. You can put that down. And I'm  
 24 going to give you what's previously been  
 25 marked as Winski Exhibit 8, NYC027202 17:40:18  
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1 Tuller  
 2 through 209. And it's lengthy and I don't  
 3 expect you to read it, but I would ask if  
 4 you've ever seen this document before.  
 5 A. I don't recall ever seeing this. 17:40:38  
 6 Q. Have you ever heard of a document  
 7 called the hack attack?  
 8 A. I have not.  
 9 Q. Do you have any idea of who the  
 10 Mooseman is, which is the word that appears 17:40:57  
 11 at the top of the first page?  
 12 A. I do not.  
 13 Q. Do you know whether this is an  
 14 official NYPD publication?  
 15 MR. MUSCHENHEIM: Objection. 17:41:17  
 16 You can answer.  
 17 A. It doesn't look like one.  
 18 Q. Have you ever heard that a  
 19 document like this was distributed to  
 20 officers assigned to Critical Mass detail? 17:41:28  
 21 A. I do not recall.  
 22 Q. Would you consider it appropriate  
 23 for a document that is not an official NYPD  
 24 document to be distributed to officers  
 25 assigned to Critical Mass detail? 17:41:40  
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1 Tuller  
 2 MR. MUSCHENHEIM: Objection to  
 3 the form. You can answer.  
 4 A. Depends what information is being  
 5 given. 17:41:56  
 6 Q. Well, if I could draw your  
 7 attention to the page ending with 205 at  
 8 the bottom right?  
 9 A. The page that ends with 205?  
 10 Q. Yes. 17:42:09  
 11 A. Okay.  
 12 Q. Do you see a section here called  
 13 bicycle/inline skates?  
 14 A. Yes.  
 15 Q. And would you agree that that 17:42:44  
 16 section looks very similar to the section  
 17 labelled bicycle/inline skates in Winski 2,  
 18 which is the exhibit we were just looking  
 19 at a minute ago?  
 20 MR. MUSCHENHEIM: Objection, 17:42:56  
 21 but you can answer.  
 22 A. Yes.  
 23 Q. One difference being that in  
 24 Winski 8, the lines that referenced 1, 2,  
 25 3, 4 have not been crossed out, correct? 17:43:13  
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1 Tuller  
 2 A. That's correct.  
 3 Q. Do believe it's appropriate for  
 4 this document, Winski 8, to be provided to  
 5 officers assigned to Critical Mass detail? 17:43:31  
 6 MR. MUSCHENHEIM: Objection as  
 7 to the form. There may be a  
 8 foundation issue too, but you can  
 9 answer.  
 10 A. Well, if the information is 17:43:43  
 11 correct, it can be given out, except maybe  
 12 for the title of it.  
 13 Q. And what if the information is  
 14 not correct?  
 15 A. Then the information should be 17:44:07  
 16 corrected.  
 17 Q. Is there someone whose  
 18 responsibility it is to approve documents  
 19 like this before they're distributed to  
 20 police officers? 17:44:18  
 21 MR. MUSCHENHEIM: Objection,  
 22 but you can answer.  
 23 A. No.  
 24 Q. And specific to Critical Mass  
 25 rides, is there someone whose 17:44:26  
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1 Tuller  
 2 responsibility it is to review documents  
 3 given to officers assigned to Critical Mass  
 4 detail?  
 5 MR. MUSCHENHEIM: Same 17:44:34  
 6 objection. You can answer.  
 7 A. Well, can you -- I don't know,  
 8 can you rephrase that question or --  
 9 MR. MUSCHENHEIM: Can we have a  
 10 readback? 17:45:02  
 11 (The last question was read.)  
 12 THE WITNESS: Not specifically.  
 13 Q. Do you believe it's appropriate  
 14 for documents to be given to those officers  
 15 without a supervisor reviewing them first? 17:45:14  
 16 MR. MUSCHENHEIM: Can we go off  
 17 the record?  
 18 (Recess taken: 5:45-5:47 p.m.)  
 19 FURTHER EXAMINATION BY MS. MATHIEU:  
 20 Q. I'm going to withdraw the 17:47:08  
 21 question and ask you a very different  
 22 question, which is did you do anything to  
 23 prepare for your deposition today?  
 24 A. No.  
 25 Q. Did you meet with anyone? 17:47:38  
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1 Tuller  
 2 A. No.  
 3 Q. Did you meet with --  
 4 A. Other than --  
 5 Q. I'm sorry, go ahead. 17:47:44  
 6 A. Other than --  
 7 Q. Mr. Muschenheim?  
 8 A. Yes.  
 9 Q. Did you meet with any other  
 10 attorneys besides Mr. Muschenheim, such as 17:47:53  
 11 Mr. Ciappetta?  
 12 A. Yes.  
 13 Q. Anyone else?  
 14 A. Yes.  
 15 Q. Did you speak to anyone at the 17:48:01  
 16 NYPD Legal Bureau about your deposition  
 17 today?  
 18 A. I did not.  
 19 Q. How many times did you meet with  
 20 Mr. Muschenheim and Mr. Ciappetta? 17:48:09  
 21 A. Once.  
 22 Q. When did that take place?  
 23 A. Yesterday.  
 24 Q. For how long did you meet?  
 25 A. About an hour. 17:48:17  
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1 Tuller  
 2 Q. Did you review any documents at  
 3 that meeting?  
 4 A. Yes.  
 5 Q. Did the documents you reviewed 17:48:27  
 6 bring any details to mind that you had  
 7 forgotten?  
 8 A. Not that I can recall, no.  
 9 Q. And what type of documents did  
 10 you review? 17:48:40  
 11 MR. MUSCHENHEIM: I'm going to  
 12 instruct the witness not to answer.  
 13 That's material covered by the work  
 14 product privilege, and also possibly  
 15 the attorney-client privilege, but 17:48:55  
 16 also state that whatever documents the  
 17 witness reviewed are all documents  
 18 that have been produced either by the  
 19 plaintiffs or by the defendants in  
 20 this litigation. 17:49:04  
 21 Q. Are you aware that other  
 22 witnesses have been deposed in connection  
 23 with this litigation?  
 24 A. Yes.  
 25 Q. Do you know who any of those 17:49:18  
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1 Tuller  
 2 people are?  
 3 A. I know that Chief Paragallo and  
 4 Chief Anger have been.  
 5 Q. And how do you know that? 17:49:30  
 6 A. They received notifications.  
 7 Q. From whom?  
 8 A. That I'm not sure of.  
 9 Q. How do you know that they  
 10 received the notifications? 17:49:37  
 11 A. I heard it.  
 12 Q. Who did you hear it from?  
 13 A. I don't recall.  
 14 Q. Did you speak to Chief Paragallo  
 15 about his deposition at all? 17:49:43  
 16 A. I did not.  
 17 Q. Did you speak to Chief Anger  
 18 about his deposition at all?  
 19 A. I did not.  
 20 Q. Did you hear anything about their 17:49:49  
 21 depositions from other people?  
 22 A. I have not.  
 23 Q. Have you had discussions of any  
 24 kind with anyone else at NYPD about this  
 25 litigation? 17:50:07  
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1 Tuller  
 2 A. I have not.  
 3 Q. Have you ever heard anyone say  
 4 anything about the political affiliations  
 5 of Critical Mass participants? 17:50:20  
 6 A. I don't recall having heard.  
 7 Q. Did you ever read anything about  
 8 the political affiliations of Critical Mass  
 9 participants?  
 10 MR. MUSCHENHEIM: Objection, 17:50:31  
 11 but you can answer.  
 12 A. I don't recall having done that.  
 13 Q. Have you ever heard anyone say  
 14 that Critical Mass participants are  
 15 anarchists? 17:50:37  
 16 A. Not that I can recall, no.  
 17 Q. Have you ever read anything that  
 18 said that Critical Mass participants are  
 19 anarchists?  
 20 A. Not that I can recall. 17:50:46  
 21 MS. MATHIEU: I have no further  
 22 questions at this time. Thank you  
 23 very much for your time today.  
 24 (Time noted: 5:51 p.m.)  
 25  
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1  
 2 A C K N O W L E D G M E N T  
 3  
 4 S T A T E O F N E W Y O R K )  
 5 : s s  
 6 C O U N T Y O F )  
 7  
 8 I, JAMES TULLER, hereby certify  
 9 that I have read the transcript of my  
 10 testimony taken under oath in my deposition  
 11 of March 11, 2009; that the transcript is a  
 12 true, complete and correct record of my  
 13 testimony, and that the answers on the  
 14 record as given by me are true and correct.  
 15  
 16  
 17 \_\_\_\_\_  
 18 JAMES TULLER  
 19  
 20 Signed and subscribed to before  
 21 me, this day  
 22 of , 2009.  
 23  
 24 \_\_\_\_\_  
 25 Notary Public, State of New York  
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1  
2           **C E R T I F I C A T E**  
3   **STATE OF NEW YORK    )**  
4                           **) ss.:**  
5   **COUNTY OF NEW YORK    )**  
6  
7       I, DAVID HENRY, a Notary Public within  
8   and for the State of New York, do hereby  
9   certify:  
10    That JAMES TULLER, the witness whose  
11   deposition is hereinbefore set forth, was  
12   duly sworn by me and that such deposition  
13   is a true record of the testimony given by  
14   such witness.  
15    I further certify that I am not  
16   related to any of the parties to this  
17   action by blood or marriage; and that I am  
18   in no way interested in the outcome of this  
19   matter.  
20    IN WITNESS WHEREOF, I have hereunto  
21   set my hand this 23rd day of March, 2009.

22  
23  
24           -----  
25           **DAVID HENRY**  
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2           **E R R A T A**  
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<b>10:12:11 (1)</b>	34:10	<b>10:35:08 (1)</b>	44:15	<b>10:47:16 (1)</b>
29:10	<b>10:18:22 (1)</b>	39:15	<b>10:41:56 (1)</b>	49:20
<b>10:12:30 (1)</b>	34:15	<b>10:35:26 (1)</b>	44:20	<b>10:47:36 (1)</b>
29:15	<b>10:18:35 (1)</b>	39:20	<b>10:42:12 (1)</b>	49:25
<b>10:12:37 (1)</b>	34:20	<b>10:35:39 (1)</b>	44:25	<b>10:47:48 (1)</b>
29:20	<b>10:18:52 (1)</b>	39:25	<b>10:42:19 (1)</b>	50:5
<b>10:12:50 (1)</b>	34:25	<b>10:35:59 (1)</b>	45:5	<b>10:48:13 (1)</b>
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<b>10:13:02 (1)</b>	35:11	<b>10:36:13 (1)</b>	45:10	<b>10:48:20 (1)</b>
30:5	<b>10:19:01 (1)</b>	40:10	<b>10:42:44 (1)</b>	50:15
<b>10:13:26 (1)</b>	35:5	<b>10:36:21 (1)</b>	45:15	<b>10:48:30 (1)</b>
30:10	<b>10:19:11 (1)</b>	40:15	<b>10:42:59 (1)</b>	50:20
<b>10:13:48 (1)</b>	35:10	<b>10:36:46 (1)</b>	45:20	<b>10:48:46 (1)</b>
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11:03:47 (1)	59:20	11:18:17 (1)	69:25	11:29:30 (1)
54:20	11:11:28 (1)	64:25	11:23:39 (1)	75:5
11:04:08 (1)	59:25	11:18:25 (1)	70:5	11:29:48 (1)

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<b>11:30:09 (1)</b>	80:20	<b>11:42:32 (1)</b>	90:25	<b>11:54:23 (1)</b>
75:20	<b>11:36:10 (1)</b>	85:25	<b>11:48:46 (1)</b>	96:15
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<b>11:30:36 (1)</b>	81:5	<b>11:42:54 (1)</b>	91:10	<b>11:55:04 (1)</b>
76:5	<b>11:36:56 (1)</b>	86:10	<b>11:49:15 (1)</b>	96:25
<b>11:30:53 (1)</b>	81:10	<b>11:43:25 (1)</b>	91:15	<b>11:55:09 (1)</b>
76:10	<b>11:37:08 (1)</b>	86:15	<b>11:49:28 (1)</b>	97:5
<b>11:30:59 (1)</b>	81:15	<b>11:43:36 (1)</b>	91:20	<b>11:55:24 (1)</b>
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<b>11:31:27 (1)</b>	81:25	<b>11:44:03 (1)</b>	92:15	<b>11:55:46 (1)</b>
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<b>11:31:51 (1)</b>	82:5	<b>11:44:11 (1)</b>	92:20	<b>11:55:55 (1)</b>
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79:10	<b>11:40:44 (1)</b>	89:15	<b>11:52:51 (1)</b>	100:5
<b>11:34:36 (1)</b>	84:15	<b>11:47:06 (1)</b>	95:5	<b>11:58:23 (1)</b>
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<b>11:35:33 (1)</b>	85:10	<b>11:48:20 (1)</b>	95:25	<b>11:59:40 (1)</b>
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<b>12:00:54 (1)</b>	107:5	<b>12:29:22 (1)</b>	117:10	<b>12:43:04 (1)</b>
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105:10	<b>12:26:41 (1)</b>	115:10	<b>12:40:29 (1)</b>	125:15
<b>12:05-12:20 (1)</b>	110:10	<b>12:33:22 (1)</b>	120:15	<b>12:47:50 (1)</b>
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