

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.

Civ. 488 (LAK)

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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VIDEOTAPED DEPOSITION  
OF  
MICHAEL SCAGNELLI  
New York, New York  
Thursday, January 22, 2009

Reported by:  
ANNETTE ARLEQUIN, CCR, RPR  
JOB NO. 20631

January 22, 2009  
9:49 a.m.

VIDEOTAPED deposition of MICHAEL SCAGNELLI, held at the offices of Debevoise & Plimpton, 919 Third Avenue, New York, New York, before Annette Arlequin, a Certified Court Reporter, a Registered Professional Reporter and a Notary Public of the State of New York.

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: BRANDON R. BERGSTRESSER, ESQ.  
BRENDON CALDON, ESQ.

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

ALSO PRESENT:

JORDAN MUMMERT, Legal Video Specialist

IT IS HEREBY STIPULATED AND AGREED, by and between the attorneys for the respective parties herein, that filing and sealing be and the same are hereby waived

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, shall be reserved to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be sworn to and signed before any officer authorized to administer an oath, with the same force and effect as if signed and sworn to before the Court.

\* Proceedings \*

THE VIDEOGRAPHER: This is the start of the tape labeled No. 1 of the videotaped deposition of Sergeant Michael Scagnelli in the matter Five Borough Bicycle Club versus City of New York.

This deposition is being held at Debevoise & Plimpton, 919 Third Avenue, New York, New York on January 22nd, 2008 -- 2009, I'm sorry, at approximately 9:49 a.m.

My name is Jordan Mummert from TSG Reporting, Inc. I'm the legal video specialist. The court reporter is Annette Arlequin in association with TSG Reporting, Inc.

Will the counsel please introduce yourselves.

MR. BERGSTRESSER: Brandon Bergstresser for the plaintiffs.

MR. CALDON: Brendon Caldon for the plaintiffs.

MR. CIAPPETTA: Nicholas Ciappetta, Assistant Corporation Counsel, Office of Michael A. Cardozo, for the defendants.

MR. BERGSTRESSER: [Directed to

1 \* Proceedings \*

2 videographer] One initial note. It's 09:49:27

3 actually not Sergeant Scagnelli, it's Chief 09:49:28

4 Scagnelli. 09:49:31

5 THE VIDEOGRAPHER: Okay. 09:49:31

6 MICHAEL SCAGNELLI, called as a

7 witness, having been duly sworn by a

8 Notary Public, was examined and testified

9 as follows:

10 \* \* \*

11 EXAMINATION BY

12 MR. BERGSTRESSER:

13 Q. Good morning, Chief Scagnelli. 09:49:52

14 My name, as you heard, is Brad 09:49:54

15 Bergstresser. I apologize. I'm getting over a 09:49:57

16 cold so if you have any difficulty understanding 09:50:00

17 me, let me know. I will do my best to speak 09:50:01

18 clearly and audibly. 09:50:04

19 Have you ever been deposed before? 09:50:05

20 A. Yes. 09:50:08

21 Q. Okay. How many times? 09:50:08

22 A. Probably five. 09:50:09

23 Q. Okay. So you're fairly familiar with 09:50:15

24 the process and -- 09:50:17

25 A. I am. 09:50:17

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1 M. Scagnelli

2 Q. -- how it works. 09:50:17

3 Okay. I'll be asking you questions. 09:50:18

4 You'll give your best answers to them. 09:50:20

5 If something is unclear or you don't 09:50:22

6 understand a question, just let me know. 09:50:24

7 Your counsel may be making objections 09:50:26

8 today and unless he directs you not to answer, 09:50:28

9 that's fine, but I'll also ask that you answer 09:50:31

10 the question. 09:50:34

11 Are you represented here by counsel 09:50:36

12 today, Chief Scagnelli? 09:50:39

13 A. Yes. 09:50:41

14 Q. And who is your counsel? 09:50:41

15 A. This gentleman right here 09:50:43

16 (indicating). 09:50:44

17 Q. Okay. You're indicating Nicholas 09:50:44

18 Ciappetta from the New York City Law Department; 09:50:46

19 is that correct?

20 A. Yes. 09:50:49

21 Q. I think you mentioned you had been 09:50:50

22 deposed approximately five times before. 09:50:54

23 Can you just give me a general idea 09:50:56

24 of what sorts of cases those were? 09:50:58

25 MR. CIAPPETTA: Objection as to form. 09:51:02

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1 M. Scagnelli

2 But you can answer. 09:51:04

3 A. One was, one involved Critical Mass. 09:51:04

4 Believe it or not, I don't even 09:51:17

5 remember what the others were. 09:51:18

6 Q. Okay. 09:51:20

7 A. I just don't remember. 09:51:20

8 Q. The one that involved Critical Mass, 09:51:21

9 do you recall approximately when you were 09:51:24

10 deposed? 09:51:25

11 A. Sometime within the last year. 09:51:26

12 Q. And what was that case about? 09:51:30

13 A. I don't really know. 09:51:34

14 Q. Was it a case against the City of New 09:51:36

15 York? 09:51:40

16 A. Yes. 09:51:40

17 Q. Okay. Were you a named defendant in 09:51:41

18 the case? 09:51:42

19 A. Yes. 09:51:42

20 Q. Was it a criminal matter or a civil 09:51:43

21 matter? 09:51:47

22 A. I would assume it was a civil matter. 09:51:51

23 Q. Okay. And do you, do you know the 09:51:54

24 nature of the charges that or the claims that 09:51:58

25 were being brought against you? 09:52:01

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1 M. Scagnelli

2 A. No. 09:52:02

3 MR. CIAPPETTA: Objection as to form. 09:52:03

4 BY MR. BERGSTRESSER: 09:52:05

5 Q. Do you know who the plaintiffs were 09:52:05

6 in that case? 09:52:07

7 A. I do not. 09:52:08

8 Q. Did you have any involvement in that 09:52:09

9 case other than being deposed? 09:52:13

10 A. No. 09:52:15

11 Q. Okay. So you were a named defendant 09:52:16

12 but you didn't -- there was nothing -- you were 09:52:19

13 not -- you did not play a role in that case 09:52:23

14 other than appearing as a witness at the 09:52:26

15 deposition. 09:52:27

16 MR. CIAPPETTA: Objection as to the 09:52:28

17 form. 09:52:29

18 You can answer. 09:52:30

19 A. Yes. 09:52:31

20 Q. Okay. Do you know if that case 09:52:31

21 proceeded to trial? 09:52:34

22 A. I have no idea. 09:52:35

23 Q. Okay. Did it settle? 09:52:36

24 A. I have no idea. 09:52:37

25 Q. Who were your attorney -- were you 09:52:38

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1 M. Scagnelli  
 2 represented in that deposition? 09:52:41  
 3 A. I was. 09:52:43  
 4 Q. Do you recall who your attorneys 09:52:44  
 5 were? 09:52:46  
 6 A. No. 09:52:46  
 7 Q. Do you know if they were from the New 09:52:46  
 8 York City Law Department? 09:52:49  
 9 A. They were. 09:52:49  
 10 Q. And do you recall the particular 09:52:50  
 11 issues about which you testified that day? 09:52:55  
 12 A. Yeah. There was a focus on arrests 09:52:59  
 13 made by people on bicycles during a Critical 09:53:11  
 14 Mass rally at the same time as the Republican 09:53:17  
 15 National Convention. 09:53:21  
 16 Q. Okay. Would that -- do you recall, 09:53:24  
 17 would that have been in -- the time period in 09:53:25  
 18 which you're talking about, would that have been 09:53:28  
 19 August 2004? 09:53:30  
 20 A. It was '04 so if the convention was 09:53:31  
 21 in August, the answer would be yes. 09:53:33  
 22 Q. Okay. I will represent to you that I 09:53:36  
 23 believe it was. 09:53:37  
 24 A. Okay. 09:53:37  
 25 Q. Do you recall how many plaintiffs 09:53:41  
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1 M. Scagnelli  
 2 there were in that case? 09:53:44  
 3 A. No. 09:53:45  
 4 Q. And were you, were you personally 09:53:46  
 5 present during that Critical Mass ride? 09:53:55  
 6 A. I was. 09:53:58  
 7 Q. The other depositions that you 09:54:00  
 8 referred to, do you recall approximately when 09:54:04  
 9 those took place? 09:54:06  
 10 A. They'd all be within the last 13 09:54:08  
 11 years or so, but I really don't remember. 09:54:18  
 12 Q. Do you recall what sort of cases -- 09:54:21  
 13 I'll withdraw that question. 09:54:24  
 14 Were those cases in which you were 09:54:25  
 15 appearing as a witness or were you a defendant 09:54:30  
 16 in any of those cases? 09:54:33  
 17 A. I don't know. 09:54:35  
 18 Q. Do you know if those were cases 09:54:37  
 19 brought -- withdraw that question. 09:54:39  
 20 Were the cases in which you appeared 09:54:43  
 21 as a result of being a member of the New York 09:54:46  
 22 Police Department as opposed to -- 09:54:51  
 23 A. Yes. 09:54:51  
 24 Q. Okay. They were not private 09:54:52  
 25 litigations. 09:54:53  
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1 M. Scagnelli  
 2 A. Correct. 09:54:54  
 3 MR. CIAPPETTA: Just let him finish 09:54:55  
 4 the question before you answer. 09:54:56  
 5 BY MR. BERGSTRESSER: 09:54:57  
 6 Q. Do you recall if they were -- well, 09:54:57  
 7 do you recall if they were civil proceedings? 09:55:00  
 8 A. Yes. 09:55:05  
 9 Q. And do you recall if you were 09:55:08  
 10 represented by, at that time, by members of the 09:55:09  
 11 New York City Law Department? 09:55:12  
 12 A. Yes, I do recall. 09:55:13  
 13 Q. Do you recall if any of those 09:55:16  
 14 depositions involved bicycling within the City 09:55:18  
 15 of New York? 09:55:27  
 16 MR. CIAPPETTA: Objection as to form. 09:55:27  
 17 You can answer. 09:55:28  
 18 A. Just that last one. 09:55:31  
 19 Q. Just the Critical Mass one that we 09:55:32  
 20 spoke about. Okay. 09:55:34  
 21 Do you recall if those other 09:55:35  
 22 depositions involved issues of public protest or 09:55:39  
 23 demonstrations? 09:55:43  
 24 A. I don't remember. 09:55:47  
 25 Q. And apart from the deposition 09:55:49  
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1 M. Scagnelli  
 2 concerning Critical Mass that we already spoke 09:55:57  
 3 about, have you ever given any sort of sworn 09:56:00  
 4 testimony regarding events during the 2004 09:56:02  
 5 Republican National Convention? 09:56:07  
 6 A. Other than what we just discussed, 09:56:09  
 7 no. 09:56:13  
 8 Q. Chief Scagnelli, did you do anything 09:56:13  
 9 to prepare for your deposition today? 09:56:15  
 10 A. Yes. 09:56:18  
 11 Q. What did you do? 09:56:19  
 12 A. Yesterday I spoke to another 09:56:19  
 13 attorney. Mark his name is? For maybe an hour 09:56:24  
 14 and 15 minutes. 09:56:29  
 15 And I spoke to my current attorney 09:56:31  
 16 for about 15 minutes or 20 minutes just this 09:56:37  
 17 morning. 09:56:41  
 18 Q. Okay. Do you happen to recall if the 09:56:41  
 19 attorney Mark was Mark Muschenheim? 09:56:45  
 20 A. Yes. 09:56:47  
 21 Q. And did you speak to him by phone or 09:56:48  
 22 in person? 09:56:50  
 23 A. In person. 09:56:50  
 24 Q. At the New York City Law Department? 09:56:51  
 25 A. Yes. 09:56:53  
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Page 14

1 M. Scagnelli

2 Q. Did you review any documents in 09:56:53  
3 preparing for your deposition today? 09:56:57

4 A. I did. 09:56:59

5 Q. Okay. Did you review any video 09:57:00  
6 material in preparation for your deposition? 09:57:03

7 A. No. 09:57:04

8 Q. When you reviewed documents, did you 09:57:05  
9 recall any facts that -- did any facts come to 09:57:11  
10 mind that you had previously forgotten? 09:57:15

11 MR. CIAPPETTA: Objection as to form. 09:57:21

12 A. Yes. 09:57:23

13 Q. And what were those facts that you 09:57:23  
14 recalled? 09:57:26

15 A. Dates. 09:57:26

16 Q. Dates of when things took place? 09:57:27

17 A. Correct. 09:57:29

18 Q. Do you recall what events? 09:57:31

19 A. Yes. 09:57:35

20 Q. What events? 09:57:36

21 A. The Critical Mass. 09:57:37

22 You're talking about the documents 09:57:46  
23 now? 09:57:47

24 Q. I'm talking about when you saw 09:57:48  
25 documents and recalled certain dates in 09:57:49

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Page 16

1 M. Scagnelli

2 A. I'm not sure. I think it might have 09:59:06  
3 been Albano, but I'm not sure. 09:59:10

4 Q. Okay. Possibly Lieutenant Daniel 09:59:12  
5 Albano? 09:59:14

6 A. Yes. 09:59:14

7 Q. Is that the name? 09:59:15

8 A. Um-hmm. 09:59:16

9 Q. And what did you speak with 09:59:16  
10 Lieutenant Albano about? 09:59:18

11 MR. CIAPPETTA: I'm going to object 09:59:19  
12 to that and instruct the witness not to 09:59:20  
13 answer on the basis of attorney-client 09:59:23  
14 privilege. 09:59:24

15 MR. BERGSTRESSER: Okay. Are you -- 09:59:28  
16 would you like to explore whether or not 09:59:30  
17 Lieutenant Albano discussed legally 09:59:32  
18 privileged matters with the witness first? 09:59:35

19 MR. CIAPPETTA: We can take a break 09:59:38  
20 and discuss that. 09:59:40

21 MR. BERGSTRESSER: Sure. 09:59:41

22 THE VIDEOGRAPHER: The time is 9:59. 09:59:41  
23 We're off the record. 09:59:43  
24 (Recess is taken.) 09:59:45

25 THE VIDEOGRAPHER: The time is 10:06. 10:04:18

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Page 15

1 M. Scagnelli

2 connection with events, what were those events? 09:57:52

3 A. Okay. The events were dates that I 09:57:54  
4 had written two letters, and the date of the RNC 09:57:58  
5 or at least the month and the year. 09:58:11

6 Q. Do you recall the recipients of those 09:58:13  
7 letters that you just mentioned? 09:58:16

8 A. Yes. 09:58:18

9 Q. Who were the recipients? 09:58:19

10 A. The president of Transportation 09:58:21  
11 Alternatives, Paul White, and a group, no name. 09:58:26  
12 I think the name of the group was Times Up. 09:58:35

13 Q. Okay. Chief, did you create any 09:58:38  
14 notes or other materials in preparation for 09:58:42  
15 today? 09:58:44

16 A. None. 09:58:45

17 Q. Did you speak with anyone other than, 09:58:46  
18 other than your attorneys concerning your 09:58:49  
19 deposition? 09:58:51

20 A. No. 09:58:51

21 Q. Did you speak with anyone from the 09:58:51  
22 New York Police Department Legal Bureau 09:58:55  
23 concerning your deposition? 09:58:58

24 A. Yes. Some period of time ago. 09:59:00

25 Q. Who was that person? 09:59:05

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Page 17

1 M. Scagnelli

2 We're on the record. 10:05:55

3 MR. BERGSTRESSER: All right. 10:05:58

4 Counsel, you're still directing Chief 10:05:59  
5 Scagnelli not to answer the question; is 10:06:01  
6 that correct? 10:06:02

7 MR. CIAPPETTA: Correct. 10:06:02

8 BY MR. BERGSTRESSER: 10:06:03

9 Q. Chief Scagnelli, do you recall when 10:06:03  
10 you met with Lieutenant Albano to prepare for 10:06:05  
11 this deposition? 10:06:07

12 MR. CIAPPETTA: Objection as to form. 10:06:09

13 You can answer the question. 10:06:19

14 A. I can answer that? Okay. 10:06:20  
15 Vaguely. 10:06:22

16 Q. And when was that? 10:06:25

17 A. One, two, three, four months ago. 10:06:26

18 Q. Okay. Between one to four months 10:06:32  
19 ago? 10:06:34

20 A. Yes. 10:06:34

21 Q. Do you recall if it was in December? 10:06:34

22 A. Don't. 10:06:36

23 Q. Okay. Could it have been in 10:06:37  
24 December? 10:06:39

25 A. That's a month ago so it could have 10:06:40

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1 M. Scagnelli  
 2 been. 10:06:43  
 3 Q. Okay. Do you recall when you were 10:06:43  
 4 informed that you would be a witness in this 10:06:44  
 5 litigation? 10:06:47  
 6 A. When he came to see me. 10:06:47  
 7 Q. Okay. So Lieutenant Albano is the 10:06:49  
 8 person who informed you that you would be 10:06:53  
 9 appearing as a witness; is that right? 10:06:54  
 10 A. Yes. 10:06:56  
 11 Q. And at that time you had further 10:06:56  
 12 discussions with him about the case; is that 10:06:59  
 13 right?  
 14 A. Yes. 10:07:03  
 15 Q. Did you discuss issues in the case 10:07:04  
 16 beyond preparing for this deposition? 10:07:09  
 17 MR. CIAPPETTA: Objection as to form 10:07:12  
 18 and I think I'll assert the attorney-client 10:07:20  
 19 privilege on that. 10:07:23  
 20 BY MR. BERGSTRESSER: 10:07:24  
 21 Q. Did you review any materials with 10:07:26  
 22 Lieutenant Albano in preparing for the 10:07:28  
 23 deposition? 10:07:29  
 24 MR. CIAPPETTA: You can answer that. 10:07:39  
 25 A. Repeat the question? 10:07:43  
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1 M. Scagnelli  
 2 documents you looked at with Lieutenant Albano? 10:08:40  
 3 A. Yes. 10:08:43  
 4 Q. How many? 10:08:44  
 5 A. Two. 10:08:45  
 6 Q. Were they New York Police Department 10:08:46  
 7 documents? 10:08:51  
 8 A. Yes. 10:08:56  
 9 MR. BERGSTRESSER: Counsel, are you 10:08:59  
 10 still objecting that the nature of those 10:08:59  
 11 documents is protected by attorney work 10:09:02  
 12 product? 10:09:05  
 13 MR. CIAPPETTA: Yes. 10:09:05  
 14 BY MR. BERGSTRESSER: 10:09:16  
 15 Q. Chief, do you know if Lieutenant 10:09:16  
 16 Albano had prepared the documents that he asked 10:09:19  
 17 you to look at? 10:09:22  
 18 MR. CIAPPETTA: Objection as to form. 10:09:23  
 19 You can answer that. 10:09:26  
 20 A. I do know. 10:09:27  
 21 Q. You do know. 10:09:28  
 22 And did he prepare those documents? 10:09:29  
 23 A. He did not. 10:09:32  
 24 Q. Do you know who did prepare those 10:09:33  
 25 documents? 10:09:35  
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1 M. Scagnelli  
 2 Q. Yeah. 10:07:45  
 3 Did you review any materials with 10:07:46  
 4 Lieutenant Albano in preparing for this 10:07:48  
 5 deposition? 10:07:49  
 6 A. Yes. 10:07:50  
 7 Q. What did you review? 10:07:50  
 8 MR. CIAPPETTA: That I would object 10:07:55  
 9 to on the attorney-client privilege and 10:07:57  
 10 attorney work product. 10:07:59  
 11 BY MR. BERGSTRESSER: 10:08:04  
 12 Q. Is Lieutenant Albano representing you 10:08:04  
 13 in this litigation, Chief? 10:08:06  
 14 A. I don't know. 10:08:09  
 15 Q. Do you know if he's representing any 10:08:11  
 16 of the defendants in this litigation? 10:08:12  
 17 A. I don't know. 10:08:14  
 18 Q. Did Lieutenant Albano discuss with 10:08:15  
 19 you other depositions that have been taken in 10:08:20  
 20 this case? 10:08:23  
 21 A. He did not. 10:08:23  
 22 Q. Did he tell you the names of anyone 10:08:25  
 23 else who had been deposed in the case? 10:08:28  
 24 A. He did not. 10:08:30  
 25 Q. Do you recall approximately how many 10:08:31  
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1 M. Scagnelli  
 2 A. I do. 10:09:35  
 3 Q. Who prepared them? 10:09:35  
 4 A. I did. 10:09:36  
 5 Q. Are they perhaps the letters which 10:09:37  
 6 you reviewed with counsel that you referred to 10:09:42  
 7 earlier? 10:09:46  
 8 A. Yes. 10:09:47  
 9 Q. Have you had any discussions with 10:09:48  
 10 individuals from the New York Police Department 10:10:06  
 11 other than Lieutenant Albano concerning your 10:10:09  
 12 deposition today? 10:10:11  
 13 A. No. 10:10:12  
 14 Q. Have you had any discussions with 10:10:13  
 15 individuals from the New York Police Department 10:10:15  
 16 other than Lieutenant Albano concerning this 10:10:16  
 17 litigation? 10:10:18  
 18 A. I have not. 10:10:19  
 19 Q. Chief, are you aware that the New 10:10:20  
 20 York Police Department was required to search 10:10:26  
 21 for and produce documents in response to 10:10:27  
 22 plaintiffs' discovery requests in this 10:10:30  
 23 litigation? 10:10:32  
 24 A. Yes. 10:10:33  
 25 Q. How do you know that? 10:10:35  
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1 M. Scagnelli  
2 A. By a conversation that I had with the 10:10:36  
3 lieutenant. 10:10:46  
4 Q. So Lieutenant Albano also informed 10:10:47  
5 you of plaintiffs' document requests; is that 10:10:49  
6 correct?  
7 A. Correct. 10:10:53  
8 Q. And he -- this took place in the 10:10:53  
9 approximately one to four-month period prior to 10:10:58  
10 this deposition? 10:11:01  
11 A. Yes. 10:11:02  
12 Q. Had you heard anything about 10:11:02  
13 plaintiffs' document requests prior to speaking 10:11:03  
14 with Lieutenant Albano? 10:11:06  
15 A. With regards to this case? 10:11:07  
16 Q. Yes.  
17 A. No. 10:11:10  
18 Q. Did you take any steps to assist in 10:11:10  
19 collecting or reviewing any materials for 10:11:17  
20 discovery in this litigation? 10:11:20  
21 A. Yes. 10:11:21  
22 Q. What steps did you take? 10:11:21  
23 A. I had my staff search for any 10:11:26  
24 documents that might exist with regards to this 10:11:33  
25 case. 10:11:37  
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1 M. Scagnelli  
2 Q. Okay. And where did your staff 10:11:37  
3 search? 10:11:41  
4 A. They searched in my office and they 10:11:42  
5 searched in my storage room. 10:11:47  
6 Q. Okay. And are materials -- do you 10:11:50  
7 have materials in your office dating back to 10:11:55  
8 2004? 10:11:58  
9 A. Yes. Office or the storage room, one 10:12:02  
10 or the other. 10:12:04  
11 Q. Okay. Do you know how far back in 10:12:05  
12 time records are kept in either your office or 10:12:08  
13 the storage room? 10:12:11  
14 A. I do. 10:12:14  
15 Q. And how far is that? 10:12:15  
16 A. February of 2002. 10:12:17  
17 Q. Chief, do you have a New York Police 10:12:22  
18 Department email account? 10:12:28  
19 A. I do. 10:12:29  
20 Q. Actually before we -- before I ask 10:12:31  
21 you about your email, do you know if the person 10:12:32  
22 or your staff located any documents to be 10:12:36  
23 produced in the litigation? 10:12:39  
24 A. They did. 10:12:40  
25 Q. And do you know if those documents 10:12:41  
TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
2 were produced? 10:12:43  
3 A. They were. 10:12:44  
4 Q. Do you recall the volume of 10:12:44  
5 documents -- 10:12:49  
6 A. Volume? 10:12:49  
7 Q. Yes. 10:12:49  
8 A. Yes. 10:12:50  
9 MR. CIAPPETTA: Objection as to form. 10:12:50  
10 BY MR. BERGSTRESSER:  
11 Q. How large was the volume? 10:12:53  
12 A. Two sheets of paper. 10:12:54  
13 Q. Were they two letters that you had 10:12:57  
14 sent to Transportation Alternatives and Times 10:13:00  
15 Up? 10:13:03  
16 A. Yes. 10:13:03  
17 Q. Have you ever used your NYPD email 10:13:05  
18 account for police business? 10:13:09  
19 A. I have never used it for police 10:13:14  
20 business. I don't know how to use a computer. 10:13:17  
21 Q. All right. I take it, then, that you 10:13:19  
22 have never sent or received an email concerning 10:13:21  
23 Critical Mass. 10:13:24  
24 A. Correct. 10:13:24  
25 Q. Have you ever sent or received any 10:13:25  
TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
2 email concerning a police officer who was 10:13:30  
3 injured in connection with a group bicycling 10:13:33  
4 event? 10:13:37  
5 A. I have not. 10:13:37  
6 Q. And I take it you have not sent or 10:13:38  
7 received any emails concerning this litigation. 10:13:41  
8 A. Correct. 10:13:43  
9 Q. Chief, do you have a PDA such as a 10:13:46  
10 BlackBerry or a Nextel device? 10:13:54  
11 A. I don't have a BlackBerry. I have 10:13:58  
12 two department phones. 10:14:04  
13 Q. Okay. Have you ever sent -- used 10:14:06  
14 either of those phones to send or receive text 10:14:10  
15 messages? 10:14:13  
16 A. With regards to police work, never. 10:14:17  
17 Q. Have you ever used it for personal 10:14:24  
18 reasons discussing group bicycling events or 10:14:31  
19 Critical Mass? 10:14:35  
20 A. No. 10:14:35  
21 Q. Chief, do you keep a folder or other 10:14:40  
22 collection of articles or reports relating to 10:14:44  
23 Critical Mass? 10:14:47  
24 A. No. 10:14:48  
25 Q. All right. Chief, I'd like to ask 10:14:49  
TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 you a few questions about your background. 10:14:54  
 3 Were you employed prior to joining 10:14:57  
 4 the New York Police Department? 10:14:58  
 5 A. Part time. 10:15:06  
 6 Q. And where was that? 10:15:14  
 7 A. Well, I was a college student and I 10:15:15  
 8 drove a cab, and sold ice cream on a truck and 10:15:19  
 9 things like that. 10:15:23  
 10 Q. Approximately what time period was 10:15:23  
 11 that? 10:15:25  
 12 A. Late '60s. 10:15:26  
 13 Q. Did you attend the Police Academy? 10:15:32  
 14 A. I did. 10:15:33  
 15 Q. When was that? 10:15:34  
 16 A. 1970. 10:15:35  
 17 Q. When did you graduate? 10:15:36  
 18 A. Six months later. 10:15:38  
 19 Q. And at that time you began working -- 10:15:40  
 20 are you considered a full-time employee of the 10:15:45  
 21 police department while you're at the academy? 10:15:47  
 22 A. Yes. 10:15:49  
 23 Q. And when you graduated the academy, 10:15:53  
 24 what, what -- do you recall what your first post 10:15:56  
 25 was within the police department? 10:16:01  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 A. My first assignment was the 77 10:16:02  
 3 Precinct. 10:16:05  
 4 Q. If you could -- I know you have a 10:16:07  
 5 long career with the police department. 10:16:09  
 6 If you could please give me a brief 10:16:11  
 7 overview of the ranks and commands that you've 10:16:13  
 8 had in your time at the police department. 10:16:17  
 9 A. Well, I've had every rank up to Chief 10:16:21  
 10 of Transportation and skipping none, and I've 10:16:27  
 11 had a myriad of assignments. 10:16:32  
 12 Q. Okay.  
 13 A. Do you want me to go through them 10:16:36  
 14 all? 10:16:37  
 15 Q. Well, what -- when did you become 10:16:38  
 16 Chief of Transportation? 10:16:40  
 17 A. 2002. 10:16:41  
 18 Q. And what rank did you hold 10:16:44  
 19 immediately prior to that? 10:16:48  
 20 A. Assistant chief. 10:16:49  
 21 Q. And what -- was that also in the 10:16:51  
 22 transportation department or -- 10:16:55  
 23 A. Not at that time. 10:16:57  
 24 Q. Okay. What -- is command or unit the 10:16:58  
 25 proper term for what unit you were assigned to 10:17:02  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 at that time? 10:17:05  
 3 A. I was assigned at that time just 10:17:06  
 4 before my promotion to the Chief of Departments 10:17:09  
 5 Office. 10:17:12  
 6 Q. Okay. And is the Chief of 10:17:12  
 7 Departments Office, does that have any 10:17:14  
 8 geographical area or does that, does that -- 10:17:17  
 9 A. It's in --  
 10 Q. -- span the entire force. 10:17:20  
 11 A. It's in police headquarters if you're 10:17:21  
 12 asking for a locale. 10:17:24  
 13 Q. Okay. But it doesn't have a 10:17:25  
 14 particular jurisdiction within the city. 10:17:27  
 15 A. It does. 10:17:29  
 16 Q. And what's that jurisdiction? 10:17:29  
 17 A. The entire city. 10:17:31  
 18 Q. Okay. And what rank did you hold 10:17:33  
 19 before, or I'm sorry, what command did you hold 10:17:37  
 20 before being the assistant chief in the Chief of 10:17:41  
 21 Departments Office? 10:17:45  
 22 A. Just before that? 10:17:48  
 23 Q. Yes.  
 24 A. I was assigned to a patrol, Borough 10:17:51  
 25 Manhattan South, as the executive officer. 10:17:54  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 Q. Okay. And when was it that you were 10:17:55  
 3 promoted from executive officer of the whole 10:17:59  
 4 Borough Manhattan South to assistant chief? 10:18:02  
 5 A. I had been an assistant chief. You 10:18:05  
 6 see, you're confusing assignments with rank. 10:18:08  
 7 Q. I apologize with my unfamiliarity 10:18:10  
 8 with the command hierarchy of the New York 10:18:13  
 9 Police Department. 10:18:19  
 10 When did you become assistant chief? 10:18:19  
 11 A. I became an assistant chief in August 10:18:22  
 12 of '95. 10:18:25  
 13 Q. Okay. And when were you promoted to 10:18:27  
 14 chief? 10:18:29  
 15 A. 2002. 10:18:31  
 16 Q. Okay. And I understand that there 10:18:37  
 17 are different levels of stars given to chiefs in 10:18:40  
 18 the New York Police Department; is that correct? 10:18:44  
 19 A. Yes, um-hmm. 10:18:45  
 20 Q. And when you initially became a chief 10:18:45  
 21 in 2002, was that as a one-star chief? 10:18:49  
 22 A. No. In 2002 I was a three-star 10:18:52  
 23 chief. 10:18:56  
 24 Q. Okay. I apologize. I may be 10:18:57  
 25 confused as to how the hierarchy works. 10:19:00  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 Is there -- what is the rank 10:19:03  
 3 immediately above a three-star chief? 10:19:06  
 4 A. Immediately above a three-star chief 10:19:09  
 5 is the singular chief of department. 10:19:11  
 6 Q. Are there such things as two-star 10:19:14  
 7 chiefs? 10:19:16  
 8 A. Yes. 10:19:17  
 9 Q. What rank are they in comparison to a 10:19:17  
 10 three-star chief? 10:19:21  
 11 A. They are called assistant chief and 10:19:22  
 12 they're obviously two is one below three. 10:19:24  
 13 Q. Okay. So an assistant chief is still 10:19:27  
 14 a two-star chief; is that correct? 10:19:33  
 15 A. Yes. 10:19:35  
 16 Q. A three-star chief is just a chief. 10:19:35  
 17 I mean not just a chief. I mean... 10:19:40  
 18 A. I think you got that backwards, but 10:19:41  
 19 just a chief would employ less than a two-star 10:19:44  
 20 chief and it's actually -- 10:19:47  
 21 Q. I understand. I did not mean any 10:19:48  
 22 such implication. 10:19:50  
 23 I meant a three-star chief is higher 10:19:51  
 24 than an assistant chief. 10:19:55  
 25 A. Yes. 10:19:56  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 Q. Okay. Do you not recall? 10:21:24  
 3 A. I probably was. 10:21:38  
 4 Q. Okay. Do you recall any specific 10:21:41  
 5 cases in which you were a defendant? 10:21:44  
 6 A. No. 10:21:46  
 7 Q. Do you recall any specific cases in 10:21:46  
 8 which you were a plaintiff? 10:21:48  
 9 A. Say again? 10:21:49  
 10 Q. Do you recall any specific cases in 10:21:51  
 11 which you were a plaintiff? 10:21:53  
 12 A. A plaintiff? 10:21:54  
 13 Q. Yes. Initially I asked you about 10:21:55  
 14 being a defendant. 10:21:57  
 15 A. Yeah. No, I was never a plaintiff. 10:21:58  
 16 Q. Okay. Do you recall now that you may 10:21:59  
 17 have been a defendant? 10:22:02  
 18 A. I keep using the word "probably" and 10:22:03  
 19 I'm staying with it. Probably. 10:22:06  
 20 Q. Okay. But you don't recall any 10:22:08  
 21 specific -- 10:22:09  
 22 A. Correct. 10:22:10  
 23 MR. CIAPPETTA: Objection. Asked and 10:22:11  
 24 answered. 10:22:12  
 25 BY MR. BERGSTRESSER: 10:22:16  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 Q. For lack of a better term, a full 10:19:58  
 3 chief. 10:20:00  
 4 A. Yes. 10:20:00  
 5 MR. CIAPPETTA: Objection as to form. 10:20:01  
 6 BY MR. BERGSTRESSER: 10:20:03  
 7 Q. When did you become a two-star chief? 10:20:03  
 8 A. A two-star chief? 10:20:06  
 9 Q. Yes.  
 10 A. As I said a couple minutes ago, that 10:20:17  
 11 would have been August of '95. 10:20:20  
 12 Q. And what assignment did you have 10:20:25  
 13 prior to being the XO of the Patrol Borough 10:20:29  
 14 Manhattan South? 10:20:41  
 15 A. I was commanding officer of the 10:20:41  
 16 Transit Division. 10:20:44  
 17 Q. And when did you become the XO of 10:20:45  
 18 Patrol Borough Manhattan South? 10:20:50  
 19 A. When I got transferred from Transit. 10:20:53  
 20 I don't really remember when it was. '97, '98. 10:20:57  
 21 Q. Okay. Apart from the Critical Mass 10:21:01  
 22 litigation that we've already discussed a little 10:21:10  
 23 bit, have you ever been the plaintiff or a 10:21:12  
 24 defendant in a lawsuit? 10:21:15  
 25 A. Probably. 10:21:18  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 Q. Chief, have you ever been arrested? 10:22:16  
 3 A. No, sir. 10:22:18  
 4 Q. Have you ever been issued a summons? 10:22:19  
 5 A. Before I became a police officer, I 10:22:23  
 6 think I got a couple of parking tickets, maybe a 10:22:29  
 7 moving violation 40 years ago. 10:22:35  
 8 Q. Do you recall if any of those had to 10:22:39  
 9 do with bicycling? 10:22:41  
 10 A. No, they didn't. 10:22:42  
 11 Q. Chief, have you ever been involved in 10:22:43  
 12 any employment disciplinary proceedings 10:22:48  
 13 concerning yourself? 10:22:51  
 14 MR. CIAPPETTA: I'm just -- can we 10:22:52  
 15 take a break so we can discuss -- I need to 10:22:53  
 16 discuss this line with... 10:22:55  
 17 MR. BERGSTRESSER: Sure. 10:22:57  
 18 THE VIDEOGRAPHER: The time is 10:23. 10:22:58  
 19 We're off the record. 10:23:01  
 20 (Counsel and witness confer.) 10:28:44  
 21 THE VIDEOGRAPHER: The time is 10:29. 10:28:54  
 22 We're on the record. 10:29:12  
 23 MR. BERGSTRESSER: Would you please 10:29:17  
 24 read the last question. 10:29:17  
 25 (Question was read back as follows:  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 "QUESTION: Chief, have you ever been 10:22:47  
 3 involved in any employment disciplinary 10:22:48  
 4 proceedings concerning yourself?" 10:22:50  
 5 MR. CIAPPETTA: You can answer that 10:29:28  
 6 question. 10:29:29  
 7 A. Yes. 10:29:30  
 8 Q. And when was that? 10:29:31  
 9 A. I don't really remember -- the only 10:29:33  
 10 one I really -- I only remember two and there 10:29:40  
 11 are others, but they are all minor in nature. 10:29:42  
 12 When I was a rookie in undercover 10:29:47  
 13 narcotics work, I had two undercover guns. One 10:29:50  
 14 broke. I took it apart and I wrapped it in 10:29:55  
 15 treated cloth and put it in a closet that had 10:30:02  
 16 pipes in it in my room, and I got home one 10:30:07  
 17 evening, went into my room and the closet door 10:30:14  
 18 was open and things were moved. 10:30:17  
 19 And I immediately thought of this 10:30:21  
 20 gun, that didn't work, got on a little step 10:30:23  
 21 stool, went and the gun was gone. 10:30:29  
 22 I ran down to my mother and she told 10:30:31  
 23 me that there had been a plumber there that day 10:30:34  
 24 doing some work and he had to get to the pipes 10:30:36  
 25 right where the gun was, and the son of the gun 10:30:38  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 stole the gun. I never got the gun back. It 10:30:42  
 3 didn't work. 10:30:45  
 4 He was accused, couldn't prove 10:30:45  
 5 anything and I was written up for losing that 10:30:47  
 6 gun. 10:30:52  
 7 I got a CCRB complaint once. I was a 10:30:55  
 8 detective in Bay Ridge. I had arrested a young 10:30:58  
 9 man for making hundreds of phoney 911 calls 10:31:03  
 10 saying police were in trouble. I worked on the 10:31:10  
 11 case. I arrested him and after I arrested him, 10:31:15  
 12 he made an allegation to CCRB, which was then 10:31:18  
 13 handled by internal police, Internal Affairs 10:31:21  
 14 police, and the allegation was that I tricked 10:31:27  
 15 him into confessing to his in fact guilt. 10:31:29  
 16 And I was brought down and the people 10:31:36  
 17 that were questioning me, I reminded them that 10:31:40  
 18 you're allowed to trick people into confessing. 10:31:44  
 19 And as a matter of fact, the day that I was 10:31:47  
 20 there, the day before there was a front page 10:31:51  
 21 article in the New York Times about the Supreme 10:31:53  
 22 Court the day before that reaffirming that 10:31:58  
 23 police officers could trick bad guys into 10:32:01  
 24 confessing, and I showed them the article and 10:32:04  
 25 they dismissed the case. 10:32:07  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 And there are a couple of other 10:32:09  
 3 things, all minor in nature, nothing 10:32:10  
 4 significant. I just don't remember what they 10:32:13  
 5 were. 10:32:15  
 6 Q. Do you remember any of the things 10:32:15  
 7 that were minor in nature? 10:32:17  
 8 A. That's all I can remember. 10:32:18  
 9 Q. And when you say they were minor in 10:32:19  
 10 nature, I know you may not remember the exact 10:32:23  
 11 things that took place, but can you remember the 10:32:26  
 12 sorts of things that you would consider minor? 10:32:27  
 13 A. I don't remember, but they were 10:32:30  
 14 things that any normal thinking human being 10:32:33  
 15 would think were minor. 10:32:38  
 16 Q. Okay. Do you recall approximately 10:32:40  
 17 when the CCRB complaint took place? 10:32:44  
 18 A. The one that I just talked about? 10:32:49  
 19 Q. Yes.  
 20 A. It had to be between '77 and '81. 10:32:56  
 21 Q. Do you recall any other employment 10:33:04  
 22 related disciplinary proceedings? 10:33:07  
 23 A. I don't recall. They exist, but 10:33:09  
 24 they're minor in nature and I don't recall them. 10:33:13  
 25 Q. Okay. Do you remember when the most 10:33:15  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 recent one, minor or otherwise, was? 10:33:17  
 3 A. I don't. 10:33:19  
 4 Q. Have you ever been the subject of any 10:33:20  
 5 other CCRB complaints besides the one you told 10:33:26  
 6 us about? 10:33:29  
 7 A. Yes. 10:33:29  
 8 Q. Approximately how many? 10:33:31  
 9 A. A very small number, single digit. 10:33:32  
 10 Q. Okay. Do you recall the details of 10:33:39  
 11 any of those? 10:33:40  
 12 A. I don't. 10:33:40  
 13 Q. Do you recall when the last one was? 10:33:41  
 14 A. Way, way, way back, but I don't know 10:33:43  
 15 when. 10:33:49  
 16 Q. Okay. Does that mean more than ten 10:33:50  
 17 years ago? 10:33:51  
 18 A. Oh, I'm sure. 10:33:52  
 19 Q. More than 20 years ago? 10:33:53  
 20 A. I don't know. 10:33:54  
 21 Q. Chief Scagnelli, do you own a bike? 10:33:56  
 22 A. I do. 10:34:05  
 23 Q. Do you ride it on a regular basis? 10:34:07  
 24 MR. CIAPPETTA: Objection as to form. 10:34:09  
 25 You can answer. 10:34:13  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 A. I haven't recently because I've just 10:34:15  
 3 been too busy, but I used to. 10:34:18  
 4 Q. When was the last time you rode? 10:34:20  
 5 A. Probably six months ago. 10:34:22  
 6 Q. And did you ride it within New York 10:34:24  
 7 City? 10:34:29  
 8 A. Yes. 10:34:29  
 9 Q. Where specifically within the city? 10:34:29  
 10 A. In Staten Island and in Manhattan. 10:34:33  
 11 Q. Where in Manhattan? 10:34:37  
 12 A. Central Park. 10:34:38  
 13 Q. When you -- you said that you used to 10:34:41  
 14 ride more frequently when you had more time. 10:34:47  
 15 Approximately how often would you 10:34:50  
 16 ride your bike? 10:34:54  
 17 A. Oh, I don't know. Once or twice a 10:34:58  
 18 week. 10:35:01  
 19 Q. And why would you ride your bike? 10:35:02  
 20 A. Exercise. 10:35:05  
 21 Q. Have you ever participated in bicycle 10:35:07  
 22 rides with other people? 10:35:11  
 23 A. No. 10:35:12  
 24 Q. Chief, have you ever been injured as 10:35:15  
 25 a result of riding your bike? 10:35:18  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 ride in a particular portion of the street. 10:36:42  
 3 A. With bike lanes? 10:36:43  
 4 Q. That do not have bike lanes.  
 5 A. You just said with though. 10:36:49  
 6 MR. CIAPPETTA: Note my objection to 10:36:49  
 7 the last question. 10:36:50  
 8 BY MR. BERGSTRESSER:  
 9 Q. I believe I said without, but just to 10:36:45  
 10 clarify -- 10:36:54  
 11 A. You want to read it back? 10:36:55  
 12 Q. Why don't I rephrase it altogether. 10:36:57  
 13 A. All right. 10:36:59  
 14 Q. On a street without bike lanes, do 10:36:59  
 15 you know if bicycles are required to proceed in 10:37:03  
 16 a certain portion of the roadway? 10:37:07  
 17 A. I don't think you can lump all 10:37:12  
 18 streets in together, but there are rules to the 10:37:14  
 19 effect of being to the left or right. 10:37:18  
 20 But I wouldn't want -- I wouldn't 10:37:20  
 21 want to testify to that because I could be 10:37:22  
 22 wrong. 10:37:26  
 23 Q. Okay. So you're not sure. 10:37:26  
 24 A. Correct. 10:37:27  
 25 Q. On a street with multiple lanes, say 10:37:32  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 A. No. 10:35:18  
 3 Q. Chief, did you ever work as a 10:35:29  
 4 bike-mounted officer? 10:35:33  
 5 A. No, sir. 10:35:35  
 6 Q. Have you ever ridden a scooter as a 10:35:37  
 7 police officer? 10:35:42  
 8 A. In training. 10:35:48  
 9 Q. Chief, are you familiar with the laws 10:35:52  
 10 regarding bicycling in New York City? 10:35:56  
 11 A. Somewhat. 10:35:59  
 12 Q. Okay. Do you know on the streets 10:36:04  
 13 without bike lanes if cyclists are required to 10:36:07  
 14 ride in a particular portion of the street? 10:36:11  
 15 A. There are a whole lot of rules there. 10:36:15  
 16 I'm not so familiar with them that I'd want to 10:36:18  
 17 give testimony as to my knowledge of them, but I 10:36:21  
 18 know there are different rules. 10:36:24  
 19 If a street is X amount of width, 10:36:25  
 20 they got to be on either the left side or the 10:36:28  
 21 right side. 10:36:31  
 22 I mean I'd have to read it. 10:36:31  
 23 Q. Okay. So just to clarify, as you sit 10:36:33  
 24 here today, you don't know if on streets without 10:36:37  
 25 bike lanes whether bicycles are required to 10:36:39  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 a one-way street with multiple lanes of more 10:37:35  
 3 than 40 feet in width, if the curbside lane is 10:37:38  
 4 full of parked vehicles, do you know where a 10:37:43  
 5 bicyclist is permitted to proceed on that 10:37:47  
 6 roadway?  
 7 MR. CIAPPETTA: Can you just read 10:37:50  
 8 that back for me, please? 10:37:51  
 9 (Question was read back as follows:  
 10 "QUESTION: On a street with multiple 10:37:32  
 11 lanes, say a one-way street with multiple 10:37:34  
 12 lanes of more than 40 feet in width, if the 10:37:37  
 13 curbside lane is full of parked vehicles, 10:37:41  
 14 do you know where a bicyclist is permitted 10:37:45  
 15 to proceed on that roadway?") 10:37:48  
 16 MR. CIAPPETTA: You can answer. 10:38:15  
 17 A. Bicyclists would have to be on the 10:38:19  
 18 left or the right, not in the center. 10:38:21  
 19 Q. Okay. If the left or the right lanes 10:38:27  
 20 are curb lanes that are filled with cars, is a 10:38:31  
 21 bicyclist still required to proceed in the left 10:38:35  
 22 or the right lane? 10:38:37  
 23 A. I don't know. 10:38:38  
 24 Q. What is the basis for your statement 10:38:43  
 25 that the bicyclist would have to be not in the 10:38:46  
 TSG Reporting - Worldwide 877-702-9580

Page 42

1 M. Scagnelli  
2 center? 10:38:50  
3 A. Just me reading the laws years ago. 10:38:53  
4 Q. Okay. Do you believe there's a 10:38:58  
5 specific provision of law that requires a 10:39:00  
6 bicyclist not proceed in the center of such a 10:39:02  
7 roadway? 10:39:05  
8 A. I don't know. I'm not an expert in 10:39:05  
9 what those laws say, so I'm uncomfortable in 10:39:08  
10 being definitive about any of them and I'm not 10:39:15  
11 being definitive about any of them. 10:39:20  
12 If you get the book out, I'll look at 10:39:21  
13 it and I'll give you an answer because I will 10:39:22  
14 have the knowledge of reading the book. 10:39:24  
15 Q. Do you know if a bicyclist is 10:39:27  
16 permitted to maintain a safe distance from 10:39:28  
17 parked cars in order to avoid being hit by a 10:39:32  
18 suddenly opened door? 10:39:36  
19 MR. CIAPPETTA: Objection as to form. 10:39:38  
20 A. I don't know any of that with any 10:39:39  
21 certainty. 10:39:45  
22 Q. Okay. Do you have a belief? 10:39:48  
23 A. No. 10:39:51  
24 Q. Okay. At this point actually I'd 10:39:53  
25 like to show you what I'd like to have marked as 10:40:00  
TSG Reporting - Worldwide 877-702-9580

Page 44

1 M. Scagnelli  
2 A. I'm not going to read it unless you 10:40:44  
3 direct me to read it -- 10:40:46  
4 Q. That's quite all right. 10:40:47  
5 A. -- and I'll take my time and read it. 10:40:49  
6 Q. I'll ask you to please take a look at 10:40:51  
7 Section 4-12 (p)(3). 10:40:53  
8 (Document review.) 10:40:56  
9 MR. BERGSTRESSER: 10:41:00  
10 MR. CIAPPETTA: I would like to note 10:41:01  
11 for the record this is a five-page document 10:41:03  
12 that is paginated 51, 52, 53, 54 and then 10:41:04  
13 57. 10:41:10  
14 A. 4-12, 5 what? 10:41:13  
15 Q. (P)(3). 10:41:16  
16 A. (P)(3). Is that on page 54? 10:41:19  
17 Q. It is. 10:41:23  
18 A. Okay. "Bicycles permitted on both 10:41:23  
19 sides of 40-foot wide one-way roadways. Any 10:41:27  
20 person operating a bicycle upon a roadway that 10:41:30  
21 carries traffic in one direction only and is at  
22 least 40 feet wide may ride as near as is  
23 practicable to either the left or the right-hand 10:41:41  
24 curb or edge of such roadway provided that 10:41:41  
25 bicycle does not... 10:41:54  
TSG Reporting - Worldwide 877-702-9580

Page 43

1 M. Scagnelli  
2 Exhibit -- actually, I believe this may have 10:40:05  
3 been marked in a previous deposition. Not this 10:40:07  
4 copy.  
5 MR. BERGSTRESSER: I'll ask the court 10:40:12  
6 reporter to mark -- no, no. That's the 10:40:13  
7 right one. I'd like to ask the court 10:40:15  
8 reporter to mark this as Exhibit 10:40:16  
9 Scagnelli-1 for identification. 10:40:19  
10 (Plaintiffs' Exhibit Scagnelli 1, 10:40:19  
11 Copy of document entitled "Section 4-12  
12 Miscellaneous," not Bates stamped, marked  
13 for identification, as of this date.) 10:40:33  
14 MR. CIAPPETTA: They're going to give 10:40:33  
15 you a copy. 10:40:34  
16 THE WITNESS: Okay. 10:40:37  
17 MR. CIAPPETTA: Take a few minutes to 10:40:35  
18 review it. 10:40:36  
19 (Document review.) 10:40:38  
20 BY MR. BERGSTRESSER: 10:40:38  
21 Q. I ask you to take a few minutes to 10:40:38  
22 look this over. 10:40:40  
23 A. I mean I'm looking it over. This is 10:40:40  
24 the law so... 10:40:42  
25 Q. Okay. 10:40:43  
TSG Reporting - Worldwide 877-702-9580

Page 45

1 M. Scagnelli  
2 (Document review.) 10:41:54  
3 Q. Chief, have you -- 10:42:06  
4 A. I'm not done. 10:42:16  
5 Q. Okay. 10:42:18  
6 (Document review.) 10:42:18  
7 A. Okay. 10:42:18  
8 Q. Now having reviewed this portion of 10:42:52  
9 the law, first of all, do you recognize that 10:42:54  
10 this is the applicable law in New York City, 10:42:59  
11 what you've just reviewed? 10:43:04  
12 A. Well, I mean you're handing it to me. 10:43:05  
13 I'm going to assume that you didn't alter it, 10:43:07  
14 and if you didn't alter it, it would be. 10:43:10  
15 Q. I'll represent to you this is an 10:43:12  
16 excerpt from the rules of the City of New York. 10:43:14  
17 A. Okay. Then it isn't. 10:43:17  
18 Q. To revisit the question that we've 10:43:19  
19 already gone over regarding where bicyclist is 10:43:20  
20 required to proceed on a one-way roadway, do you 10:43:23  
21 have a better recollection or understanding now 10:43:29  
22 of where a bicyclist is required to proceed on a 10:43:31  
23 one-way roadway of at least 40 feet in width? 10:43:36  
24 A. Well, this law says this particular 10:43:39  
25 thing. There could be things in here, additions 10:43:42  
TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 to this. I don't know, but I read that and I 10:43:47  
 3 understand what it says after reading it three 10:43:53  
 4 times. 10:43:54  
 5 Q. Okay. Well, you know, based on your 10:43:55  
 6 experience as a police officer and as a 10:43:57  
 7 three-star chief, and the chief of the 10:43:59  
 8 Transportation Bureau and formerly an assistant 10:44:01  
 9 chief and a head of the Transit Division, what 10:44:05  
 10 is your understanding of this law? 10:44:07  
 11 A. My understanding is exactly what the 10:44:11  
 12 law said and I'll read it to you if you like. 10:44:13  
 13 Q. No, that's okay. 10:44:16  
 14 So do you believe a bicyclist is not 10:44:18  
 15 required to proceed in the center of the 10:44:22  
 16 roadway? 10:44:23  
 17 MR. CIAPPETTA: Could you just read 10:44:25  
 18 back that again? 10:44:27  
 19 (Question was read back as follows:  
 20 "QUESTION: So do you believe a 10:44:19  
 21 bicyclist is not required to proceed in the 10:44:21  
 22 center of the roadway?") 10:44:22  
 23 MR. CIAPPETTA: Objection to form. 10:44:33  
 24 You can answer. 10:44:37  
 25 A. Well, required or allowed? Do you 10:44:39  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 mean allowed or required? 10:44:42  
 3 Q. I believe a bicyclist is well, not 10:44:46  
 4 required, which I suppose would mean allowed. 10:44:52  
 5 A. Well, according to this... 10:44:56  
 6 (Document review.) 10:45:03  
 7 A. It says, "Any person operating a 10:45:03  
 8 bicycle upon a roadway that carries traffic in 10:45:12  
 9 one direction only and is at least 40 feet wide 10:45:15  
 10 may ride as near as is practicable to either the 10:45:19  
 11 left or ride-hand curb or edge of such roadway, 10:45:26  
 12 provided that bicycles are not prohibited from 10:45:30  
 13 using said roadway." 10:45:32  
 14 And the law says nothing about the 10:45:34  
 15 middle of the road. 10:45:36  
 16 Q. So you would agree with me that 10:45:38  
 17 nothing in this provision prohibits a bicyclist 10:45:40  
 18 from proceeding in the center of the roadway. 10:45:42  
 19 A. I don't know what they mean. I don't 10:45:45  
 20 know who wrote this. I wouldn't have written it 10:45:52  
 21 that way and I don't really know what they mean. 10:45:54  
 22 You have to ask the legislators that 10:45:56  
 23 wrote it what they mean. I don't want to be 10:45:59  
 24 disagreeable at all. I want to be very 10:46:02  
 25 agreeable, but I've read this three times and I 10:46:03  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 don't know. 10:46:09  
 3 Q. So in your experience in both the 10:46:11  
 4 Transportation Bureau and the Transit 10:46:13  
 5 Department, you have never had the opportunity 10:46:17  
 6 to apply this law as you understand it. 10:46:23  
 7 MR. CIAPPETTA: Objection to form. 10:46:28  
 8 A. I personally have not, no. 10:46:31  
 9 Q. Are you aware of whether officers 10:46:33  
 10 under your command have? 10:46:34  
 11 A. I am not aware. 10:46:35  
 12 Q. Just to confirm, and I apologize if 10:46:36  
 13 it seems like we're rehashing old ground but I'm 10:46:46  
 14 not sure if I ever got an answer to my question, 10:46:49  
 15 so please correct me if I'm wrong, based on what 10:46:53  
 16 you said, looking at this, you can't say whether 10:46:56  
 17 this prohibits a bicyclist from proceeding in 10:47:00  
 18 the center of the roadway; is that correct? 10:47:03  
 19 MR. CIAPPETTA: Objection. Asked and 10:47:05  
 20 answered.  
 21 MR. BERGSTRESSER: With all due 10:47:07  
 22 respect, Counsel, it has not been answered 10:47:08  
 23 although it has been asked. 10:47:09  
 24 MR. CIAPPETTA: I disagree, but he 10:47:12  
 25 can answer again. 10:47:15  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 A. I'm saying that you have to ask the 10:47:16  
 3 people that wrote this what they mean. I'm not 10:47:17  
 4 sure what they mean, so I can't say yes or no 10:47:20  
 5 because I don't know. 10:47:22  
 6 Q. Okay. Chief, do you know if 10:47:23  
 7 bicyclists are permitted to ride three abreast 10:47:30  
 8 on a roadway in New York City? 10:47:33  
 9 A. There is something in this law that 10:47:39  
 10 says something about two or three abreast. I'm 10:47:40  
 11 not sure which, whether it's two or three. 10:47:43  
 12 And if I looked in here, I guess I 10:47:45  
 13 could find it. 10:47:48  
 14 Q. Okay. But as you sit here now, you 10:47:48  
 15 don't know. 10:47:50  
 16 A. Don't know. 10:47:50  
 17 Q. Chief, are you familiar with Vehicle 10:47:51  
 18 & Traffic Law Section 1234? 10:47:59  
 19 A. Maybe. Tell me what it is. 10:48:01  
 20 Q. Well, I'll take that to mean that you 10:48:03  
 21 are not familiar -- 10:48:06  
 22 A. I don't know the numbers, no. 10:48:06  
 23 MR. CIAPPETTA: Let him finish the 10:48:08  
 24 question. 10:48:09  
 25 BY MR. BERGSTRESSER: 10:48:10  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 Q. When I say Vehicle & Traffic Law 10:48:10  
 3 1234, you do not -- you are not aware of what 10:48:13  
 4 that specific provision of law provides. 10:48:18  
 5 MR. CIAPPETTA: Objection as to form. 10:48:20  
 6 You can answer it. 10:48:25  
 7 A. I don't know what you mean by what 10:48:26  
 8 you just said. 10:48:28  
 9 Q. Have you ever discussed with anyone 10:48:30  
 10 within the police department whether or not 10:48:36  
 11 certain provisions of law concerning bicyclists 10:48:39  
 12 applied within New York City? 10:48:45  
 13 A. I have not. 10:48:47  
 14 Q. Have you ever discussed with anyone 10:48:48  
 15 whether certain provisions of the law were 10:48:55  
 16 specifically applicable to Critical Mass 10:49:00  
 17 participants? 10:49:04  
 18 A. I have not. 10:49:04  
 19 MR. CIAPPETTA: Objection as to form. 10:49:05  
 20 BY MR. BERGSTRESSER: 10:49:07  
 21 Q. Chief, do you know if a bicyclist is 10:49:07  
 22 allowed to merge towards the center of a roadway 10:49:10  
 23 in order to avoid double-parked vehicles? 10:49:13  
 24 A. I'm smiling because if they didn't 10:49:20  
 25 avoid them, they'd crash into them. So I think 10:49:32  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 they'd have no choice, but I don't know what the 10:49:35  
 3 law says. 10:49:37  
 4 Q. Well, do you believe that the law 10:49:38  
 5 would be written in such a way that would 10:49:39  
 6 provide cyclists with no choice but to crash 10:49:41  
 7 into a double-parked vehicle? 10:49:44  
 8 MR. CIAPPETTA: Objection as to form. 10:49:45  
 9 You can go ahead and answer. 10:49:48  
 10 A. You would have to ask the people that 10:49:51  
 11 write some of these laws that are sometimes 10:49:52  
 12 confusing. 10:49:56  
 13 Q. With all due respect, Chief, we're 10:49:56  
 14 interested in asking people who enforce the laws 10:49:58  
 15 about how they enforce them and understand 10:50:00  
 16 them -- 10:50:03  
 17 A. Okay. 10:50:03  
 18 Q. -- in this case. 10:50:03  
 19 A. Well, I've never enforced that law 10:50:05  
 20 and I don't understand it. 10:50:07  
 21 Q. Okay. Chief, do you know if a 10:50:08  
 22 bicyclist -- say a bicyclist is on a one-way 10:50:13  
 23 roadway consisting of five lanes of traffic and 10:50:14  
 24 the bicyclist is -- say, there's parked cars on 10:50:19  
 25 both of the sides of the road so there's only 10:50:23  
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1 M. Scagnelli  
 2 three available traffic lanes, the bicyclist is 10:50:25  
 3 in the right-hand lane and wants to make a left 10:50:28  
 4 turn. 10:50:31  
 5 Do you know if the bicyclist is 10:50:31  
 6 allowed to merge across to the left-hand side of 10:50:33  
 7 the roadway in order to make a left turn? 10:50:36  
 8 MR. CIAPPETTA: Objection. 10:50:38  
 9 A. Okay. I don't know how else you'd 10:50:38  
 10 make the left turn so I would do it, you know, 10:50:44  
 11 but I don't understand the law. 10:50:47  
 12 I am -- once again, I'm not an expert 10:50:50  
 13 in bicycle law. Never purported to be. Never 10:50:51  
 14 was. 10:50:55  
 15 Q. Now, Chief, do you know if there's a 10:50:59  
 16 minimum speed limit for bicycles on New York 10:51:01  
 17 City streets? 10:51:04  
 18 A. That I do know. 10:51:05  
 19 Q. And what's the answer? 10:51:07  
 20 A. The same as a car; 30 miles an hour 10:51:08  
 21 unless posted otherwise. 10:51:12  
 22 Q. Okay. Is that the maximum or the 10:51:13  
 23 minimum speed limit? 10:51:14  
 24 A. That's the maximum. 10:51:15  
 25 Q. Okay. Is there a minimum speed 10:51:17  
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1 M. Scagnelli  
 2 limit? 10:51:18  
 3 A. Well, there's no posted minimum speed 10:51:18  
 4 limit. 10:51:27  
 5 However, with cars, a car wouldn't be 10:51:29  
 6 able to go so slow as to impede normal traffic. 10:51:33  
 7 Q. And do you believe that the same 10:51:40  
 8 requirement is applied to bicycles? 10:51:45  
 9 A. I'm sure it is because everything 10:51:48  
 10 that is illegal with a car is illegal with a 10:51:53  
 11 bicycle. Same VTL and traffic regulations 10:51:56  
 12 apply. 10:52:01  
 13 Q. Okay. What does it mean for a car to 10:52:02  
 14 impede normal traffic? 10:52:05  
 15 A. Well, to me that would be, for 10:52:07  
 16 example, if everyone is going 30 miles an hour 10:52:13  
 17 and you're in the middle lane going 2 miles an 10:52:15  
 18 hour, not because there's someone in front of 10:52:23  
 19 you going slow but there's no one in front of 10:52:25  
 20 you and you choose to go 2 miles an hour when 10:52:28  
 21 you can know 30 because there's enough space to 10:52:31  
 22 go 30, that would certainly be impeding traffic. 10:52:33  
 23 Q. Okay. What if in that situation 10:52:36  
 24 where traffic is generally going, let's say 10:52:37  
 25 there are three lanes of traffic that are all 10:52:39  
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1 M. Scagnelli  
 2 flowing approximately 30 miles per hour. 10:52:41  
 3 A. Um-hmm. 10:52:43  
 4 Q. If you're in a car traveling 10 miles 10:52:43  
 5 an hour because that's your choice, are you 10:52:45  
 6 impeding traffic? 10:52:48  
 7 MR. CIAPPETTA: Objection. 10:52:49  
 8 A. Yes. 10:52:50  
 9 Q. Okay. The same scenario, although 10:52:51  
 10 let's say you're riding a bike, and I'm sure you 10:52:56  
 11 would agree with me bicyclists tend to move at a 10:52:59  
 12 slower rate of speed than motor vehicles -- 10:53:04  
 13 A. They do. 10:53:04  
 14 Q. -- correct?  
 15 MR. CIAPPETTA: Let him finish the  
 16 question.  
 17 BY MR. BERGSTRESSER:  
 18 Q. So let's say there are three lanes of 10:53:06  
 19 traffic, motor vehicle traffic is moving at 10:53:08  
 20 approximately 30 miles per hour and as a 10:53:10  
 21 cyclist, you are in a lane proceeding 10 miles 10:53:13  
 22 per hour.  
 23 Are you impeding traffic? 10:53:16  
 24 MR. CIAPPETTA: Objection. 10:53:18  
 25 A. I'd have to see it, but probably not. 10:53:21  
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1 M. Scagnelli  
 2 have to rephrase it for me to answer it. 10:54:31  
 3 Q. Well, you said that the reason that 10:54:33  
 4 it would probably not be impeding traffic on a 10:54:37  
 5 bicycle is because 10 miles an hour is awfully 10:54:39  
 6 slow in a car and it's not awfully slow in a 10:54:42  
 7 bicycle. 10:54:44  
 8 So why does that fact -- I'll 10:54:44  
 9 rephrase that question. 10:54:50  
 10 What does that have to do with 10:54:52  
 11 whether or not a vehicle was impeding traffic? 10:54:54  
 12 A. I don't understand your question. 10:54:59  
 13 Q. Okay. I'll read your prior answer. 10:55:02  
 14 I asked, "Why would you be impeding 10:55:07  
 15 traffic in a motor vehicle but not on a bicycle 10:55:10  
 16 in that situation?" 10:55:12  
 17 And you answered, "Because 10 miles 10:55:13  
 18 an hour is awfully slow in a car. It's not 10:55:14  
 19 awfully slow on a bicycle." 10:55:17  
 20 Why does whether 10 miles an hour is 10:55:19  
 21 -- why is the fact that 10 miles an hour is slow 10:55:26  
 22 for a car but not slow for a bicycle relevant to 10:55:28  
 23 whether or not traffic is impeded? 10:55:31  
 24 A. Traffic -- I was maybe incorrectly 10:55:39  
 25 thinking in terms of whether I'd give someone a 10:55:42  
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1 M. Scagnelli  
 2 Q. Okay. Why would you be impeding 10:53:23  
 3 traffic in a motor vehicle but not on a bicycle 10:53:25  
 4 in that situation? 10:53:29  
 5 A. Because 10 miles an hour is awfully 10:53:36  
 6 slow in a car. It's not awfully slow in a 10:53:42  
 7 bicycle. 10:53:47  
 8 Q. Okay. So please correct me if I'm 10:53:48  
 9 wrong, but it sounds like you believe that the 10:53:52  
 10 relative average speed of a vehicle, whether 10:53:55  
 11 it's a motor vehicle or a bicycle, is a factor 10:53:58  
 12 in determining whether or not such a vehicle is 10:54:02  
 13 impeding traffic. 10:54:04  
 14 MR. CIAPPETTA: Could we get a read 10:54:05  
 15 back on that? I'm sorry. I missed that. 10:54:07  
 16 (Question was read back as follows:  
 17 "QUESTION: So please correct me if 10:53:48  
 18 I'm wrong, but it sounds like you believe 10:53:52  
 19 that the relative average speed of a 10:53:54  
 20 vehicle, whether it's a motor vehicle or a 10:53:57  
 21 bicycle, is a factor in determining whether 10:54:00  
 22 or not such a vehicle is impeding 10:54:03  
 23 traffic?") 10:54:05  
 24 MR. CIAPPETTA: Objection to form. 10:54:27  
 25 A. Yeah, I can't answer that. You'd 10:54:29  
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1 M. Scagnelli  
 2 ticket or not. 10:55:44  
 3 And perhaps the bicycle going 10 10:55:50  
 4 miles an hour might be, might be impeding 10:55:54  
 5 traffic, but I wouldn't give him a ticket for 10:55:57  
 6 it. 10:55:59  
 7 But if a car were going 10 miles an 10:55:59  
 8 hour when everybody else was going 30, I'd give 10:56:03  
 9 a ticket. 10:56:05  
 10 Q. But pursuant to the letter of the 10:56:05  
 11 law -- 10:56:06  
 12 A. Well, the letter of the law, the 10:56:06  
 13 bicycle may be breaking the law but... 10:56:07  
 14 MR. CIAPPETTA: Let him finish the 10:56:09  
 15 question before you answer it, please. 10:56:11  
 16 BY MR. BERGSTRESSER: 10:56:12  
 17 Q. So you believe that in the scenario 10:56:12  
 18 we've set up, if the bicyclist is going 10 miles 10:56:19  
 19 an hour and average motor vehicle traffic is 10:56:29  
 20 proceeding at 30 miles an hour, the bicyclist 10:56:31  
 21 may be breaking the law? 10:56:35  
 22 MR. CIAPPETTA: Objection as to form. 10:56:38  
 23 A. I'd have to see it, but maybe. I'm 10:56:43  
 24 not saying yes, I'm saying maybe. I'd have to 10:56:46  
 25 see it. It's speculation on my part not seeing 10:56:49  
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1 M. Scagnelli  
 2 it. 10:56:53  
 3 Q. And the reason that the cyclist might 10:56:53  
 4 be breaking the law is because it would be 10:56:56  
 5 impeding motor vehicle traffic? 10:56:57  
 6 MR. CIAPPETTA: Objection. 10:57:00  
 7 A. Or other bicycles. You can impede 10:57:04  
 8 bicycles too. 10:57:08  
 9 Q. Chief Scagnelli, as part of your role 10:57:10  
 10 as chief of the Transportation Bureau, are you 10:57:12  
 11 involved in educating and training the officers 10:57:16  
 12 under you in the enforcement of traffic laws? 10:57:21  
 13 A. No. 10:57:23  
 14 Q. Is there someone in your bureau who 10:57:24  
 15 fulfills that role? 10:57:28  
 16 MR. CIAPPETTA: Objection as to form. 10:57:29  
 17 A. Yes. 10:57:31  
 18 Q. Is there a particular person or are 10:57:31  
 19 there numerous people? 10:57:34  
 20 A. There are lots of people. 10:57:35  
 21 Q. Okay. Do you know if the officers 10:57:36  
 22 under your command are specifically trained on 10:57:40  
 23 what the laws applicable to bicyclists are? 10:57:46  
 24 A. I don't know. 10:57:50  
 25 Q. Would you expect that the officers 10:57:51  
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1 M. Scagnelli  
 2 under your command would be able to answer 10:57:54  
 3 questions about the law and the rules of the 10:57:57  
 4 road as we've been discussing today? 10:58:01  
 5 A. Not all of them. Some of them, yes, 10:58:05  
 6 because they have specific duties, but not all 10:58:07  
 7 of them. 10:58:09  
 8 Q. Chief, are you aware -- well, 10:58:09  
 9 actually, I'll withdraw that. 10:58:18  
 10 Generally speaking, does a bicyclist 10:58:19  
 11 have the same right to be on the road as a motor 10:58:22  
 12 vehicle does? 10:58:24  
 13 A. Absolutely. 10:58:25  
 14 Q. Why do you believe that? 10:58:28  
 15 A. Because the roads are for everybody. 10:58:30  
 16 They're for bicyclists, people in cars, trucks, 10:58:36  
 17 motorcycles, pedestrians. They're for all of 10:58:40  
 18 us. That's what's so great about America. 10:58:45  
 19 Q. Okay. But despite that -- I'll 10:58:51  
 20 withdraw that question. 10:58:57  
 21 Chief, are you aware of a grace 10:58:58  
 22 period which permits a motorist to avoid a 10:59:05  
 23 summons for having a non-working headlight if 10:59:08  
 24 that motorist can demonstrate that the headlight 10:59:11  
 25 has been fixed within 24 hours of receiving the 10:59:13  
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1 M. Scagnelli  
 2 summons? 10:59:15  
 3 A. Yes. 10:59:16  
 4 Q. And are there preprinted forms for 10:59:16  
 5 motorists to fill out to demonstrate that; is 10:59:20  
 6 that right?  
 7 A. Yes. 10:59:22  
 8 Q. Do you know what provision of law 10:59:22  
 9 provides for that? 10:59:25  
 10 A. I do not. 10:59:25  
 11 Q. But you're aware, you do believe it 10:59:27  
 12 is permitted by law. 10:59:30  
 13 A. It is absolutely permitted. 10:59:32  
 14 Q. Okay. Do you know if there's a 10:59:34  
 15 similar provision that applies to equipment 10:59:36  
 16 violations on bicycles? 10:59:43  
 17 A. I do not know. 10:59:45  
 18 Q. Okay. Let me give you a scenario. 10:59:48  
 19 If a bicyclist receives a ticket for 10:59:53  
 20 having an improper taillight -- well, actually, 10:59:54  
 21 I'll withdraw the question. 10:59:57  
 22 Are you aware of whether it's a 10:59:58  
 23 violation for a bicyclist to have an improperly 11:00:01  
 24 attached taillight? 11:00:04  
 25 A. I don't know. 11:00:05  
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1 M. Scagnelli  
 2 Q. I'll represent to you that it is a 11:00:06  
 3 violation for a bicyclist to have an improperly 11:00:11  
 4 affixed taillight. 11:00:14  
 5 And in the scenario where a bicyclist 11:00:15  
 6 receives a ticket for having a taillight say 11:00:19  
 7 attached to the back of his helmet, do you 11:00:23  
 8 believe that that bicyclist should similarly be 11:00:27  
 9 allowed to have the summons avoided if he can 11:00:30  
 10 demonstrate that the taillight has been properly 11:00:45  
 11 attached within 24 hours? 11:00:47  
 12 MR. CIAPPETTA: Note my objection. 11:00:49  
 13 A. Okay. I have no opinion on that 11:00:50  
 14 because I'm not a legislator. The legislators 11:00:56  
 15 make these laws and we enforce them and 11:01:01  
 16 everybody abides by them hopefully, so you'd 11:01:04  
 17 have to ask the people that have either made 11:01:07  
 18 such a law, I don't know if it exists, or 11:01:10  
 19 whether they think they should make such a law, 11:01:13  
 20 so I don't know. 11:01:16  
 21 Q. Chief, you're allowed to have a 11:01:16  
 22 personal opinion. 11:01:19  
 23 A. As a police chief, I shouldn't have a 11:01:19  
 24 personal opinion on that. 11:01:22  
 25 Q. Well, how about --  
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1 M. Scagnelli  
2 A. As a private citizen I might. 11:01:23  
3 Q. Let me ask you as a private citizen. 11:01:24  
4 A. What's fair is fair, so if people in 11:01:28  
5 cars can do it, people with bicycles should be 11:01:33  
6 able to do it too. 11:01:35  
7 Q. All right. Chief, I realize this is 11:01:36  
8 a broad question, but can you generally describe 11:01:46  
9 some of the responsibilities that the 11:01:49  
10 Transportation Bureau has? 11:01:50  
11 A. The Transportation Bureau, I'm the 11:01:55  
12 chief of the Transportation Bureau so they're my 11:02:04  
13 responsibilities, and my responsibilities are to 11:02:08  
14 oversee the Traffic Control Division, which 11:02:13  
15 consists of Highway Patrol, they're the officers 11:02:18  
16 that police our highways; the Manhattan Traffic 11:02:27  
17 Task Force officers who deal with directing 11:02:34  
18 traffic and giving summonses primarily in the 11:02:38  
19 Borough of Manhattan; the Movie and TV Unit, 11:02:43  
20 which has officers at every outdoor movie shoot 11:02:51  
21 and TV shoot outdoor in the public spaces; a 11:02:57  
22 unit called Stead, which in essence is a unit 11:03:07  
23 that regulates taxis, yellow medallion cabs, 11:03:13  
24 buses, New York City buses, and takes action 11:03:21  
25 against errant cab drivers and bus drivers and 11:03:30  
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1 M. Scagnelli  
2 related police work; the Parking Enforcement 11:03:36  
3 District, which are the traffic agents that 11:03:43  
4 direct traffic, give parking tickets out, tow 11:03:52  
5 vehicles, enforcing truck laws, enforce 11:04:00  
6 violations at street construction sites. 11:04:10  
7 You know, each of those units has, 11:04:24  
8 for lack of a better term, subunits within them 11:04:30  
9 that do more specific things within those 11:04:32  
10 realms. 11:04:35  
11 Q. Okay. Is there a traffic task force 11:04:36  
12 that deals with the boroughs other than 11:04:40  
13 Manhattan? 11:04:44  
14 A. No. 11:04:44  
15 Q. Who within NYPD has primary 11:04:46  
16 responsibility for things like traffic control 11:04:53  
17 within Brooklyn? 11:04:55  
18 A. Well, traffic control is a broad 11:04:57  
19 term. The borough commanders are involved, as 11:05:05  
20 is the Manhattan borough commander too, except 11:05:10  
21 that he gets a lot more help. 11:05:14  
22 But I have traffic agents that direct 11:05:16  
23 traffic and give parking tickets in every 11:05:18  
24 borough, including Staten Island. 11:05:21  
25 Highway Patrol patrols all the 11:05:24  
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1 M. Scagnelli  
2 highways; the Brooklyn highways, the Bronx 11:05:26  
3 highways, et cetera. 11:05:28  
4 The Taxi and Bus Unit goes 11:05:31  
5 everywhere. 11:05:38  
6 So that the bonus, so to speak, for 11:05:38  
7 Manhattan is the Manhattan Traffic Task Force 11:05:44  
8 which primarily works in Manhattan and is only 11:05:49  
9 taken out of Manhattan in emergencies. 11:05:51  
10 Q. And is the Manhattan Traffic Task 11:05:55  
11 Force, do they also handle issues of traffic, 11:05:59  
12 for lack of a better term, traffic management 11:06:02  
13 and ensuring smooth traffic flow within 11:06:05  
14 Manhattan? 11:06:10  
15 A. Yes, as do the traffic agents. They 11:06:11  
16 work in conjunction. 11:06:14  
17 Q. Okay. When you say "traffic agents," 11:06:16  
18 are those -- 11:06:18  
19 A. Civilian traffic agents. They're in 11:06:18  
20 uniform in the intersection directing traffic. 11:06:20  
21 Q. Okay. Are those also referred to as 11:06:23  
22 Traffic Enforcement Agents? 11:06:27  
23 A. Yes. 11:06:28  
24 Q. TEAs? 11:06:29  
25 A. Um-hmm. 11:06:29  
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1 M. Scagnelli  
2 Q. How does the Transportation Bureau 11:06:31  
3 carry out its goals of traffic management -- 11:06:40  
4 MR. CIAPPETTA: Objection as to form. 11:06:44  
5 BY MR. BERGSTRESSER: 11:06:45  
6 Q. -- in Manhattan? 11:06:45  
7 A. Well, I mean to give you the right 11:06:50  
8 answer is going to take me two hours. 11:06:55  
9 Q. Is it possible to give me a 11:06:58  
10 30-second -- 11:07:00  
11 A. No.  
12 Q. -- thumbnail sketch? 11:07:01  
13 A. No. 11:07:02  
14 Q. Okay. Is the Transportation Bureau 11:07:02  
15 or one of its units specifically tasked with the 11:07:06  
16 enforcement of traffic laws? 11:07:10  
17 A. Everybody that works for me is tasked 11:07:13  
18 with that. 11:07:16  
19 Q. Okay.  
20 A. Some to almost 100 percent of their 11:07:17  
21 day down to a smaller percentage. 11:07:23  
22 Q. Does the Transportation Bureau 11:07:28  
23 suggest changes to traffic rules within New York 11:07:30  
24 City? 11:07:33  
25 A. Yes. Sometimes. 11:07:35  
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1 M. Scagnelli  
 2 Q. Can you give me an example of when 11:07:36  
 3 that happened? 11:07:39  
 4 A. It doesn't happen enough, but the 11:07:40  
 5 latest example is the new law, comparatively new 11:07:45  
 6 law, it's September of -- August or September or 11:07:55  
 7 so of last year. 11:07:58  
 8 We now have a law which makes 11:07:59  
 9 spill-back not only a moving violation but also 11:08:07  
 10 a parking infraction. 11:08:09  
 11 Q. I'm sorry. What is spill-back? 11:08:12  
 12 A. Okay. Spill-back is, sometimes 11:08:14  
 13 people understand it as block the box, don't 11:08:18  
 14 block the box. You get -- you enter an 11:08:21  
 15 intersection while you have a green light but 11:08:25  
 16 then you wind up with a red light and you can't 11:08:29  
 17 get out of the intersection because there are 11:08:32  
 18 cars in front of you, and you're blocking the 11:08:34  
 19 box and now the people that have the green light 11:08:37  
 20 can't proceed because you're in their way. 11:08:40  
 21 Q. Okay. And who do you make these 11:08:42  
 22 suggestions to on what rules should be changed? 11:08:47  
 23 A. To the police commissioner through 11:08:51  
 24 our process. 11:08:55  
 25 Q. Okay. So is it the police 11:08:58  
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1 M. Scagnelli  
 2 commissioner himself who has the authority to 11:09:01  
 3 change the rules? 11:09:02  
 4 A. No, absolutely not. No. 11:09:02  
 5 What would happen is, let's say I 11:09:04  
 6 want to do something. I would go to our legal 11:09:07  
 7 people who would research it and then present it 11:09:12  
 8 to the police commissioner. 11:09:14  
 9 If the police commissioner thinks 11:09:16  
 10 it's a good idea, then he would go to the 11:09:17  
 11 mayor's office. 11:09:21  
 12 You know, we have legislative peoples 11:09:21  
 13 that represent the police department and the 11:09:23  
 14 mayor, so we would make a pitch and then 11:09:27  
 15 ultimately the mayor's office would decide if 11:09:30  
 16 they wanted to, for example, lobby Albany to try 11:09:32  
 17 to get a new law, which could be a traffic law 11:09:37  
 18 or it could be any law, or the mayor's office 11:09:39  
 19 could wind up going to the city council and 11:09:42  
 20 getting a local law. 11:09:46  
 21 Q. Okay.  
 22 A. And the new block the box spill-back 11:09:52  
 23 ticket is a local law. 11:09:53  
 24 Q. Is that the provision that's followed 11:09:54  
 25 for all changes to local laws that the police 11:09:57  
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1 M. Scagnelli  
 2 department recommends? 11:10:04  
 3 A. We can't change laws. We enforce 11:10:04  
 4 them. So we can recommend and then the process 11:10:07  
 5 either happens or it doesn't happen. 11:10:11  
 6 Q. And that's true not just for traffic 11:10:14  
 7 issues but all sorts of regulations or rules 11:10:16  
 8 that the police department might have a view on. 11:10:20  
 9 A. Any laws. 11:10:23  
 10 Q. Does the Transportation Bureau ever 11:10:30  
 11 make suggestions as to how certain lanes are 11:10:32  
 12 marked? 11:10:34  
 13 MR. CIAPPETTA: Objection. 11:10:35  
 14 A. We never have since 2002. 11:10:37  
 15 Q. Okay. But what -- well, what -- and 11:10:42  
 16 what happened in 2002? 11:10:44  
 17 A. It was created. It didn't exist 11:10:45  
 18 before then, the Transportation Bureau. 11:10:48  
 19 Q. Oh, you're saying -- I see what 11:10:50  
 20 you're saying. 11:10:52  
 21 But is that an example of something 11:10:53  
 22 the Transportation Bureau might get involved in 11:10:55  
 23 if it thought that -- 11:10:58  
 24 A. To do what now? 11:11:00  
 25 MR. CIAPPETTA: Please let -- 11:11:01  
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1 M. Scagnelli  
 2 BY MR. BERGSTRESSER: 11:11:02  
 3 Q. Let me rephrase the question. 11:11:02  
 4 MR. CIAPPETTA: Let him finish the 11:11:03  
 5 question. 11:11:04  
 6 BY MR. BERGSTRESSER: 11:11:04  
 7 Q. Let's say that it came to your 11:11:04  
 8 attention that certain streets you believe 11:11:06  
 9 should be marked a different way regarding turn 11:11:10  
 10 lanes or some such -- 11:11:12  
 11 A. Okay. Now I understand. Okay. 11:11:12  
 12 MR. CIAPPETTA: Objection. 11:11:17  
 13 THE WITNESS: Answer it? 11:11:18  
 14 MR. CIAPPETTA: Yup. 11:11:19  
 15 A. Okay. That wouldn't be a law so 11:11:20  
 16 that's a different process. 11:11:22  
 17 What happens there is the New York 11:11:24  
 18 City Department of Transportation is responsible 11:11:27  
 19 for marking lanes and deciding whether there 11:11:30  
 20 should be a bicycle lane here or there should be 11:11:34  
 21 a three-lane street or this should be a one-way 11:11:37  
 22 street, so the Department of Transportation does 11:11:39  
 23 it. 11:11:41  
 24 There are frequent occasions where a 11:11:42  
 25 police department through the TrafficStat 11:11:46  
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1 M. Scagnelli  
 2 process, which I run, makes recommendations to 11:11:50  
 3 the Department of Transportation to do things 11:11:55  
 4 like that, and then they study them and then 11:11:56  
 5 ultimately they either do them or they don't do 11:12:00  
 6 them, from our recommendation, from the public's 11:12:03  
 7 recommendation, from them doing it themselves. 11:12:05  
 8 So it's not a law. That's what they do. 11:12:09  
 9 Q. Okay. And I believe you mentioned 11:12:12  
 10 bicycling specifically. 11:12:16  
 11 Is that also how changes to bike 11:12:16  
 12 lanes might be made -- 11:12:19  
 13 A. Yeah.  
 14 Q. -- through that process? 11:12:20  
 15 A. The commissioner of the Department of 11:12:21  
 16 Transportation can deem that Third Avenue is 11:12:24  
 17 going to have a bike lane and then she puts it 11:12:25  
 18 in. 11:12:29  
 19 Q. But that does not require City Hall 11:12:33  
 20 approval. 11:12:36  
 21 A. Oh, I don't know. You'd have to ask 11:12:37  
 22 them. I would think the mayor is the mayor and 11:12:38  
 23 he's ultimately in charge of everything, so no 11:12:42  
 24 one would do anything without -- that he didn't 11:12:45  
 25 want so I'm sure they'd have tacit approval from 11:12:47  
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1 M. Scagnelli  
 2 him. 11:12:52  
 3 Q. Okay. 11:12:52  
 4 A. As the system should be. 11:12:54  
 5 Q. You mentioned earlier that you have a 11:12:55  
 6 number of personnel within the bureau who are 11:13:05  
 7 tasked with enforcement of traffic laws to 11:13:07  
 8 varying degrees. 11:13:09  
 9 A. Yes. 11:13:11  
 10 Q. Are there officers who are dedicated 11:13:12  
 11 exclusively towards traffic enforcement? 11:13:15  
 12 A. Yes. 11:13:18  
 13 MR. CIAPPETTA: Objection as to form. 11:13:19  
 14 BY MR. BERGSTRESSER: 11:13:20  
 15 Q. Do you know if there are officers who 11:13:20  
 16 are exclusively dedicated to traffic enforcement 11:13:24  
 17 outside of the Transportation Bureau? 11:13:26  
 18 A. There are. 11:13:28  
 19 Q. Do you know if they're within a 11:13:29  
 20 particular command? 11:13:33  
 21 A. I do know. 11:13:36  
 22 Q. And where are they, where are they 11:13:37  
 23 assigned? 11:13:43  
 24 A. All of the 76 precincts have traffic 11:13:43  
 25 officers. Not a lot, but they all have them. 11:13:47  
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1 M. Scagnelli  
 2 Q. Okay. And those are officers who are 11:13:50  
 3 dedicated almost exclusively, if not 11:13:51  
 4 exclusively, to enforcement of traffic 11:13:55  
 5 violations. 11:13:57  
 6 A. Yes. 11:13:57  
 7 Q. Are there any traffic laws that are 11:13:58  
 8 only enforceable by Transportation Bureau 11:14:02  
 9 personnel? 11:14:05  
 10 A. No. 11:14:05  
 11 Q. Does the Transportation Bureau have 11:14:12  
 12 any involvement in determining the rules 11:14:16  
 13 governing the approval of parade permits in New 11:14:20  
 14 York City? 11:14:22  
 15 A. We have nothing to do with that. 11:14:22  
 16 Q. Does the Transportation Bureau have 11:14:24  
 17 any involvement in determining which parade 11:14:31  
 18 permits are granted? 11:14:34  
 19 A. We have nothing to do with the 11:14:35  
 20 system. 11:14:37  
 21 Q. Now the Transportation Bureau is not 11:14:37  
 22 ever asked to provide information on the 11:14:41  
 23 potential traffic impact that a requested parade 11:14:43  
 24 would generate? 11:14:48  
 25 A. If a patrol borough or somebody above 11:14:50  
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1 M. Scagnelli  
 2 my rank in headquarters asked us to do that, we 11:14:58  
 3 would. 11:15:01  
 4 Q. Has it ever happened? 11:15:02  
 5 A. I'm sure it has, sure. 11:15:03  
 6 Q. Can you recall any specific instances 11:15:06  
 7 of it happening? 11:15:08  
 8 A. No. 11:15:09  
 9 Q. Is the Transportation Bureau ever 11:15:15  
 10 involved in determining what sort of police 11:15:19  
 11 presence is necessary at a parade? 11:15:23  
 12 MR. CIAPPETTA: Objection as to form. 11:15:27  
 13 A. No and yes. 11:15:31  
 14 We have nothing to do with the actual 11:15:33  
 15 parade and the policing of the parade itself. 11:15:35  
 16 We are in charge of the traffic going 11:15:37  
 17 around the parade and we do that exclusively. 11:15:41  
 18 We figure out how many traffic officers or 11:15:45  
 19 traffic agents are needed, and we determine that 11:15:49  
 20 and we do that. 11:15:51  
 21 Q. How do you determine how many traffic 11:15:52  
 22 officers will be needed? 11:15:56  
 23 A. Well, in most cases it's pretty easy 11:15:58  
 24 because we have the same event every year. 11:16:07  
 25 We'll have the Macy's Thanksgiving Day Parade 11:16:09  
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1 M. Scagnelli  
 2 and, you know, our traffic plan last year worked 11:16:12  
 3 real well and without any variables, we'll stick 11:16:15  
 4 to it. 11:16:19  
 5 Next year I understand one of these, 11:16:20  
 6 I think it might be that parade, the route is 11:16:23  
 7 getting changed so now we're going to have to go 11:16:26  
 8 to square one again and sit down and discuss it, 11:16:27  
 9 and have little pegs and put little pegs saying 11:16:32  
 10 we need a traffic agent here and there, and then 11:16:35  
 11 we'll do it that way. 11:16:37  
 12 So the tried and true events are 11:16:38  
 13 easy. The new events are more difficult, and 11:16:41  
 14 the people that work for me do a real good job 11:16:43  
 15 and they get it right just about every time. 11:16:45  
 16 Q. What sort of factors go into the 11:16:47  
 17 decision as to how many officers will be needed? 11:16:51  
 18 A. Tons of factors. How many people are 11:16:54  
 19 going to be attending the event. What kind of 11:17:00  
 20 event is it; is it a family event, is it a 11:17:04  
 21 demonstration. What is the history of the 11:17:08  
 22 demonstrators. What impact, are we going to 11:17:11  
 23 have to shut down Fifth Avenue or Sixth Avenue 11:17:16  
 24 or Times Square or are we not going to have to 11:17:20  
 25 do that. If we have to shut roads down, where 11:17:23  
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1 M. Scagnelli  
 2 are we going to divert the traffic. What time 11:17:26  
 3 of day is it. What day of the week is it. Are 11:17:29  
 4 there holidays. Anything that any common man 11:17:35  
 5 could figure would impact is what in fact 11:17:39  
 6 impacts. 11:17:42  
 7 Q. How does the issue of whether it's a 11:17:45  
 8 public demonstration and the history of those 11:17:52  
 9 demonstrators factor into the calculation? 11:17:54  
 10 A. If there are demonstrators that have 11:17:58  
 11 demonstrated before and the demonstrations are 11:18:02  
 12 always peaceful, you know, they go to a 11:18:07  
 13 particular location, they stay there for three 11:18:09  
 14 hours and yell and scream and do whatever else 11:18:11  
 15 they can and want to do that's legal and not 11:18:14  
 16 interfering with the rights of others, that's 11:18:20  
 17 easier. You know exactly what's going to happen 11:18:22  
 18 so you can figure it out. 11:18:25  
 19 There are times where we have 11:18:26  
 20 demonstrators who in the past they were supposed 11:18:28  
 21 to be on one given square block and they 11:18:32  
 22 illegally leave and march all over the city, so 11:18:35  
 23 we have to factor that in too. 11:18:38  
 24 Q. But still your involvement at 11:18:41  
 25 Transportation deals with not policing the 11:18:48  
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1 M. Scagnelli  
 2 parade itself, I believe you said, but the sort 11:18:51  
 3 of, I don't know what the term for it is -- 11:18:53  
 4 A. Well --  
 5 Q. -- attendant circumstances. 11:18:55  
 6 A. We do the -- 11:18:57  
 7 MR. CIAPPETTA: Objection as to form. 11:18:57  
 8 BY MR. BERGSTRESSER: 11:19:03  
 9 Q. I think we're ready for an answer. 11:19:03  
 10 A. We do the traffic. The patrol 11:19:05  
 11 boroughs do the people, so to speak; the 11:19:08  
 12 demonstration, the parade. 11:19:11  
 13 Q. Where does Transportation get its 11:19:15  
 14 information about events that are going to be 11:19:20  
 15 held? 11:19:22  
 16 MR. CIAPPETTA: Objection as to form. 11:19:23  
 17 A. The Patrol Borough calls for a 11:19:29  
 18 meeting. You know, the Thanksgiving Day Parade 11:19:31  
 19 is coming up and next month is Thanksgiving, 11:19:37  
 20 they call for a meeting, everyone gets together 11:19:39  
 21 and goes over it. 11:19:42  
 22 And I'm going to need a break to go 11:19:52  
 23 to the bathroom. 11:19:53  
 24 Q. Okay. 11:19:55  
 25 MR. BERGSTRESSER: Can we take it 11:19:55  
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1 M. Scagnelli  
 2 right now? 11:19:56  
 3 MR. CIAPPETTA: Sure.  
 4 MR. BERGSTRESSER: Okay. 11:19:57  
 5 THE VIDEOGRAPHER: The time is 11:20. 11:19:57  
 6 We're off the record. 11:19:59  
 7 (Recess is taken.) 11:20:00  
 8 THE VIDEOGRAPHER: The time is 11:35. 11:25:44  
 9 We're on the record. 11:35:03  
 10 BY MR. BERGSTRESSER: 11:35:04  
 11 Q. Chief, does the Transportation Bureau 11:35:07  
 12 have any role in enforcing the rules concerning 11:35:09  
 13 required equipment on bicycles? 11:35:13  
 14 A. The sworn officer would be allowed to 11:35:16  
 15 enforce those laws. We have no specific 11:35:25  
 16 direction to have them do so. 11:35:30  
 17 Q. Okay. So no role different than the 11:35:32  
 18 general obligation of all police officers to 11:35:37  
 19 enforce violations of law. 11:35:40  
 20 A. Correct. 11:35:41  
 21 Q. Does the Transportation Bureau get 11:35:42  
 22 involved in focusing enforcement efforts on 11:35:46  
 23 particular violations? 11:35:49  
 24 A. Sometimes. 11:35:51  
 25 Q. When is, when is such focused 11:35:52  
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1 M. Scagnelli  
2 enforcement put into effect? 11:35:59  
3 MR. CIAPPETTA: Objection as to form. 11:36:01  
4 A. When I deem that it's required. 11:36:08  
5 Q. Has that ever been done with regard 11:36:09  
6 to traffic violations concerning bicyclists? 11:36:12  
7 A. Very infrequently. 11:36:19  
8 Q. Can you recall the last time it 11:36:28  
9 happened? 11:36:30  
10 A. I can. 11:36:30  
11 Q. When? 11:36:31  
12 A. I'm going to say it was recently. 11:36:35  
13 Maybe one, two, three, months ago, I got a phone 11:36:40  
14 call from a captain and he said that they were 11:36:44  
15 having a problem with bicyclists at the foot of 11:36:46  
16 the Williamsburg Bridge, and the bicyclists were 11:36:54  
17 going through red lights and disobeying some 11:37:00  
18 sign that was there, and he wanted to do some 11:37:02  
19 specific enforcement there for a short period 11:37:06  
20 to, you know, educate the bicyclists, give some 11:37:10  
21 tickets out and get the word out so that the 11:37:14  
22 bicyclists wouldn't kill themselves, and I told 11:37:17  
23 him to do it and he did do it. 11:37:20  
24 Q. Do you recall specifically what 11:37:22  
25 captain that was? 11:37:26  
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1 M. Scagnelli  
2 A. Yes. 11:37:26  
3 Q. Who was it? 11:37:27  
4 A. Jeff Fallon. 11:37:28  
5 Q. And did Captain Fallon indicate to 11:37:32  
6 you -- withdraw that question. 11:37:37  
7 Do you know if his request was in 11:37:38  
8 response to complaints from civilians? 11:37:42  
9 A. It was not. 11:37:46  
10 Q. Was it based on his observations or 11:37:47  
11 the observations of officers under his command? 11:37:54  
12 A. Yes. 11:37:56  
13 Q. And what did you do in response to 11:37:57  
14 his concerns? 11:38:01  
15 A. Said yes. 11:38:03  
16 Q. And what form did the focused 11:38:05  
17 enforcement take? 11:38:09  
18 A. He had police officers out there and 11:38:10  
19 they gave tickets to bicyclists that committed 11:38:13  
20 infractions at that specific location. 11:38:18  
21 Q. Okay. Did the Transportation Bureau 11:38:21  
22 have any involvement in that or that was 11:38:22  
23 something that his officers did on their own? 11:38:24  
24 A. They are my officers. They work for 11:38:26  
25 me and they're part of the Transportation 11:38:30  
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1 M. Scagnelli  
2 Bureau. 11:38:32  
3 Q. Okay. And I'm not sure what the 11:38:32  
4 proper police terminology is, but I'll say was 11:38:36  
5 this operated as a stationary checkpoint? 11:38:39  
6 A. I haven't -- 11:38:42  
7 MR. CIAPPETTA: Objection as to form. 11:38:42  
8 A. I don't know how they did it. 11:38:44  
9 Q. Okay. Is a stationary checkpoint 11:38:47  
10 sometimes used in such focused enforcement 11:38:49  
11 efforts? 11:38:52  
12 MR. CIAPPETTA: Objection as to form. 11:38:53  
13 A. No, because a checkpoint is rather 11:39:08  
14 specific, so that wouldn't have worked there so 11:39:10  
15 I'm sure they didn't do it. 11:39:14  
16 Q. Okay. Are you aware of whether or 11:39:16  
17 not the focused enforcement efforts at the foot 11:39:18  
18 of the Williamsburg Bridge were successful? 11:39:20  
19 MR. CIAPPETTA: Objection. 11:39:24  
20 A. I don't know. 11:39:27  
21 Q. Do you know if those focused 11:39:28  
22 enforcement efforts are still going on? 11:39:32  
23 A. They are not. 11:39:37  
24 Q. Okay.  
25 A. Other than ad hoc, but the specific 11:39:41  
TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
2 "let's go down there and do that" is not going 11:39:45  
3 on. 11:39:47  
4 Q. Okay. Do you know why the specific 11:39:47  
5 enforcement focus was stopped at that location? 11:39:50  
6 MR. CIAPPETTA: Objection as to form. 11:39:58  
7 A. I would only assume. 11:40:00  
8 Q. And what would you assume 11:40:02  
9 understanding that you don't know? 11:40:04  
10 A. It was successful. 11:40:05  
11 Q. Okay. How would the success of such 11:40:07  
12 an enforcement action be measured? 11:40:11  
13 A. Large numbers of bicyclists aren't 11:40:15  
14 committing the dangerous infractions that they 11:40:18  
15 were committing, so that we'd be satisfied that 11:40:21  
16 it wasn't so dangerous anymore and they wouldn't 11:40:27  
17 get hurt. 11:40:30  
18 Q. Are any statistics collected on that 11:40:31  
19 by the Transportation Bureau? 11:40:34  
20 A. No. 11:40:35  
21 Q. Is that a personal judgment made by 11:40:36  
22 the officers who would be performing the focused 11:40:40  
23 enforcement? 11:40:43  
24 A. Yes. 11:40:44  
25 Q. Can you recall other instances of 11:40:44  
TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
2 focused enforcement action against bicycling 11:40:49  
3 violations? 11:40:53  
4 A. No. 11:40:53  
5 Q. Does Transportation directly receive 11:40:57  
6 complaints from the public? 11:41:01  
7 A. Yes. 11:41:03  
8 Q. Are you aware of any complaints that 11:41:05  
9 have been received about bicyclists? 11:41:06  
10 A. There have been some, but I don't 11:41:12  
11 have any specific remembrance of them. 11:41:16  
12 Q. When the Transportation Bureau 11:41:18  
13 receives complaints, are those something that 11:41:22  
14 you would normally be made aware of? 11:41:24  
15 A. People that work for me would 100 11:41:26  
16 percent of the time be made aware of them, and 11:41:40  
17 then if they deem that they would be a little 11:41:42  
18 more important, they would then show them to me. 11:41:47  
19 Q. Okay. Do you know if complaints 11:41:50  
20 received from the public are kept by the bureau? 11:41:55  
21 A. Well, nothing gets thrown away, so 11:42:03  
22 yes. 11:42:06  
23 Q. Let's go back to focused enforcement 11:42:09  
24 efforts again. 11:42:12  
25 Do you know if there's ever been 11:42:13  
TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
2 focused enforcement on a problem of motor 11:42:15  
3 vehicles blocking bicycle lanes? 11:42:20  
4 MR. CIAPPETTA: Objection. 11:42:23  
5 A. Yes, there have as a matter of fact. 11:42:24  
6 Q. Okay. Do you recall the last time 11:42:25  
7 such a focused enforcement was taken? 11:42:27  
8 A. Recently. We get quite a few 11:42:29  
9 complaints about that and when we do, we direct 11:42:32  
10 officers to go to those streets in question and 11:42:37  
11 give tickets to violators. 11:42:41  
12 Q. Are focused enforcement efforts such 11:42:45  
13 as the Williamsburg Bridge situation we've 11:42:48  
14 discussed and what you just mentioned concerning 11:42:51  
15 vehicles blocking the bike lane, are those ever, 11:42:54  
16 are those ever done spontaneously by the 11:43:00  
17 Transportation Bureau or is it only in response 11:43:03  
18 to complaints? 11:43:05  
19 MR. CIAPPETTA: Objection. 11:43:06  
20 A. Both of course. 11:43:08  
21 Q. How does the Transportation Bureau 11:43:09  
22 decide on its own where to conduct focused 11:43:11  
23 enforcement action? 11:43:14  
24 A. Well, when the members of the 11:43:16  
25 Transportation Bureau, and you could also call 11:43:29  
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1 M. Scagnelli  
2 it the Traffic Control Division, it's the same 11:43:33  
3 thing, when police officers whose main task it 11:43:36  
4 is to give summonses are out there, and they are 11:43:40  
5 every day, and when civilian traffic enforcement 11:43:44  
6 agents that are out there giving tickets out, 11:43:48  
7 because some direct traffic, some give tickets, 11:43:51  
8 the ones that give tickets, who are in large 11:43:55  
9 numbers, when they see a violator parked in a 11:43:58  
10 bicycle lane on their post, they're each and 11:44:04  
11 every time going to immediately go over and give 11:44:07  
12 a ticket. They do it every day. They don't 11:44:10  
13 walk by any of them. They give them all a 11:44:12  
14 ticket. That's their -- they're traffic agents. 11:44:15  
15 Their function in life is to give parking 11:44:16  
16 tickets out. 11:44:19  
17 So every single car that they see 11:44:19  
18 that's in violation of any of the parking rules, 11:44:21  
19 they walk down the block, they see a car, 11:44:26  
20 whether it's an expired meter or a no standing 11:44:28  
21 or a bicycle lane infraction, they write the 11:44:31  
22 ticket every day. 11:44:34  
23 Q. Okay. But when I refer to focused 11:44:35  
24 enforcement, I guess what I'm referring to is, 11:44:38  
25 you know, does the Transportation Bureau ever 11:44:40  
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1 M. Scagnelli  
2 say, "Here's a particular location where there 11:44:42  
3 are a recurring number of violations, we need to 11:44:45  
4 do something to increase the resources deployed 11:44:51  
5 to this location"? 11:44:55  
6 MR. CIAPPETTA: Objection. 11:44:55  
7 A. I'm sure that they do. 11:44:57  
8 Q. Are you aware of that having been 11:44:58  
9 done? 11:45:01  
10 A. Not specifically with any one 11:45:02  
11 location, no. 11:45:09  
12 Q. Are you familiar with the Stipulated 11:45:11  
13 Fine Program? 11:45:16  
14 MR. CIAPPETTA: Objection. 11:45:18  
15 A. The Stipulated Pine Program? 11:45:19  
16 Q. Fine Program, Stipulated Fine 11:45:22  
17 Program?  
18 A. F-i-n-e, fine? 11:45:24  
19 Q. Yes.  
20 A. Is that the thing with trucks? 11:45:26  
21 Q. I'm not sure. 11:45:29  
22 A. Okay. Then I don't know. 11:45:30  
23 Q. What's the thing with trucks that 11:45:33  
24 you're thinking of? 11:45:36  
25 A. The finance commissioner has a 11:45:37  
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1 M. Scagnelli  
2 program with trucks where -- trucks get a lot of 11:45:41  
3 tickets because they park illegally and we give 11:45:48  
4 them a lot of tickets. 11:45:50  
5 And they have a -- the Finance 11:45:52  
6 Department has a program with truck companies 11:45:56  
7 that register, not just any truck company but 11:46:00  
8 they have to register, and there's a deal made 11:46:02  
9 where if they get a ticket for this, they pay 11:46:08  
10 that amount of money. And, you know, it's like 11:46:11  
11 if you double-park here, you pay half or you 11:46:15  
12 pay -- you know, like that kind of thing and 11:46:18  
13 you'd have to ask them about that. 11:46:21  
14 Q. That may in fact be exactly what I'm 11:46:22  
15 referring to. 11:46:26  
16 So who operates that program? 11:46:27  
17 A. The Finance Department. 11:46:28  
18 Q. Have you ever been involved in 11:46:30  
19 discussions with them concerning what summonses 11:46:31  
20 should be reduced by certain amounts? 11:46:36  
21 A. The Finance Department created the 11:46:43  
22 program and after the program was created, there 11:46:54  
23 were a couple of meetings. 11:47:00  
24 Q. Do you recall when those meetings 11:47:03  
25 occurred? 11:47:05  
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1 M. Scagnelli  
2 A. A couple years ago. 11:47:05  
3 Q. Do you know if that information, the 11:47:08  
4 different amounts of summonses, is generally 11:47:14  
5 known by NYPD enforcement personnel? 11:47:16  
6 A. We still write the ticket so we don't 11:47:21  
7 have to know. We meaning the cop on the street, 11:47:25  
8 the agent on the street. They're in violation, 11:47:29  
9 we write the ticket. 11:47:33  
10 Q. Okay. So that the existence of that 11:47:34  
11 program does not alter your enforcement policy 11:47:37  
12 or behavior in any way. 11:47:40  
13 MR. CIAPPETTA: Objection as to form. 11:47:42  
14 A. No. We write the ticket. 11:47:45  
15 Q. You mentioned before the TrafficStat 11:47:47  
16 program or the TrafficStat system. 11:47:50  
17 Could you describe that, what is 11:47:53  
18 TrafficStat? 11:47:55  
19 A. Yes. It is an accountability process 11:47:55  
20 much like COMSTAT and, you know, the mission 11:48:02  
21 statement of it is to move traffic, reduce 11:48:08  
22 accidents, reduce injuries related to accidents 11:48:16  
23 and reduce vehicle-related deaths. 11:48:20  
24 And it's a process where, where it is 11:48:25  
25 conducted by me once a week and a particular 11:48:29  
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1 M. Scagnelli  
2 patrol borough, there are eight, is called in 11:48:32  
3 and there are large numbers of people at the 11:48:39  
4 meeting, perhaps 100, Highway Patrol is there, 11:48:41  
5 the traffic agent, the supervisor is there, DOT 11:48:45  
6 is there, Sanitation is there, Transit 11:48:48  
7 Authority, Taxi and Limousine, TBTA, and I'm 11:48:54  
8 probably leaving a few out, and we have a 11:49:01  
9 meeting and precinct executive officers or 11:49:02  
10 commanders are brought up to the microphone and 11:49:06  
11 they are quizzed by me as to the number of 11:49:11  
12 accidents. 11:49:18  
13 Normally there would be an increase 11:49:19  
14 if they're up at the microphone; injuries, 11:49:20  
15 deaths, summonses given out. They have a chance 11:49:24  
16 to talk to DOT to recommend changes, such as 11:49:30  
17 recommending a one-way street, recommending a 11:49:37  
18 left turn signal or down to the simple there's a 11:49:40  
19 stop sign with graffiti on it to potholes. The 11:49:45  
20 entire gamut. And all the agencies are able to 11:49:49  
21 interact for the betterment of the mission, to 11:49:54  
22 move the flow of traffic and reduce accidents 11:50:00  
23 and help people not to get injured or die. 11:50:03  
24 We, you know, and we talk about every 11:50:06  
25 aspect of traffic. We talk about motorcycles. 11:50:13  
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1 M. Scagnelli  
2 We talk about pedestrians. We talk about 11:50:18  
3 bicycles, trucks, cars. 11:50:21  
4 Q. In connection with that process, are 11:50:27  
5 statistics ever compiled concerning the numbers 11:50:30  
6 of violations that are being enforced for 11:50:34  
7 various infractions? 11:50:41  
8 A. For some infractions, yes. 11:50:42  
9 Q. And do you know if that sort of 11:50:46  
10 analysis has ever been performed concerning 11:50:48  
11 violations of traffic laws applicable to 11:50:51  
12 bicyclists? 11:50:54  
13 A. It has not to my knowledge. 11:50:55  
14 Q. Has Critical Mass ever been discussed 11:50:59  
15 at a TrafficStat meeting? 11:51:01  
16 A. Critical Mass has never been 11:51:05  
17 discussed at a TrafficStat meeting. 11:51:06  
18 Q. Okay. I believe you said previously 11:51:09  
19 that Transportation does not play any role in 11:51:22  
20 approving or rejecting applications for parade 11:51:26  
21 permits, right? 11:51:27  
22 A. Yes. 11:51:28  
23 Q. Have you ever been involved in the 11:51:29  
24 process of approving applications for parade 11:51:38  
25 permits prior to your time at Transportation? 11:51:40  
TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 A. Yes. 11:51:42  
 3 Q. When was that? 11:51:43  
 4 A. When I was in Patrol Borough 11:51:45  
 5 Manhattan South a number of years ago. 11:51:48  
 6 Q. At that time, what would you do in 11:51:51  
 7 regards to approving parade permits? What was 11:52:01  
 8 your role in approving the permit? 11:52:04  
 9 A. Well, I was the number two guy there 11:52:05  
 10 but I would generally, when he wasn't available, 11:52:07  
 11 frequently I would meet with the people that 11:52:15  
 12 came in for the application with our operations 11:52:17  
 13 people and we would have a meeting. 11:52:21  
 14 They'd tell us what it was about. 11:52:23  
 15 They'd tell us what we wanted to do, what they 11:52:25  
 16 wanted to do, and then sometimes we'd have no 11:52:29  
 17 objection from the beginning. 11:52:33  
 18 Sometimes we would have objections as 11:52:35  
 19 to location or other things and then we would, 11:52:37  
 20 we would work out a deal with those groups, 11:52:44  
 21 agree on something and then give them a permit. 11:52:47  
 22 Q. Did you -- 11:52:54  
 23 A. And just to complete the thought, 11:52:57  
 24 some of them were, you know, like the 11:53:00  
 25 Thanksgiving Day Parade or the St. Patrick's Day 11:53:02  
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1 M. Scagnelli  
 2 and sometimes it wasn't. Sometimes we would say 11:54:44  
 3 no. 11:54:47  
 4 Q. Apart from the meetings with 11:54:49  
 5 applicants, was there any other investigation 11:54:52  
 6 that would take place into the proposed parade 11:54:54  
 7 before a determination would be made? 11:54:59  
 8 MR. CIAPPETTA: Objection. 11:55:01  
 9 A. I don't recall. 11:55:07  
 10 MR. BERGSTRESSER: At this point I 11:55:31  
 11 would like to ask the court reporter to 11:55:32  
 12 mark an exhibit as Scagnelli-2 for 11:55:34  
 13 identification. 11:55:36  
 14 (Plaintiffs' Exhibit Scagnelli 2, 11:55:37  
 15 Communication Referral Summary dated  
 16 12/30/04, Bates stamped NYC 013343 through  
 17 348, marked for identification, as of this  
 18 date.) 11:56:01  
 19 BY MR. BERGSTRESSER: 11:56:01  
 20 Q. Please take a minute to look through 11:56:05  
 21 this, Chief Scagnelli. 11:56:08  
 22 (Document review.) 11:56:12  
 23 Q. I realize this document is dated from 11:56:54  
 24 after your time at Patrol Borough Manhattan 11:56:57  
 25 South, but do you recognize this as being 11:57:00  
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1 M. Scagnelli  
 2 Parade, they come in for the permit every year 11:53:06  
 3 and it's like okay, we're going to do exactly 11:53:09  
 4 the same as last. So some of them are quickies 11:53:11  
 5 and some of them are more negotiable. 11:53:14  
 6 Q. Right. 11:53:17  
 7 Did someone from Patrol Borough 11:53:18  
 8 Manhattan South meet with every applicant for a 11:53:22  
 9 permit? 11:53:26  
 10 A. They did when I was there. 11:53:26  
 11 Q. Do you recall at the time when you 11:53:28  
 12 would meet with parade permit applicants, 11:53:47  
 13 approximately how long would such meetings would 11:53:50  
 14 last? 11:53:52  
 15 A. They could last anywhere from a half 11:53:53  
 16 an hour to several hours. 11:54:00  
 17 Q. And approximately how many meetings 11:54:03  
 18 with parade permit applicants would you be 11:54:06  
 19 involved in per month? 11:54:09  
 20 A. Several. 11:54:12  
 21 Q. And could you estimate how long it 11:54:15  
 22 took Patrol Borough Manhattan South to either 11:54:25  
 23 approve or reject a parade permit after that 11:54:31  
 24 meeting had taken place? 11:54:34  
 25 A. Most of the time it was right away 11:54:35  
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1 M. Scagnelli  
 2 similar to the parade permit applications that 11:57:02  
 3 you would complete? 11:57:07  
 4 A. This indicates it was revised in '02, 11:57:14  
 5 so I don't know if it's the same because I 11:57:17  
 6 really don't have the foggiest remembrance of 11:57:20  
 7 what it looked like. 11:57:23  
 8 Q. Okay. I'll ask you to please turn to 11:57:24  
 9 the page that bears Bates number NYC 013347 in 11:57:34  
 10 the corner. 11:57:39  
 11 A. Okay. 11:57:49  
 12 Q. Looking at this page, which I'll 11:57:50  
 13 submit to you sets forth a number of checkboxes 11:57:54  
 14 and potential reasons that a parade might be 11:57:59  
 15 denied, do you recall if at the time that you 11:58:01  
 16 were involved in approving or denying parade 11:58:04  
 17 permits if the form you completed had a similar 11:58:08  
 18 checkbox process for indicating reasons to deny 11:58:13  
 19 a permit? 11:58:17  
 20 MR. CIAPPETTA: Objection. 11:58:18  
 21 A. I don't remember. 11:58:19  
 22 Q. I think that's all the questions for 11:58:20  
 23 that document. 11:58:31  
 24 Chief Scagnelli, have you ever 11:58:39  
 25 stopped the forward movement of a bicyclist in 11:58:40  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 order to detain him? 11:58:43  
 3 MR. CIAPPETTA: Objection. 11:58:46  
 4 A. Not that I can recall, no. 11:58:59  
 5 Q. Are you aware of whether there's a 11:59:02  
 6 proper way to do that under NYPD procedures? 11:59:04  
 7 A. Not aware of that. 11:59:11  
 8 Q. Do you know if officers within the 11:59:13  
 9 Transportation Bureau receive training on the 11:59:20  
 10 proper way to detain cyclists? 11:59:24  
 11 A. To detain them? 11:59:29  
 12 Q. Um-hmm. 11:59:30  
 13 A. Detain them. 11:59:33  
 14 (Pause.) 11:59:51  
 15 A. Can I ask you a question? 11:59:58  
 16 They've already been stopped to be 12:00:03  
 17 detained so they're just either standing there 12:00:07  
 18 or sitting on their bike stopped. 12:00:10  
 19 Is that what you're saying? 12:00:13  
 20 Q. Well, let me initially ask you do you 12:00:14  
 21 know if officers within the Transportation 12:00:18  
 22 Bureau have received training on the proper way 12:00:20  
 23 to stop a cyclist in motion? 12:00:21  
 24 A. That's what confused me. I don't 12:00:24  
 25 know. 12:00:26  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 Pogan? 12:01:41  
 3 A. Don't know. 12:01:41  
 4 Q. Did you hear anything about that 12:01:42  
 5 incident -- I'll withdraw the question. 12:01:43  
 6 Have you ever heard anything about an 12:01:47  
 7 officer named Patrick Pogan? 12:01:50  
 8 A. No, other than what I saw on TV and 12:01:51  
 9 probably read in the paper. 12:01:55  
 10 Q. Okay. You have not received any -- 12:01:57  
 11 well, I'll rephrase the question. 12:02:03  
 12 Have you received any information 12:02:04  
 13 about that incident from the police department? 12:02:06  
 14 A. Never. 12:02:09  
 15 Q. A little earlier we discussed a 12:02:12  
 16 number of bicycling laws and the laws applicable 12:02:19  
 17 to bicyclists in New York City. 12:02:22  
 18 Chief, are you aware of any training 12:02:24  
 19 that is given to officers under your command 12:02:25  
 20 concerning the laws applicable to bicyclists? 12:02:27  
 21 A. I'm not. 12:02:29  
 22 Q. Are you aware of any such training 12:02:31  
 23 given to officers outside the Transportation 12:02:34  
 24 Bureau? 12:02:36  
 25 A. I am not. 12:02:36  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 Q. Do you know if officers within the 12:00:26  
 3 Transportation Bureau have received training on 12:00:28  
 4 the proper way to detain a cyclist who is still 12:00:30  
 5 mounted on his bike? 12:00:34  
 6 A. I don't know. 12:00:37  
 7 Q. Are you aware of any bicyclist ever 12:00:42  
 8 being injured by officers during an attempt to 12:00:53  
 9 stop the cyclist from moving on their bike? 12:00:56  
 10 A. Only the same thing that everybody 12:01:04  
 11 saw on television. 12:01:07  
 12 Q. I'm sorry. What are you referring 12:01:09  
 13 to? 12:01:11  
 14 A. I saw something on television where a 12:01:11  
 15 police officer wound up trying to stop a 12:01:14  
 16 bicyclist who wound up falling down and it was 12:01:21  
 17 on television. That is the only awareness I 12:01:24  
 18 have. 12:01:27  
 19 Q. Do you recall if that incident 12:01:27  
 20 occurred approximately during last summer? 12:01:28  
 21 A. I have no idea when it occurred. It 12:01:31  
 22 was certainly within the last year because I saw 12:01:33  
 23 it on television within the last year. 12:01:35  
 24 Q. Are you aware of whether or not that 12:01:36  
 25 incident involved an officer named Patrick 12:01:38  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 Q. And do you know if written materials 12:02:37  
 3 are ever distributed to the police force 12:02:41  
 4 concerning the laws that are applicable to 12:02:43  
 5 bicyclists? 12:02:45  
 6 A. I don't know. 12:02:45  
 7 Q. And do you know if synopses or 12:02:46  
 8 digests of traffic laws are published and 12:02:53  
 9 distributed to the police? 12:02:56  
 10 MR. CIAPPETTA: Objection. 12:03:04  
 11 A. I have no personal knowledge of that. 12:03:11  
 12 Q. But are you aware that it happens? 12:03:17  
 13 A. Without being able to articulate, I'm 12:03:19  
 14 aware of it and I can't even tell you how I'm 12:03:26  
 15 aware of it. 12:03:29  
 16 Q. Do you know if there's a section of 12:03:30  
 17 the NYPD administrative manual that specifically 12:03:35  
 18 addresses traffic violations involving 12:03:38  
 19 bicyclists? 12:03:41  
 20 A. I don't know. 12:03:43  
 21 Q. Chief, when did you first become 12:03:44  
 22 aware of Critical Mass -- oh, first, withdraw 12:03:52  
 23 that. 12:03:54  
 24 When I say "Critical Mass," do you 12:03:54  
 25 understand what that means? 12:03:59  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
2 A. I do. 12:04:00  
3 Q. Okay. What is Critical Mass? 12:04:01  
4 A. A group of people that meet on, I 12:04:03  
5 don't know, the first Friday, is it, of every 12:04:11  
6 month and they meet I think on 14th Street and 12:04:13  
7 then they drive around the city. 12:04:17  
8 Q. Okay. When you say drive around the 12:04:20  
9 city -- 12:04:22  
10 A. On bicycles. 12:04:22  
11 Q. On bicycles. 12:04:24  
12 When did you first hear about 12:04:25  
13 Critical Mass? 12:04:27  
14 A. Sometime in '04. 12:04:27  
15 Q. What did you hear? 12:04:33  
16 A. I heard that there was a relatively 12:04:36  
17 small group of people that rode bicycles 12:04:44  
18 throughout Manhattan together and they would 12:04:49  
19 meet at a particular park and they would drive 12:04:51  
20 around the city, and that there were police that 12:04:56  
21 would actually meet them and kind of lead them 12:05:03  
22 around the city, and they would go on a bike 12:05:07  
23 ride. 12:05:13  
24 Q. Okay. Do you recall more 12:05:15  
25 specifically when in 2004 you first heard about 12:05:16  
TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
2 A. I don't, I don't remember if they 12:06:38  
3 were officers under my command or Manhattan 12:06:44  
4 South, but there were officers involved. I just 12:06:46  
5 don't remember which officers. 12:06:49  
6 Q. And do you recall, do you recall 12:06:53  
7 taking any action at that time or giving any 12:07:02  
8 instructions to people under your command 12:07:05  
9 concerning Critical Mass when you first heard 12:07:09  
10 about it? 12:07:13  
11 A. After what they told me, there was no 12:07:14  
12 need for me to do that. 12:07:19  
13 Q. Why not? 12:07:21  
14 A. Because it wasn't problematic. 12:07:22  
15 Q. Was it your understanding that at the 12:07:29  
16 time you were informed that the ride, as you 12:07:33  
17 described it, would continue, that small groups 12:07:38  
18 would show up and go on a bike ride and that New 12:07:40  
19 York Police Department officers would, for lack 12:07:45  
20 of a better term, escort them around the city? 12:07:47  
21 MR. CIAPPETTA: Objection. 12:07:50  
22 A. That was my understanding and that it 12:07:51  
23 wasn't problematic. 12:07:52  
24 Q. Okay. Since becoming chief of the 12:08:14  
25 Transportation Bureau, have you ever received 12:08:16  
TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
2 Critical Mass? 12:05:19  
3 A. I don't remember specifically, but it 12:05:19  
4 would have been, it would have been in the, 12:05:24  
5 perhaps the beginning of the summer. 12:05:30  
6 Q. And what were the circumstances? Why 12:05:32  
7 did you hear anything about them? 12:05:34  
8 A. I don't remember. 12:05:37  
9 Q. Do you remember who told you? 12:05:38  
10 A. Don't. 12:05:40  
11 Q. Was it an officer under your command? 12:05:41  
12 A. It would be speculation to say yes, 12:05:44  
13 but somebody told me. I just don't remember 12:05:48  
14 who. 12:05:52  
15 Q. And do you recall why you were being 12:05:55  
16 informed? 12:05:57  
17 A. So that I would have the knowledge of 12:05:59  
18 that existence. 12:06:04  
19 Q. At the time did you understand 12:06:05  
20 that -- I'll rephrase the question. 12:06:09  
21 When you first learned about Critical 12:06:20  
22 Mass, did you have an understanding that 12:06:25  
23 officers under your command were to be involved 12:06:28  
24 in policing that event going forward? 12:06:33  
25 MR. CIAPPETTA: Objection as to form. 12:06:36  
TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
2 any reports concerning Critical Mass? 12:08:18  
3 A. No. 12:08:21  
4 Q. Are you aware that Critical Mass 12:08:25  
5 occurs in other cities worldwide on a monthly 12:08:34  
6 basis? 12:08:37  
7 A. I am aware of that. 12:08:40  
8 Q. When did you hear that? 12:08:42  
9 A. I don't remember. 12:08:43  
10 Q. Do you recall who told you? 12:08:51  
11 A. No. 12:08:53  
12 Q. Do you know if it was something you 12:08:53  
13 learned prior to August 2004? 12:09:01  
14 A. It was definitely not before 2004. 12:09:05  
15 Q. Why do you think that? 12:09:08  
16 A. Oh, I know that because the first 12:09:10  
17 time I ever heard of Critical Mass was in 2004. 12:09:12  
18 Q. And so you don't think that the fact 12:09:19  
19 that it occurred worldwide was something that 12:09:21  
20 you learned at that time. 12:09:23  
21 A. I know for sure I did not know that 12:09:25  
22 in 2004. 12:09:27  
23 MR. CIAPPETTA: Note my objection to 12:09:29  
24 that last question. 12:09:30  
25 BY MR. BERGSTRESSER: 12:09:33  
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1 M. Scagnelli  
2 Q. Do you know that a feature of 12:09:33  
3 Critical Mass rides is that they proceed without 12:09:37  
4 a fixed route? 12:09:39  
5 MR. CIAPPETTA: Objection. 12:09:40  
6 A. Don't know that. 12:09:42  
7 Q. You have never heard that from 12:09:42  
8 anyone. 12:09:44  
9 A. No. 12:09:44  
10 Q. Did you have an understanding at the 12:09:45  
11 time when you first heard about the ride that 12:09:53  
12 there was a fixed route? 12:09:57  
13 A. Say again? 12:10:02  
14 MR. BERGSTRESSER: Could you read  
15 back the question, please? 12:10:13  
16 (Question was read back as follows:  
17 "QUESTION: Did you have an 12:09:50  
18 understanding at the time when you first 12:09:52  
19 heard about the ride that there was a fixed 12:09:54  
20 route?") 12:09:57  
21 A. I don't recall. 12:10:21  
22 Q. Are you aware that Critical Mass 12:10:23  
23 rides purport to have no leaders? 12:10:27  
24 A. Yes. 12:10:30  
25 Q. Do you recall when you learned that? 12:10:31  
TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
2 information regarding the methods used by law 12:11:30  
3 enforcement personnel in other jurisdictions to 12:11:32  
4 manage Critical Mass? 12:11:36  
5 A. No. 12:11:36  
6 Q. Do you know if anyone else at NYPD 12:11:38  
7 has done that? 12:11:43  
8 A. Do not know. 12:11:44  
9 Q. At the time you first heard about 12:11:45  
10 Critical Mass, did you have an understanding as 12:11:55  
11 to whether or not the ride had leaders? 12:11:57  
12 A. When I first learned about them? 12:12:02  
13 I've already answered that question, but no, I 12:12:05  
14 was not aware of any leadership at that time. 12:12:07  
15 Q. Do you believe that Critical Mass has 12:12:09  
16 leaders? 12:12:20  
17 A. I believe it. 12:12:22  
18 Q. Why do you believe that? 12:12:28  
19 A. Every organization that were a 12:12:31  
20 grouping of people since the beginning of time 12:12:37  
21 in my belief has had leaders. They'd be the 12:12:39  
22 only exception ever. 12:12:42  
23 Q. Okay. So you don't think it's 12:12:47  
24 possible that a regularly occurring event can 12:12:48  
25 exist without having someone in charge of it? 12:12:54  
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1 M. Scagnelli  
2 A. In 2004. 12:10:35  
3 Q. Was it at the time that you first 12:10:39  
4 heard that Critical Mass rides took place in New 12:10:40  
5 York? 12:10:42  
6 A. No. 12:10:42  
7 Q. It was after that fact. 12:10:43  
8 A. Yes. 12:10:46  
9 Q. Now do you recall how long after 12:10:47  
10 first hearing about Critical Mass you heard that 12:10:50  
11 the ride purported to have no leaders? 12:10:53  
12 A. It was sometime in the middle of 2004 12:10:58  
13 that I learned that. 12:11:02  
14 Q. Do you know if it was prior to the 12:11:05  
15 2004 Republican National Convention? 12:11:07  
16 A. Yes, it was. 12:11:10  
17 Q. Are you aware that no specific 12:11:11  
18 organization claims responsibility for Critical 12:11:15  
19 Mass? 12:11:18  
20 MR. CIAPPETTA: Objection. 12:11:19  
21 A. Yes. 12:11:20  
22 Q. And is that something you learned in 12:11:21  
23 2004? 12:11:24  
24 A. Yes. 12:11:24  
25 Q. Now, Chief, have you ever reviewed 12:11:25  
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1 M. Scagnelli  
2 MR. CIAPPETTA: Objection. 12:12:56  
3 A. Yes. 12:12:59  
4 Q. Who do you believe are the leaders of 12:12:59  
5 Critical Mass? 12:13:05  
6 A. I don't have the faintest idea. 12:13:07  
7 Q. Have you ever had an idea concerning 12:13:10  
8 who the leaders of Critical Mass are? 12:13:15  
9 A. Someone was suggesting to me who they 12:13:18  
10 might be, not by name but by -- not by people 12:13:30  
11 names but by like a group. 12:13:37  
12 Q. Who made that suggestion to you? 12:13:41  
13 A. Paul White, who is the president or 12:13:43  
14 chairman, leader of Transportation Alternatives. 12:13:48  
15 Q. And who did he suggest to you that 12:13:51  
16 the leaders are? 12:13:54  
17 A. It was -- oh, he gave me the name of 12:13:54  
18 a group and I actually wrote the name on a -- I 12:13:59  
19 wrote two reports and the name is on the second 12:14:04  
20 of those reports, and I don't recall it right 12:14:08  
21 now. 12:14:10  
22 Q. Okay. When did you write -- withdraw 12:14:11  
23 that question. 12:14:16  
24 What are these reports that you 12:14:16  
25 mentioned? 12:14:20  
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1 M. Scagnelli  
 2 A. They're actually letters written by 12:14:21  
 3 me. I wrote one to Paul White and then I wrote 12:14:23  
 4 one to a group name and an address that I had 12:14:29  
 5 gotten from Paul White. 12:14:34  
 6 Q. Okay. Did you prepare any internal 12:14:35  
 7 reports containing information like this? 12:14:37  
 8 A. No. 12:14:41  
 9 Q. Chief, have you ever read anything 12:14:41  
 10 about Critical Mass in the newspaper? 12:14:47  
 11 A. Probably. 12:14:51  
 12 Q. But you don't have any specific 12:14:54  
 13 recollection? 12:14:55  
 14 A. No. 12:14:55  
 15 Q. Do you recall having seen anything 12:14:56  
 16 about Critical Mass on television? 12:14:58  
 17 A. Yes. 12:14:59  
 18 Q. And what have you seen on television? 12:15:00  
 19 A. I've seen them cover some of the 12:15:03  
 20 rides. 12:15:06  
 21 Q. Have you ever watched videos from the 12:15:07  
 22 New York Times on the Internet concerning 12:15:13  
 23 Critical Mass? 12:15:15  
 24 A. No. 12:15:16  
 25 Q. Other than this litigation and the 12:15:16  
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1 M. Scagnelli  
 2 the litigation you mentioned earlier that you 12:15:24  
 3 were deposed in, are you aware of any lawsuits 12:15:27  
 4 concerning Critical Mass? 12:15:30  
 5 A. I am not. 12:15:31  
 6 Q. Have you ever read an op-ed piece 12:15:33  
 7 published under Ray Kelly's name in the New York  
 8 Post entitled "Extremists have hijacked the bike 12:15:40  
 9 rides"? 12:15:43  
 10 A. No. 12:15:43  
 11 Q. Had you ever heard that such an op-ed 12:15:45  
 12 piece was going to be published? 12:15:48  
 13 A. No. 12:15:50  
 14 Q. Have you heard of a group called 12:15:56  
 15 Times Up? 12:16:05  
 16 A. That's the name I was trying to think 12:16:06  
 17 of. 12:16:08  
 18 Q. Okay. 12:16:09  
 19 A. So, yes. 12:16:09  
 20 Q. And what is your understanding of 12:16:10  
 21 Times Up? 12:16:13  
 22 A. It was purported to me back in '04 12:16:13  
 23 that Times Up was some of the leadership, if not 12:16:19  
 24 the leadership, of Critical Mass. 12:16:26  
 25 Q. Had you heard of Times Up before 12:16:28  
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1 M. Scagnelli  
 2 hearing that name from Paul White? 12:16:31  
 3 A. No. 12:16:32  
 4 Q. And do you currently believe that 12:16:33  
 5 Times Up are some of the leadership of Critical 12:16:43  
 6 Mass? 12:16:48  
 7 A. I don't know anything about Times Up. 12:16:48  
 8 Don't even know if it exists, so no. 12:16:53  
 9 Q. Have you heard anything about Times 12:16:54  
 10 Up beyond what you heard from Paul White? 12:17:01  
 11 A. No. 12:17:03  
 12 Q. Did you tell anyone at the New York 12:17:03  
 13 Police Department that Paul White had indicated 12:17:13  
 14 to you that Times Up might be involved in the 12:17:15  
 15 leadership of Critical Mass? 12:17:16  
 16 A. I'm sure that I did. 12:17:18  
 17 Q. Okay. Do you recall who you told? 12:17:20  
 18 A. No. 12:17:23  
 19 Q. Do you recall why you would have 12:17:23  
 20 communicated that information to someone? 12:17:28  
 21 A. Because we were having a discussion 12:17:30  
 22 about Critical Mass. 12:17:34  
 23 Q. Do you know how long Critical Mass 12:17:36  
 24 has been a regularly occurring event in New York 12:17:41  
 25 City? 12:17:44  
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1 M. Scagnelli  
 2 A. How long? 12:17:44  
 3 Q. Yes.  
 4 A. Well, since '04 to my knowledge. 12:17:47  
 5 Q. Are you aware if Critical Mass 12:17:49  
 6 existed prior to 2004? 12:17:51  
 7 A. I am not aware. 12:17:53  
 8 Q. So at the time you first heard about 12:17:54  
 9 the rides in 2004, do you recall having an 12:18:01  
 10 understanding as to when the rides had begun? 12:18:04  
 11 A. No, other than whoever told me said, 12:18:06  
 12 you know, they've been doing these for some 12:18:15  
 13 time. 12:18:16  
 14 Q. But you don't recall specifically how 12:18:16  
 15 long -- 12:18:21  
 16 A. No. 12:18:22  
 17 Q. -- they've been going on. 12:18:22  
 18 A. No. 12:18:23  
 19 Q. Did you hear at some point that the 12:18:24  
 20 nature of Critical Mass rides changed during 12:18:32  
 21 2004? 12:18:33  
 22 A. Yes. 12:18:34  
 23 Q. And what did you hear? 12:18:38  
 24 A. I heard that the numbers grew 12:18:40  
 25 significantly and that there were, for lack of a 12:18:49  
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1 M. Scagnelli  
 2 better term, disruptive types of people that 12:19:00  
 3 were now joining in on the rides. 12:19:04  
 4 Q. And who told you that? 12:19:06  
 5 A. I don't remember. 12:19:09  
 6 Q. Do you recall if it was the same 12:19:10  
 7 person who provided you with information in the 12:19:13  
 8 first place about Critical Mass? 12:19:15  
 9 A. Not necessarily. 12:19:16  
 10 Q. Do you recall when you heard that the 12:19:18  
 11 numbers were growing and there were disruptive 12:19:21  
 12 types of people joining on the rides? 12:19:24  
 13 A. Summer of '04. 12:19:25  
 14 Q. Do you recall how long this was after 12:19:30  
 15 you had initially learned that rides were 12:19:33  
 16 occurring? 12:19:34  
 17 A. Some period of time. Months anyway. 12:19:37  
 18 Q. Multiple months? 12:19:42  
 19 A. Could have been. 12:19:43  
 20 Q. Could it have been six months? 12:19:44  
 21 A. Could have been. 12:19:46  
 22 Q. Could it have been eight months? 12:19:47  
 23 A. Could have been. 12:19:50  
 24 Q. Could it have been a year? 12:19:52  
 25 A. Probably not. 12:19:54  
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1 M. Scagnelli  
 2 I had a conversation with him about what I 12:21:09  
 3 believed was happening. 12:21:13  
 4 Q. Okay. Do you recall when that 12:21:16  
 5 conversation took place? 12:21:18  
 6 A. No. 12:21:19  
 7 Q. Do you recall if Deputy Commissioner 12:21:19  
 8 Brown contacted you or if you contacted him? 12:21:25  
 9 A. I don't remember. 12:21:28  
 10 MR. CIAPPETTA: Sorry. Can we take a 12:21:34  
 11 break? I have a contact issue. 12:21:35  
 12 MR. BERGSTRESSER: Yeah, sure. 12:21:37  
 13 THE VIDEOGRAPHER: The time is 12:21. 12:21:37  
 14 We're off the record. 12:21:39  
 15 (Recess is taken.) 12:21:41  
 16 THE VIDEOGRAPHER: The time is 12:27. 12:25:06  
 17 We're on the record. 12:27:17  
 18 BY MR. BERGSTRESSER: 12:27:18  
 19 Q. Do you recall having discussions with 12:27:20  
 20 personnel other than DCPI Brown about the 12:27:22  
 21 changes you heard were occurring on the Critical 12:27:28  
 22 Mass rides? 12:27:31  
 23 A. I'm sure that I did. I don't 12:27:34  
 24 particularly recall with whom. 12:27:37  
 25 Q. When is the first time you observed a 12:27:40  
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1 M. Scagnelli  
 2 Q. Could it have been as little as one 12:19:55  
 3 month? 12:19:59  
 4 A. No, it was more than that. 12:19:59  
 5 Q. Three months? 12:20:02  
 6 A. It could have been three months. 12:20:04  
 7 Q. And between the time that you had 12:20:09  
 8 initially learned about Critical Mass and that 12:20:16  
 9 you had been informed that the rides were 12:20:18  
 10 growing bigger, did you have any discussions 12:20:21  
 11 with anyone about Critical Mass? 12:20:24  
 12 A. Say that one more time now? 12:20:27  
 13 Q. Between the time that you had 12:20:28  
 14 initially heard about Critical Mass and the 12:20:30  
 15 later conversation where you heard the rides had 12:20:32  
 16 been getting bigger, did you have conversations 12:20:35  
 17 about Critical Mass in the meantime? 12:20:37  
 18 A. Oh, I'm sure I did. 12:20:39  
 19 Q. Why are you sure you did? 12:20:42  
 20 A. Because it became a topic when they 12:20:44  
 21 became problematic. 12:20:49  
 22 Q. Okay. And what sort of discussions 12:20:52  
 23 did you have? 12:20:55  
 24 A. I remember, I remember Deputy 12:20:55  
 25 Commissioner Paul Brown asking me about them and 12:21:07  
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1 M. Scagnelli  
 2 Critical Mass ride? 12:27:43  
 3 A. I saw one briefly in -- oh, I don't 12:27:46  
 4 really know. Maybe April, May, June of '04. 12:28:00  
 5 Something like that. Briefly. 12:28:08  
 6 Q. How did you come to observe that 12:28:12  
 7 ride? 12:28:16  
 8 A. I happened to be driving around 12:28:16  
 9 Manhattan and observed it coincidentally. 12:28:20  
 10 Q. Did you observe police activity 12:28:25  
 11 occurring in regard to that -- 12:28:27  
 12 A. There were police there, but there 12:28:29  
 13 were just a bunch of people riding bicycles. 12:28:31  
 14 Q. And how big was the ride, in your 12:28:34  
 15 estimation, when you observed it? 12:28:38  
 16 A. In my estimation, it could have been 12:28:40  
 17 200. 12:28:45  
 18 Q. Did the ride seem to be proceeding -- 12:28:46  
 19 I'll withdraw that question. 12:28:57  
 20 When you heard that disruptive types, 12:28:59  
 21 quote, unquote, were joining the rides, what did 12:29:05  
 22 you understand that to mean? 12:29:07  
 23 A. Well, I understood it to mean by the 12:29:09  
 24 people telling me that they were running red 12:29:14  
 25 lights, stopping people from crossing, the 12:29:21  
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1 M. Scagnelli  
2 roadway; that they took over. They took over 12:29:27  
3 roadways. They disobeyed all the signs. They 12:29:29  
4 were driving dangerously. And that's what I 12:29:34  
5 understood. They wouldn't do what the police 12:29:39  
6 indicated. 12:29:43  
7 I was led to believe that the groups 12:29:46  
8 before that did obey the police, so now there 12:29:47  
9 was disobedience against the laws and the 12:29:53  
10 police. 12:29:57  
11 Q. And you don't recall who told you 12:29:58  
12 this information? 12:30:00  
13 A. I heard it from more than one person 12:30:01  
14 and I don't remember who they were. 12:30:03  
15 Q. Do you recall how many people 12:30:04  
16 provided this information to you? 12:30:06  
17 A. Several. You know, more than three, 12:30:07  
18 less than ten. 12:30:17  
19 Q. Was your understanding that these 12:30:18  
20 people had personally witnessed the rides 12:30:20  
21 themselves? 12:30:23  
22 A. Yes. 12:30:23  
23 Q. Do you know if there were officers 12:30:24  
24 assigned to escort Critical Mass as you 12:30:28  
25 understood had been done? 12:30:35  
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1 M. Scagnelli  
2 officers to escort a Critical Mass of that type? 12:31:47  
3 A. The commanding officer of the Traffic 12:31:49  
4 Control Division or the commanding officer of 12:31:53  
5 Patrol Borough Manhattan South. Either of them. 12:31:59  
6 Q. If the commanding officer of PBMS had 12:31:59  
7 assigned details to Critical Mass rides at that 12:32:02  
8 time, could those details have included officers 12:32:05  
9 from the Transportation Bureau? 12:32:08  
10 A. Could have. 12:32:09  
11 Q. Who was the commanding officer of the 12:32:10  
12 Traffic Control Division at that time? 12:32:13  
13 A. Ed Canon. 12:32:15  
14 Q. But you don't recall if -- well, I'll 12:32:18  
15 withdraw that question. 12:32:20  
16 Did you have any discussions with Ed 12:32:22  
17 Canon concerning Critical Mass rides in 2004? 12:32:23  
18 A. I'm sure I did, but I can't recall 12:32:26  
19 any specific conversations whatsoever. 12:32:30  
20 Q. And did you ever discuss with 12:32:33  
21 anyone -- withdrawn. 12:32:45  
22 You described a change in the nature 12:32:46  
23 of the rides that you were informed about in 12:32:55  
24 2004. 12:32:58  
25 A. Yes. 12:32:59  
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1 M. Scagnelli  
2 MR. CIAPPETTA: Objection. 12:30:36  
3 A. I don't remember. 12:30:37  
4 Q. Do you know of what rank any of these 12:30:40  
5 individuals were? 12:30:43  
6 A. I'm -- I don't remember. 12:30:44  
7 Q. Were these individuals assigned 12:30:52  
8 within the Transportation Bureau at that time? 12:30:54  
9 A. Some of them were. 12:30:57  
10 Q. Do you know who assigned the officers 12:30:59  
11 to escort the Critical Mass rides at that time? 12:31:04  
12 A. I don't. 12:31:06  
13 Q. Would it have been the Transportation 12:31:08  
14 Bureau? 12:31:09  
15 A. It could have been. 12:31:09  
16 Q. If it had been the Transportation 12:31:11  
17 Bureau, would you have been aware of the fact 12:31:19  
18 that officers were assigned to escort the ride? 12:31:22  
19 A. In the beginning, not necessarily if 12:31:26  
20 it wasn't problematic. 12:31:31  
21 Once it would become problematic, 12:31:33  
22 definitively I would. 12:31:36  
23 Q. Okay. What rank within the 12:31:37  
24 Transportation Bureau would be the appropriate 12:31:39  
25 rank to have the authority to assign a detail of 12:31:43  
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1 M. Scagnelli  
2 Q. Do you know if NYPD did anything in 12:32:59  
3 response to that purported change? 12:33:02  
4 MR. CIAPPETTA: Objection as to form. 12:33:04  
5 A. Yes. 12:33:08  
6 Q. And what did they do? 12:33:08  
7 A. They assigned elevated numbers of 12:33:10  
8 police officers. 12:33:13  
9 Q. Okay. How do you know that? 12:33:14  
10 A. I don't remember how I know it. 12:33:15  
11 Q. Are you aware or were you aware that 12:33:21  
12 that was going to happen before it took place? 12:33:24  
13 A. The elevated number of police 12:33:28  
14 officers? 12:33:30  
15 Q. Yes. 12:33:30  
16 A. I'm sure I did. 12:33:31  
17 Q. Okay. Is that because you would have 12:33:33  
18 been involved in discussions with individuals 12:33:34  
19 about what the appropriate response was? 12:33:37  
20 A. I was involved in discussions. 12:33:39  
21 Q. Do you recall particular discussions 12:33:40  
22 you had considering the appropriate response? 12:33:43  
23 A. No. 12:33:44  
24 Q. And you don't recall with whom any of 12:33:45  
25 those discussion would have taken place. 12:33:46  
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1 M. Scagnelli  
 2 A. No. 12:33:48  
 3 Q. Would they have taken place with Ray 12:33:48  
 4 Kelly? 12:33:52  
 5 A. They might have. I just don't 12:33:52  
 6 remember. 12:33:54  
 7 Q. Do you recall any such discussions 12:33:55  
 8 with Bruce Smolka, who I believe was assistant 12:33:57  
 9 chief at that time? 12:34:00  
 10 A. Again, probably, but I have no 12:34:01  
 11 recollection at all. 12:34:03  
 12 Q. When you said that the rides, when 12:34:04  
 13 you first heard about the rides and that they 12:34:10  
 14 were smaller groups of individuals, what was 12:34:12  
 15 your understanding of how large the groups were? 12:34:15  
 16 A. When they were small? 12:34:18  
 17 Q. Yes.  
 18 A. Well, the day I saw them, I thought 12:34:26  
 19 there were about 200, but I was led to believe 12:34:29  
 20 that there were never more than 250 and could 12:34:31  
 21 have been less. 12:34:34  
 22 Q. And you believe that the rides that 12:34:35  
 23 would have been about that size took place in 12:34:37  
 24 early 2004? That was your understanding? 12:34:39  
 25 A. Yes. And perhaps before that. 12:34:43  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 Q. Had you ever heard that rides 12:34:49  
 3 exceeded 1,000 participants prior to August 12:34:52  
 4 2004? 12:34:57  
 5 A. I had not heard that. 12:34:59  
 6 Q. Do you know if anyone else had heard 12:35:00  
 7 that? 12:35:03  
 8 A. How would I know that? No. 12:35:03  
 9 Because if I knew they heard it, then 12:35:07  
 10 I would have heard it. 12:35:09  
 11 Q. Do you have an understanding of how 12:35:11  
 12 long the police had been, I'll use the term 12:35:19  
 13 "facilitating," the Critical Mass ride when you 12:35:22  
 14 first learned that the ride had been occurring? 12:35:24  
 15 MR. CIAPPETTA: Objection as to form. 12:35:26  
 16 A. My understanding is that it was for a 12:35:29  
 17 while. 12:35:31  
 18 Q. I'm sorry. Could you put some sort 12:35:33  
 19 of time period on a while? 12:35:36  
 20 A. Certainly months and perhaps more. 12:35:37  
 21 Q. So it's possible that the police had 12:35:42  
 22 been facilitating the ride for at least a year 12:35:46  
 23 before you heard about it. 12:35:48  
 24 A. I don't know about a year. 12:35:49  
 25 My recollection is it was less than 12:35:51  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 that, but others more knowledgeable might have a 12:35:54  
 3 better answer. 12:35:57  
 4 Q. Could you recommend anyone that you 12:35:57  
 5 would think would be more knowledgeable about 12:36:00  
 6 that? 12:36:02  
 7 A. No. 12:36:02  
 8 Q. Have you ever attended a Critical 12:36:03  
 9 Mass detail? 12:36:11  
 10 A. Yes. 12:36:13  
 11 Q. And I understand that, please correct 12:36:15  
 12 me if I'm wrong, due to your rank, you are not 12:36:20  
 13 assigned to a particular Critical Mass detail, 12:36:23  
 14 correct? 12:36:26  
 15 A. That's correct. 12:36:26  
 16 Q. But you can attend them voluntarily 12:36:26  
 17 for whatever reason. 12:36:29  
 18 A. To observe. 12:36:30  
 19 Q. Yes. 12:36:31  
 20 And you've done that. 12:36:33  
 21 A. I remember one specific time. 12:36:34  
 22 Q. Okay. Was that in -- 12:36:37  
 23 A. Actually, two specific times. 12:36:41  
 24 Q. Okay. When were those times? 12:36:42  
 25 A. One of them I don't know the date, 12:36:44  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 but it's the date that they road on the FDR 12:36:48  
 3 Drive and I'm sure that date is documented here 12:36:54  
 4 somewhere. 12:36:56  
 5 And I was on -- I was observing on -- 12:36:58  
 6 I was in a car and I was on West Street in the 12:37:02  
 7 vicinity of the Brooklyn Battery Tunnel, and I 12:37:07  
 8 watched large numbers of bicyclists coming 12:37:10  
 9 southbound on West Street, and then I saw them 12:37:16  
 10 all illegally enter the Battery Park underpass 12:37:20  
 11 which leads out to the northbound FDR Drive. 12:37:26  
 12 Q. And when was the other ride, or I'm 12:37:32  
 13 sorry, the other detail? 12:37:35  
 14 A. The other one was the Friday night 12:37:36  
 15 with regards to the RNC. 12:37:40  
 16 Q. You did not attend any Critical Mass 12:37:43  
 17 details to observe prior to -- I'll represent to 12:37:46  
 18 you that the FDR Drive occurred prior to the 12:37:50  
 19 RNC. 12:37:54  
 20 So is that the first Critical Mass 12:37:54  
 21 detail that you recall observing? 12:37:55  
 22 A. The FDR Drive. 12:37:57  
 23 However, I -- sometime before that I 12:37:58  
 24 happened to observe one and I didn't go out of 12:38:02  
 25 my way to do it. I articulated that before. I 12:38:05  
 TSG Reporting - Worldwide 877-702-9580

Page 122

1 M. Scagnelli

2 happened to see them driving by while I was in 12:38:07  
3 Manhattan. 12:38:10

4 Q. Right. 12:38:10

5 And have you attended any Critical 12:38:11  
6 Mass details to observe after the 2004 RNC? 12:38:15

7 A. No. 12:38:20

8 Q. Did you have any supervisory role 12:38:28  
9 when you observed Critical Mass details in I'll 12:38:31  
10 submit to you it was July and August of 2004? 12:38:35

11 A. With regards to the detail, no. 12:38:39

12 Q. With regards to anything else at 12:38:42  
13 those events? 12:38:46

14 A. No. 12:38:47

15 Q. Why did you attend the July 2004 12:38:47  
16 Critical Mass detail? 12:38:53

17 A. Was that the FDR day? Because it was 12:38:55  
18 supposed to be really big and it was indicated 12:39:01  
19 to me that it would be disruptive and 12:39:07  
20 lawbreaking, and I thought that it was proper 12:39:09  
21 for me to go and see it myself. 12:39:13

22 Q. How did you know it was supposed to 12:39:16  
23 be really big? 12:39:19

24 A. People told me. 12:39:19

25 Q. Who told you? 12:39:21

TSG Reporting - Worldwide 877-702-9580

Page 124

1 M. Scagnelli

2 A. I don't know. You can speculate on 12:40:25  
3 that as much as I can. It would be speculation 12:40:32  
4 so I would rather not answer. I don't know. 12:40:35

5 Q. With all due respect, I'll submit 12:40:36  
6 that you're more of an expert on law enforcement  
7 issues than I am.

8 In your opinion, is it possible to  
9 tell if a ride would be lawbreaking prior to it 12:40:44  
10 occurring?

11 A. Well, if, if it's lawbreaking, I mean 12:40:53  
12 there are lots of different ways. You have 12:40:54  
13 people that are participating that you talk to 12:40:57  
14 that tell you it's lawbreaking is one way. I'm 12:41:00  
15 not saying that happened. 12:41:03

16 You might have something you read 12:41:04  
17 about it on the Internet that indicates that 12:41:09  
18 they're going to break the law. 12:41:11

19 You might say well, they broke the 12:41:15  
20 law last month so there's a really good chance 12:41:18  
21 they're going to break it this month. 12:41:21

22 I mean there are lots of ways but 12:41:23  
23 that's, you know, that's just speculation. 12:41:24

24 Q. So you have no recollection sitting 12:41:26  
25 here now as to where the understanding came from 12:41:27

TSG Reporting - Worldwide 877-702-9580

Page 123

1 M. Scagnelli

2 A. People that worked for me told me. 12:39:23

3 Q. But you don't recall specifically 12:39:26  
4 who? 12:39:28

5 A. No. 12:39:28

6 Q. Did they indicate to you why they 12:39:29  
7 thought it was supposed to be especially big? 12:39:31

8 A. Probably. 12:39:34

9 Q. But you don't recall sitting here 12:39:38  
10 now. 12:39:39

11 A. No. 12:39:39

12 Q. Are those the same people who 12:39:40  
13 indicated to you that the ride that day would be 12:39:44  
14 disruptive and lawbreaking? 12:39:47

15 A. The same people that said it would be 12:39:49  
16 large? Yeah. Yes. 12:39:55

17 Q. Did you have an understanding as to 12:39:57  
18 how they understood it was to be disruptive and 12:40:00  
19 lawbreaking? 12:40:03

20 A. Probably, but I have no recollection. 12:40:04  
21 It would be a question I would ask, but I have 12:40:12  
22 absolutely no recollection of it. 12:40:16

23 Q. How is it possible to tell if a ride 12:40:20  
24 is going to be lawbreaking prior to it 12:40:22  
25 occurring? 12:40:25

TSG Reporting - Worldwide 877-702-9580

Page 125

1 M. Scagnelli

2 that the July 2004 ride would be lawbreaking. 12:41:30

3 A. That's correct. 12:41:35

4 Q. Are you aware whether or not there 12:41:36  
5 was a larger police presence than normal at the 12:41:43  
6 July 2004 ride? 12:41:45

7 A. There was. 12:41:47

8 Q. And is it your understanding that was 12:41:48  
9 because of the information that you had heard 12:41:51  
10 that the ride was purportedly going to be larger 12:41:55  
11 and more lawbreaking? 12:41:58

12 A. Yes. 12:41:59

13 Q. Do you know who made the decision to 12:42:00  
14 have a larger police force attend that ride? 12:42:02

15 A. No. 12:42:05

16 Q. Were you involved in any way in the 12:42:05  
17 decision to have a larger police force attend 12:42:08  
18 that ride? 12:42:11

19 A. I wasn't the decision-maker, no. 12:42:12

20 Q. Were you involved in any discussions 12:42:15  
21 with someone who might have made that decision? 12:42:18

22 A. I'm sure I was. 12:42:20

23 Q. But you don't recall it. 12:42:21

24 A. I don't recall the discussions. 12:42:22

25 Q. Why did you attend the August 2004 12:42:26

TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 Critical Mass detail that took place during the 12:42:45  
 3 Republican National Convention? 12:42:48  
 4 A. The Republican National Convention 12:42:49  
 5 was all hands. Every ranking person worked the 12:42:52  
 6 convention and I was one of them. 12:42:58  
 7 Q. Okay. 12:43:00  
 8 A. I wasn't specifically assigned to the 12:43:03  
 9 bike ride. I was assigned to the Republican 12:43:05  
 10 Convention. 12:43:09  
 11 Q. Did you believe that Critical Mass 12:43:11  
 12 rides would continue to be large and lawbreaking 12:43:15  
 13 after the 2004 Republican National Convention? 12:43:18  
 14 A. I did. 12:43:21  
 15 Q. Did you believe they would cause 12:43:23  
 16 significant traffic disruptions within New York 12:43:26  
 17 City? 12:43:29  
 18 A. I did. 12:43:29  
 19 Q. Why then did you not attend future 12:43:30  
 20 Critical Mass details to observe? 12:43:34  
 21 MR. CIAPPETTA: Objection as to form. 12:43:36  
 22 A. Because after the RNC, Patrol Borough 12:43:42  
 23 Manhattan South was very specifically tasked 12:43:50  
 24 with handling that and they went through a 12:43:53  
 25 different chief so I'm not within their chain of 12:43:56  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 command. So if I were to go there, it would be 12:44:00  
 3 to look and not to participate, and I felt no 12:44:02  
 4 need for that. Let the other three-star chief 12:44:08  
 5 do it. 12:44:11  
 6 Q. Who does PBMS report to? 12:44:11  
 7 A. The chief of patrol. 12:44:15  
 8 Q. And who was that at that time? 12:44:17  
 9 A. Nick Estevillo. 12:44:18  
 10 Q. When you say that PBMS was very 12:44:21  
 11 specifically tasked with handling the rides at 12:44:27  
 12 that time, who tasked them with that? 12:44:30  
 13 A. I don't know. 12:44:36  
 14 Q. Well, how do you know they were very 12:44:38  
 15 specifically tasked with that? 12:44:41  
 16 A. Because I was told. 12:44:42  
 17 Q. But you don't know who told you. 12:44:43  
 18 A. No. 12:44:44  
 19 Q. Wasn't PBMS handling the rides prior 12:44:45  
 20 to the RNC as well? 12:44:52  
 21 MR. CIAPPETTA: Objection as to form. 12:44:55  
 22 A. I'm not so sure. That's a gray area 12:45:03  
 23 in my mind as to whether Traffic Control 12:45:06  
 24 Division or Manhattan South or a combination 12:45:10  
 25 were handling it in the times where it was not 12:45:12  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 problematic. 12:45:17  
 3 Q. If someone wanted to find out 12:45:22  
 4 specifically who had been handling it, how would 12:45:24  
 5 you do that? 12:45:26  
 6 A. I guess one could ask potential 12:45:30  
 7 participants that might have been there, and if 12:45:40  
 8 you asked enough people, you'd figure it out. 12:45:43  
 9 Or, you know, the chief of Traffic 12:45:49  
 10 Control Division at the time might know and the 12:45:51  
 11 Manhattan South Borough commander at the time 12:45:54  
 12 might know and their immediate staffs might 12:45:56  
 13 know, or they would know actually. 12:45:59  
 14 Q. Do you know who was the executive 12:46:01  
 15 officer of PBMS at the time? 12:46:06  
 16 A. Sometimes they had one, sometimes 12:46:07  
 17 they had two. 12:46:12  
 18 I think Steve Paragallo is -- my 12:46:12  
 19 educated guess is that Steve Paragallo was 12:46:16  
 20 there. 12:46:19  
 21 Q. The two Critical Mass details that 12:46:21  
 22 you attended, I believe you said you had no 12:46:25  
 23 supervisory role regarding the detail. 12:46:29  
 24 A. Correct. 12:46:32  
 25 Q. So did you ever direct officers as to 12:46:33  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 how to conduct operations during those details? 12:46:39  
 3 A. Well, during the FDR ride, I sat 12:46:43  
 4 there and watched. 12:46:53  
 5 During the RNC, the RNC went, I don't 12:46:55  
 6 know, three, four, five nights. I can't 12:46:59  
 7 remember, and there were times I was out there 12:47:01  
 8 giving -- making supervisory decisions and 12:47:04  
 9 telling people what to do and what not to do, 12:47:07  
 10 not necessarily involved with Critical Mass 12:47:11  
 11 because that was only one night. 12:47:13  
 12 Q. Did you make supervisory decisions -- 12:47:15  
 13 A. There were lots of pedestrian 12:47:17  
 14 demonstrations. 12:47:20  
 15 Q. Did you make supervisory decisions 12:47:22  
 16 and tell people what to do concerning the 12:47:25  
 17 Critical Mass event during the RNC? 12:47:27  
 18 A. No and yes. 12:47:29  
 19 No, I didn't give a whole lot of 12:47:30  
 20 orders to police officers, but I did speak to 12:47:35  
 21 individual participants on bicycles on a number 12:47:42  
 22 of occasions. 12:47:47  
 23 And specifically there would be 12:47:48  
 24 groups of bicyclists dismounted blocking 12:47:52  
 25 east/west traffic and I would actually stop and 12:47:56  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 get out, and go over and tell them to move. 12:48:03  
 3 And some of them moved, some of them 12:48:09  
 4 didn't, but I took no further police action 12:48:10  
 5 against the ones that didn't. 12:48:14  
 6 Q. I believe you said, and correct me if 12:48:18  
 7 I'm wrong, that you observed the July 2004 FDR 12:48:20  
 8 incident Critical Mass ride in a car; is that 12:48:25  
 9 correct?  
 10 A. Yes. Well, I got out of the car. I 12:48:30  
 11 was standing there, but I arrived at that 12:48:33  
 12 location by car. 12:48:35  
 13 Q. Had you been following the ride up to 12:48:36  
 14 the point where they entered the FDR? 12:48:40  
 15 A. No. I was, I was, I was on West 12:48:41  
 16 Street within a half a block of the Brooklyn 12:48:49  
 17 Battery Tunnel and they came down, you know, I 12:48:53  
 18 knew that they were coming and I positioned 12:48:59  
 19 myself and then here they came. 12:49:01  
 20 And they drove into the Battery Park 12:49:04  
 21 underpass. I recognized by police radio that 12:49:06  
 22 they had then when they got out of the 12:49:11  
 23 underpass, they proceeded northbound on the FDR 12:49:14  
 24 Drive. I didn't see that, but I heard it on the 12:49:16  
 25 radio and they, you know, that's what they would 12:49:18  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 Q. What is your understanding as to why 12:50:47  
 3 NYPD would have a police presence escort the 12:50:59  
 4 Critical Mass rides when you had first heard 12:51:03  
 5 that there were smaller rides that would be 12:51:06  
 6 escorted by the police? 12:51:10  
 7 A. To protect -- 12:51:11  
 8 MR. CIAPPETTA: Objection as to form. 12:51:11  
 9 A. To protect the public and the 12:51:13  
 10 bicyclists themselves so that no one got hurt. 12:51:17  
 11 Q. Have you ever received reports 12:51:23  
 12 prepared after a Critical Mass detail which I 12:51:27  
 13 believe are sometimes referred to as unusual 12:51:30  
 14 occurrence reports? 12:51:32  
 15 A. Never. 12:51:33  
 16 Q. Did you have an understanding as to 12:51:41  
 17 the interaction between police and bicyclists 12:51:46  
 18 that took place during the time period where the 12:51:53  
 19 rides were allegedly smaller and more law 12:51:57  
 20 abiding? 12:52:00  
 21 A. What I was told is that everybody got 12:52:02  
 22 along and they cooperated with the police that 12:52:05  
 23 were present. 12:52:08  
 24 Q. Did you hear if they told the -- did 12:52:11  
 25 you hear if ride participants told the police 12:52:16  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 have done coming out of the underpass. 12:49:21  
 3 And I listened to it. They went 12:49:23  
 4 north on the FDR and then I disengaged after the 12:49:26  
 5 last ones went through the tunnel, the 12:49:30  
 6 underpass. 12:49:33  
 7 Q. Did you observe any part of the ride 12:49:33  
 8 other than the part whereupon they enter into 12:49:35  
 9 the tunnel? 12:49:38  
 10 A. No. 12:49:39  
 11 Q. Are you aware of whether an NYPD 12:49:40  
 12 employee of higher rank than yourself has ever 12:49:52  
 13 attended a Critical Mass ride? 12:49:56  
 14 A. Not aware. 12:49:57  
 15 Q. Do you know who any of the officers 12:49:59  
 16 in charge of the Critical Mass details that took 12:50:08  
 17 place prior to July 2004 are? 12:50:11  
 18 A. I have no knowledge at this time of 12:50:19  
 19 that. 12:50:23  
 20 Q. Do you know who the Commanding 12:50:24  
 21 Officer of the detail was during the July 2004 12:50:27  
 22 ride? 12:50:34  
 23 A. Well, it would be Patrol Borough 12:50:36  
 24 Manhattan South and I'm not sure which chief it 12:50:43  
 25 would be. 12:50:45  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 where they would be going in advance? 12:52:18  
 3 A. I don't know how they did it. 12:52:21  
 4 Q. I'm sorry. When you say you don't 12:52:25  
 5 know how they did it, do you mean that to 12:52:26  
 6 understand that they did tell the police where 12:52:28  
 7 they were going? 12:52:29  
 8 A. What I'm saying is this: I don't 12:52:30  
 9 know. I know they, because I was told, they got 12:52:37  
 10 together, they talked about what they were going 12:52:40  
 11 to do and then they went and did it. So 12:52:42  
 12 anything else after that is speculation. 12:52:45  
 13 Q. And when you say "they," do you -- 12:52:47  
 14 A. The police and the riders. 12:52:49  
 15 Q. Okay. It's your understanding that 12:52:50  
 16 prior to the ride commencing, there was 12:52:56  
 17 discussion between the police and the cyclists. 12:52:57  
 18 A. There was. 12:53:00  
 19 Q. Do you recall any of the police who 12:53:04  
 20 had supposedly been involved in those sorts of 12:53:08  
 21 conversations with participants? 12:53:11  
 22 A. I don't -- 12:53:13  
 23 MR. CIAPPETTA: Can you repeat 12:53:13  
 24 that -- I'm sorry. Can you repeat that 12:53:14  
 25 question? 12:53:15  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 (Question was read back as follows:  
 3 "QUESTION: Do you recall any of the 12:53:04  
 4 police who had supposedly been involved in 12:53:07  
 5 those sorts of conversations with 12:53:10  
 6 participants?") 12:53:12  
 7 A. No. 12:53:23  
 8 MR. BERGSTRESSER: Lunch break? 12:53:26  
 9 MR. CIAPPETTA: Sure. 12:53:29  
 10 THE VIDEOGRAPHER: The time is 12:53. 12:53:37  
 11 We're off the record. 12:53:40  
 12 (Lunch recess taken from 12:53 p.m. 12:53:42  
 13 until 1:47 p.m.) 12:53:43  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 A F T E R N O O N S E S S I O N  
 3 (Time noted: 1:47 p.m.)  
 4 (Witness not present at this time.) 13:28:22  
 5 THE VIDEOGRAPHER: The time is 1:47. 13:47:27  
 6 We're on the record. 13:47:30  
 7 MR. BERGSTRESSER: I've asked Chief 13:47:31  
 8 Scagnelli to step out of the room for a 13:47:36  
 9 moment. 13:47:38  
 10 And I'd like to ask counsel to 13:47:38  
 11 reconsider the decision to direct the 13:47:40  
 12 witness not to answer questions concerning 13:47:43  
 13 his discussions with Lieutenant Albano 13:47:45  
 14 based on the fact that Lieutenant Albano 13:47:48  
 15 was a named defendant in this case, is not, 13:47:50  
 16 to anybody's knowledge, representing Chief 13:47:56  
 17 Scagnelli, and, you know, as counsel is 13:48:00  
 18 well aware, it's a violation of the 13:48:03  
 19 disciplinary rules for an attorney to 13:48:06  
 20 insert himself in a representative 13:48:08  
 21 capacity, you know, while he's a major fact 13:48:13  
 22 witness to the event. 13:48:17  
 23 I think counsel is aware that, you 13:48:18  
 24 know, Lieutenant Albano is directly 13:48:22  
 25 involved in many of the issues in this case 13:48:23  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 and as one of the named defendants who was 13:48:25  
 3 named because of his involvement in the 13:48:29  
 4 issues at the heart of this case, the fact 13:48:31  
 5 that, you know, we would just ask that you 13:48:35  
 6 reconsider your position that statements he 13:48:39  
 7 made to this witness would be privileged. 13:48:43  
 8 MR. CIAPPETTA: I mean are you 13:48:47  
 9 saying, Brad, that -- can we have a 13:48:48  
 10 discussion off the record on this? 13:48:57  
 11 MR. BERGSTRESSER: Sure. 13:48:59  
 12 MR. CIAPPETTA: You know, to put your 13:49:00  
 13 position on? 13:49:02  
 14 MR. BERGSTRESSER: Sure. 13:49:02  
 15 THE VIDEOGRAPHER: The time is 1:49. 13:49:03  
 16 We're off the record. 13:49:05  
 17 (Discussion off the record.) 13:49:07  
 18 (Mr. Muschenheim now present.) 14:04:19  
 19 (Witness now present in room.) 14:05:17  
 20 THE VIDEOGRAPHER: The time is 2:05. 14:05:17  
 21 We're on the record. 14:05:19  
 22 \* \* \* 14:05:20  
 23 MR. CIAPPETTA: In response to 14:05:20  
 24 Mr. Bergstresser's statement, defendants 14:05:21  
 25 have decided to continue their objection as 14:05:25  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 to any questions about what Chief Scagnelli 14:05:27  
 3 discussed with Lieutenant Albano as we 14:05:31  
 4 believe that is covered by attorney-client 14:05:34  
 5 privilege. 14:05:35  
 6 M I C H A E L S C A G N E L L I, resumed  
 7 and testified as follows:  
 8 EXAMINATION BY (Cont'd.)  
 9 MR. BERGSTRESSER:  
 10 Q. All right. Chief Scagnelli, if I 14:05:39  
 11 could just ask you a few questions about topics 14:05:41  
 12 we already touched on briefly. 14:05:43  
 13 You mentioned the focused enforcement 14:05:46  
 14 action taken concerning cyclists coming off the 14:05:50  
 15 Williamsburg Bridge. 14:05:55  
 16 Do you recall that discussion? 14:05:56  
 17 A. I do. 14:05:57  
 18 Q. Do you know if that focused 14:05:58  
 19 enforcement action was -- were cyclists in that 14:06:00  
 20 situation summonsed for one violation in 14:06:05  
 21 particular? 14:06:09  
 22 MR. CIAPPETTA: Objection to the 14:06:10  
 23 form. 14:06:11  
 24 A. I don't know. 14:06:13  
 25 Q. Do you know if that's -- if it's 14:06:16  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
2 generally the case that in such a focused 14:06:19  
3 enforcement action, particular summonses are 14:06:21  
4 emphasized in the enforcement activity? 14:06:24  
5 MR. CIAPPETTA: Objection. 14:06:27  
6 A. If officers are sent there to clear 14:06:32  
7 up a condition, the condition, it would have 14:06:36  
8 been articulated to them as to what violations 14:06:40  
9 were considered dangerous and needed to be 14:06:43  
10 corrected, and they would stop the errant 14:06:45  
11 bicyclists or motorists, or whatever the case 14:06:49  
12 may be, for that condition and issue a summons. 14:06:52  
13 Q. Do you know if in focusing 14:06:56  
14 enforcement action on the particular area of 14:06:59  
15 concern sort of other violations might go 14:07:03  
16 ignored? 14:07:08  
17 MR. CIAPPETTA: Objection. 14:07:10  
18 A. It would depend on the individual 14:07:13  
19 officer at the scene. They use judgment. 14:07:16  
20 Q. Let me give an example which you may 14:07:20  
21 or may not know the answer to. 14:07:22  
22 In the Williamsburg Bridge example, 14:07:24  
23 if enforcement was being directed towards 14:07:27  
24 bicyclists who were running red lights, for 14:07:31  
25 example, would cars that were running red lights 14:07:35  
TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
2 wanted to do it, yes. 14:08:37  
3 Q. Is it correct to say, then, that 14:08:39  
4 Police Commissioner Kelly does not have any 14:08:41  
5 authority on his own to enact a change to the 14:08:44  
6 traffic laws? 14:08:49  
7 MR. CIAPPETTA: Objection. 14:08:50  
8 A. Correct. 14:08:51  
9 Q. Does Commissioner Kelly have the 14:08:51  
10 authority to enact any sort of laws? 14:08:54  
11 A. No, the legislators do that. 14:08:59  
12 Q. Chief, are you familiar with a 14:09:03  
13 multi-year study or report that was conducted 14:09:13  
14 concerning trucks in New York City and traffic 14:09:16  
15 problems and violations caused by trucks that 14:09:21  
16 would have been completed in 2006? 14:09:23  
17 A. I have no recollection of that at 14:09:28  
18 this time. 14:09:30  
19 Q. Are you aware of any studies 14:09:35  
20 specifically examining the issue of violations 14:09:40  
21 and enforcement of violations against bicyclists 14:09:46  
22 that has taken place in New York City? 14:09:50  
23 A. No. 14:09:52  
24 MR. CIAPPETTA: Objection. 14:09:52  
25 BY MR. BERGSTRESSER: 14:09:53  
TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
2 also be cited? 14:07:39  
3 MR. CIAPPETTA: Objection. 14:07:41  
4 I'm sorry. Are you asking that as a 14:07:45  
5 hypothetical? 14:07:46  
6 BY MR. BERGSTRESSER:  
7 Q. Well, I'll represent to you that that 14:07:47  
8 happened. 14:07:49  
9 MR. CIAPPETTA: Okay. 14:07:49  
10 A. Okay. I wasn't there, but any 14:07:50  
11 officer that was there focusing on bicycles that 14:07:54  
12 saw a car going through a red light that didn't 14:07:58  
13 stop them and give them a ticket would be in a 14:08:01  
14 whole lot of hot water with me. 14:08:03  
15 Q. We also discussed before, the process 14:08:06  
16 through which the police department, and 14:08:12  
17 specifically the Transportation Bureau, might 14:08:15  
18 have suggestions or recommendations concerning 14:08:17  
19 the traffic regulations and how that would 14:08:20  
20 get -- the procedure for how that would get 14:08:23  
21 moved up through the hierarchy you discussed 14:08:27  
22 with legal and sent to City Hall for 14:08:30  
23 consideration. 14:08:33  
24 Do you recall that discussion we had? 14:08:33  
25 A. As long as the police commissioner 14:08:35  
TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
2 Q. All right, chief, at this time I'd 14:09:53  
3 like to -- well, withdraw that statement. 14:09:59  
4 Are you aware that New York City 14:10:02  
5 Police Officer Kenneth Wagner has testified in 14:10:05  
6 this case? 14:10:07  
7 A. Never heard of him and I don't know 14:10:08  
8 that he testified. 14:10:10  
9 Q. Do you have any knowledge of any of 14:10:13  
10 the witnesses who have testified in this matter? 14:10:16  
11 A. I do not. 14:10:18  
12 Q. I'll represent to you that Officer 14:10:27  
13 Wagner testified that he's been assigned to the 14:10:34  
14 1st Precinct Scooter Task Force since 1993. 14:10:38  
15 Are you familiar with the 1st 14:10:41  
16 Precinct Scooter Task Force? 14:10:43  
17 A. Yes. 14:10:44  
18 Q. I'll hand you this without marking it 14:10:53  
19 for identification. I'll represent it to you as 14:10:56  
20 a transcript of Officer Wagner's testimony. 14:10:58  
21 MR. CIAPPETTA: Are you going to 14:11:04  
22 direct the witness to a specific section? 14:11:05  
23 MR. BERGSTRESSER: I will, yes. 14:11:07  
24 BY MR. BERGSTRESSER: 14:11:07  
25 Q. No need to read through this entire 14:11:07  
TSG Reporting - Worldwide 877-702-9580

Page 142

1 M. Scagnelli  
2 thing, Chief.  
3 If you could please take a look at 14:11:11  
4 page 34, and bear in mind that the way these 14:11:13  
5 pages are set up, there's actually four pages on 14:11:16  
6 each page so you need to look at the page 14:11:19  
7 numbers in the upper right-hand corner of each 14:11:21  
8 pane. 14:11:25  
9 A. Oh, so not this 34 (indicating). 14:11:25  
10 Q. Right. Sorry. 14:11:27  
11 MR. CIAPPETTA: Go backwards. 14:11:30  
12 BY MR. BERGSTRESSER: 14:11:32  
13 Q. I believe it's -- at the bottom of 14:11:32  
14 the page it's indicated as page 10. 14:11:34  
15 (Document review.) 14:11:38  
16 A. Okay. Page 34, top left corner. 14:11:41  
17 Okay. 14:11:47  
18 Q. If you could just read starting at 14:11:47  
19 line 24 on that page through the end of page 35. 14:11:49  
20 A. Line 24? 14:11:55  
21 Q. Yes, which is at the bottom of page 14:11:57  
22 34 and then through page 35, and then I'll have 14:11:59  
23 some questions for you. 14:12:02  
24 (Document review.) 14:12:03  
25 Q. Okay, Chief? 14:13:31  
TSG Reporting - Worldwide 877-702-9580

Page 144

1 M. Scagnelli  
2 A. I don't have, I don't have reason to 14:14:55  
3 believe or not believe. I have no idea. 14:14:58  
4 Q. Okay. Now if you could please turn 14:15:04  
5 to page 34, which is I believe just one page 14:15:08  
6 later on what is indicated at the bottom of the 14:15:11  
7 transcript as page 12. 14:15:14  
8 MR. CIAPPETTA: Did you say 34 or 44? 14:15:17  
9 MR. BERGSTRESSER: Forty-four. 14:15:18  
10 A. Forty-four? 14:15:21  
11 Q. Yes. 14:15:22  
12 And if you could please start at Line 14:15:23  
13 5 which says, "Do you recall being told what 14:15:24  
14 your specific objectives would be?" 14:15:26  
15 And read from there to page 45, the 14:15:29  
16 bottom of the page. 14:15:34  
17 (Document review.) 14:15:35  
18 A. Where do you want me to finish? 14:16:06  
19 Q. Just at the bottom of page 45. 14:16:08  
20 (Document review.) 14:16:15  
21 Q. Okay. Would you agree with me that 14:16:38  
22 Officer Wagner's testimony is that he was 14:16:40  
23 instructed in connection with that January 2004 14:16:42  
24 Critical Mass ride to ride along and monitor the 14:16:45  
25 ride but not to take law enforcement action 14:16:47  
TSG Reporting - Worldwide 877-702-9580

Page 143

1 M. Scagnelli  
2 A. Where do you want me to stop? 14:13:32  
3 Q. Just at the bottom of page 35. 14:13:35  
4 A. Oh. I went way past it then. Okay. 14:13:38  
5 Q. Would you agree with me that Officer 14:13:42  
6 Wagner testified that he and other members of 14:13:44  
7 the 1st Precinct Scooter Task Force were 14:13:45  
8 assigned to the Critical Mass ride occurring on 14:13:47  
9 January 30th, 2004? 14:13:49  
10 MR. CIAPPETTA: Objection as to form. 14:13:54  
11 A. Yes. 14:14:04  
12 Q. And that his orders were that the 14:14:05  
13 detail was to monitor the ride and keep the 14:14:06  
14 borough commander apprised of the situation? 14:14:09  
15 (Document review.) 14:14:19  
16 MR. CIAPPETTA: Object to the form. 14:14:22  
17 A. Yes. 14:14:36  
18 Q. Do you have any reason to believe 14:14:37  
19 that Officer Wagner's testimony in that regard 14:14:38  
20 is incorrect? 14:14:40  
21 MR. CIAPPETTA: Objection. 14:14:41  
22 A. I don't know Officer Wagner so I 14:14:42  
23 don't have the faintest idea. 14:14:49  
24 Q. But do you have any reason to believe 14:14:51  
25 that his testimony is incorrect? 14:14:53  
TSG Reporting - Worldwide 877-702-9580

Page 145

1 M. Scagnelli  
2 unless absolutely dictated by the circumstances? 14:16:50  
3 MR. CIAPPETTA: Objection. 14:16:53  
4 A. That's what the text says, yes. 14:16:53  
5 Q. Okay. Is that -- does that comport 14:16:55  
6 with your understanding of how the ride, the 14:17:01  
7 Critical Mass rides have been conducted and 14:17:05  
8 facilitated with the police prior to the July 14:17:07  
9 2004 ride? 14:17:11  
10 MR. CIAPPETTA: Objection. 14:17:12  
11 A. No. 14:17:14  
12 Q. Why not? 14:17:15  
13 A. I was told that the bicyclists would 14:17:16  
14 meet, the police would meet with them, have 14:17:23  
15 conversation with them about what was going to 14:17:25  
16 happen and then they would go along, ride along 14:17:27  
17 with them, and that there were -- that it wasn't 14:17:34  
18 problematic. 14:17:39  
19 Q. Okay. How does -- 14:17:41  
20 A. That's what I was told. 14:17:42  
21 Q. And -- I'll withdraw that question. 14:17:43  
22 Does that conflict with Officer 14:17:47  
23 Wagner's testimony? 14:17:59  
24 A. Not necessarily. 14:18:05  
25 Q. Well, do you think there's anything 14:18:13  
TSG Reporting - Worldwide 877-702-9580

Page 146

1 M. Scagnelli  
2 inconsistent in your understanding of how rides 14:18:19  
3 were conducted and policed prior to July 2004 14:18:21  
4 and what we've looked at so far in Officer 14:18:24  
5 Wagner's statements? 14:18:29  
6 MR. CIAPPETTA: Objection. 14:18:29  
7 A. Can you repeat that? 14:18:30  
8 Q. Sure. 14:18:31  
9 MR. BERGSTRESSER: Could you read the 14:18:32  
10 question back, please? 14:18:32  
11 (Question was read back as follows:  
12 "QUESTION: Well, do you think 14:18:17  
13 there's anything inconsistent in your 14:18:18  
14 understanding of how rides were conducted 14:18:20  
15 and policed prior to July 2004 and what 14:18:22  
16 we've looked at so far in Officer Wagner's 14:18:25  
17 statements?") 14:18:29  
18 A. No. 14:18:53  
19 Q. Okay. Chief, I'll ask you to please 14:18:53  
20 turn to page 50. 14:18:57  
21 I'm sorry. Just one more turn of a 14:18:59  
22 page. 14:19:01  
23 (Document review.) 14:19:02  
24 Q. If you look on page 50 at Line 9, 14:19:08  
25 I'll read aloud. 14:19:12  
TSG Reporting - Worldwide 877-702-9580

Page 148

1 M. Scagnelli  
2 heard information about Critical Mass from at 14:20:16  
3 least three individuals who you believed 14:20:19  
4 personally attended Critical Mass details? 14:20:21  
5 A. Correct. 14:20:23  
6 Q. Do you have any idea how many 14:20:23  
7 Critical Mass rides those individuals had 14:20:27  
8 attended? 14:20:29  
9 A. I do not. 14:20:30  
10 Q. Were you provided with any other 14:20:31  
11 evidence beyond the statements of those 14:20:39  
12 individuals who provided you with that 14:20:43  
13 information about the size of Critical Mass 14:20:45  
14 rides at that time? 14:20:46  
15 MR. CIAPPETTA: Objection. 14:20:49  
16 A. No. 14:20:49  
17 Q. Did you hear from anyone else or 14:20:50  
18 receive information from anyone else at that 14:20:54  
19 time concerning the size of Critical Mass rides? 14:20:57  
20 A. Probably. 14:21:00  
21 Q. Why do you say probably? 14:21:03  
22 A. Because I don't believe I would have 14:21:06  
23 just had conversations with three people and not 14:21:08  
24 heard more about it, but I don't remember now. 14:21:10  
25 You know, if I had to give a like 14:21:14  
TSG Reporting - Worldwide 877-702-9580

Page 147

1 M. Scagnelli  
2 "Question: What was the source of 14:19:13  
3 your information regarding those prior rides? 14:19:15  
4 "Answer: The shift supervisor and 14:19:17  
5 the other officers in the Scooter Task Force." 14:19:19  
6 "Question: What did they tell you 14:19:22  
7 about the size of the prior rides? 14:19:25  
8 "Answer: That they could be quite 14:19:27  
9 large, numbers ranging between several thousand 14:19:29  
10 to close to 6 or 7,000 riders depending on 14:19:31  
11 weather. 14:19:34  
12 "Question: And that is what they 14:19:35  
13 told you about Critical Mass rides that took 14:19:36  
14 place prior to January 30, 2004? 14:19:38  
15 "Answer: Yes." 14:19:41  
16 Do you have any reason to believe 14:19:44  
17 that Officer Wagner's testimony on that point is 14:19:48  
18 incorrect? 14:19:51  
19 A. I believe that it's incorrect. 14:19:53  
20 Q. Based on what? 14:19:55  
21 A. Based upon my conversations in 2004 14:19:57  
22 with members of the department that were telling 14:20:00  
23 me that the numbers were nowhere near that. 14:20:07  
24 Q. Okay. And you're referring to the 14:20:11  
25 conversations we discussed earlier when you 14:20:14  
TSG Reporting - Worldwide 877-702-9580

Page 149

1 M. Scagnelli  
2 what do you think, I'd probably say I probably 14:21:16  
3 spoke to 30 people, but I can't remember doing 14:21:19  
4 that. 14:21:23  
5 Q. And you can't recall any particular 14:21:26  
6 individual that you had conversations with 14:21:28  
7 concerning Critical Mass at that time. 14:21:30  
8 A. No. 14:21:32  
9 MR. CIAPPETTA: Objection. Asked and 14:21:33  
10 answered. 14:21:34  
11 BY MR. BERGSTRESSER: 14:21:34  
12 Q. Do you recall if you had any 14:21:34  
13 discussions with Steve Paragallo at that time 14:21:37  
14 concerning Critical Mass? 14:21:42  
15 A. I don't recall speaking to him about 14:21:46  
16 it. 14:21:48  
17 Q. Is it possible that you spoke to him 14:21:48  
18 concerning Critical Mass rides? 14:21:55  
19 A. It's very possible. 14:21:56  
20 Q. Is it in fact likely that you spoke 14:21:59  
21 to him? 14:22:01  
22 A. I probably did. 14:22:02  
23 Q. But you don't recall hearing 14:22:03  
24 information about the size of Critical Mass 14:22:08  
25 rides from anyone else at that time. 14:22:09  
TSG Reporting - Worldwide 877-702-9580

Page 150

1 M. Scagnelli  
2 MR. CIAPPETTA: Objection. 14:22:12  
3 A. No. 14:22:12  
4 Q. Are you aware of any documents that 14:22:14  
5 would have been prepared at that time containing 14:22:22  
6 information on the size of Critical Mass rides 14:22:24  
7 that had occurred prior to January of 2004? 14:22:26  
8 A. Documents? No. 14:22:30  
9 Q. If you take a look at page 51, which 14:22:35  
10 is just on the other side of the same page, or 14:22:40  
11 at Line 11 Officer Wagner testifies, "Some of 14:22:44  
12 the cyclists would break off and stop crosstown 14:22:48  
13 traffic or cross-street traffic from whichever 14:22:51  
14 street or avenue they were crossing 14:22:53  
15 perpendicularly to at that time." 14:22:55  
16 MR. CIAPPETTA: Could just read the 14:22:57  
17 whole sentence? 14:22:58  
18 MR. BERGSTRESSER: Sure. 14:22:59  
19 BY MR. BERGSTRESSER: 14:23:02  
20 Q. Starting at Line 7, "In substance, 14:23:02  
21 the ride was very large, usually occupied the 14:23:04  
22 entire street from curb to curb regardless of -- 14:23:07  
23 A. I'm not going to follow this unless I 14:23:09  
24 understand the question and I don't understand 14:23:14  
25 the question. 14:23:15  
TSG Reporting - Worldwide 877-702-9580

Page 152

1 M. Scagnelli  
2 A. I have to be honest with you, I don't 14:24:10  
3 understand what the officer is talking about 14:24:12  
4 because if 7,000 people were riding around the 14:24:22  
5 city and my people didn't come and tell me that, 14:24:25  
6 that would be a very terrible blunder. So I'm 14:24:28  
7 very confused as to what he's saying. 14:24:33  
8 Q. Well, I'll represent to you that 14:24:36  
9 that's what he's saying. 14:24:37  
10 A. Yeah, I can see that. 14:24:40  
11 MR. CIAPPETTA: Objection. 14:24:41  
12 Is there -- is that a question or... 14:24:42  
13 BY MR. BERGSTRESSER: 14:24:44  
14 Q. So do you have any reason to -- is it 14:24:45  
15 accurate to say that you don't believe this is 14:24:52  
16 possible, what Officer Wagner is saying, because 14:24:56  
17 you should have been informed about it; is that 14:25:01  
18 correct? 14:25:04  
19 MR. CIAPPETTA: Objection. 14:25:04  
20 A. I believe if there are 7,000 people 14:25:09  
21 riding around together on bicycles on any given 14:25:11  
22 day, I would have been told about it by many 14:25:16  
23 people. 14:25:18  
24 Q. Okay. What if 1,000 bicycles were 14:25:20  
25 riding around together on any given day? Would 14:25:22  
TSG Reporting - Worldwide 877-702-9580

Page 151

1 M. Scagnelli  
2 It says, "What did they tell you?" 14:23:16  
3 Who's "they"? 14:23:18  
4 Otherwise, there's no way I can judge 14:23:19  
5 anything unless I know who "they" is. 14:23:21  
6 Q. Well, actually, the "they" is 14:23:24  
7 irrelevant in this situation so I'm not going to 14:23:25  
8 ask you about "they." 14:23:27  
9 So why don't you let me ask the 14:23:28  
10 question and then you can let me know if it 14:23:29  
11 makes sense. 14:23:31  
12 A. Okay. 14:23:31  
13 Q. Thank you. 14:23:32  
14 I apologize. The full sentence 14:23:33  
15 actually begins at Line 10, so it's, "And that 14:23:38  
16 some of the cyclists would break off and stop 14:23:42  
17 crosstown traffic or cross-street traffic from 14:23:45  
18 whichever street or avenue they were crossing 14:23:48  
19 perpendicularly to at that time." 14:23:51  
20 Would you agree that Officer Wagner 14:23:55  
21 is testifying as to the behavior of cyclists 14:23:58  
22 during the January 2004 Critical Mass rides, or 14:24:02  
23 sorry, prior to the January 2004 Critical Mass 14:24:06  
24 rides? 14:24:08  
25 MR. CIAPPETTA: Objection. 14:24:08  
TSG Reporting - Worldwide 877-702-9580

Page 153

1 M. Scagnelli  
2 you have been informed about that? 14:25:24  
3 MR. CIAPPETTA: Objection. 14:25:25  
4 A. Maybe, maybe not. 14:25:26  
5 Q. Okay. Why would you have been 14:25:31  
6 informed of an event of that size? 14:25:32  
7 A. Because that's a very significant 14:25:35  
8 number and if 7,000 people were riding around 14:25:44  
9 breaking the law like is indicated here, that 14:25:48  
10 would be a massive problem to the transportation 14:25:51  
11 of Manhattan on that given day. 14:25:57  
12 And for my people to not tell me 14:26:00  
13 about that would be a dereliction of their duty. 14:26:03  
14 Q. I believe you testified before that 14:26:07  
15 you were made aware that rides of a few hundred 14:26:08  
16 people had been occurring with the cooperation 14:26:13  
17 of the police and that you were not aware of 14:26:16  
18 that until after they took place, correct? 14:26:18  
19 A. Yes. 14:26:20  
20 Q. Okay. Is that because rides of, say, 14:26:21  
21 200 or 300 people would not cause a massive 14:26:24  
22 problem to the transportation of Manhattan? 14:26:29  
23 MR. CIAPPETTA: Objection. 14:26:32  
24 A. They could, but these I'm assuming 14:26:33  
25 didn't because they didn't tell me about it. 14:26:38  
TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 Q. So you wouldn't have heard about it 14:26:40  
 3 if they caused significant traffic problems. Is 14:26:42  
 4 that what you're saying? 14:26:45  
 5 A. Yes. 14:26:45  
 6 Q. Okay. Do you believe it's impossible 14:26:45  
 7 for a ride of 1,000 people to not cause 14:26:47  
 8 significant traffic problems? 14:26:53  
 9 A. Well, certainly 7,000 would have to 14:26:54  
 10 cause a problem. 14:27:01  
 11 1,000? Maybe, maybe not. 14:27:03  
 12 A couple hundred, probably not. 14:27:05  
 13 Q. You'll excuse my relative ignorance 14:27:09  
 14 concerning traffic matters.  
 15 Why would 7,000 have to cause a 14:27:18  
 16 problem? 14:27:19  
 17 MR. CIAPPETTA: Objection. 14:27:19  
 18 A. Seven thousand persons on bicycles 14:27:20  
 19 riding together in Manhattan would have to cause 14:27:33  
 20 problems. It would be inconceivable that they 14:27:43  
 21 wouldn't cause problems. 7,000 bicyclists would 14:27:48  
 22 be causing problems. 14:27:54  
 23 Q. Okay. What -- 14:27:56  
 24 A. They would even if they weren't 14:27:58  
 25 trying, would have to interfere with pedestrian 14:28:01  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 traffic for people that have a green light so 14:29:16  
 3 his buddy can go cross a red light. 14:29:18  
 4 Q. Okay. And in your opinion that 14:29:19  
 5 behavior causes traffic problems; is that 14:29:22  
 6 correct? 14:29:25  
 7 A. That would cause a singular traffic 14:29:25  
 8 problem for a couple minutes for a couple of 14:29:27  
 9 people. You wouldn't have to tell me about 14:29:29  
 10 that. Crazy things like that happen every day. 14:29:31  
 11 But if 7,000 did it, I'd better know 14:29:36  
 12 about it. 14:29:39  
 13 Q. Are you familiar with a practice 14:29:39  
 14 known as corking? 14:29:42  
 15 A. No, never -- don't know the term. 14:29:44  
 16 Q. Okay. I'll represent to you that if 14:29:45  
 17 I use the term "corking," I mean it to represent 14:29:47  
 18 that activity where a person blocks crosstown 14:29:50  
 19 traffic so that riders can proceed through an 14:29:55  
 20 intersection. 14:29:58  
 21 Does that make sense? 14:29:59  
 22 MR. CIAPPETTA: Is that how you're 14:30:00  
 23 going to define it or... 14:30:01  
 24 MR. BERGSTRESSER: That's how if I 14:30:03  
 25 happen to use the term, that's what I 14:30:05  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 traffic. They would have to interfere with 14:28:04  
 3 vehicle traffic. It would be impossible not to. 14:28:06  
 4 Q. Okay. And specifically why not? 14:28:12  
 5 What traffic problems would be caused? 14:28:15  
 6 A. People who would want to cross the 14:28:22  
 7 streets when they had the green light wouldn't 14:28:24  
 8 be able to. 14:28:27  
 9 If this officer -- if some cyclists 14:28:27  
 10 would break off and stop crosstown traffic or 14:28:34  
 11 cross-street traffic from whichever street, 14:28:39  
 12 avenue, et cetera, et cetera, well, then the 14:28:41  
 13 people that wanted to cross, couldn't cross. 14:28:44  
 14 The cars that wanted to cross, couldn't cross. 14:28:46  
 15 That's a major problem in the City of New York. 14:28:49  
 16 We can't allow that. 14:28:51  
 17 Q. Okay. Would it be okay to allow 14:28:54  
 18 activity like that concerning smaller rides? 14:28:56  
 19 MR. CIAPPETTA: Objection. 14:29:00  
 20 A. No. Not stopping of traffic, no. 14:29:02  
 21 Q. Okay. Why not? 14:29:05  
 22 A. Because it's wrong. You can't stop 14:29:06  
 23 traffic. 14:29:10  
 24 If two bicycles were driving down the 14:29:11  
 25 street, one of them can't get out and stop 14:29:13  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 intend it to mean. 14:30:06  
 3 MR. CIAPPETTA: Okay. 14:30:08  
 4 BY MR. BERGSTRESSER:  
 5 Q. Does that explanation make sense to 14:30:09  
 6 you?  
 7 A. Okay. I understand the definition 14:30:12  
 8 you're giving "corking." 14:30:15  
 9 Q. Okay. I'd like to direct your 14:30:17  
 10 attention to page 53 of Officer Wagner's 14:30:19  
 11 testimony starting at Line 2, which is at the 14:30:22  
 12 top of the page. I will read it aloud. 14:30:25  
 13 "Question: Was there any discussion 14:30:28  
 14 as to how the officers monitoring the ride on 14:30:30  
 15 January 30, 2004 would respond if a cyclist were 14:30:34  
 16 to attempt intersecting traffic in the manner 14:30:39  
 17 that you described earlier? 14:30:41  
 18 "Answer: Yes. 14:30:43  
 19 "Question: What was that discussion? 14:30:44  
 20 "Answer: That discussion was 14:30:47  
 21 centered around that we would relieve the 14:30:49  
 22 cyclist of his blocking position and a uniformed 14:30:51  
 23 officer assigned with us, one of our officers 14:30:54  
 24 there, would then block the side street allowing 14:30:56  
 25 the cyclist to rejoin the pack again in an 14:30:58  
 TSG Reporting - Worldwide 877-702-9580

Page 158

1 M. Scagnelli  
 2 effort to keep all the stragglers to a minimum." 14:31:00  
 3 MR. CIAPPETTA: Actually, I mean it 14:31:03  
 4 says, "relief the cyclist" but... 14:31:04  
 5 MR. BERGSTRESSER: You would not 14:31:08  
 6 agree with me that that's a typo, 14:31:09  
 7 counselor? 14:31:12  
 8 MR. CIAPPETTA: I would, but it says 14:31:13  
 9 "relief" there. 14:31:14  
 10 MR. BERGSTRESSER: Okay. 14:31:15  
 11 BY MR. BERGSTRESSER: 14:31:19  
 12 Q. Chief, do you have any reason to 14:31:19  
 13 believe that Officer Wagner's testimony on that 14:31:22  
 14 point is incorrect? 14:31:24  
 15 A. I don't know Officer Wagner and I 14:31:31  
 16 don't know anything about that, but I -- no, I 14:31:35  
 17 don't understand it. 14:31:42  
 18 Q. Okay. Do you believe that that -- 14:31:44  
 19 those statements by Officer Wagner that I've 14:31:47  
 20 just read are inconsistent with what you were 14:31:49  
 21 told about Critical Mass rides in 2004 being 14:31:53  
 22 facilitated by the police? 14:31:57  
 23 MR. CIAPPETTA: Objection. 14:31:59  
 24 A. Not necessarily. 14:32:00  
 25 Q. Do you know if the, I'll refer to 14:32:03  
 TSG Reporting - Worldwide 877-702-9580

Page 160

1 M. Scagnelli  
 2 "Question: This is October 31, 2003? 14:33:49  
 3 "Answer: 2003, correct. 14:33:52  
 4 "Question: Can you recall any other 14:33:55  
 5 instances in which you engaged in that activity? 14:33:56  
 6 "Answer: Yes. 14:34:01  
 7 "Question: What are they?  
 8 "Answer: Again with regard to that, 14:34:03  
 9 my recollection is that it happened every 14:34:05  
 10 time we worked a Critical Mass ride at that 14:34:06  
 11 time that we would relieve the cyclists of 14:34:08  
 12 corking positions, and given the number of 14:34:11  
 13 cross streets, I couldn't give you the 14:34:13  
 14 exact number of times I did that. 14:34:14  
 15 "Question: Do you recall how many 14:34:17  
 16 Critical Mass details you served on between 14:34:19  
 17 the Halloween 2003 ride and January 30, 14:34:21  
 18 2004? 14:34:24  
 19 "Answer: Yes. I believe, as I 14:34:25  
 20 recall, it was the October ride for 14:34:28  
 21 Halloween, the ride at the end of November 14:34:31  
 22 and the New Year's ride in 2003, December 14:34:33  
 23 31, 2003 prior to January 30, 2004 -- '04." 14:34:36  
 24 Would you agree with me that Officer 14:34:47  
 25 Wagner's statements indicate that he engaged in 14:34:50  
 TSG Reporting - Worldwide 877-702-9580

Page 159

1 M. Scagnelli  
 2 generally the three individuals that you said 14:32:21  
 3 provided you with specific information about how 14:32:24  
 4 Critical Mass rides have been conducted and 14:32:26  
 5 facilitated by the police, do you know if those 14:32:30  
 6 individuals had attended Critical Mass details 14:32:32  
 7 in 2003? 14:32:35  
 8 MR. CIAPPETTA: Objection. 14:32:36  
 9 A. I don't know. 14:32:38  
 10 Q. At this point if you'll turn to page 14:32:39  
 11 54 in Officer Wagner's testimony, I will read 14:33:07  
 12 aloud starting at Line 13. 14:33:12  
 13 "Question: Had you, prior to January 14:33:17  
 14 30, 2004, ever participated in a detail in which 14:33:19  
 15 an NYPD officer relieved a civilian of a 14:33:23  
 16 blocking position of the sort we have been 14:33:26  
 17 talking about?" 14:33:28  
 18 "Answer: Yes. 14:33:29  
 19 "Question: Can you describe the 14:33:31  
 20 circumstances of that or those details? 14:33:33  
 21 "Answer: Yes. The example I recall 14:33:35  
 22 most distinctly would be the October 31st ride 14:33:38  
 23 as I personally did relieve several bicyclists 14:33:41  
 24 of corking positions along cross streets, the 14:33:44  
 25 costume ride of Halloween. 14:33:47  
 TSG Reporting - Worldwide 877-702-9580

Page 161

1 M. Scagnelli  
 2 relieving bicyclists of corking positions on at 14:34:54  
 3 least three Critical Mass rides in 2003? 14:34:59  
 4 A. That's what he says. 14:35:02  
 5 Q. Do you have any reason believe that 14:35:03  
 6 Officer Wagner's testimony on that point is 14:35:05  
 7 inaccurate? 14:35:08  
 8 MR. CIAPPETTA: Objection. 14:35:08  
 9 A. I don't know Officer Wagner. He 14:35:08  
 10 apparently remembers all kinds of little details 14:35:20  
 11 that I'm not good enough to remember, so I have 14:35:23  
 12 no reason to understand what he's saying or not 14:35:28  
 13 saying. 14:35:31  
 14 Q. And I believe you said you don't know 14:35:35  
 15 if any of the individuals who provided you with 14:35:38  
 16 information about how rides had been conducted 14:35:40  
 17 with the cooperation of police had attended 14:35:43  
 18 rides in 2003, is that correct? 14:35:45  
 19 MR. CIAPPETTA: Objection. 14:35:47  
 20 A. I don't know. 14:35:47  
 21 Q. Have you ever heard of something 14:35:48  
 22 called a bike lift? 14:35:54  
 23 A. No. 14:35:57  
 24 Q. Have you ever heard of Critical Mass 14:35:58  
 25 participants stopping in a location, dismounting 14:36:01  
 TSG Reporting - Worldwide 877-702-9580

Page 162

1 M. Scagnelli  
2 and lifting their bicycles over their head? 14:36:04  
3 A. No. 14:36:07  
4 Q. You never heard about such a practice 14:36:08  
5 from the individuals who gave you information 14:36:12  
6 about Critical Mass in 2004? 14:36:15  
7 MR. CIAPPETTA: Objection. Asked and 14:36:17  
8 answered.  
9 BY MR. BERGSTRESSER: 14:36:28  
10 Q. You can answer the question. 14:36:28  
11 MR. CIAPPETTA: Go ahead. 14:36:31  
12 A. Well, I've never seen that in my life 14:36:35  
13 so I couldn't have, which I already said, and so 14:36:38  
14 therefore I couldn't have seen it in 2004. 14:36:41  
15 Q. I'm just asking if the individuals 14:36:43  
16 who had given you information about how the 14:36:45  
17 rides had been conducted had mentioned anything 14:36:47  
18 about that practice. 14:36:50  
19 A. I never heard of that practice, 14:36:57  
20 therefore the answer is no, they never told me 14:37:01  
21 anything about that. 14:37:05  
22 Q. If you could please turn in Officer 14:37:06  
23 Wagner's transcript to page 88, which I believe 14:37:12  
24 on the bottom of the page is page 23. 14:37:15  
25 (Witness complies.) 14:37:23  
TSG Reporting - Worldwide 877-702-9580

Page 164

1 M. Scagnelli  
2 "Answer: In general, the Critical 14:38:21  
3 Mass ride would again go randomly 14:38:23  
4 northbound until they got above the Times 14:38:25  
5 Square area, at which point they would 14:38:27  
6 come -- excuse me, come and merge onto 14:38:28  
7 Broadway heading south from above 50th 14:38:31  
8 Street. Upon entering Times Square, they 14:38:34  
9 would stop in the vicinity of between 43rd 14:38:36  
10 and 47th Streets, dismount, stopping, 14:38:38  
11 dismounting, lift the bicycles up over 14:38:42  
12 their heads, a big cheer, big roar. They 14:38:45  
13 would remain there for anywhere between 14:38:47  
14 three to eight minutes depending on the 14:38:50  
15 size of the ride, and then they would 14:38:51  
16 remount then and then depart the Times 14:38:53  
17 Square area. 14:38:55  
18 "Question: And what were the NYPD 14:38:57  
19 officers on Critical Mass detail doing at 14:38:59  
20 the time that these events would take place 14:39:01  
21 in Times Square? 14:39:02  
22 "Answer: That depended on position. 14:39:04  
23 If you were toward the rear of the 14:39:06  
24 pack, you would hold southbound traffic on 14:39:08  
25 Broadway.  
TSG Reporting - Worldwide 877-702-9580

Page 163

1 M. Scagnelli  
2 Q. Actually, I'm sorry, it's page 89. 14:37:25  
3 I'll read starting at Line 2. 14:37:35  
4 "Question: Can you recall any of 14:37:38  
5 those rides proceeding through the Times Square 14:37:40  
6 area? 14:37:42  
7 "Answer: Yes. 14:37:42  
8 "Question: Can you recall in 14:37:44  
9 connection with any rides that proceeded through 14:37:47  
10 the Times Square area, the bicyclists 14:37:49  
11 dismounting in the roadway and lifting their 14:37:51  
12 bicycles? 14:37:54  
13 "Answer: Yes. 14:37:55  
14 "Question: And that occurred on 14:37:56  
15 Critical Mass rides on or prior to June 25, 14:37:58  
16 2004? 14:38:01  
17 "Answer: Yes. 14:38:01  
18 "Question: Did it occur on all of 14:38:02  
19 them? 14:38:05  
20 "Answer: All the ones that I was 14:38:05  
21 present for, yes." 14:38:14  
22 Actually, I'll continue reading. 14:38:15  
23 "Question: Can you describe exactly 14:38:16  
24 how this took place? 14:38:19  
25 There's an objection. 14:38:20  
TSG Reporting - Worldwide 877-702-9580

Page 165

1 M. Scagnelli  
2 If you were near a side street, you 14:39:13  
3 would attempt to hold traffic crosstown. 14:39:13  
4 "Question: Do you recall any 14:39:16  
5 attempts during this time frame to direct 14:39:18  
6 the participants in the ride not to engage 14:39:20  
7 in this activity? 14:39:21  
8 "Answer: No." 14:39:22  
9 Officer Wagner is testifying in 14:39:32  
10 those statements that he observed, you know, an 14:39:33  
11 activity that was described as a bike lift in 14:39:38  
12 Times Square on all the Critical Mass rides he 14:39:41  
13 attended; is that correct? 14:39:43  
14 MR. CIAPPETTA: Objection. 14:39:46  
15 A. That's what it says. 14:39:47  
16 Q. And also according to Officer Wagner, 14:39:48  
17 the NYPD personnel present made no attempt to 14:39:52  
18 stop that activity from happening, correct? 14:39:54  
19 A. Correct. 14:39:58  
20 MR. CIAPPETTA: Objection. 14:39:59  
21 BY MR. BERGSTRESSER: 14:39:59  
22 Q. Do you have any reason to doubt that 14:39:59  
23 testimony? 14:40:01  
24 MR. CIAPPETTA: Same objection. 14:40:02  
25 A. I have no reason to believe or 14:40:15  
TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 disbelieve it. 14:40:17  
 3 Q. Do you recall hearing anything 14:40:30  
 4 specifically about the June 2004 Critical Mass 14:40:38  
 5 ride, which I believe would have been the month 14:40:42  
 6 prior to the detail that you observed? 14:40:43  
 7 A. No. 14:40:46  
 8 Q. Were you ever notified as to when a 14:40:47  
 9 Critical Mass ride would terminate and disperse? 14:40:58  
 10 A. No. 14:41:02  
 11 Q. In regarding the July 2004 Critical 14:41:10  
 12 Mass ride that you observed prior to it entering 14:41:20  
 13 onto the FDR Drive, how would you describe the 14:41:25  
 14 conduct of the cyclists as they proceeded into 14:41:28  
 15 the tunnel as you observed? 14:41:32  
 16 MR. CIAPPETTA: Objection. 14:41:33  
 17 A. They were riding southbound and I 14:41:34  
 18 made no observation as to their conduct other 14:42:01  
 19 than they were riding bicycles southbound and 14:42:03  
 20 went into the Battery Park underpass. 14:42:07  
 21 Q. And what was the response of the NYPD 14:42:13  
 22 officers who were monitoring the ride on that 14:42:17  
 23 date to the cyclists proceeding on the FDR 14:42:20  
 24 Drive? 14:42:23  
 25 A. Don't know. 14:42:23  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 Q. You didn't hear anything about what 14:42:26  
 3 the NYPD did in response to that? 14:42:28  
 4 MR. CIAPPETTA: Objection. 14:42:30  
 5 A. I might have heard at the time. I 14:42:30  
 6 don't know. 14:42:33  
 7 Q. I'll ask you to please turn back to 14:42:33  
 8 the Wagner transcript and turn to page 101, 14:42:51  
 9 which starts at I believe what is indicated as 14:42:59  
 10 26 at the bottom of the page. 14:43:01  
 11 (Witness complies.) 14:43:10  
 12 Q. I'll read to you starting at Line 18. 14:43:10  
 13 "Question: Do you recall there being 14:43:16  
 14 a meeting prior of the detail prior to going to 14:43:17  
 15 Union Square in connection with the July 30, 14:43:20  
 16 2004 ride? 14:43:23  
 17 "Answer: Yes. 14:43:24  
 18 "Question: Was the meeting similar 14:43:25  
 19 to that that took place prior to the other prior 14:43:28  
 20 Critical Mass details that you had participated 14:43:31  
 21 in? 14:43:33  
 22 "Answer: Yes, it was. 14:43:34  
 23 "Question: Were the objectives for 14:43:36  
 24 the June 30, 2004 ride discussed at that 14:43:38  
 25 meeting? 14:43:41  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 "Answer: July 30th? 14:43:42  
 3 "Question: I'm sorry. July 30th. 14:43:44  
 4 "Answer: Yes, they were. 14:43:46  
 5 "Question: What were those 14:43:48  
 6 objectives? 14:43:50  
 7 "Answer: As with the prior rides, 14:43:51  
 8 the objectives were to maintain the group 14:43:53  
 9 together as much as possible, ensure the safety 14:43:55  
 10 of cyclists and minimizing the impact of 14:43:59  
 11 vehicular traffic by keeping the pack together." 14:44:01  
 12 Chief, would you agree that Officer 14:44:07  
 13 Wagner is indicating that the objectives of the 14:44:09  
 14 detail were the same as those for previous 14:44:12  
 15 rides? 14:44:14  
 16 MR. CIAPPETTA: Objection. 14:44:15  
 17 BY MR. BERGSTRESSER: 14:44:15  
 18 Q. Primarily monitoring, keeping the 14:44:15  
 19 group together and ensuring safety. 14:44:17  
 20 A. That's too broad for me to say yes or 14:44:20  
 21 no. I don't know. 14:44:22  
 22 Q. Well, when he says to keep the group 14:44:23  
 23 together as much as possible, that refers to, as 14:44:29  
 24 we saw earlier, allowing bicyclists to block 14:44:33  
 25 intersections and then relieving the bicyclists 14:44:39  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 of those blocking positions, right? 14:44:40  
 3 A. I don't understand your question. 14:44:43  
 4 Q. Okay. When Officer Wagner refers to 14:44:44  
 5 "...maintain the group together as much as 14:44:48  
 6 possible..." isn't that the same thing he was 14:44:50  
 7 describing earlier in terms of relieving 14:44:54  
 8 bicyclists of their positions blocking traffic 14:44:56  
 9 so that the ride could stay together? 14:44:58  
 10 MR. CIAPPETTA: Objection. 14:45:01  
 11 A. I don't know. You'd have to ask him 14:45:01  
 12 that. 14:45:03  
 13 Q. Okay. Would you agree that the 14:45:07  
 14 procedures described by Officer Wagner such as 14:45:10  
 15 holding back motor vehicle traffic in order to 14:45:14  
 16 keep the ride together maximizes the safety of 14:45:16  
 17 bicyclists participating in that ride? 14:45:19  
 18 MR. CIAPPETTA: Objection. 14:45:21  
 19 A. I don't know. I would have to be 14:45:24  
 20 there to make that judgment. 14:45:25  
 21 Q. Okay. Do you believe that it would 14:45:26  
 22 maximize safety to prevent motor vehicles from 14:45:32  
 23 interspersing themselves between cyclists in a 14:45:39  
 24 group bicycle ride? 14:45:42  
 25 MR. CIAPPETTA: Objection. 14:45:45  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
2 A. Yes. 14:45:46  
3 Q. And would not keeping a ride together 14:45:48  
4 in that fashion also limit the disruption to 14:45:51  
5 motor vehicles as the bicyclists stay together 14:45:56  
6 and move through traffic, and do not spread out 14:46:00  
7 over multiple blocks? 14:46:02  
8 MR. CIAPPETTA: Objection. 14:46:03  
9 A. In theory that sounds right, but I 14:46:03  
10 would have to be there to see it to give you a 14:46:06  
11 real answer. 14:46:09  
12 Q. Well, but you would agree that in 14:46:09  
13 theory it at least sounds right. 14:46:14  
14 A. It could be right. It could be wrong 14:46:14  
15 too. 14:46:19  
16 Q. I'm sorry. Did you say already what 14:46:24  
17 you understand the size of the July 2004 ride to 14:46:28  
18 have been? 14:46:31  
19 A. Was that the FDR? 14:46:32  
20 Q. Yes.  
21 A. Oh, gosh. There were thousands and 14:46:37  
22 thousands, and thousands and thousands and 14:46:42  
23 thousands. 14:46:43  
24 Q. Okay. Could it have been 7,000? 14:46:45  
25 A. Could have been. 14:46:47  
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1 M. Scagnelli  
2 Q. Could it have 10,000? 14:46:49  
3 A. Could have been. 14:46:50  
4 Q. Could it have been 4,000? 14:46:51  
5 A. Probably more than that, but it could 14:46:55  
6 have been. 14:46:56  
7 Q. Could it have been 2,000? 14:46:57  
8 A. No. 14:46:59  
9 Q. Okay. How do you know that? 14:46:59  
10 A. Because I saw -- the way I saw -- I 14:47:01  
11 saw them all and there was way more than 2,000 14:47:04  
12 in my opinion. 14:47:07  
13 Now we can all be standing at a 14:47:09  
14 parade, and we do this all the time, we say how 14:47:15  
15 many people are here? And you'll say 15,000 and 14:47:18  
16 you'll say 26,000 and I'll say 7,000. Maybe all 14:47:21  
17 three of us are wrong, but at least two of us 14:47:28  
18 are wrong. 14:47:30  
19 Everybody looks at numbers 14:47:31  
20 differently and who's to declare that he or she 14:47:32  
21 is an expert on numbers. 14:47:36  
22 Q. Are you --  
23 A. So, so to go back to your original 14:47:42  
24 question, the FDR ride I saw the first riders 14:47:44  
25 going into that underpass and I saw the last 14:47:49  
TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
2 riders, and it was a magnitude of bicycles. 14:47:51  
3 Like I was looking at it saying oh, my God, look 14:47:57  
4 at all these bicycles, so it was a whole lot. 14:48:01  
5 Q. Are NYPD officers given any training 14:48:06  
6 on how to estimate the size of crowds? 14:48:10  
7 A. No. 14:48:12  
8 Q. Is there a particular reason? 14:48:14  
9 MR. CIAPPETTA: Objection. 14:48:17  
10 A. Is there a reason why we don't give 14:48:18  
11 them training on how to estimate crowds. 14:48:20  
12 I don't think it's necessary at all. 14:48:22  
13 Q. Okay. Do you believe that such a 14:48:25  
14 skill would be useful in managing parades or 14:48:28  
15 large group events for example? 14:48:31  
16 MR. CIAPPETTA: Objection. 14:48:33  
17 A. For police officers at that rank? 14:48:33  
18 No, not at all. It wouldn't be useful. 14:48:38  
19 Q. I'm sorry. When you say "at that 14:48:40  
20 rank," what rank are you -- 14:48:40  
21 A. Police officer. 14:48:42  
22 Q. Do officers at any rank receive 14:48:47  
23 training in how to estimate the size of crowds? 14:48:52  
24 A. I never received the training. 14:48:54  
25 There is an officer that purports to 14:49:01  
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1 M. Scagnelli  
2 be real good at it and you'd have to ask him 14:49:04  
3 why. 14:49:09  
4 Q. Do you know if that officer has ever 14:49:09  
5 been involved in policing a Critical Mass ride? 14:49:13  
6 A. Don't know. 14:49:15  
7 Q. Who's that officer? 14:49:15  
8 A. Chief Graham. 14:49:16  
9 Q. Do you know if that's Chief Thomas 14:49:23  
10 Graham? 14:49:27  
11 A. Yup. 14:49:27  
12 Q. Do you know if at any point the 14:49:34  
13 bicyclists were prevented from proceeding on the 14:49:48  
14 FDR Drive on the July 2004 ride? 14:49:50  
15 A. I might have known then. 14:49:54  
16 I don't know now. 14:49:56  
17 Q. So you don't know what happened to 14:49:57  
18 the cyclists after they entered the FDR. 14:50:00  
19 A. Correct. 14:50:02  
20 Q. Do you know if Commissioner Ray Kelly 14:50:04  
21 was notified about the July 2004 incident 14:50:07  
22 involving the FDR Drive? 14:50:12  
23 A. I don't personally know. 14:50:13  
24 Q. Do you believe that he was notified? 14:50:16  
25 MR. CIAPPETTA: Objection. 14:50:18  
TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 A. Well, I believe he was, was notified. 14:50:18  
 3 Q. Were you aware that personnel from 14:50:25  
 4 the Disorder Control Unit were present at the 14:50:38  
 5 July 2004 Critical Mass ride? 14:50:40  
 6 A. I would have known then if they were 14:50:43  
 7 there. 14:50:45  
 8 I don't know now. 14:50:45  
 9 Q. Do you know if they were present at 14:50:47  
 10 any rides prior to July 2004? 14:50:48  
 11 A. I don't know. 14:50:51  
 12 Q. Were you aware that personnel from 14:50:52  
 13 the Technical Assistance and Response Unit 14:51:01  
 14 called TARU were assigned to the July 30th, 2004 14:51:02  
 15 Critical Mass ride? 14:51:05  
 16 A. Might have known then. 14:51:06  
 17 Don't know now. 14:51:09  
 18 Q. Do you know if TARU was present at 14:51:09  
 19 rides prior to July 2004? 14:51:11  
 20 A. Might have known then. 14:51:13  
 21 Don't know now. 14:51:14  
 22 Q. Did you know that an Aviation Unit 14:51:15  
 23 was assigned to the July 30, 2004 Critical Mass 14:51:19  
 24 ride?  
 25 MR. CIAPPETTA: Objection.  
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1 M. Scagnelli  
 2 A. Might have known then. 14:51:23  
 3 Don't know now. 14:51:24  
 4 Q. Do you know if Aviation was present 14:51:25  
 5 at any rides prior to July 2004? 14:51:30  
 6 A. No, sir. 14:51:32  
 7 Q. No, you don't know? 14:51:33  
 8 A. No, sir. 14:51:37  
 9 Q. I'm sorry. Are you saying -- 14:51:40  
 10 A. Your question was do you know. No. 14:51:42  
 11 And then I threw in "sir." I'm sorry. 14:51:46  
 12 Q. That's the part that confused me. 14:51:49  
 13 Chief, the New York Police Department 14:51:51  
 14 uses both plainclothes and undercover officers 14:52:04  
 15 in addition to uniformed officers to achieve law 14:52:13  
 16 enforcement objectives; is that correct? 14:52:17  
 17 MR. CIAPPETTA: Objection. 14:52:18  
 18 A. Yes. 14:52:19  
 19 MR. CIAPPETTA: I'm going to instruct 14:52:19  
 20 the witness not to answer. 14:52:20  
 21 MR. BERGSTRESSER: I'm sorry. Are 14:52:22  
 22 you instructing witness not to answer the 14:52:23  
 23 question of whether or not plainclothes or 14:52:24  
 24 undercover officers are used at all? 14:52:26  
 25 MR. CIAPPETTA: He can answer that 14:52:28  
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1 M. Scagnelli  
 2 question. 14:52:29  
 3 A. Same answer; yes. 14:52:31  
 4 Q. Could you please explain the 14:52:32  
 5 difference between plainclothes and undercover 14:52:35  
 6 officers? 14:52:37  
 7 A. Different people have different 14:52:38  
 8 definitions of that. 14:52:45  
 9 However, the truth is, plainclothes 14:52:48  
 10 officers are regular police officers that might 14:52:54  
 11 be in a uniform on Tuesday and could be in 14:53:01  
 12 dungarees on a Thursday. They work most of the 14:53:04  
 13 time in plainclothes but they're capable of 14:53:08  
 14 putting a uniform on if so ordered and they're 14:53:11  
 15 not hidden from the public. 14:53:15  
 16 They are Officer Michael Scagnelli, 14:53:17  
 17 who is a detective, therefore I'm in 14:53:19  
 18 plainclothes, I wear a suit every day, or 14:53:24  
 19 someone that's in the narcotics division who 14:53:28  
 20 works plainclothes. There's a difference with 14:53:31  
 21 undercover police officers. 14:53:35  
 22 Undercover police officers are police 14:53:38  
 23 officers that no one can know are police 14:53:40  
 24 officers and they do undercover work all the 14:53:43  
 25 time, and they perform undercover work and 14:53:47  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 nobody knows who they are. 14:53:52  
 3 Q. Okay. Chief, to your knowledge, have 14:53:54  
 4 undercover officers ever been used in connection 14:53:57  
 5 with surveillance or law enforcement activities 14:54:00  
 6 involving protest groups in New York City? 14:54:03  
 7 MR. CIAPPETTA: I'm going to object 14:54:05  
 8 to that question. 14:54:06  
 9 Instruct the witness not to answer on 14:54:06  
 10 the basis of the law enforcement privilege. 14:54:10  
 11 MR. BERGSTRESSER: Okay. And your 14:54:12  
 12 objection is to the question of whether or 14:54:13  
 13 not they've ever been used, not with regard 14:54:14  
 14 to any specific information about that. 14:54:16  
 15 MR. CIAPPETTA: That's right. 14:54:19  
 16 BY MR. BERGSTRESSER: 14:54:21  
 17 Q. Chief, isn't it true that undercover 14:54:27  
 18 officers have been used in pursuing law 14:54:29  
 19 enforcement objectives during Critical Mass 14:54:33  
 20 rides? 14:54:33  
 21 MR. CIAPPETTA: Same objection. 14:54:34  
 22 BY MR. BERGSTRESSER: 14:54:36  
 23 Q. Isn't it true that undercover 14:54:36  
 24 officers participated in the July 2005 Critical 14:54:42  
 25 Mass ride? 14:54:45  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
2 MR. CIAPPETTA: Same objection, 14:54:46  
3 pursuant to the law enforcement privilege 14:54:47  
4 and same direction to the witness not to 14:54:49  
5 answer that question. 14:54:52  
6 BY MR. BERGSTRESSER: 14:54:53  
7 Q. Isn't it true that undercover 14:54:53  
8 officers were in fact involved in encouraging 14:54:55  
9 the ride to proceed on the FDR Drive at that 14:54:57  
10 time? 14:55:00  
11 MR. CIAPPETTA: Same objection, 14:55:01  
12 pursuant to the law enforcement privilege 14:55:03  
13 and the same instruction to the witness not 14:55:05  
14 to answer that question. 14:55:07  
15 MR. BERGSTRESSER: Counselor, will 14:55:11  
16 you permit answers to those questions to be 14:55:12  
17 given if this portion of the transcript is 14:55:14  
18 designated as confidential? 14:55:17  
19 MR. CIAPPETTA: No. 14:55:19  
20 MR. BERGSTRESSER: All right.  
21 BY MR. BERGSTRESSER: 14:55:26  
22 Q. I believe earlier mentioned that you 14:55:26  
23 had some discussions with -- 14:55:29  
24 MR. CIAPPETTA: I'm sorry. Referring 14:55:30  
25 back to that question, next question, let 14:55:30  
TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
2 but I don't recall that now where I can clearly 14:56:49  
3 say yes. 14:56:52  
4 Q. And do you recall DCPI Brown 14:56:52  
5 specifically asking you about Critical Mass at 14:56:56  
6 that time? 14:56:58  
7 A. He did. 14:56:59  
8 Q. And what did he ask you? 14:57:00  
9 A. "Tell me about Critical Mass." 14:57:01  
10 Q. Okay.  
11 A. "What's going on?" 14:57:07  
12 Q. Do you know why he was interested in 14:57:08  
13 Critical Mass? 14:57:11  
14 MR. CIAPPETTA: Objection. 14:57:12  
15 A. It would be his job to know that as 14:57:12  
16 the Deputy Commissioner of Public Information if 14:57:19  
17 it's something that's happening, so that's why. 14:57:21  
18 Q. Okay. I'm sorry. I don't 14:57:28  
19 understand. 14:57:29  
20 Surely -- I mean the DCPI is not -- 14:57:30  
21 A. It would be, it would be within his 14:57:33  
22 job scope to know that. 14:57:34  
23 Q. Why? 14:57:36  
24 A. Because it's a public event that very 14:57:36  
25 likely could get publicized. 14:57:41  
TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
2 me make a statement that we don't believe 14:55:33  
3 that the privilege we would lose any -- we 14:55:36  
4 don't believe that marking the transcript 14:55:41  
5 confidential would secure our privilege. 14:55:44  
6 So you can go ahead. 14:55:49  
7 BY MR. BERGSTRESSER: 14:55:50  
8 Q. Chief, I believe you mentioned before 14:55:53  
9 that you had spoken with DCPI Paul Brown 14:55:55  
10 concerning Critical Mass rides in 2004, correct? 14:55:58  
11 A. Yes. 14:56:01  
12 Q. And did you in essence tell him that 14:56:02  
13 the rides had been smaller and uneventful, where 14:56:08  
14 participants had cooperated with the police? 14:56:15  
15 A. I told him they weren't problematic 14:56:16  
16 and they were small or relatively small. 14:56:19  
17 Q. Okay. And do you recall the context 14:56:22  
18 of that discussion with DCPI Brown? 14:56:26  
19 MR. CIAPPETTA: Objection. 14:56:29  
20 A. I had a meeting with him. You know, 14:56:31  
21 I have meetings with him and we had a discussion 14:56:34  
22 at a meeting. 14:56:37  
23 Q. Was the purpose of the meeting to 14:56:38  
24 discuss Critical Mass? 14:56:39  
25 A. Again, to be honest, it probably was, 14:56:43  
TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
2 Q. Okay. What do you believe that the 14:57:44  
3 Critical Mass rides were events such that would 14:57:47  
4 likely be publicized? 14:57:49  
5 A. They were, so I guess my guess was 14:57:51  
6 right. 14:57:54  
7 Q. Okay. What does that mean though? 14:57:54  
8 I'm sorry. I don't understand when 14:57:56  
9 you say the ride was publicized. What does that 14:57:57  
10 mean? 14:57:59  
11 A. That there were articles about rides 14:58:00  
12 in the newspapers and it was covered on TV. 14:58:02  
13 Q. And do you believe that that media 14:58:05  
14 attention happened prior to July 2005? 14:58:08  
15 Or I'm sorry, 2004? 14:58:14  
16 A. I don't particularly know. 14:58:16  
17 Q. And what specifically did you tell 14:58:19  
18 DCPI Brown? 14:58:23  
19 A. I don't know how specific I can be. 14:58:26  
20 I told him that these Critical Mass people were 14:58:30  
21 on, I think it was the first Friday of the month 14:58:40  
22 were riding around Manhattan in a group. They 14:58:45  
23 would meet in a park and they would drive 14:58:48  
24 around, and I had been told that they were 14:58:53  
25 relatively small in number and they were 14:58:56  
TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 cooperating with the police. 14:58:59  
 3 Q. Did you tell DCPI Brown that the ride 14:59:07  
 4 organizers would provide information about the 14:59:11  
 5 route to police officers? 14:59:12  
 6 A. My belief at the time was that yes, 14:59:15  
 7 the police and the -- I was told that the police 14:59:22  
 8 and the people there discussed where they wanted 14:59:27  
 9 to go. 14:59:32  
 10 Q. Did you tell DCPI Brown the sources 14:59:34  
 11 of your information? 14:59:38  
 12 A. I don't remember. 14:59:43  
 13 Q. Did DCPI Brown provide you with any 14:59:44  
 14 information about the Critical Mass in those 14:59:50  
 15 discussions? 14:59:51  
 16 A. I don't think so. 14:59:52  
 17 Q. Did you tell DCPI Brown that the ride 15:00:00  
 18 participants were generally lawful? 15:00:20  
 19 A. The what? I can't get that either. 15:00:20  
 20 Q. Well, why don't I start over. 15:00:21  
 21 Did you tell Paul Brown that the ride 15:00:23  
 22 participants were generally lawful and complied 15:00:25  
 23 with the police prior to the ride where they 15:00:28  
 24 proceeded on the FDR? 15:00:30  
 25 A. Yes. 15:00:31  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 so I can speculate, but that doesn't mean I'm 15:02:02  
 3 right. 15:02:04  
 4 So I just don't remember. I don't 15:02:05  
 5 try to remember who was at a meeting 15:02:06  
 6 four-and-a-half years ago -- 15:02:08  
 7 Q. Well, I'll ask you to please try --  
 8 A. -- when I go to two or three a day. 15:02:11  
 9 Q. Approximately how many meetings do 15:02:13  
 10 you recall taking place concerning this issue? 15:02:14  
 11 A. There were a couple of them. I don't 15:02:16  
 12 remember how many. 15:02:18  
 13 Q. More than five? 15:02:19  
 14 A. I don't know. That's all I know. 15:02:20  
 15 But I might not have gone to more than five. I 15:02:25  
 16 went to less than five. 15:02:27  
 17 Q. Do you know if Commissioner Kelly 15:02:28  
 18 attended any of them? 15:02:30  
 19 A. I don't remember. 15:02:31  
 20 Q. Is it possible that Commissioner 15:02:32  
 21 Kelly attended some of them? 15:02:34  
 22 A. It's possible that anybody in the 15:02:35  
 23 upper ranks attended, but I don't know. I have 15:02:37  
 24 no personal recollection. 15:02:40  
 25 Q. Is it possible that anyone below the 15:02:42  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 Q. Did you tell them that participants 15:00:32  
 3 obeyed traffic regulations and stopped at red 15:00:35  
 4 lights? 15:00:39  
 5 A. I don't remember if I told him that. 15:00:48  
 6 Q. Do you know if there was a decision 15:00:50  
 7 to conduct the policing activity associated with 15:01:10  
 8 Critical Mass rides differently after the July 15:01:16  
 9 2004 ride that proceeded on the FDR? 15:01:20  
 10 A. Yes. 15:01:25  
 11 Q. How do you know that? 15:01:29  
 12 A. There were meetings. 15:01:30  
 13 Q. And who was involved in those 15:01:35  
 14 meetings? 15:01:37  
 15 A. I don't really remember. 15:01:37  
 16 Q. You don't remember any participant 15:01:39  
 17 who was involved in -- 15:01:42  
 18 A. I can assume who was there but it 15:01:44  
 19 would be an assumption. I was at the meeting, 15:01:46  
 20 meetings or some of the meetings. They might 15:01:48  
 21 have had more that I wasn't at, but I was at a 15:01:51  
 22 couple of meetings. 15:01:54  
 23 I can't remember what room they were 15:01:55  
 24 in and I don't remember who was there. I just 15:01:56  
 25 know who was generally at all meetings like that 15:01:59  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 rank of captain attended? 15:02:48  
 3 A. Below the rank of captain? 15:02:50  
 4 Q. Yes. 15:02:52  
 5 A. It's possible, sure. 15:02:52  
 6 Q. And what was the decision that was 15:02:54  
 7 made concerning how enforcement was to be -- 15:03:05  
 8 actually, I'll rephrase the question. 15:03:08  
 9 What is the decision that was made 15:03:10  
 10 concerning how policing of the rides would be 15:03:20  
 11 conducted going forward at that time? 15:03:20  
 12 A. I don't really remember. I wasn't 15:03:20  
 13 the decision-maker. 15:03:20  
 14 Q. Who was the decision-maker? 15:03:22  
 15 A. I don't remember who was at the 15:03:24  
 16 meeting. 15:03:25  
 17 Q. But you're sure it wasn't you. 15:03:26  
 18 A. I was not the decision-maker. 15:03:28  
 19 Q. How do you know you weren't? 15:03:30  
 20 A. Because I remember everything that I 15:03:31  
 21 make a decision on. 15:03:33  
 22 Q. Do you recall having any input into 15:03:36  
 23 the decision? 15:03:45  
 24 A. I probably did, but again, I don't 15:03:47  
 25 specifically remember. I don't remember what I 15:03:51  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 said. 15:03:53  
 3 Q. You don't recall what your position 15:03:55  
 4 was at that time concerning whether or not the 15:03:58  
 5 conduct of the policing should be changed? 15:04:00  
 6 MR. CIAPPETTA: Objection. 15:04:03  
 7 A. I don't remember. 15:04:10  
 8 Q. Looking back now, do you think that 15:04:12  
 9 the way policing was conducted at the July 2004 15:04:22  
 10 ride and prior should have been different? 15:04:27  
 11 MR. CIAPPETTA: Objection. 15:04:30  
 12 A. Which 2004? The FDR ride? 15:04:39  
 13 Q. The FDR Drive and prior to that. 15:04:41  
 14 MR. CIAPPETTA: Can you repeat that 15:04:45  
 15 question? Sorry. 15:04:46  
 16 (Question was read back as follows:  
 17 "QUESTION: Looking back now, do you 15:04:19  
 18 think that the way policing was conducted 15:04:21  
 19 at the July 2004 ride and prior should have 15:04:25  
 20 been different?") 15:04:29  
 21 A. Okay. Two different answers. 15:05:08  
 22 Prior to that, I don't know because I 15:05:09  
 23 don't know enough about it other than what was 15:05:13  
 24 told to me. 15:05:15  
 25 The FDR Drive in retrospect could 15:05:16  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 MR. CIAPPETTA: Just note for the 15:07:24  
 3 record that this is a one-page document 15:07:26  
 4 produced by plaintiffs that's Bates stamped 15:07:29  
 5 5BBC00007863. It appears to come from the 15:07:32  
 6 Times Up web page. 15:07:42  
 7 BY MR. BERGSTRESSER:  
 8 Q. And I'll ask you to keep that exhibit 15:07:49  
 9 handy for comparison, Chief Scagnelli. 15:07:51  
 10 MR. CIAPPETTA: I would just like to, 15:07:53  
 11 I'm sorry, note also that some of the, 15:07:53  
 12 looks like a good portion of the letter is 15:07:56  
 13 cut off on this document. 15:07:59  
 14 MR. BERGSTRESSER: I'll ask the court 15:08:01  
 15 reporter to mark this next document that 15:08:02  
 16 I've handed over as Scagnelli-4 for 15:08:05  
 17 identification. 15:08:08  
 18 (Plaintiffs' Exhibit Scagnelli 4, 15:08:08  
 19 Letter dated 8/23/04 from Scagnelli to  
 20 White, unsigned, Bates stamped NYC 002162, 15:08:51  
 21 marked for identification, as of this  
 22 date.)  
 23 BY MR. BERGSTRESSER: 15:08:23  
 24 Q. Now comparing these two exhibits, and 15:08:23  
 25 feel free to take the time you need to do that, 15:08:26  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 have been handled better. 15:05:21  
 3 Q. And -- 15:05:24  
 4 A. By not giving up the FDR Drive. 15:05:25  
 5 MR. BERGSTRESSER: All right. At 15:05:37  
 6 this point I'd like the court reporter to 15:05:38  
 7 mark for identification, excuse me, I 15:05:40  
 8 believe we're on Scagnelli-3. 15:05:48  
 9 (Plaintiffs' Exhibit Scagnelli 3, 15:06:51  
 10 Letter dated 8/23/04 from Scagnelli to  
 11 White, Bates stamped 5BBC00007863, marked  
 12 for identification, as of this date.) 15:07:00  
 13 (Document review.) 15:07:00  
 14 BY MR. BERGSTRESSER: 15:07:04  
 15 Q. My question for you -- 15:07:04  
 16 A. By the way, I just wanted to read 15:07:09  
 17 because the last letters of most of the lines 15:07:11  
 18 are cut off. 15:07:12  
 19 Q. It is. 15:07:13  
 20 A. You don't have a better copy than 15:07:14  
 21 this? 15:07:16  
 22 Q. Well, if I can first ask you my 15:07:17  
 23 question, is that your signature at the bottom 15:07:19  
 24 of this page, Chief Scagnelli? 15:07:21  
 25 A. Yes. 15:07:22  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 would you agree with me that these are the same 15:08:29  
 3 letter except that the Scagnelli-4, which you 15:08:33  
 4 have now, is simply an unsigned version? 15:08:36  
 5 MR. BERGSTRESSER: And I will state 15:08:43  
 6 for the record that although it appears to 15:08:44  
 7 be a little cut off on my copy at least, 15:08:46  
 8 this document bears Bates stamp NYC 002162 15:08:48  
 9 and was produced by defendants. 15:08:53  
 10 Scagnelli-4 that is. 15:08:56  
 11 A. Yes. 15:08:58  
 12 Q. Okay. Do you recognize this letter, 15:08:59  
 13 Chief Scagnelli? 15:09:04  
 14 A. I do. 15:09:05  
 15 Q. And what it is? 15:09:05  
 16 A. It's a letter that I wrote on August 15:09:06  
 17 23rd, 2004 to Paul White. 15:09:10  
 18 Q. And why did you send Paul White this 15:09:17  
 19 letter? 15:09:21  
 20 A. I think that the letter is 15:09:21  
 21 self-explanatory as to why I sent it. 15:09:26  
 22 Q. With all due respect, I may be slow, 15:09:29  
 23 but I will say that I have not found it 15:09:32  
 24 self-explanatory and I'll ask you that you 15:09:36  
 25 please explain why you wrote it. 15:09:39  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 A. Sure. 15:09:41  
 3 (Document review.) 15:09:54  
 4 A. Okay. I wrote it to inform Paul, who 15:09:55  
 5 is the executive director of Transportation 15:09:59  
 6 Alternatives, that I had a conversation with 15:10:02  
 7 Noah Budnick, who was his compatriot at 15:10:08  
 8 Transportation Alternatives, who is -- was a 15:10:13  
 9 board officer of some other title. 15:10:14  
 10 That I had spoke to him about 15:10:17  
 11 Critical Mass bicycle rides that take place on a 15:10:19  
 12 Friday of each month, and I told him that 15:10:23  
 13 increasingly large numbers of bicyclists have 15:10:29  
 14 been riding through Manhattan. 15:10:31  
 15 Q. Chief Scagnelli, I apologize -- 15:10:32  
 16 A. Well, you're asking me what the 15:10:34  
 17 purpose is, and the purpose is to inform him of 15:10:35  
 18 and now I'm going to tell you what. I'm 15:10:38  
 19 answering your question and you're giving me a 15:10:40  
 20 hard time. I am answering your question very 15:10:41  
 21 specifically, very specifically. 15:10:44  
 22 MR. CIAPPETTA: I mean I think the 15:10:46  
 23 witness should be allowed an opportunity to 15:10:47  
 24 finish answering the question. 15:10:48  
 25 MR. BERGSTRESSER: Well, that's fine, 15:10:51  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 but I would like it to be noted on the 15:10:52  
 3 record that the witness is simply reading 15:10:53  
 4 the letter which -- 15:10:56  
 5 THE WITNESS: Parts of the letter. 15:10:57  
 6 BY MR. BERGSTRESSER:  
 7 Q. I'm sorry. I realize you skipped the 15:10:58  
 8 introduction but -- 15:11:00  
 9 MR. CIAPPETTA: Could we let him 15:11:00  
 10 finish his answer?  
 11 BY MR. BERGSTRESSER: 15:11:02  
 12 Q. Please. Continue. 15:11:02  
 13 A. Can you -- I tell you what, why don't 15:11:03  
 14 we -- why not hear the question again. 15:11:06  
 15 Q. Well, sure. 15:11:06  
 16 A. Because now I don't remember the 15:11:09  
 17 question. I was a third way through my answer. 15:11:10  
 18 I don't remember the question. 15:11:12  
 19 MR. CIAPPETTA: Let's have a read 15:11:15  
 20 back of the question. 15:11:16  
 21 (Record was read back as follows:  
 22 "QUESTION: And why did you send Paul 15:09:19  
 23 White this letter?" 15:09:20  
 24 "ANSWER: I think that the letter is 15:09:22  
 25 self-explanatory as to why I sent it. 15:09:26  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 "QUESTION: With all due respect, I 15:09:30  
 3 may be slow, but I will say that I have not 15:09:31  
 4 found it self-explanatory and I'll ask you 15:09:36  
 5 that you please explain why you wrote it.") 15:09:39  
 6 A. Okay. Can I start at the beginning 15:12:08  
 7 to answer the question? 15:12:09  
 8 Q. You may give your full answer if you 15:12:11  
 9 believe it answers the question. 15:12:13  
 10 A. Okay. The question I believe was why 15:12:14  
 11 did I write this letter to Paul White. 15:12:17  
 12 I wrote this letter to Paul White to 15:12:21  
 13 tell him that I had had a conversation with Noah 15:12:22  
 14 Budnick. Wanted to talk to him about the 15:12:27  
 15 Critical Mass, I wanted to discuss in the letter 15:12:28  
 16 the Critical Mass bike rides, to tell him that 15:12:31  
 17 increasingly large numbers of bicyclists had 15:12:35  
 18 been riding through Manhattan and on an 15:12:38  
 19 escalating scale, these riders were breaking 15:12:42  
 20 many traffic laws and violations of law. 15:12:46  
 21 They've escalated to levels of disorderly 15:12:50  
 22 conduct and obstruction of governmental 15:12:54  
 23 administration, which is a next level after 15:12:56  
 24 traffic violations. 15:12:59  
 25 I wanted to tell him that traffic had 15:13:02  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 been significantly impeded; that there were 15:13:04  
 3 dangerous conditions, both to the riders and 15:13:08  
 4 other citizens. 15:13:10  
 5 I was telling him that the police 15:13:12  
 6 department can't allow this to continue. 15:13:15  
 7 I was then officially notifying him 15:13:18  
 8 that the police department was going to take 15:13:21  
 9 action against future violators of law, meaning 15:13:23  
 10 arrests. 15:13:27  
 11 And then I wanted to tell him that we 15:13:28  
 12 didn't want to have to summons or arrest anybody 15:13:30  
 13 and we were asking him and Transportation 15:13:34  
 14 Alternatives, a great organization, to notify 15:13:38  
 15 their members, some of whom might be partaking 15:13:44  
 16 in the Critical Mass rallies or rides, to obey 15:13:49  
 17 all traffic laws, administrative and penal laws. 15:13:56  
 18 And I wanted him to tell his members 15:13:59  
 19 that if they didn't obey all of these traffic 15:14:01  
 20 laws and administrative and penal laws, that 15:14:04  
 21 they were going to be summonsed and arrested, 15:14:08  
 22 and that we didn't want to do that. 15:14:11  
 23 And that's why I wrote him the 15:14:13  
 24 letter. 15:14:15  
 25 MR. BERGSTRESSER: All right. I'll 15:14:16  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 just note that the witness has simply 15:14:17  
 3 quoted large parts of the letter in his 15:14:20  
 4 response. 15:14:21  
 5 BY MR. BERGSTRESSER:  
 6 Q. And my next question is, why did you 15:14:22  
 7 want to tell Paul White those things? 15:14:25  
 8 A. Because he is in charge of 15:14:26  
 9 Transportation Alternatives, which has very 15:14:29  
 10 large numbers of bicyclists that are members, 15:14:34  
 11 and it was my belief that there were many 15:14:38  
 12 members of Transportation Alternatives riding in 15:14:43  
 13 these Friday night rides and I wanted him to be 15:14:47  
 14 able to let his members know that if they broke 15:14:50  
 15 the law, they were subject to arrest and we 15:14:54  
 16 didn't want to do that. 15:14:56  
 17 Q. Okay. Why did you believe that 15:14:58  
 18 specifically members of Transportation 15:15:05  
 19 Alternatives were participating in the Critical 15:15:07  
 20 Mass rides? 15:15:09  
 21 A. I don't remember, but I do remember 15:15:10  
 22 this: When I had a conversation with him on the 15:15:12  
 23 telephone and when I had a conversation with 15:15:16  
 24 Noah Budnick on the telephone, they told me that 15:15:19  
 25 members of Transportation Alternatives were in 15:15:22  
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1 M. Scagnelli  
 2 fact riding there, so that's how I know because 15:15:25  
 3 they told me. 15:15:29  
 4 Q. Did you contact Noah Budnick or did 15:15:30  
 5 he contact you? 15:15:33  
 6 A. I don't remember. 15:15:34  
 7 Q. What did you tell Noah Budnick about 15:15:35  
 8 the Critical Mass rides when you spoke with him? 15:15:41  
 9 A. I don't remember the conversation. 15:15:43  
 10 Q. Did you also have a phone 15:15:48  
 11 conversation with Paul White prior to sending 15:15:50  
 12 this letter? 15:15:52  
 13 A. I don't remember, but I had several 15:15:52  
 14 conversations with Paul on the phone. 15:15:55  
 15 Q. Do you remember the content of any of 15:15:57  
 16 those conversations? 15:16:00  
 17 A. The content was the same as the 15:16:00  
 18 content of this letter, and I also asked him if 15:16:04  
 19 he knew who was in charge of Critical Mass. 15:16:10  
 20 Q. Did you discuss with anyone at NYPD 15:16:16  
 21 the fact that you were sending this letter prior 15:16:24  
 22 to sending it? 15:16:25  
 23 A. I'm sure I did. 15:16:27  
 24 Q. Why are you sure that you did? 15:16:28  
 25 A. Because that would be my policy when 15:16:30  
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1 M. Scagnelli  
 2 I send an official letter to someone. 15:16:34  
 3 Q. Who would you notify that you were 15:16:37  
 4 sending this letter? 15:16:39  
 5 A. Could have been the chief of 15:16:41  
 6 department, could have been the police 15:16:45  
 7 commissioner. I don't remember. 15:16:47  
 8 Q. Okay. And when you say the police 15:16:49  
 9 commissioner, you mean Ray Kelly. 15:16:51  
 10 A. Yeah. 15:16:52  
 11 Q. Did anyone else have -- 15:16:54  
 12 A. And I'm not saying it was him. I'm 15:16:56  
 13 saying it could have been and I would have 15:16:59  
 14 discussed it before I sent it. 15:17:00  
 15 Q. Did anyone else have input into this 15:17:02  
 16 letter before you sent it? 15:17:04  
 17 A. No one. 15:17:04  
 18 MR. CIAPPETTA: Objection. 15:17:05  
 19 BY MR. BERGSTRESSER: 15:17:06  
 20 Q. Was it reviewed by anyone prior to 15:17:06  
 21 being sent out? 15:17:08  
 22 MR. CIAPPETTA: Objection. 15:17:09  
 23 A. I doubt it, but I don't recall. 15:17:09  
 24 Q. Did you discuss this letter with 15:17:14  
 25 Lieutenant Albano at all? 15:17:24  
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1 M. Scagnelli  
 2 MR. CIAPPETTA: Objection. 15:17:26  
 3 You can answer it. 15:17:37  
 4 THE WITNESS: Answer it? 15:17:39  
 5 MR. MUSCHENHEIM: Well... 15:17:41  
 6 MR. CIAPPETTA: Let's take a break 15:17:41  
 7 for a moment. 15:17:42  
 8 MR. BERGSTRESSER: All right. 15:17:43  
 9 THE VIDEOGRAPHER: The time is 3:17. 15:17:44  
 10 We're off the record. 15:17:46  
 11 (Recess is taken.) 15:18:03  
 12 THE VIDEOGRAPHER: The time is 3:35. 15:34:39  
 13 We're on the record. 15:35:28  
 14 MR. CIAPPETTA: Can we get a read 15:35:28  
 15 back of that last question, please? 15:35:30  
 16 (Question was read back as follows:  
 17 "QUESTION: Did you discuss this 15:17:22  
 18 letter with Lieutenant Albano at all?") 15:17:23  
 19 MR. CIAPPETTA: Can we get a time 15:35:41  
 20 frame on that or... 15:35:42  
 21 MR. BERGSTRESSER: Sure. 15:35:44  
 22 BY MR. BERGSTRESSER: 15:35:47  
 23 Q. Have you discussed this letter with 15:35:47  
 24 Lieutenant Albano at any time in 2004? 15:35:49  
 25 A. No. 15:35:54  
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1 M. Scagnelli  
 2 Q. Did you discuss this letter with 15:35:54  
 3 Lieutenant Albano more recently than that? 15:35:57  
 4 MR. MUSCHENHEIM: You can answer yes 15:36:06  
 5 or no. 15:36:07  
 6 A. I discussed the existence but not the 15:36:07  
 7 content so I don't know if that's a yes or a no. 15:36:09  
 8 That's why I had to say that. I don't know if 15:36:15  
 9 that's yes or no. I didn't discuss it but I 15:36:17  
 10 discussed the existence. 15:36:18  
 11 Q. Did you discuss it with Lieutenant 15:36:21  
 12 Albano at any time prior to 2008? 15:36:23  
 13 A. No. 15:36:26  
 14 Q. Did you discuss it with Lieutenant 15:36:28  
 15 Albano in connection with the facts of this 15:36:34  
 16 case? 15:36:36  
 17 MR. CIAPPETTA: Objection as to form. 15:36:40  
 18 I don't understand what that means. 15:36:43  
 19 You can answer yes or no. 15:36:50  
 20 A. I can't answer yes or no. 15:36:52  
 21 Q. I'm sorry. Why not? 15:36:54  
 22 A. Because yes wouldn't be the truth and 15:36:56  
 23 no wouldn't be the truth. I'd have to give you 15:36:58  
 24 a couple of sentences. 15:37:03  
 25 Q. Did you discuss this letter with 15:37:05  
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1 M. Scagnelli  
 2 Lieutenant Albano at any time other than in 15:37:06  
 3 preparation for your deposition here today? 15:37:08  
 4 MR. CIAPPETTA: You can answer that. 15:37:10  
 5 A. No. 15:37:13  
 6 Q. All right. Chief, I'd like to direct 15:37:13  
 7 your attention to the first sentence of this 15:37:28  
 8 letter when you write, "I am writing to you -- 15:37:32  
 9 I'm sorry. "I'm writing you to follow up on the 15:37:36  
 10 conversation I had with Noah Budnick last week 15:37:38  
 11 concerning the Critical Mass bicycle rides that 15:37:41  
 12 have generally taken place on the last Friday of 15:37:43  
 13 each month." 15:37:45  
 14 Chief, are you aware of any Critical 15:37:46  
 15 Mass rides that have not taken place on the last 15:37:48  
 16 Friday of a month? 15:37:50  
 17 A. No. 15:37:53  
 18 Q. The second sentence you write, 15:37:58  
 19 "Increasingly large numbers of bicyclists have 15:38:06  
 20 been riding through Manhattan and on an 15:38:09  
 21 escalating scale, those riders are breaking 15:38:10  
 22 numerous traffic laws and violations of the law 15:38:14  
 23 that have escalated to levels of disorderly 15:38:15  
 24 conduct and obstructing governmental  
 25 administration." 15:38:21  
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1 M. Scagnelli  
 2 What did you mean by "increasingly 15:38:22  
 3 large numbers of bicyclists"? 15:38:25  
 4 A. I was told that... 15:38:28  
 5 (Document review.) 15:38:38  
 6 A. Well, we had the FDR ride and that 15:38:39  
 7 was, I was told, a huge increase compared to 15:38:45  
 8 other rides. 15:38:52  
 9 Q. But did you have any particular 15:38:53  
 10 numbers in mind when you said "increasingly 15:38:55  
 11 large numbers"? 15:38:57  
 12 A. Yeah, I did have numbers in mind. 15:38:57  
 13 Thousands and thousands, and thousands and 15:38:59  
 14 thousands and thousands. 15:39:01  
 15 Q. Okay. You're referring to 15:39:02  
 16 specifically the FDR Drive ride, correct? 15:39:03  
 17 A. Yes. 15:39:06  
 18 Q. Are you aware of any rides prior to 15:39:06  
 19 that that contained increasingly large numbers 15:39:10  
 20 of participants? 15:39:11  
 21 A. No. I was referring to the FDR 15:39:14  
 22 Drive. 15:39:17  
 23 Q. When you refer to an escalating scale 15:39:17  
 24 of the riders breaking numerous traffic laws, 15:39:25  
 25 what are you referring to there? 15:39:29  
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1 M. Scagnelli  
 2 A. What I specifically meant is that at 15:39:31  
 3 the FDR Drive ride, there were people that not 15:39:36  
 4 only committed traffic laws but committed 15:39:42  
 5 disorderly conduct and they certainly obstructed 15:39:46  
 6 governmental administration. 15:39:49  
 7 Q. Okay. When you said an escalating 15:39:51  
 8 scale, that sounds like you're referring more to 15:39:53  
 9 just one event. 15:39:57  
 10 Would you agree with that? 15:39:57  
 11 MR. CIAPPETTA: Objection. 15:39:58  
 12 A. Maybe I didn't use the right word. 15:39:58  
 13 Q. And also when you say "increasingly 15:40:01  
 14 large numbers," that would sound to me to refer 15:40:03  
 15 to more than one occasion. 15:40:06  
 16 Would you agree with that? 15:40:10  
 17 MR. CIAPPETTA: Objection. 15:40:11  
 18 A. Yeah, maybe I used the wrong word. 15:40:12  
 19 Q. Okay. So really it wasn't so much 15:40:15  
 20 that increasingly large numbers of bicyclists 15:40:18  
 21 had been riding through Manhattan on an 15:40:21  
 22 escalating scale breaking numerous traffic laws, 15:40:24  
 23 I mean it sounds like now you're saying well, 15:40:26  
 24 really it was just there was one really, really 15:40:29  
 25 large ride where numerous offenses were 15:40:31  
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1 M. Scagnelli  
 2 committed. 15:40:35  
 3 MR. CIAPPETTA: Objection. 15:40:36  
 4 A. Yeah. I probably could have written 15:40:39  
 5 that very long sentence a little better. 15:40:41  
 6 Q. Do you have any sort of documentary 15:40:46  
 7 or other evidence to support the idea that 15:40:50  
 8 increasingly large numbers of cyclists had been 15:40:56  
 9 riding through Manhattan and breaking numerous 15:40:59  
 10 traffic laws or was that based on what you, 15:41:02  
 11 simply what you had personally observed and 15:41:04  
 12 learned from -- 15:41:07  
 13 A. It was -- 15:41:08  
 14 MR. CIAPPETTA: Hold on and wait for 15:41:08  
 15 the question. 15:41:09  
 16 BY MR. BERGSTRESSER: 15:41:09  
 17 Q. And learned from individuals. 15:41:09  
 18 MR. CIAPPETTA: Objection. 15:41:11  
 19 A. It was based on what happened on the 15:41:14  
 20 FDR ride. 15:41:19  
 21 Q. When you refer to violations of law 15:41:21  
 22 that had escalated to obstructing governmental 15:41:40  
 23 administration, what specifically are you 15:41:42  
 24 referring to by that? 15:41:46  
 25 A. Well, one example would be blocking 15:41:51  
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1 M. Scagnelli  
 2 traffic. If someone, if someone purposely gets 15:41:54  
 3 out and blocks westbound 55th Street here at 15:42:00  
 4 Third Avenue and the police come and tell them 15:42:05  
 5 to move and they don't, they can be arrested for 15:42:10  
 6 obstructing governmental administration. 15:42:13  
 7 Q. Okay. And to your knowledge, were 15:42:15  
 8 there violations of obstructing governmental 15:42:20  
 9 administration that occurred on the July 2004 15:42:24  
 10 ride?  
 11 A. That's the FDR ride? Yes. 15:42:26  
 12 Q. Okay. Why do you believe that? 15:42:27  
 13 A. Well, I saw it right at the FDR -- at 15:42:32  
 14 the Brooklyn Battery Tunnel with my own eyes 15:42:36  
 15 just one location, and I heard about it from 15:42:39  
 16 many people that were policing the entire thing 15:42:42  
 17 when we discussed it. 15:42:46  
 18 Q. Okay. But correct me if I'm wrong, 15:42:48  
 19 didn't you say that you weren't aware of the 15:42:51  
 20 police taking any action to prevent the cyclists 15:42:52  
 21 from proceeding on the FDR? 15:42:54  
 22 MR. CIAPPETTA: Objection. 15:42:56  
 23 A. I believe that I said that if we had 15:42:56  
 24 it to do over, we should have prevented them 15:43:10  
 25 from getting on the FDR in the first place. You 15:43:14  
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1 M. Scagnelli  
 2 can't do that unless you have a plan in advance. 15:43:16  
 3 You can't have four cops go ahead of them and 15:43:18  
 4 say stop. It doesn't work. 15:43:22  
 5 Q. Well, are you aware of whether or not 15:43:22  
 6 any police actually told them not to proceed 15:43:23  
 7 onto the FDR? 15:43:26  
 8 A. Of personal knowledge, no. 15:43:27  
 9 Q. Do you have any knowledge that anyone 15:43:31  
 10 actually committed obstructing governmental 15:43:34  
 11 administration on that ride? 15:43:37  
 12 MR. CIAPPETTA: Objection. 15:43:39  
 13 A. Yeah, absolutely. Oh, personally? 15:43:40  
 14 Yeah, I saw it right at the Brooklyn Battery 15:43:42  
 15 Tunnel where they were blocking -- you can come 15:43:46  
 16 out of the Brooklyn Battery Tunnel and make a 15:43:49  
 17 left, and no one was allowed to do that and they 15:43:50  
 18 had bikes stopped there. 15:43:53  
 19 Q. Okay. Did you see officers direct 15:43:55  
 20 them not to do that? 15:43:57  
 21 A. Yes. 15:43:58  
 22 Q. If there was were escalating -- well, 15:43:58  
 23 I'll rephrase that question. 15:44:11  
 24 Why were the riders that were 15:44:12  
 25 breaking numerous traffic laws and violations of 15:44:16  
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1 M. Scagnelli  
 2 law as you describe in your letter not arrested 15:44:18  
 3 or issued summonses? 15:44:21  
 4 MR. CIAPPETTA: Objection. 15:44:27  
 5 A. Say that again? 15:44:27  
 6 Q. Yeah. You refer to riders breaking 15:44:28  
 7 numerous traffic laws and violations of law but 15:44:30  
 8 you're not aware of any enforcement action that 15:44:33  
 9 was taken during the FDR incident. 15:44:35  
 10 MR. CIAPPETTA: Note my objection. 15:44:37  
 11 A. I'm not saying there wasn't. I'm not 15:44:38  
 12 aware of it. 15:44:41  
 13 Q. Do you believe that there was 15:44:41  
 14 enforcement action taken against -- 15:44:44  
 15 A. I don't have the foggiest idea. I 15:44:46  
 16 wasn't in charge of the detail. 15:44:49  
 17 Q. But you had numerous discussions with 15:44:50  
 18 people after it took place, correct? 15:44:51  
 19 A. I'm sure I did, yes. 15:44:54  
 20 Q. But you don't recall hearing about 15:44:56  
 21 whether enforcement action had been taken. 15:44:57  
 22 A. I'm sure -- 15:45:08  
 23 MR. CIAPPETTA: Objection. Asked and 15:45:14  
 24 answered. 15:45:15  
 25 A. I'm sure that I was told at the time. 15:45:19  
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1 M. Scagnelli  
 2 I don't remember now. 15:45:22  
 3 Q. In the second paragraph of this 15:45:23  
 4 letter you say, "Traffic has been significantly 15:45:29  
 5 impeded." 15:45:30  
 6 What did you mean by that? 15:45:32  
 7 A. I mean that thousands of people in 15:45:35  
 8 cars were prevented from crossing, driving 15:45:42  
 9 through streets that they wanted to go through 15:45:45  
 10 and that thousands and thousands and thousands 15:45:49  
 11 of pedestrians couldn't cross the street either. 15:45:52  
 12 And they wanted to go across the street and they 15:45:55  
 13 had every right to across the street when the 15:45:57  
 14 light was green for them. 15:45:59  
 15 Q. Okay. Are you referring to the FDR 15:46:00  
 16 Drive incident? 15:46:03  
 17 A. They didn't just drive on the FDR 15:46:03  
 18 Drive. They drove all over the city after they 15:46:05  
 19 got off the FDR Drive and they ended with the 15:46:07  
 20 FDR Drive. 15:46:10  
 21 Q. Did you observe any of that 15:46:10  
 22 happening? 15:46:11  
 23 A. No. 15:46:12  
 24 Q. But people told you that that took 15:46:12  
 25 place. 15:46:14  
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1 M. Scagnelli  
 2 they told me specifically. 15:47:00  
 3 Q. But do you recall that they told you 15:47:01  
 4 about pedestrians being blocked. 15:47:03  
 5 A. They told me that they were blocking 15:47:05  
 6 every intersection that they went through and 15:47:08  
 7 that no traffic crossed and no people could 15:47:11  
 8 cross the streets. 15:47:15  
 9 Q. Okay. Did they tell you that police 15:47:16  
 10 were facilitating that action as they had done 15:47:18  
 11 on prior rides? 15:47:21  
 12 MR. CIAPPETTA: Objection. 15:47:22  
 13 A. I'm sure that they weren't. 15:47:22  
 14 Q. Okay. Why are you sure that they 15:47:27  
 15 weren't? 15:47:29  
 16 A. Because that wouldn't have been 15:47:29  
 17 something that was done on that day. 15:47:32  
 18 Q. Well, do you have any -- 15:47:33  
 19 A. Although I wasn't there and maybe, 15:47:36  
 20 maybe my assuredness is wrong but I believe very 15:47:39  
 21 strongly that they didn't do that. 15:47:44  
 22 Maybe you can find someone that says 15:47:49  
 23 they did, but I'm not aware of it. 15:47:51  
 24 Q. What does it mean that traffic is 15:47:53  
 25 significantly impeded as opposed to -- I'll 15:48:02  
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1 M. Scagnelli  
 2 A. Yes. 15:46:14  
 3 Q. Okay. Did people tell you that 15:46:15  
 4 thousands and thousands and thousands of 15:46:16  
 5 pedestrians were obstructed from crossing the 15:46:18  
 6 street? 15:46:20  
 7 MR. CIAPPETTA: Objection. 15:46:20  
 8 A. They didn't use those words, but they 15:46:21  
 9 said that they just took over the streets and 15:46:22  
 10 they blocked every intersection. 15:46:25  
 11 And I defy you to go take a look and 15:46:28  
 12 go through 40 or 50 or 100 intersections in 15:46:33  
 13 Manhattan where the numbers of pedestrians don't 15:46:37  
 14 add up to thousands and thousands, and thousands 15:46:40  
 15 and thousands.  
 16 So it's an assumption on my part, but 15:46:42  
 17 it's a correct assumption and I'd bet my life on 15:46:44  
 18 it. 15:46:46  
 19 Q. Okay. But you don't recall who told 15:46:47  
 20 you this information. 15:46:48  
 21 A. No. 15:46:49  
 22 Q. Do you recall specifically what they 15:46:50  
 23 told you about the participants doing after 15:46:53  
 24 proceeding on the FDR? 15:46:55  
 25 A. No. I don't remember at all what 15:46:57  
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1 M. Scagnelli  
 2 withdraw that question. 15:48:05  
 3 Isn't it true that traffic is always 15:48:06  
 4 impeded by other traffic? 15:48:08  
 5 MR. CIAPPETTA: Objection. 15:48:11  
 6 A. It's not always impeded, no. You 15:48:13  
 7 drive around here 3:00 in the morning and there 15:48:17  
 8 are cars but no one is impeded. 15:48:20  
 9 Q. How do you define traffic being 15:48:23  
 10 impeded? 15:48:26  
 11 A. When you have every legal right to go 15:48:26  
 12 and you are prevented from going. 15:48:32  
 13 Q. And the reason you would be prevented 15:48:35  
 14 from going is because there are -- 15:48:37  
 15 A. People are in the way and you have a 15:48:39  
 16 green light, and they won't let you go through 15:48:40  
 17 the green light. 15:48:42  
 18 Q. Well, not just green light 15:48:43  
 19 situations, correct? 15:48:45  
 20 If you're -- 15:48:46  
 21 A. If it's a red light, you can't go. 15:48:46  
 22 Q. If you're traveling down the road and 15:48:49  
 23 say you're in a car and there's a car in front 15:48:51  
 24 of you, you're being impeded; is that correct? 15:48:53  
 25 MR. CIAPPETTA: Objection. 15:48:56  
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1 M. Scagnelli  
 2 A. Yes, but perhaps not by someone doing 15:48:56  
 3 anything illegal. That's just volume. 15:49:01  
 4 Q. Right. 15:49:04  
 5 So there are situations where traffic 15:49:04  
 6 is being impeded but it's a perfectly legal fact 15:49:06  
 7 of multiple vehicles on the road, for example, 15:49:09  
 8 correct? 15:49:13  
 9 MR. CIAPPETTA: Objection. 15:49:13  
 10 A. Yes. 15:49:14  
 11 Q. So when you write here that traffic 15:49:16  
 12 is significantly impeded, what does that mean? 15:49:19  
 13 A. What it meant to me is there were 15:49:24  
 14 hundreds of crosstown blocks where people sat 15:49:30  
 15 for numerous changes of a light and never moved 15:49:36  
 16 when they had every right to go across those 15:49:41  
 17 streets. 15:49:43  
 18 So if you miss one light, you're 15:49:44  
 19 impeded. 15:49:46  
 20 If you miss 15 lights, you're 15:49:46  
 21 significantly impeded. If you're sitting there 15:49:48  
 22 watching the light change 15 times and you can't 15:49:51  
 23 move, that's significantly impeded. 15:49:53  
 24 Q. Did you hear any -- 15:49:55  
 25 A. That's terrible. 15:49:56  
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1 M. Scagnelli  
 2 Q. Did you hear any information that 15:49:58  
 3 hundreds of crosstown blocks specifically were 15:50:00  
 4 blocked? 15:50:03  
 5 A. Yes. 15:50:04  
 6 Q. Somebody told you that hundreds of 15:50:06  
 7 crosstown blocks were being blocked. 15:50:08  
 8 A. They told me that every-- 15:50:10  
 9 MR. CIAPPETTA: Wait a minute. 15:50:11  
 10 THE WITNESS: I'm sorry.  
 11 MR. CIAPPETTA: Objection. Asked and 15:50:12  
 12 answered. 15:50:13  
 13 You can answer. 15:50:15  
 14 A. Every block was blocked, every single 15:50:16  
 15 one, and it was hundreds. Or 100 anyway. 15:50:18  
 16 Q. Do you have any information on the 15:50:26  
 17 approximate route that the ride took on that 15:50:28  
 18 date after leaving the FDR? 15:50:30  
 19 A. I don't recall now. I knew then, but 15:50:32  
 20 they drove all over the place. 15:50:35  
 21 Q. I'm sorry. But could you be a little 15:50:38  
 22 more precise about what -- 15:50:40  
 23 A. No, I can't. 15:50:41  
 24 Q. All over the place. 15:50:42  
 25 A. Yeah. 15:50:43  
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1 M. Scagnelli  
 2 Q. I'm sorry. Did somebody tell you it 15:50:44  
 3 was hundreds or that it was 100 or did they not 15:50:55  
 4 specify how many -- 15:50:58  
 5 A. No. No one used the term 100. No 15:50:59  
 6 one used the term hundreds. 15:51:02  
 7 What they told me is that every 15:51:03  
 8 single block that they passed was blocked. 15:51:06  
 9 The 100 or hundreds is my term. 15:51:11  
 10 Q. Okay. And did people tell you 15:51:16  
 11 specifically that motor vehicles were prevented 15:51:19  
 12 from crossing through intersections for 15 15:51:24  
 13 changes of lights? 15:51:26  
 14 A. No one would have used 15. 15:51:30  
 15 Q. Did they -- 15:51:34  
 16 A. They told me that they were prevented 15:51:35  
 17 for the entire length of the group of bicycles 15:51:37  
 18 from pillar to post, from the front to the back. 15:51:41  
 19 Q. And did you ever hear any estimate 15:51:45  
 20 about how long the entire mass of bicyclists 15:51:47  
 21 stretched out? 15:51:50  
 22 A. Well, I saw them when they were on 15:51:51  
 23 West Street going into the Battery Park 15:51:53  
 24 underpass. They were moving along at a pretty 15:51:56  
 25 good clip at that point. It was I guess in the 15:52:00  
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1 M. Scagnelli  
 2 early third or -- of the event. They were 15:52:04  
 3 moving along pretty good and it took forever 15:52:08  
 4 from the first to the last. 15:52:13  
 5 Q. I appreciate that you're 15:52:15  
 6 exaggerating. I'll assume it didn't actually 15:52:18  
 7 take forever, but could you estimate how long it 15:52:20  
 8 actually did take? 15:52:23  
 9 MR. CIAPPETTA: Objection. 15:52:24  
 10 A. It took a long time. I was amazed at 15:52:24  
 11 how long it took. 15:52:29  
 12 Q. Did it take five minutes? 15:52:30  
 13 A. Oh, way more than that. 15:52:31  
 14 Q. Did it take an hour? 15:52:32  
 15 A. No. 15:52:33  
 16 Q. Did it take 10 minutes? 15:52:34  
 17 A. Probably more than that. 15:52:35  
 18 Q. About 15 minutes? 15:52:37  
 19 A. Yeah, maybe more. 15:52:39  
 20 Q. Could it have taken half an hour? 15:52:47  
 21 A. It was between 15 minutes and a half 15:52:50  
 22 hour, but probably more towards the middle of 15:53:01  
 23 that. It took a long time. 15:53:04  
 24 Q. So you believe as you sit here today 15:53:08  
 25 that it took -- that you witnessed a column of 15:53:10  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 bicycles that took at least 20 minutes to 15:53:14  
 3 entirely ride past? 15:53:16  
 4 MR. CIAPPETTA: Objection. 15:53:18  
 5 A. Between 15. So it could have been 15:53:18  
 6 15. It took a long time. 15:53:24  
 7 Q. When you wrote in that second 15:53:29  
 8 paragraph that "...dangerous conditions both to 15:53:47  
 9 the riders and other citizens exist." 15:53:49  
 10 What conditions were you referring 15:53:52  
 11 to? 15:53:53  
 12 A. You got bicycles riding all over the 15:53:55  
 13 place. You got cars all over the place. You 15:54:00  
 14 have people sitting in cars stuck. 15:54:03  
 15 I was shocked and still am to this 15:54:10  
 16 day that there weren't -- well, there actually 15:54:14  
 17 were road rage incidents and I'm shocked that 15:54:18  
 18 frankly some crazy driver didn't just drive 15:54:24  
 19 through the intersection and kill 20 bicyclists. 15:54:28  
 20 I really thought that was going to happen and I 15:54:31  
 21 was shocked that it hasn't happened to this 15:54:33  
 22 date, because there are a lot of nutty people in 15:54:36  
 23 New York City and a lot of them are behind cars, 15:54:40  
 24 and I thought it was really dangerous. 15:54:42  
 25 I mean I saw on another occasion, I 15:54:45  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 Q. What was your understanding or what 15:56:06  
 3 was your basis for saying "...the police 15:56:10  
 4 department must take actions against future 15:56:12  
 5 violators of the law"? 15:56:14  
 6 A. Because we were going to make 15:56:15  
 7 arrests. 15:56:22  
 8 Q. And you would agree that that was a 15:56:24  
 9 change in policy -- 15:56:27  
 10 A. And we were point blank telling that; 15:56:28  
 11 don't do it because we don't want to lock you 15:56:30  
 12 up. 15:56:32  
 13 Q. You would agree that that was a 15:56:33  
 14 change in policy from the way rides had been 15:56:35  
 15 handled previously by the NYPD. 15:56:37  
 16 MR. CIAPPETTA: Objection. 15:56:40  
 17 A. Yes. 15:56:41  
 18 Q. Was it your understanding that going 15:56:41  
 19 forward there would be a zero tolerance policy 15:56:45  
 20 for violations? 15:56:47  
 21 MR. CIAPPETTA: Objection. 15:56:48  
 22 A. That would be impossible. We would 15:56:48  
 23 be locking up, like at the RNC, 20,000 people 15:56:52  
 24 today. Physically impossible zero tolerance. 15:56:58  
 25 It was never discussed zero tolerance. It would 15:57:01  
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1 M. Scagnelli  
 2 saw motorists screaming, throwing stuff, revving 15:54:50  
 3 up their engines, pretending -- moving forward 15:54:56  
 4 for like five feet like they were going to kill 15:55:00  
 5 people. It was like, and not just one, like 15:55:02  
 6 lots of them. It was scary. And that was the 15:55:05  
 7 night of RNC. I thought we were going to have 15:55:08  
 8 mass murder. 15:55:12  
 9 Q. Did you hear of any injuries to ride 15:55:15  
 10 participants occurring on the July 2004 ride? 15:55:21  
 11 A. I don't recall. 15:55:23  
 12 Q. Did you hear of any injuries to 15:55:29  
 13 anyone occurring during the July 2004 ride? 15:55:31  
 14 A. I don't recall. 15:55:34  
 15 Q. And then if I can ask you about the 15:55:35  
 16 third paragraph in this letter, you write, 15:55:44  
 17 "...the police department must take actions 15:55:46  
 18 against future violators of the law." 15:55:49  
 19 A. Where are we here? 15:55:54  
 20 Q. The third paragraph, the full 15:55:55  
 21 sentence says, "Therefore I am respectfully 15:55:57  
 22 notifying you that the police department must 15:55:58  
 23 take actions against future violators of the 15:56:00  
 24 law." 15:56:03  
 25 A. Okay. Um-hmm. 15:56:03  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 be a physical impossibility. It would be like 15:57:05  
 3 me lifting this building right now. 15:57:07  
 4 Q. Well, let's say that the rides were 15:57:08  
 5 such as 300 participants as apparently had been 15:57:10  
 6 going around before you believe. 15:57:15  
 7 Would it be possible to enforce a 15:57:16  
 8 zero tolerance policy against them? 15:57:17  
 9 MR. CIAPPETTA: Objection. 15:57:19  
 10 A. It would be possible with 300. 15:57:20  
 11 Q. But you don't believe it was 15:57:22  
 12 discussed that there would be a zero tolerance 15:57:24  
 13 policy at that time. 15:57:26  
 14 MR. CIAPPETTA: Objection. 15:57:27  
 15 A. I didn't hear that and I wouldn't 15:57:31  
 16 have discussed it because it's something that 15:57:34  
 17 wouldn't be feasible. 15:57:36  
 18 Q. Okay. What was the policy going 15:57:38  
 19 forward? 15:57:40  
 20 A. That we were going to make arrests. 15:57:41  
 21 Q. But not on a zero tolerance basis. 15:57:44  
 22 A. You can't lock them up, all of the 15:57:48  
 23 them up, so you pick the more serious violators 15:57:50  
 24 if you're going to make arrests. 15:57:55  
 25 Q. Is it your understanding that was the 15:57:57  
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1 M. Scagnelli  
 2 basis on which arrests would be made going 15:57:58  
 3 forward? 15:58:01  
 4 A. I don't remember at the time so I 15:58:04  
 5 don't want to assume. 15:58:06  
 6 Q. All right. How does one identify a 15:58:09  
 7 future violator of the law? 15:58:12  
 8 A. One doesn't until they violate it. 15:58:15  
 9 MR. CIAPPETTA: Objection. 15:58:17  
 10 A. I was implying that people that break 15:58:20  
 11 the law in the future are going to either get 15:58:23  
 12 arrested or summonsed. 15:58:27  
 13 Q. This letter is dated -- actually, do 15:58:29  
 14 you recall if at this time you believed that 15:58:34  
 15 people would specifically be arrested as opposed 15:58:35  
 16 to being summonsed? 15:58:38  
 17 A. It would depend on what they did. 15:58:39  
 18 Q. But was it your understanding that -- 15:58:41  
 19 A. A lot of times you go over to give 15:58:44  
 20 someone a ticket for going through a red light 15:58:46  
 21 and they punch you in the nose. Now there's a 15:58:48  
 22 felony. 15:58:51  
 23 Q. Have you ever heard of somebody, an 15:58:51  
 24 officer being punched in the nose during a 15:58:55  
 25 Critical Mass event while writing somebody a 15:58:56  
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1 M. Scagnelli  
 2 Q. Have you ever heard that Critical 15:59:48  
 3 Mass participants were arrested for violations 15:59:52  
 4 on which they might be summonsed? 15:59:54  
 5 A. Nobody, as far as I know, from 15:59:59  
 6 Critical Mass charged with a traffic infraction 16:00:01  
 7 only was arrested. 16:00:06  
 8 If they did something more than a 16:00:10  
 9 traffic infraction, then they might have been 16:00:12  
 10 arrested. 16:00:14  
 11 Q. What is the basis for your 16:00:14  
 12 understanding? 16:00:17  
 13 MR. CIAPPETTA: Objection. 16:00:19  
 14 A. My basis for understanding is I'm 16:00:20  
 15 specifically talking about the bike ride at the 16:00:24  
 16 RNC and nobody was arrested for going through a 16:00:28  
 17 light. 16:00:33  
 18 There were people on bikes that were 16:00:35  
 19 charged with other violations of law and they 16:00:38  
 20 were arrested. 16:00:40  
 21 Q. Are you aware of any of the details 16:00:41  
 22 of arrests or summonsing that has occurred 16:00:45  
 23 during Critical Mass rides after the 2004 RNC? 16:00:49  
 24 A. No. 16:00:53  
 25 Q. This letter is dated August 23rd, 16:00:54  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 summons? 15:58:58  
 3 A. I don't know. 15:58:59  
 4 Q. Was it your -- correct me if I'm 15:59:00  
 5 wrong, but there are some offenses for which 15:59:06  
 6 summonses or arrests may be made; is that 15:59:08  
 7 correct?  
 8 A. Yes. 15:59:10  
 9 Q. Was it your understanding at the time 15:59:10  
 10 you sent this letter that arrests as opposed to 15:59:13  
 11 summonses would be made when that was an option? 15:59:17  
 12 A. No. No, because it's always an 15:59:21  
 13 option. You can arrest someone for going 15:59:25  
 14 through a red light. We don't do it as a matter 15:59:28  
 15 of policy, but we could legally do that. 15:59:31  
 16 Q. Why is that not done as a matter of 15:59:34  
 17 policy? 15:59:36  
 18 A. Because it would be a silly policy. 15:59:37  
 19 We give traffic tickets out for that and you go 15:59:39  
 20 to traffic court. 15:59:40  
 21 But you can legally arrest someone 15:59:41  
 22 and bring them to criminal court for going 15:59:43  
 23 through a red light. 15:59:45  
 24 Q. Have you ever heard that --  
 25 A. We wouldn't do it, but you can. 15:59:47  
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1 M. Scagnelli  
 2 2004. 16:00:59  
 3 Did you send similar letters to 16:01:01  
 4 anyone else around that date? 16:01:03  
 5 A. With regards to Critical Mass? 16:01:07  
 6 Q. Yes.  
 7 A. No. And if I did, you'd have it in 16:01:11  
 8 your folder. 16:01:13  
 9 Q. Were you aware prior to the 2004 RNC 16:01:14  
 10 held in New York City that the Critical Mass 16:01:23  
 11 rides scheduled for August 27, 2004 would 16:01:26  
 12 coincide with the RNC? 16:01:29  
 13 A. Would you repeat the question? 16:01:31  
 14 MR. BERGSTRESSER: Would you read it 16:01:34  
 15 back, please? 16:01:35  
 16 (Question was read back as follows:  
 17 "QUESTION: Were you aware prior to 16:01:20  
 18 the 2004 RNC held in New York City that the 16:01:22  
 19 Critical Mass rides scheduled for August 16:01:25  
 20 27, 2004 would coincide with the RNC?") 16:01:28  
 21 A. Yes. 16:01:51  
 22 Q. Is that something that was discussed 16:01:51  
 23 in conjunction with the discussion about 16:01:57  
 24 Critical Mass rides that took place around that 16:02:00  
 25 time? 16:02:02  
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1 M. Scagnelli  
2 A. Yes. 16:02:03  
3 Q. Do you know if you ever discussed 16:02:04  
4 Critical Mass with Chief Esposito? 16:02:08  
5 A. I'm sure that I did. 16:02:11  
6 Q. Okay. Are you aware of attending any 16:02:14  
7 meetings at One Police Plaza held by Chief 16:02:16  
8 Esposito around that time? 16:02:22  
9 A. I did attend meetings. 16:02:23  
10 Q. And do you recall that he was one of 16:02:25  
11 the participants? 16:02:28  
12 A. On some occasions, yes. 16:02:28  
13 Q. Do you know a Sergeant Wolfgang? 16:02:35  
14 A. I'm not sure who that is. 16:02:42  
15 Q. You don't recall receiving 16:02:44  
16 information about Critical Mass in 2004 from 16:02:46  
17 anyone with the last name Wolfgang? 16:02:50  
18 A. The name doesn't ring a bell. He may 16:02:54  
19 be someone that works for me but I have 16:02:59  
20 thousands of people who work for me. I don't 16:03:01  
21 know him or I don't know the name. 16:03:04  
22 He might walk in and I'll say, "Hey, 16:03:06  
23 Joey," but I don't know who it is right now. 16:03:08  
24 Q. What were your responsibilities in 16:03:20  
25 preparing for the 2004 Republican National 16:03:22  
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1 M. Scagnelli  
2 Q. The RNC. 16:04:32  
3 A. The RNC. Yes, I was. 16:04:33  
4 Q. Was there a particular reason why you 16:04:35  
5 were in the location where the Critical Mass 16:04:39  
6 ride was occurring? 16:04:41  
7 A. It was occurring everywhere. I mean 16:04:43  
8 it was 100 blocks long. You could almost not be 16:04:47  
9 in Manhattan and not be involved in it some way. 16:04:52  
10 It was that big. And I was driving around 16:04:55  
11 dealing with traffic because that was the bigger 16:05:00  
12 issue than the subways at that point. 16:05:03  
13 Q. Were there other demonstrations going 16:05:04  
14 on at that time or was it only the Critical 16:05:07  
15 Mass? 16:05:09  
16 A. There were demonstrations all over 16:05:09  
17 the place.  
18 Q. Okay. So when you say --  
19 A. And there were people on foot. 16:05:12  
20 Q. When you say it was 100 blocks long, 16:05:14  
21 are you just referring to Critical Mass or are 16:05:17  
22 you saying that the entire public demonstrations 16:05:19  
23 were taking up 100 blocks? 16:05:22  
24 A. Critical Mass only. It was huge. 16:05:23  
25 Q. How do you know that? 16:05:26  
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1 M. Scagnelli  
2 Convention? 16:03:26  
3 MR. CIAPPETTA: Objection. 16:03:26  
4 A. Traffic and subways. 16:03:26  
5 Q. Did you have any specific discussions 16:03:28  
6 in preparing for the 2004 RNC dealing 16:03:36  
7 specifically with handling Critical Mass during 16:03:39  
8 the August 2004 ride? 16:03:42  
9 A. I was in charge of traffic and I was 16:03:44  
10 in charge of the subway system at the time. 16:03:48  
11 And other people were in charge of 16:03:52  
12 the actual demonstrations and the Critical Mass 16:03:53  
13 ride. 16:03:57  
14 Q. But were you involved in discussions 16:03:57  
15 concerning the impact that Critical Mass would 16:04:01  
16 undoubtedly have on traffic at that time? 16:04:03  
17 MR. CIAPPETTA: Objection. 16:04:06  
18 A. I'm sure I did. 16:04:06  
19 Q. But you don't have any specific 16:04:07  
20 recollection of that. 16:04:10  
21 A. Correct. 16:04:11  
22 Q. I believe you said before that you 16:04:11  
23 were present while the August 2004 Critical Mass 16:04:23  
24 ride was occurring; is that right? 16:04:26  
25 A. Which one is the August? 16:04:31  
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1 M. Scagnelli  
2 A. Because I saw it. I was there. 16:05:27  
3 Q. You personally witnessed that 16:05:30  
4 Critical Mass was extending for 100 blocks. 16:05:33  
5 A. No, no, no, because you'd have to be 16:05:34  
6 in a helicopter to do that. But I'd be at an 16:05:37  
7 intersection and it would take 45 minutes to go 16:05:41  
8 by. I mean a huge amount of time. 16:05:46  
9 Q. Okay. You --  
10 A. Huge amount of time. 16:05:48  
11 I would be -- I remember once I was 16:05:51  
12 on Second Avenue and I walked up and down, and I 16:05:53  
13 could see, oh, I don't want to exaggerate, five 16:05:56  
14 blocks, six blocks in each direction and it was 16:06:01  
15 just a mass of bicycles. And then the guys you 16:06:04  
16 could see, and gals, that you could see, yeah, 16:06:08  
17 that came by, now there was another mass and 16:06:11  
18 another... It was mind bogging. 16:06:16  
19 Q. Did you personally wait 45 minutes to 16:06:19  
20 cross through an intersection? 16:06:21  
21 A. I was in an unmarked police car and 16:06:23  
22 on numerous occasions that night I tried to 16:06:27  
23 cross with the unmarked police car with my 16:06:32  
24 lights and sirens blaring, and I have as many 16:06:36  
25 lights on my car as a marked car, they're all 16:06:39  
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1 M. Scagnelli  
 2 over the place, and they wouldn't let me 16:06:42  
 3 through. And I tried to inch through and I had 16:06:44  
 4 to have my driver back up because it was too 16:06:47  
 5 dangerous. We were going to hurt somebody. 16:06:50  
 6 And I actually at two locations I got 16:06:52  
 7 out of the car in uniform and begged, literally 16:06:56  
 8 begged the bicyclists to stop and let me across 16:07:01  
 9 to the point where I actually got in the street 16:07:06  
 10 and I said, "I beg you to stop and let me -- I 16:07:09  
 11 used the word "beg." I'm a police chief in 16:07:13  
 12 uniform and I'm using the word "beg." 16:07:15  
 13 And they looked at me and some people 16:07:18  
 14 drove by and said, "Fuck you." And nobody 16:07:20  
 15 stopped. It was out of control. 16:07:24  
 16 Q. What preparations did you make 16:07:36  
 17 concerning the anticipated impact on traffic of 16:07:40  
 18 Critical Mass during the RNC? 16:07:45  
 19 MR. CIAPPETTA: Objection. 16:07:46  
 20 A. We had traffic agents and police 16:07:49  
 21 officers at hundreds and hundreds and hundreds 16:07:55  
 22 of intersections in advance in order to deal not 16:08:03  
 23 only with Critical Mass, but with everything 16:08:07  
 24 else that was going on in New York City. 16:08:09  
 25 And we had officers, traffic 16:08:13  
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1 M. Scagnelli  
 2 officers, out in cars and ready to respond in 16:08:19  
 3 vans to go to particular locations to try to 16:08:23  
 4 alleviate problems. 16:08:25  
 5 Q. Were you informed -- 16:08:27  
 6 A. And they were out there every night, 16:08:29  
 7 not just that night. 16:08:30  
 8 Q. Were you informed of any -- of the 16:08:31  
 9 planned enforcement act against Critical Mass 16:08:36  
 10 participants? 16:08:39  
 11 A. I might have been but I wasn't 16:08:40  
 12 involved in that aspect of it and I don't 16:08:45  
 13 remember at all. 16:08:50  
 14 Q. You mentioned that you did not send 16:08:53  
 15 similar letters as this August 23, 2004 letter 16:08:57  
 16 to other groups informing them that future 16:09:01  
 17 violators of the law would have action taken 16:09:07  
 18 against them, correct? 16:09:10  
 19 MR. CIAPPETTA: Objection. 16:09:11  
 20 A. Well, you know what, I'd have to see 16:09:13  
 21 it, but I wrote another -- as a result of this, 16:09:16  
 22 my phone conversation with Paul White right 16:09:31  
 23 around the time of this letter, he gave me the 16:09:33  
 24 name of that group. We used the name before and 16:09:35  
 25 I forget what it was. Something up? Something 16:09:37  
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1 M. Scagnelli  
 2 up? 16:09:41  
 3 And he indicated a particular address 16:09:42  
 4 and I wrote a letter to them, but it might have 16:09:46  
 5 been a couple weeks after this letter, and I 16:09:51  
 6 wrote a letter to them and I'd have to see it to 16:09:53  
 7 remember exactly what I said. You probably have 16:09:58  
 8 it. 16:10:00  
 9 Q. If you were interested in, if you 16:10:01  
 10 were interested in warning people that 16:10:09  
 11 enforcement action would be taken against them 16:10:12  
 12 and discouraging people from violating the 16:10:14  
 13 law -- 16:10:18  
 14 A. Yup. 16:10:18  
 15 Q. -- and there were thousands and 16:10:18  
 16 thousands of people who participated in the July 16:10:22  
 17 2004 FDR Drive incident ride, why did you only 16:10:25  
 18 send this letter to one group? 16:10:29  
 19 MR. CIAPPETTA: Objection. 16:10:31  
 20 A. Okay. Good question. Because the 16:10:32  
 21 only person in New York City that I to this day 16:10:33  
 22 or the only organization I know to this day 16:10:36  
 23 that's involved in biking is Transportation 16:10:39  
 24 Alternatives so I don't know where else to go. 16:10:43  
 25 If I had other places to go, I would 16:10:45  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 have gone to all. He's the only one I know 16:10:48  
 3 about. "He" meaning Paul, Noah and 16:10:51  
 4 Transportation Alternatives. 16:10:55  
 5 Q. Do you believe that Transportation 16:10:57  
 6 Alternatives is the only bicycle-oriented 16:10:59  
 7 organization within New York City? 16:11:02  
 8 A. Never said that, I'm sure it's not 16:11:03  
 9 true, but they're the only ones I know about and 16:11:05  
 10 have a relationship with. 16:11:08  
 11 Q. As the chief of the Transportation 16:11:11  
 12 Bureau, are you familiar with -- I'll rephrase 16:11:16  
 13 the question. 16:11:19  
 14 Wouldn't the Transportation Bureau be 16:11:20  
 15 aware of different advocacy groups concerning 16:11:37  
 16 transportation in New York City? 16:11:40  
 17 MR. CIAPPETTA: Objection. 16:11:42  
 18 A. I'm aware of advocacy groups, but the 16:11:44  
 19 only bicycle advocacy group that I know of is 16:11:50  
 20 Transportation Alternatives which has lots of 16:11:54  
 21 members and they have actually sought out the 16:11:57  
 22 police originally, and they came to us to bond a 16:12:02  
 23 relationship many years ago. 16:12:09  
 24 And no one else has and I'm not aware 16:12:11  
 25 of anybody else, and I read the papers every day 16:12:13  
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1 M. Scagnelli  
 2 and I don't read about any other groups that are 16:12:15  
 3 very big or get any publicity, so I'm assuming 16:12:20  
 4 that if there are others, and there probably 16:12:23  
 5 are, they're probably pretty small. 16:12:25  
 6 Q. Do you know how many -- 16:12:31  
 7 A. By the way, if you give me the names 16:12:33  
 8 of them, I'll contact them tomorrow because 16:12:35  
 9 that's a good thing. 16:12:37  
 10 Q. I appreciate that, Chief, but 16:12:38  
 11 understand that that's really not my role in 16:12:40  
 12 this process. 16:12:43  
 13 Are you aware of the use of mesh 16:12:43  
 14 netting to barricade roadways and corral 16:12:57  
 15 cyclists during the RNC? 16:13:01  
 16 MR. CIAPPETTA: Objection. 16:13:02  
 17 A. No. 16:13:05  
 18 Q. You didn't witness anything like that 16:13:06  
 19 while you were on location as it were? 16:13:09  
 20 MR. CIAPPETTA: Objection. 16:13:12  
 21 A. If I did, I don't remember it now, 16:13:13  
 22 but I don't think I did. 16:13:18  
 23 Q. Has the Transportation Bureau or 16:13:20  
 24 people under your command ever used orange 16:13:25  
 25 netting to block bicyclists from proceeding down 16:13:28  
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1 M. Scagnelli  
 2 the roadway? 16:13:33  
 3 A. Not to my knowledge. 16:13:33  
 4 Q. Do you know if there is an NYPD 16:13:37  
 5 policy concerning the use of netting to block 16:13:38  
 6 city streets? 16:13:40  
 7 A. I'm not aware of any policy. 16:13:42  
 8 Q. To your knowledge, has the NYPD ever 16:13:48  
 9 forcibly removed bike locks from secured 16:13:51  
 10 bicycles on city streets? 16:13:54  
 11 A. Don't know. 16:13:56  
 12 Q. You never heard that that was done 16:13:57  
 13 during the RNC? 16:14:02  
 14 A. I never heard that. 16:14:03  
 15 Q. Are you aware if there is an NYPD 16:14:06  
 16 policy concerning the removal of bike locks? 16:14:10  
 17 A. No. 16:14:13  
 18 MR. CIAPPETTA: Objection. 16:14:14  
 19 BY MR. BERGSTRESSER: 16:14:18  
 20 Q. Did you have discussions with anyone 16:14:18  
 21 after the August 2004 RNC concerning the 16:14:21  
 22 Critical Mass ride and the conduct that you 16:14:29  
 23 witnessed? 16:14:32  
 24 A. I don't remember. 16:14:32  
 25 Q. You don't recall specifically 16:14:33  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 discussing the disrespectful actions of 16:14:37  
 3 bicyclists towards yourself with anyone? 16:14:42  
 4 MR. CIAPPETTA: Objection. 16:14:43  
 5 A. I've told that story to countless 16:14:44  
 6 friends of mine and countless friends of mine in 16:14:50  
 7 the department, but I don't remember talking 16:14:53  
 8 about that in any official capacity. 16:14:54  
 9 Q. Do you recall if there was any 16:14:57  
 10 discussion that you were involved in around that 16:15:04  
 11 time concerning whether Critical Mass needed to 16:15:06  
 12 obtain a parade permit? 16:15:09  
 13 MR. CIAPPETTA: At which time are we 16:15:11  
 14 talking about here? 16:15:13  
 15 MR. BERGSTRESSER: Around the time of 16:15:14  
 16 the 2004 RNC. 16:15:15  
 17 A. I spoke to Paul White when I was 16:15:24  
 18 trying to find out who was in charge of Critical 16:15:27  
 19 Mass and I was telling Paul that if he knew 16:15:30  
 20 them, to tell them they had to get a parade 16:15:33  
 21 permit and that a parade permit was required. 16:15:35  
 22 And I'd love to be able to see that 16:15:43  
 23 second letter because I just remember something 16:15:46  
 24 in there that I thought might be part of that. 16:15:49  
 25 Q. Why do you believe that a parade 16:16:00  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 permit was required at that time for Critical 16:16:06  
 3 Mass? 16:16:09  
 4 Actually, I'll withdraw the question. 16:16:10  
 5 Do you believe that at the time you 16:16:11  
 6 had these discussions with Paul White that 16:16:14  
 7 Critical Mass needed to obtain a parade permit? 16:16:16  
 8 A. Yes. 16:16:18  
 9 Q. Why do you believe that? 16:16:19  
 10 A. Because they were going to have a 16:16:20  
 11 parade, a rally, whatever you want, with huge 16:16:26  
 12 numbers of people using the streets of the city 16:16:30  
 13 and you need a permit to do that. 16:16:32  
 14 Q. Okay. Are you aware as you sit here 16:16:34  
 15 today what the requirements for obtaining a 16:16:38  
 16 parade permit were in the summer of 2004? 16:16:42  
 17 A. I'm going to say no. 16:16:45  
 18 Q. Where did the idea come from that 16:16:55  
 19 Critical Mass needed to obtain a parade permit? 16:17:01  
 20 Was that something that you thought of by your 16:17:03  
 21 own or did someone else tell you that? 16:17:06  
 22 MR. CIAPPETTA: Objection. 16:17:08  
 23 A. I know that on my own. I knew it 16:17:08  
 24 then, I know it now. 16:17:12  
 25 Whether I had discussions with other 16:17:15  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 people is probable, but I don't remember them. 16:17:16  
 3 Q. Okay. Before the RNC when you first 16:17:19  
 4 learned that the NYPD had been attending 16:17:23  
 5 Critical Mass rides and facilitating the rides, 16:17:28  
 6 and the rides were only a few hundred people, do 16:17:31  
 7 you believe that Critical Mass needed to have a 16:17:36  
 8 permit -- 16:17:38  
 9 A. You're saying rides, right? 16:17:39  
 10 Q. Yes.  
 11 A. Okay. Because I heard riots. 16:17:41  
 12 Q. No, no, no, no. Different -- yeah. 16:17:43  
 13 You recall you mentioned hearing that 16:17:46  
 14 there were smaller rides that were -- 16:17:49  
 15 A. Um-hmm. 16:17:53  
 16 Q. -- operating with the cooperation of 16:17:54  
 17 police.  
 18 Did Critical Mass need to have a 16:17:54  
 19 permit to conduct those rides? 16:17:55  
 20 A. In my view, yes. 16:17:58  
 21 MR. CIAPPETTA: Objection. 16:18:00  
 22 BY MR. BERGSTRESSER: 16:18:02  
 23 Q. Why? 16:18:02  
 24 A. Because there were -- you know, the 16:18:02  
 25 one I saw was about 200 people. You had 200 16:18:08  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 over the streets when they're riding together, 16:19:08  
 3 and in my estimation you would need a permit for 16:19:10  
 4 that. 16:19:13  
 5 Q. Okay. But do you know when the legal 16:19:13  
 6 requirement is that you obtain a permit? 16:19:16  
 7 MR. CIAPPETTA: Objection. 16:19:18  
 8 BY MR. BERGSTRESSER: 16:19:18  
 9 Q. Or did you know what the legal 16:19:18  
 10 requirement was at the time? 16:19:20  
 11 A. No. 16:19:21  
 12 Q. So did you discuss with anyone else 16:19:22  
 13 the idea of forcing Critical Mass to obtain a 16:19:43  
 14 parade permit around the time of the 2004 RNC? 16:19:47  
 15 A. Can you repeat that? I'm sorry. 16:19:51  
 16 (Question was read back as follows:  
 17 "QUESTION: So did you discuss with 16:19:41  
 18 anyone else the idea of forcing Critical 16:19:42  
 19 Mass to obtain a parade permit around the 16:19:46  
 20 time of the 2004 RNC?") 16:19:48  
 21 MR. CIAPPETTA: Objection. 16:20:05  
 22 A. I know that it was discussed at 16:20:10  
 23 meetings. I wasn't at the forefront. 16:20:11  
 24 Q. Do you recall who was at the 16:20:17  
 25 forefront of that discussion? 16:20:19  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 people riding together in bikes using the public 16:18:11  
 3 streets, and in my estimation they would need 16:18:15  
 4 permits to do that. 16:18:17  
 5 Q. Okay. Is -- 16:18:18  
 6 A. And we would have given them permits 16:18:24  
 7 if they applied and cooperated. 16:18:26  
 8 Q. Is your estimation different than 16:18:27  
 9 what the law is concerning when a permit's 16:18:29  
 10 required? 16:18:34  
 11 MR. CIAPPETTA: Objection. 16:18:34  
 12 A. You're referring to the law and now 16:18:34  
 13 you're going over my head, so I can't answer the 16:18:36  
 14 question because I don't know what the law is, 16:18:38  
 15 if there's a law. I don't know what you mean. 16:18:41  
 16 Q. Okay. Well, you said that in your 16:18:44  
 17 view, Critical Mass needed to have a permit to 16:18:46  
 18 conduct those rides. 16:18:48  
 19 A. Yes. 16:18:49  
 20 Q. Do you know if legally they needed to 16:18:50  
 21 have a permit? 16:18:52  
 22 A. I would say yes. 16:18:54  
 23 Q. Why? 16:18:55  
 24 A. Because they had a couple hundred 16:18:56  
 25 people riding around together essentially taking 16:19:02  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 A. No. 16:20:20  
 3 MR. BERGSTRESSER: All right. At 16:20:23  
 4 this point I'd like to ask the court 16:20:25  
 5 reporter to mark for identification 16:20:26  
 6 Scagnelli-5. 16:20:28  
 7 (Plaintiffs' Exhibit Scagnelli 5, 16:20:29  
 8 Letter dated 9/23/04 from Scagnelli to  
 9 Times Up, Bates stamped 5BBC00007862,  
 10 marked for identification, as of this  
 11 date.)  
 12 BY MR. BERGSTRESSER: 16:20:46  
 13 Q. Take a minute to look over that and 16:20:46  
 14 when you're ready, Chief Scagnelli, let me know 16:20:50  
 15 if you recognize this document. 16:20:52  
 16 MR. CIAPPETTA: Can you just read the 16:20:54  
 17 Bates number, Brad? It's cut off. 16:20:54  
 18 MR. BERGSTRESSER: Sure. 16:20:57  
 19 It's a document which is cut off on 16:20:57  
 20 my copy as well, but the Bates number is 16:21:02  
 21 5BBC00007862. 16:21:07  
 22 (Document review.) 16:21:39  
 23 A. Okay. I've read it. 16:21:39  
 24 Q. Do you recognize this document? 16:21:40  
 25 A. Yes. 16:21:42  
 TSG Reporting - Worldwide 877-702-9580

Page 238

1 M. Scagnelli

2 Q. Is this the second letter to which 16:21:42  
3 you're referring? 16:21:44

4 A. Yes. 16:21:46

5 Q. Or have referred previously as you 16:21:46  
6 say. 16:21:48

7 Is this your signature at the bottom 16:21:48  
8 of the letter? 16:21:50

9 A. It is. 16:21:50

10 Q. This is in September of 2004, which 16:21:51  
11 is after the RNC, correct? 16:21:57

12 The 2004 RNC that we discussed. 16:22:02

13 A. I don't know. What was the date of 16:22:05  
14 the RNC? 16:22:07

15 Q. I will represent to you that it was 16:22:08  
16 in August 2004. 16:22:09

17 A. Okay. Then this is a month after. 16:22:10

18 Q. Why did you send this letter to Times 16:22:12  
19 Up? 16:22:16

20 A. Because I had gotten the Times Up 16:22:16  
21 name and that address from Paul White. 16:22:21

22 Q. And what -- I understand the content 16:22:25  
23 of the letter here, but why did you, why did you 16:22:30  
24 wish to inform Times Up of what you've written 16:22:32  
25 here in your letter? 16:22:36

TSG Reporting - Worldwide 877-702-9580

Page 240

1 M. Scagnelli

2 Critical Mass. 16:23:57

3 Q. You had sent that letter to 16:24:01  
4 Transportation Alternatives approximately a 16:24:03  
5 month prior to this one being sent out, correct? 16:24:05

6 A. Correct. 16:24:08

7 Q. Why did you wait nearly a month to 16:24:08  
8 send this follow-up letter to Times Up? 16:24:11

9 MR. CIAPPETTA: Objection. 16:24:13

10 A. Because I wasn't aware of Times Up 16:24:19  
11 until after the FDR event. 16:24:24

12 Q. Right. 16:24:28

13 But the FDR event was in July and you 16:24:29  
14 had discussions with Paul White in August, 16:24:32  
15 correct, because you sent the letter -- 16:24:35

16 A. Oh, I didn't -- let me put it this 16:24:37  
17 way because I'm confused now: The FDR is July, 16:24:41  
18 the RNC is August; is that correct? 16:24:46

19 Q. That's my understanding. 16:24:48

20 A. Okay. I wrote this letter to Times 16:24:49  
21 Up within days of me finding out about Times Up, 16:24:57  
22 so I had a conversation with Paul White not very 16:24:59  
23 many days before the date of this letter. 16:25:05

24 Q. Okay. 16:25:08

25 A. And if I had known about them 16:25:09

TSG Reporting - Worldwide 877-702-9580

Page 239

1 M. Scagnelli

2 A. Well, because I -- Paul White said 16:22:37  
3 that they were leaders in Critical Mass. 16:22:39

4 Doesn't mean he was right, but that's what he 16:22:49  
5 told me. 16:22:51

6 Q. Okay. Is --

7 A. So I was writing this letter to what 16:22:52  
8 I believe was leadership in Critical Mass. 16:22:55

9 Q. Okay. What specifically did Paul 16:22:57  
10 White tell you concerning Times Up's role with 16:22:59  
11 regard to Critical Mass? 16:23:02

12 A. I don't remember. I remember asking 16:23:06  
13 him who are these people, who are these leaders. 16:23:10

14 And he said, "Yeah, they're, you 16:23:13  
15 know, they don't really identify themselves, but 16:23:18  
16 there's a group called Times Up." He gave me 16:23:22  
17 this address, "And the people that are members 16:23:24  
18 of that are leaders in Critical Mass." And he 16:23:28  
19 gave me no names of people, just Times Up. 16:23:35

20 Q. And did he say that there were 16:23:39  
21 individual leaders or merely that the 16:23:43  
22 organization was involved in leading Critical 16:23:44  
23 Mass? 16:23:46

24 A. He said that the leadership of Times 16:23:49  
25 Up were the leaders or some of the leaders of 16:23:52

TSG Reporting - Worldwide 877-702-9580

Page 241

1 M. Scagnelli

2 earlier, I would have written them a letter 16:25:10  
3 earlier. 16:25:13

4 Q. Do you know if you sent similar 16:25:14  
5 letters to this one around the same time that 16:25:18  
6 you sent this one out? 16:25:21

7 A. These are the only two letters I've 16:25:22  
8 ever sent with regards to Critical Mass in my 16:25:24  
9 whole life. 16:25:26

10 Q. Okay. In the first sentence you 16:25:27  
11 write, "I have been informed there is a Critical 16:25:31  
12 Mass bike ride scheduled for Friday, September 16:25:34  
13 24, 2004 in Manhattan." 16:25:36

14 How were you aware that there was a 16:25:40  
15 ride scheduled for that date? 16:25:42

16 A. I don't remember, except that it must 16:25:43  
17 have been the last Friday of the month and I may 16:25:45  
18 have had discussion with Patrol Borough 16:25:49  
19 Manhattan South, but I don't remember. 16:25:53

20 Q. And then the second sentence says, 16:25:58  
21 "Last month thousands of riders drove through 16:26:01  
22 the city breaking numerous traffic laws and I 16:26:01  
23 personally observed many acts of disorderly 16:26:04  
24 conduct and obstructing governmental 16:26:06  
25 administration violations of the penal law." 16:26:08

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1 M. Scagnelli  
 2 Is that referring to the events that 16:26:11  
 3 you've already described during your personal 16:26:14  
 4 observations at the RNC? 16:26:17  
 5 A. It, it refers to countless numbers of 16:26:18  
 6 disorderly conduct violations and obstructing 16:26:25  
 7 governmental administration violations of the 16:26:32  
 8 penal law that I personally observed the night 16:26:34  
 9 of the Critical Mass during the RNC in August. 16:26:39  
 10 I saw hundreds and hundreds of these violations. 16:26:45  
 11 Q. Are you aware that many people 16:26:54  
 12 visited New York during August 2004 to protest 16:27:00  
 13 the RNC? 16:27:03  
 14 A. Yes. 16:27:04  
 15 Q. Are you aware that many participants 16:27:05  
 16 in the August 2004 Critical Mass ride were 16:27:13  
 17 visiting the city specifically to protest the 16:27:17  
 18 RNC? 16:27:21  
 19 MR. CIAPPETTA: Objection. 16:27:21  
 20 A. I'm not aware of that. 16:27:22  
 21 Q. You never heard that. 16:27:23  
 22 A. No. 16:27:24  
 23 MR. CIAPPETTA: Objection. Asked and 16:27:26  
 24 answered. 16:27:27  
 25 BY MR. BERGSTRESSER: 16:27:27  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 Q. Do you think there's any connection 16:27:27  
 3 between public protesting of the RNC and the 16:27:36  
 4 increased numbers of violations that you 16:27:40  
 5 witnessed during the August 2004 Critical Mass 16:27:44  
 6 ride? 16:27:46  
 7 MR. CIAPPETTA: Objection. 16:27:46  
 8 A. I don't know. 16:27:49  
 9 Give me that again? 16:27:57  
 10 MR. BERGSTRESSER: Would you read 16:27:58  
 11 back the question, please. 16:27:59  
 12 (Question was read back as follows:  
 13 "QUESTION: Do you think there's any 16:27:34  
 14 connection between public protesting of the 16:27:35  
 15 RNC and the increased numbers of violations 16:27:39  
 16 that you witnessed during the August 2004 16:27:42  
 17 Critical Mass ride?") 16:27:46  
 18 MR. CIAPPETTA: Note my objection to 16:28:21  
 19 that. 16:28:22  
 20 A. I don't know. I have no personal 16:28:26  
 21 knowledge of that. 16:28:28  
 22 Q. The second paragraph of this letter 16:28:30  
 23 you write, "Traffic was significantly impeded 16:28:35  
 24 and dangerous conditions both to riders and 16:28:38  
 25 others existed." 16:28:40  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 There was other protest activity that 16:28:42  
 3 took place during the RNC, correct? 16:28:46  
 4 A. Yes.  
 5 Q. Not just Critical Mass? 16:28:48  
 6 A. Um-hmm. 16:28:49  
 7 Q. Are you aware of whether other 16:28:50  
 8 protest activity also impeded traffic? 16:28:51  
 9 A. I saw other protest activity and some 16:28:56  
 10 of it impeded traffic, but not anywhere near the 16:29:07  
 11 extent that this did. Not even close. 16:29:11  
 12 Q. Are you aware of any letters being 16:29:14  
 13 sent to other organizations that may have 16:29:16  
 14 protested informing them of the fact that 16:29:20  
 15 traffic was impeded during the RNC? 16:29:24  
 16 MR. CIAPPETTA: Objection. 16:29:26  
 17 A. I'm not aware. 16:29:27  
 18 Q. On the third paragraph you write, "It 16:29:31  
 19 continues to be our desire not to summons or 16:29:32  
 20 arrest riders." 16:29:34  
 21 What did you mean by that statement? 16:29:36  
 22 A. Don't break the law. We don't want 16:29:38  
 23 to arrest you. Please don't break the law. 16:29:39  
 24 Please, please, please. We don't want to arrest 16:29:42  
 25 you. We don't want to give you summonses. 16:29:44  
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1 M. Scagnelli  
 2 Don't break the law. 16:29:47  
 3 Q. Okay. Why did the NYPD, quote, 16:29:47  
 4 unquote, desire not to summons or arrest riders? 16:29:49  
 5 A. Because we want people, every person 16:29:53  
 6 that's in the City of New York to not break the 16:29:56  
 7 law and then therefore we wouldn't give them a 16:29:58  
 8 summons or make an arrest. 16:30:01  
 9 I wish this was utopia where no one 16:30:03  
 10 broke the law and we'd never have to give 16:30:06  
 11 anybody a summons or ever arrest anybody. That 16:30:08  
 12 would be a wonderful place for my children to 16:30:12  
 13 live.  
 14 Q. So your desire was not so much not to 16:30:14  
 15 issue summonses or arrests, but that 16:30:17  
 16 participants not break the law, correct? 16:30:18  
 17 MR. CIAPPETTA: Objection. 16:30:20  
 18 A. Yes. 16:30:24  
 19 Q. In the fourth paragraph you wrote, "I 16:30:27  
 20 suggest that you work within the framework of 16:30:30  
 21 our laws and apply for a permit for the ride 16:30:32  
 22 which then might be sanctioned by the police 16:30:35  
 23 department under our rules and regulations." 16:30:37  
 24 Why did you suggest that Times Up 16:30:41  
 25 specifically apply for a permit for the Critical 16:30:42  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 Mass ride? 16:30:45  
 3 A. Because Paul White told me that they 16:30:46  
 4 were the leaders of Critical Mass as far as he 16:30:49  
 5 knew. 16:30:54  
 6 Q. If Times Up are not in fact leaders 16:30:54  
 7 of Critical Mass or were not at that time, they 16:30:56  
 8 would not be able to obtain a permit for the 16:30:58  
 9 ride; is that correct? 16:31:00  
 10 MR. CIAPPETTA: Objection. 16:31:01  
 11 A. Yeah. If they had nothing to do with 16:31:02  
 12 it, of course not. 16:31:05  
 13 Q. Are you aware of whether the Critical 16:31:06  
 14 Mass rides that took place prior to the July 16:31:21  
 15 2004 ride had permits? 16:31:23  
 16 A. I'm not aware. 16:31:27  
 17 Q. Are you aware whether the July 2004 16:31:36  
 18 ride had a parade permit? 16:31:41  
 19 A. That was the FDR? 16:31:43  
 20 Q. Yes.  
 21 A. They did not have a permit. 16:31:49  
 22 Q. How do you know that? 16:31:50  
 23 A. Because I was involved in discussions 16:31:52  
 24 about it and was made aware at the discussions 16:31:55  
 25 that they didn't have a permit, they didn't 16:31:59  
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1 M. Scagnelli  
 2 They could pick the route and then we'd say 16:33:05  
 3 whether it was okay or not. We don't give 16:33:05  
 4 permits for chaos. 16:33:12  
 5 Q. So is it your position that a 16:33:15  
 6 Critical Mass ride proceeding without a fixed 16:33:17  
 7 route is automatically chaos? 16:33:19  
 8 MR. CIAPPETTA: Objection. 16:33:21  
 9 A. It has the potential for that, yes. 16:33:21  
 10 And if they had 7 or 10 or 20,000 people, it 16:33:26  
 11 would be chaos no matter what, and it was. 16:33:30  
 12 Q. What if the participants in the ride 16:33:37  
 13 informed the police who were escorting the ride 16:33:49  
 14 where they were going as the ride proceeded? 16:33:53  
 15 MR. CIAPPETTA: Objection. 16:33:56  
 16 A. What if? I don't know what if 16:33:59  
 17 means.  
 18 What was the question. 16:34:02  
 19 Q. The question is if the ride 16:34:03  
 20 participants informed the police as to the 16:34:05  
 21 direction the ride would take while it was 16:34:09  
 22 ongoing, would that be acceptable from the 16:34:12  
 23 NYPD's point of view? 16:34:17  
 24 MR. CIAPPETTA: Note my objection. 16:34:18  
 25 A. No. 16:34:19  
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1 M. Scagnelli  
 2 apply, we didn't know who the leadership was. 16:32:01  
 3 Q. But you don't recall who told you 16:32:03  
 4 that information. 16:32:05  
 5 A. No. 16:32:06  
 6 Q. Are you aware of whether or not 16:32:12  
 7 Critical Mass had a permit for the August 2004 16:32:14  
 8 ride during the RNC? 16:32:17  
 9 A. They did not. 16:32:19  
 10 Q. How do you know that? 16:32:20  
 11 A. Through meetings and discussions. 16:32:22  
 12 Q. But you don't recall specifically who 16:32:26  
 13 told you that? 16:32:27  
 14 A. No. 16:32:29  
 15 Q. If it is true that Critical Mass did 16:32:30  
 16 not have a fixed route in September 2004, they 16:32:35  
 17 would not have been able to obtain a parade 16:32:41  
 18 permit; is that correct? 16:32:44  
 19 MR. CIAPPETTA: Objection. 16:32:45  
 20 A. If they came in and were looking for 16:32:46  
 21 a parade permit and they said, "Well, we want a 16:32:53  
 22 permit and we're going to drive all the city but 16:32:55  
 23 we're not going to tell you where we're going," 16:32:58  
 24 we wouldn't give them a permit.  
 25 They would have to work out a route. 16:33:03  
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1 M. Scagnelli  
 2 Q. Why not? 16:34:20  
 3 A. Because they didn't have a permit so 16:34:21  
 4 they weren't allowed to be anywhere without a 16:34:23  
 5 permit. 16:34:26  
 6 Q. Could they obtain a permit if when 16:34:29  
 7 they came in to meet with you as you described, 16:34:32  
 8 they said, "We will inform the police as to the 16:34:35  
 9 direction the ride is going as it is ongoing"? 16:34:38  
 10 MR. CIAPPETTA: Objection. 16:34:41  
 11 A. I wouldn't give them a permit if they 16:34:44  
 12 said that to me. 16:34:46  
 13 Others might. You'd have to ask 16:34:48  
 14 them. 16:34:51  
 15 Q. Did you have an understanding at the 16:34:56  
 16 time that you sent this letter on September 23, 16:34:58  
 17 2004 that parading without a permit would be 16:35:00  
 18 enforced against ride participants going 16:35:05  
 19 forward? 16:35:07  
 20 A. You mean as far as an arrest or a 16:35:11  
 21 summons? 16:35:15  
 22 Q. Yes.  
 23 A. I wasn't particularly involved in 16:35:16  
 24 that and I didn't know. 16:35:18  
 25 Q. This letter refers to a ride 16:35:29  
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1 M. Scagnelli  
 2 scheduled to take place on September 24, 2004; 16:35:32  
 3 is that correct?  
 4 A. Yes. 16:35:37  
 5 MR. CIAPPETTA: Objection. 16:35:37  
 6 BY MR. BERGSTRESSER: 16:35:38  
 7 Q. When you sent this letter on 16:35:38  
 8 September 23, 2004, did you expect that Times Up 16:35:39  
 9 would receive it before the sent 24th ride took 16:35:42  
 10 place?  
 11 A. If I put it in the United States 16:35:46  
 12 mail, of course not. 16:35:47  
 13 I had a police officer drive it to 16:35:48  
 14 that address. 16:35:51  
 15 Q. Okay. And did you hear from that 16:35:53  
 16 police officer that he had delivered the letter? 16:35:56  
 17 A. He had delivered it. He went into 16:35:58  
 18 that address. He said it was like a whacky 16:36:00  
 19 or... I'm not sure what he said, but he 16:36:07  
 20 delivered it at that address. 16:36:09  
 21 Q. Did you -- 16:36:12  
 22 A. And he delivered it on September 16:36:14  
 23 23rd. 16:36:16  
 24 Q. Did he tell you who he had delivered 16:36:17  
 25 it to? 16:36:19  
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1 M. Scagnelli  
 2 A. It wasn't necessary because I 16:37:20  
 3 frequently talked to Paul White on the telephone 16:37:24  
 4 about this for many times. 16:37:27  
 5 And Paul had -- and any of his 16:37:34  
 6 members, any of his leadership had access to 16:37:36  
 7 come into my office any time. 16:37:40  
 8 And we spoke all the time. We still 16:37:43  
 9 speak every now and then. 16:37:45  
 10 Q. Did you discuss this letter with 16:37:46  
 11 anyone else prior to sending it? 16:37:48  
 12 A. Probably. 16:37:51  
 13 Q. Would you have discussed it possibly 16:37:57  
 14 with Bruce Smolka? 16:38:00  
 15 A. No. 16:38:01  
 16 Q. You're sure that you didn't discuss 16:38:02  
 17 it with Bruce Smolka. 16:38:06  
 18 MR. CIAPPETTA: Objection. Asked and 16:38:07  
 19 answered. 16:38:08  
 20 A. No, I'm not sure, but there would 16:38:08  
 21 be -- I'm not sure, but I did discuss it with 16:38:15  
 22 people in the department. 16:38:18  
 23 Q. Did you possibly discuss it with 16:38:20  
 24 Steven Caraballo? 16:38:22  
 25 A. Don't know. 16:38:25  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 A. He delivered it to whichever people 16:36:19  
 3 were at the location. He didn't know who they 16:36:27  
 4 were. They weren't cooperative, and he handed 16:36:30  
 5 them the letter and left. 16:36:34  
 6 Q. Do you know if Times Up in fact 16:36:35  
 7 received this letter? 16:36:37  
 8 A. I haven't the faintest idea. 16:36:38  
 9 Q. Did you send a similar letter to 16:36:39  
 10 Transportation Alternatives -- well, I'm sorry. 16:36:50  
 11 I believe you already testified that you didn't 16:36:53  
 12 send any other letters, including Transportation 16:36:54  
 13 Alternatives, correct? 16:36:59  
 14 A. I said about five times that I've 16:36:59  
 15 never sent any other letters related to Critical 16:37:00  
 16 Mass to any other human being on duty or off 16:37:03  
 17 duty ever, ever, ever except these two letters. 16:37:05  
 18 MR. CIAPPETTA: Note my objection to 16:37:09  
 19 that last question. 16:37:10  
 20 BY MR. BERGSTRESSER: 16:37:10  
 21 Q. Why didn't you send another letter to 16:37:10  
 22 Transportation Alternatives if you believed 16:37:12  
 23 Transportation Alternatives members had been 16:37:15  
 24 participating in Critical Mass rides? 16:37:16  
 25 MR. CIAPPETTA: Objection. 16:37:18  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 Q. Did you discuss it with -- 16:38:26  
 3 A. I don't know anybody that I discussed 16:38:28  
 4 it with, but I did discuss it with people and I 16:38:30  
 5 don't know who they are. 16:38:33  
 6 Q. Did you discuss it with Paul Brown? 16:38:34  
 7 A. This letter? I might have. 16:38:37  
 8 Q. I believe you said that you had not 16:38:39  
 9 attended a Critical Mass detail after the RNC; 16:38:48  
 10 is that correct?  
 11 A. Correct. 16:38:54  
 12 Q. Are you aware of whether Critical 16:39:01  
 13 Mass participants have ever been charged with 16:39:03  
 14 parading without a permit? 16:39:08  
 15 A. I'm not aware. 16:39:09  
 16 Q. Have you ever heard that there was a 16:39:13  
 17 switch in enforcement policy with regard to 16:39:17  
 18 Critical Mass participants after beginning to 16:39:22  
 19 enforce violations going forward from the July 16:39:27  
 20 2004 ride? 16:39:32  
 21 MR. CIAPPETTA: Objection. 16:39:33  
 22 A. Give me the date again? 16:39:34  
 23 Q. Sure. Actually, let me break down 16:39:37  
 24 that question for you. 16:39:40  
 25 We discussed that going forward after 16:39:40  
 TSG Reporting - Worldwide 877-702-9580

Page 254

1 M. Scagnelli  
2 the FDR incident there was going to be a, there 16:39:44  
3 was going to be enforcement activity carried 16:39:50  
4 against ride participants that broke the law, 16:39:53  
5 correct?  
6 A. Um-hmm. 16:39:55  
7 Q. Did you hear at any time after that 16:39:56  
8 that there was a switch in the way that 16:39:58  
9 enforcement activity would be carried out 16:40:02  
10 against Critical Mass participants? 16:40:04  
11 MR. CIAPPETTA: Objection. 16:40:07  
12 A. No. 16:40:07  
13 Q. We discussed briefly whether you're 16:40:16  
14 aware of any Critical Mass participant being 16:40:29  
15 arrested when they might have been issued a 16:40:31  
16 summons for a traffic violation. 16:40:33  
17 I'll ask you now, are you aware of 16:40:35  
18 whether the NYPD has ever conducted an 16:40:38  
19 enforcement action or an operation in which 16:40:40  
20 motorists found to have gone through a red light 16:40:44  
21 or exceeded the speed limit are arrested as 16:40:48  
22 opposed to being issued summonses? 16:40:50  
23 A. Yes. 16:40:53  
24 MR. CIAPPETTA: Objection. 16:40:53  
25 BY MR. BERGSTRESSER: 16:40:54  
TSG Reporting - Worldwide 877-702-9580

Page 256

1 M. Scagnelli  
2 for traffic violations? 16:42:21  
3 A. Don't know anything -- 16:42:21  
4 MR. CIAPPETTA: Objection. 16:42:21  
5 A. Don't know anything about that. I 16:42:22  
6 was the traffic guy and transit guy and I didn't 16:42:23  
7 get involved in that, so I don't know. 16:42:26  
8 Q. Can you imagine any reason why that 16:42:28  
9 might be done? 16:42:30  
10 MR. CIAPPETTA: Objection. 16:42:31  
11 A. Don't. It wasn't my purview. 16:42:31  
12 Q. I understand that it wasn't your 16:42:34  
13 purview, but as you sit here today, can you 16:42:42  
14 think of any reason why that might be a 16:42:42  
15 legitimate basis for enforcement? 16:42:44  
16 MR. CIAPPETTA: Objection. Asked and 16:42:46  
17 answered. 16:42:51  
18 A. To arrest someone who is only charged 16:42:51  
19 with going through a traffic light? 16:42:55  
20 Q. Yes.  
21 A. I'm not aware that that was done. 16:43:00  
22 Q. I understand that, Chief, and I'm not 16:43:02  
23 implying that you were aware of it. 16:43:05  
24 I'm just asking if you -- 16:43:06  
25 A. I don't think it was done. 16:43:08  
TSG Reporting - Worldwide 877-702-9580

Page 255

1 M. Scagnelli  
2 Q. In situations where there was no 16:40:54  
3 other offense beyond a traffic infraction? 16:40:58  
4 A. Yes. 16:41:05  
5 Q. Can you describe that situation? 16:41:06  
6 A. We have the right to, and on occasion 16:41:10  
7 do, arrest people that perhaps are going 100 16:41:14  
8 miles an hour on the Belt Parkway, and we have 16:41:19  
9 officers that can and sometimes make an arrest 16:41:23  
10 instead of giving a speeding ticket out for 16:41:29  
11 excessive speeds like that. 16:41:32  
12 Q. Are you aware of whether any such 16:41:35  
13 arrest as opposed to summoning situation has 16:41:37  
14 occurred with regard to a motorist crossing a 16:41:40  
15 red light? 16:41:47  
16 A. We would not arrest someone who did 16:41:48  
17 that except for exigent circumstances of course 16:41:51  
18 where, for example, he's wanted or has a 16:41:58  
19 suspended license, et cetera, et cetera. 16:42:02  
20 But if he's a legitimate motorist 16:42:03  
21 with a legitimate license, goes through a red  
22 light, he gets a ticket. 16:42:09  
23 Q. Can you -- are you aware of any 16:42:09  
24 reason why Critical Mass participants might have 16:42:14  
25 been arrested as opposed to receiving summonses 16:42:18  
TSG Reporting - Worldwide 877-702-9580

Page 257

1 M. Scagnelli  
2 Q. I understand that. 16:43:09  
3 Can you think of any law enforcement 16:43:09  
4 basis why it might be done? 16:43:12  
5 MR. CIAPPETTA: Objection. Asked and 16:43:13  
6 answered. 16:43:14  
7 THE WITNESS: Am I supposed to 16:43:18  
8 answer? 16:43:19  
9 MR. CIAPPETTA: You can answer again. 16:43:19  
10 A. I wouldn't do it. 16:43:23  
11 Q. All right. At this point I'd like to 16:43:28  
12 ask you to take a look at a couple of documents. 16:43:44  
13 MR. BERGSTRESSER: I'll ask the court 16:43:49  
14 reporter to mark these, I believe we're at 16:43:50  
15 Scagnelli-6. 16:43:53  
16 MR. CIAPPETTA: That's right. 16:43:54  
17 (Plaintiffs' Exhibit Scagnelli 6,  
18 Series of summonses, Bates stamped NYC 16:57:25  
19 002167 through 2171 and 2361, marked for 16:57:26  
20 identification, as of this date.)  
21 THE WITNESS: You know what, I need 16:43:58  
22 to go to the bathroom. 16:43:59  
23 MR. BERGSTRESSER: Okay. Well, let's 16:44:00  
24 take a break now. 16:44:01  
25 MR. CIAPPETTA: Okay. 16:44:02  
TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
2 THE VIDEOGRAPHER: The time is 4:44 16:44:02  
3 we're off the record. 16:44:09  
4 (Recess is taken.) 16:44:10  
5 THE VIDEOGRAPHER: The time is 4:57. 16:56:26  
6 We're on the record. 16:57:09  
7 BY MR. BERGSTRESSER: 16:57:10  
8 Q. All right, chief, I'll ask you to 16:57:11  
9 take a look at what's been marked as 16:57:13  
10 Scagnelli-6, and this is a series of summonses 16:57:17  
11 that are each one page and they bear Bates 16:57:21  
12 numbers NYC 002167, 2168, 2169, 2170, 2171 and 16:57:24  
13 2361. 16:57:43  
14 MR. CIAPPETTA: This is Scagnelli-6, 16:57:43  
15 right? 16:57:45  
16 MR. BERGSTRESSER: This is 16:57:45  
17 Scagnelli-6. 16:57:45  
18 BY MR. BERGSTRESSER: 16:57:49  
19 Q. Now you can take your time to look 16:57:49  
20 through these and just let me know -- 16:57:52  
21 A. Okay. 16:57:55  
22 Q. -- when you're ready for questions. 16:57:54  
23 (Document review.) 16:57:56  
24 Q. Chief, would you agree with me -- now 17:00:43  
25 this is a series of summonses that were all 17:00:47  
TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
2 Q. Okay. Well, yes. 17:01:47  
3 A. Yeah.  
4 Q. A facsimile of a summons that appears 17:01:48  
5 to be a violation of 1238A of the VTL, correct? 17:01:50  
6 A. It says 5A or SA. 17:01:56  
7 Q. Well, 1238 either 5A or SA. 17:01:58  
8 A. Okay.  
9 Q. And the description of the infraction 17:02:03  
10 is "No helmet while riding bicycle"? 17:02:05  
11 A. Okay. 17:02:08  
12 Q. Do you know if adult bicyclists are 17:02:08  
13 required to wear helmets in New York City? 17:02:11  
14 A. I don't think so. 17:02:14  
15 Q. If you look at the date of birth 17:02:14  
16 indicated here, it appears to be April -- 17:02:16  
17 A. It's an adult. 17:02:18  
18 Q. Does it appear to you based -- I 17:02:21  
19 understand you don't have any other information 17:02:25  
20 than what's presented here. 17:02:28  
21 Based on this information, does it 17:02:29  
22 appear to you that the summons was properly 17:02:33  
23 issued? 17:02:35  
24 MR. CIAPPETTA: Objection. 17:02:37  
25 A. If the date of birth is right, I 17:02:42  
TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
2 issued on the evening of April 29, 2005 between 17:00:49  
3 8:00 p.m. and 10:00 p.m. in the vicinity of 17:00:52  
4 Union Square Park. 17:00:56  
5 A. Okay. That's what these sheets 17:00:57  
6 indicate. 17:00:58  
7 Q. Now looking at the first page, which 17:00:59  
8 has Bates number ending in 167, do you see that 17:01:03  
9 the summons was issued for a violation of New 17:01:07  
10 York VTL -- 17:01:10  
11 A. 167? 17:01:11  
12 Q. Yeah. Those are three numbers ending 17:01:12  
13 the first page. 17:01:15  
14 A. I have summonses here. 17:01:18  
15 Q. Yeah, I'm sorry. I'm talking about 17:01:19  
16 the number in the corner. 17:01:20  
17 A. Okay. 17:01:21  
18 Q. NYC 002167. 17:01:24  
19 A. Okay. 17:01:27  
20 Q. Would you agree this was a summons 17:01:28  
21 that was issued for a violation of New York VTL 17:01:30  
22 1238A? 17:01:33  
23 MR. CIAPPETTA: Objection. 17:01:37  
24 A. It's a fac -- it is a facsimile of a 17:01:37  
25 summons. 17:01:43  
TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
2 would think this is improper, an improper 17:02:46  
3 summons. 17:02:49  
4 Q. Okay. I'll ask you to turn to the 17:02:50  
5 next page, please. 17:02:51  
6 (Witness complies.) 17:02:54  
7 Q. This is another summons that, a copy 17:02:54  
8 of another summons that appears to have been 17:02:57  
9 issued by a PO Russo, and I'll submit to you, 17:02:58  
10 you'll notice that the summons was issued 17:03:05  
11 approximately 10 minutes after the previous one 17:03:07  
12 we looked at at the same location. 17:03:09  
13 Would you agree with that? 17:03:12  
14 A. I've got to go back. 17:03:21  
15 9:00, 9:10, yes. 17:03:21  
16 MR. CIAPPETTA: Excuse me. Did your 17:03:22  
17 mike fall off maybe? 17:03:25  
18 THE WITNESS: I'm sorry. What?  
19 BY MR. BERGSTRESSER: 17:03:26  
20 Q. Oh, Chief, your microphone. 17:03:26  
21 A. Oh, okay.  
22 That better? 17:03:36  
23 THE VIDEOGRAPHER: Yeah, thanks. 17:03:37  
24 BY MR. BERGSTRESSER: 17:03:38  
25 Q. And if you see this summons was also 17:03:38  
TSG Reporting - Worldwide 877-702-9580

Page 262

1 M. Scagnelli  
2 issued for a violation 1238 sub 5A -- 17:03:42  
3 A. Yes. 17:03:46  
4 Q. Described as "No helmet while riding 17:03:47  
5 bicycle." 17:03:53  
6 And if you look at the date of birth, 17:03:53  
7 assuming that that's correct, this would have 17:03:54  
8 been issued to someone who was I believe 39 on 17:03:57  
9 that date. 17:04:05  
10 A. Um-hmm. 17:04:06  
11 Q. Does it appear to you that this 17:04:07  
12 summons was properly issued? 17:04:08  
13 MR. CIAPPETTA: Objection. 17:04:11  
14 A. No. 17:04:12  
15 Q. Take a look at the next page. 17:04:13  
16 (Witness complies.) 17:04:17  
17 Q. Do you see that this summons was 17:04:17  
18 written approximate lit same time as the one we 17:04:20  
19 just looked at in the same location? 17:04:22  
20 Would you agree with that? 17:04:28  
21 A. Yes. 17:04:29  
22 Q. And it also appears to have been 17:04:30  
23 issued for 1238 sub 5A, "No helmet while 17:04:32  
24 operating bicycle"? 17:04:36  
25 A. That's what it says. 17:04:37  
TSG Reporting - Worldwide 877-702-9580

Page 264

1 M. Scagnelli  
2 have been improperly issued? 17:05:43  
3 A. Yes. 17:05:44  
4 Q. Now if you please take a look at the 17:05:45  
5 next one, which is the page stamped in the 17:05:51  
6 corner as NYC 002170, this is a summons that was 17:05:54  
7 issued on the same date in approximately the 17:06:04  
8 same location at 8:55; is that correct? 17:06:07  
9 A. That's what it indicates. 17:06:10  
10 Q. Okay. It states this is for a 17:06:12  
11 violation of 19.1761B and the description is 17:06:14  
12 "Reckless operation of a bicycle." 17:06:19  
13 Are you familiar with reckless 17:06:23  
14 operation of a bicycle is a violation of the 17:06:25  
15 law? 17:06:28  
16 MR. CIAPPETTA: Objection. 17:06:31  
17 A. I don't. I'm not aware of it. 17:06:34  
18 Q. Do you know whether Section 19.1761B 17:06:36  
19 of the administrative code prohibits reckless 17:06:42  
20 skateboarding? 17:06:47  
21 MR. CIAPPETTA: Objection. I'm going 17:06:48  
22 to object to the extent it calls for the 17:06:49  
23 witness to provide a legal conclusion and 17:06:50  
24 he's not a lawyer. 17:06:55  
25 MR. BERGSTRESSER: He is not a 17:06:56  
TSG Reporting - Worldwide 877-702-9580

Page 263

1 M. Scagnelli  
2 Q. Does it appear that this summons was 17:04:39  
3 issued to a cyclist who would have been 17:04:49  
4 approximately 28 at the time the offense was 17:04:50  
5 issued? 17:04:52  
6 A. This one -- 17:04:53  
7 MR. CIAPPETTA: Objection. 17:04:53  
8 A. -- the year I cannot read at all, so 17:04:54  
9 I have no idea what that says. 17:04:57  
10 Q. Okay. I'll represent to you that the 17:04:59  
11 year is '77 and that is discernible on a clearer 17:05:02  
12 copy of this summons. 17:05:06  
13 MR. CIAPPETTA: I'll just note that 17:05:09  
14 this copy, in this copy it's not 17:05:10  
15 discernible. 17:05:13  
16 MR. BERGSTRESSER: Okay.  
17 BY MR. BERGSTRESSER: 17:05:15  
18 Q. Assuming that I'm correct in saying 17:05:15  
19 that the date of birth is entered as December 17:05:17  
20 22nd, '77, would you agree that this would 17:05:21  
21 appear to be a summons for "No helmet while 17:05:24  
22 operating bicycle" issued to an adult? 17:05:30  
23 MR. CIAPPETTA: Objection. 17:05:30  
24 A. Yes. 17:05:31  
25 Q. Would this summons also appear to 17:05:32  
TSG Reporting - Worldwide 877-702-9580

Page 265

1 M. Scagnelli  
2 lawyer. 17:06:57  
3 BY MR. BERGSTRESSER: 17:06:57  
4 Q. Are you aware of whether or not that 17:06:57  
5 section of law actually refers to reckless 17:07:01  
6 skateboarding? 17:07:03  
7 MR. CIAPPETTA: You can answer. 17:07:05  
8 A. I don't know anything about that 17:07:06  
9 section at all. 17:07:08  
10 MR. BERGSTRESSER: I'll ask the court 17:07:32  
11 reporter to please mark, don't put this one 17:07:33  
12 away yet, Chief, but I'll ask the court 17:07:35  
13 reporter to please mark this as Scagnelli-7 17:07:37  
14 for identification. 17:07:39  
15 (Plaintiffs' Exhibit Scagnelli 7, NYC 17:07:54  
16 Administrative Code Title 19, Section 176.1  
17 Transportation, not Bates stamped, marked  
18 for identification, as of this date.)  
19 BY MR. BERGSTRESSER: 17:07:55  
20 Q. And I will submit that this is an 17:07:55  
21 excerpt from the New York City Administrative 17:08:00  
22 Code, specifically Title 19, Section 176.1. 17:08:02  
23 And I'll ask if you take a look at 19 17:08:11  
24 1761B where it says, "No person shall engage in 17:08:17  
25 the reckless operation of roller skates, in-line 17:08:26  
TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 skates or a skateboard." 17:08:29  
 3 Now, Chief, based on this provision 17:08:30  
 4 of the Administrative Code which I have provided 17:08:34  
 5 you and looking at this copy of a summons we 17:08:36  
 6 were just discussing, do you have an opinion as 17:08:39  
 7 to whether or not this summons was properly 17:08:41  
 8 issued? 17:08:43  
 9 MR. CIAPPETTA: Objection. 17:08:43  
 10 A. I do. 17:08:46  
 11 Q. And what's that opinion? 17:08:46  
 12 A. It's improperly written. 17:08:48  
 13 Q. If you'll take a look at the next one 17:08:54  
 14 just very briefly, it appears to have been 17:08:56  
 15 issued around the same time and location for the 17:08:59  
 16 same offense of reckless operation of a bicycle. 17:09:02  
 17 Would you agree? 17:09:07  
 18 A. Yes. 17:09:13  
 19 Q. And would it appear that this one is 17:09:19  
 20 also improperly written considering that it 17:09:22  
 21 appears the code does not seem to address 17:09:24  
 22 bicycles. 17:09:27  
 23 MR. CIAPPETTA: Objection. 17:09:27  
 24 A. Yes. 17:09:32  
 25 Q. And I'll submit to you, Chief, that 17:09:33  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 that date occurred during a Critical Mass ride. 17:09:37  
 3 Whose job is normally to ensure that 17:09:50  
 4 summonses are properly written? 17:09:54  
 5 MR. CIAPPETTA: Objection. 17:09:56  
 6 A. The police officer that writes it. 17:10:00  
 7 Q. Does it seem to you unusual that 17:10:06  
 8 three officers would be writing similar invalid 17:10:11  
 9 summonses at the same location around the same 17:10:18  
 10 time to bicyclists? 17:10:20  
 11 MR. CIAPPETTA: Objection. 17:10:26  
 12 A. No. 17:10:30  
 13 Q. Why not? 17:10:30  
 14 A. Well, three of the summonses, the 17:10:31  
 15 reckless operation of a bicycle, which is 17:10:38  
 16 supposed to be a skateboard, those three 17:10:41  
 17 summonses are written by the same officer, so 17:10:44  
 18 he's not particularly well informed. 17:10:48  
 19 And if a supervisor that had any 17:10:53  
 20 knowledge of this law, which I didn't, looked at 17:10:55  
 21 it or, you know, they should have looked at it 17:10:58  
 22 and voided it, but that's one police officer 17:11:06  
 23 that made a pretty silly mistake. 17:11:09  
 24 Q. And how about the other ones that 17:11:14  
 25 were issued improperly? 17:11:16  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 A. The others, there are -- two of them 17:11:16  
 3 are for no helmet. The first two are written by 17:11:20  
 4 the same police officer from the 44 and he is 17:11:25  
 5 not informed. 17:11:32  
 6 Q. And third officer? 17:11:34  
 7 A. And the third officer is... 17:11:36  
 8 (Document review.) 17:11:39  
 9 A. Is that the 13th Precinct, 013? Do 17:11:39  
 10 you have a better copy? 17:11:44  
 11 Q. No. That's the only copy I have for 17:11:46  
 12 you. 17:11:48  
 13 A. Are you looking at a better copy? 17:11:50  
 14 Q. I am not. 17:11:52  
 15 A. Okay. Well... 17:11:53  
 16 (Document review.) 17:11:58  
 17 A. He wrote a poor summons too. 17:12:00  
 18 Q. Do you think it's unusual for three 17:12:03  
 19 officers assigned to the same detail and 17:12:06  
 20 conducting summonsing activity were all writing 17:12:08  
 21 invalid summonses? 17:12:10  
 22 MR. CIAPPETTA: Objection. 17:12:12  
 23 A. Well, I would think that was usual if 17:12:13  
 24 there were like 15 officers there, but if there 17:12:17  
 25 were hundreds, I wouldn't think it was unusual. 17:12:20  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 I don't know how many were there, but 17:12:22  
 3 if there were a lot of officers, you know, then 17:12:25  
 4 this is X amount of -- this is three officers 17:12:29  
 5 and, you know, I'd like to know how many 17:12:33  
 6 officers wrote how many summonses. There might 17:12:34  
 7 have been 500 summonses written, 492 of them 17:12:37  
 8 were good. 17:12:42  
 9 Q. When you direct officers under your 17:12:46  
 10 command to conduct enforcement actions regarding 17:12:49  
 11 traffic violations, do you expect them to issue 17:12:52  
 12 valid summonses in doing that? 17:12:55  
 13 MR. CIAPPETTA: Objection. 17:12:57  
 14 A. Yes. 17:12:57  
 15 Q. Are you aware as to whether or not 17:13:00  
 16 the officers conducting such enforcement action 17:13:02  
 17 receive training as to what the proper summonses 17:13:05  
 18 are? 17:13:08  
 19 A. My officers are traffic experts and 17:13:09  
 20 they receive such training and they're experts. 17:13:19  
 21 These officers come from precincts, 17:13:22  
 22 and based on their tax numbers, they don't have 17:13:26  
 23 very much time on the job. These are rookies. 17:13:32  
 24 Q. Who provides your officers with 17:13:37  
 25 training so that they become traffic experts? 17:13:43  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 A. Training sergeants. 17:13:47  
 3 Q. Do you know if officers not within 17:13:51  
 4 the Transportation Bureau ever receive such 17:13:53  
 5 training? 17:13:57  
 6 MR. CIAPPETTA: Objection. 17:13:58  
 7 A. Officers that are in the precincts, 17:13:58  
 8 they all receive training and what that quality 17:14:10  
 9 is, I don't know. 17:14:13  
 10 Q. Chief, are you aware that Critical 17:14:16  
 11 Mass rides also occur on a monthly basis in 17:14:26  
 12 Brooklyn as well as in Manhattan? 17:14:28  
 13 A. I do. 17:14:30  
 14 Q. How do you know that? 17:14:31  
 15 A. I heard of that for a number of years 17:14:32  
 16 now and I can't tell you exactly when I knew or 17:14:39  
 17 who told me, but I'm well aware of it. 17:14:44  
 18 Q. Do you recall the first time -- 17:14:47  
 19 A. I'm a Brooklyn kid so... 17:14:48  
 20 Q. Do you recall the first time you 17:14:51  
 21 heard that Critical Mass rides occurred in 17:14:52  
 22 Brooklyn? 17:14:55  
 23 A. Several years ago. 17:14:55  
 24 Q. Would it have been prior to when you 17:14:58  
 25 learned about Critical Mass rides in Manhattan? 17:15:00  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 not in policing. 17:16:01  
 3 Q. Okay. What's that difference that 17:16:02  
 4 you're aware of? 17:16:04  
 5 A. I am told that, never seen it myself, 17:16:04  
 6 but I am told that the Brooklyn Critical Mass 17:16:07  
 7 participants are reasonably cooperative and 17:16:15  
 8 reasonably law abiding. 17:16:19  
 9 Q. What does it mean that they are 17:16:23  
 10 reasonably cooperative? 17:16:25  
 11 A. What that means is that they 17:16:28  
 12 cooperate with the police and they don't break a 17:16:34  
 13 whole lot of laws that impede the rights of 17:16:42  
 14 citizens. 17:16:44  
 15 Q. Do you know if participants in the 17:16:46  
 16 Brooklyn Critical Mass ride provide the route of 17:16:48  
 17 the ride to the police in advance of the ride? 17:16:51  
 18 A. I do not know. 17:16:54  
 19 Q. Do you know if participants in the 17:16:56  
 20 Brooklyn Critical Mass ride run red lights? 17:16:58  
 21 A. Do not know. 17:17:01  
 22 Q. Do you know if they block 17:17:03  
 23 intersections so that vehicular traffic cannot 17:17:06  
 24 split up the ride? 17:17:11  
 25 A. Do not know. 17:17:12  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 A. I don't really remember. 17:15:03  
 3 Q. Have you ever witnessed a Brooklyn 17:15:07  
 4 Critical Mass ride? 17:15:11  
 5 A. No. 17:15:11  
 6 Q. I take it that means you have never 17:15:12  
 7 attended a Brooklyn Critical Mass detail. 17:15:15  
 8 A. Correct. 17:15:18  
 9 Q. Are you aware that the New York 17:15:18  
 10 Police Department sends a detail of officers to 17:15:21  
 11 the Brooklyn Critical Mass rides every month? 17:15:24  
 12 A. Yes. 17:15:26  
 13 Q. Do you know how you know that 17:15:27  
 14 information? 17:15:29  
 15 A. I've heard it from many people many 17:15:29  
 16 times, and I don't remember when, where, who, 17:15:34  
 17 but I know it. 17:15:40  
 18 Q. Are you aware of any difference with 17:15:40  
 19 how enforcement action is conducted on the 17:15:43  
 20 Brooklyn Critical Mass ride as opposed to the 17:15:46  
 21 Manhattan Critical Mass ride? 17:15:49  
 22 MR. CIAPPETTA: Objection. 17:15:50  
 23 A. I am, I am not aware of a difference 17:15:50  
 24 in policing. 17:15:58  
 25 I'm aware of another difference, but 17:15:59  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 Q. Do you know if the Brooklyn Critical 17:17:13  
 3 Mass ride obtains a permit for its rides? 17:17:15  
 4 A. Do not know. 17:17:18  
 5 Q. Do you know who any commanding 17:17:19  
 6 officer of a Brooklyn Critical Mass detail has 17:17:27  
 7 been? 17:17:28  
 8 A. I know almost all of the Brooklyn 17:17:29  
 9 commanders and I'm sure that they ran them, so 17:17:34  
 10 the answer is yes, but I don't know who. 17:17:38  
 11 Q. Have you ever witnessed Critical Mass 17:17:41  
 12 participants block an emergency vehicle such as 17:17:47  
 13 an ambulance? 17:17:49  
 14 A. Yes. 17:17:50  
 15 Q. You personally witnessed that. 17:17:50  
 16 A. I personally witnessed that on a 17:17:52  
 17 number of occasions the night of the RNC, 17:17:54  
 18 including my emergency vehicle and lots of 17:17:57  
 19 marked police cars, fire engines and the 17:18:00  
 20 ambulances. 17:18:06  
 21 Q. Where were you positioned when you 17:18:08  
 22 saw ambulances being blocked? 17:18:13  
 23 A. All over. I was everywhere. I saw 17:18:15  
 24 them all over. I couldn't give you any streets, 17:18:17  
 25 but I saw all of them and more than one time 17:18:21  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 each. It was pretty shocking. 17:18:25  
 3 Q. Does the NYPD maintain statistics 17:18:28  
 4 concerning the impact of traffic on emergency 17:18:32  
 5 vehicle response times? 17:18:34  
 6 MR. CIAPPETTA: Objection. 17:18:35  
 7 A. Repeat the question, please? 17:18:39  
 8 MR. BERGSTRESSER: Would you read it 17:18:42  
 9 back?  
 10 (Question was read back as follows:  
 11 "QUESTION: Does the NYPD maintain 17:18:30  
 12 statistics concerning the impact of traffic 17:18:31  
 13 on emergency vehicle response times?") 17:18:33  
 14 A. No. 17:18:55  
 15 Q. Does it maintain any records of 17:18:56  
 16 instances where ambulances have been blocked in 17:19:00  
 17 traffic? 17:19:03  
 18 A. Would you repeat that, please? 17:19:08  
 19 MR. BERGSTRESSER: Would you read it 17:19:09  
 20 back, please? 17:19:11  
 21 A. I'm having a hard time understanding 17:19:14  
 22 you. 17:19:15  
 23 Q. I apologize. My voice may be close 17:19:16  
 24 to giving out, but I will persevere and do my 17:19:19  
 25 best and be louder and clearer. 17:19:23  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 (Question was read back as follows:  
 3 "QUESTION: Does it maintain any 17:18:59  
 4 records of instances where ambulances have 17:19:00  
 5 been blocked in traffic?") 17:19:03  
 6 A. Does the NYPD? 17:19:35  
 7 Q. Yes.  
 8 A. No. 17:19:40  
 9 Q. Are you aware of whether anybody else 17:19:40  
 10 does? 17:19:44  
 11 A. I'm not aware of whether the fire 17:19:45  
 12 department would keep the records of their 17:19:48  
 13 personnel. 17:19:50  
 14 Q. Do you know what the typical delay is 17:19:52  
 15 for emergency vehicles to reach their 17:19:54  
 16 destination? 17:19:56  
 17 MR. CIAPPETTA: Objection. 17:19:59  
 18 When? Ever? 17:20:02  
 19 MR. BERGSTRESSER: Average. 17:20:04  
 20 A. Delay doesn't fit. If you're talking 17:20:09  
 21 about response time, I can answer the question. 17:20:10  
 22 Delay doesn't make sense. 17:20:13  
 23 Q. Okay. Are you aware of what the 17:20:15  
 24 average response time is for an emergency 17:20:17  
 25 vehicle to reach its destination in New York 17:20:19  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 City? 17:20:21  
 3 A. Okay. It's a very broad question so 17:20:22  
 4 I'll have to be specific. 17:20:25  
 5 I don't know anything about 17:20:27  
 6 ambulances. I don't know anything about fire 17:20:29  
 7 engines, which are emergency vehicles. I know 17:20:31  
 8 nothing about their response time. 17:20:33  
 9 The NYPD has documented response 17:20:35  
 10 times to specific jobs in specific precincts, 17:20:41  
 11 and on certain jobs the police car is given a 17:20:52  
 12 job like go to a, you know, go an accident 17:20:56  
 13 and/or go to a robbery and so that's given at a 17:21:00  
 14 certain time. 17:21:04  
 15 And then when they get to the scene, 17:21:05  
 16 they're supposed to give a signal 1084 which 17:21:08  
 17 says we're here and that would be the response 17:21:12  
 18 time. 17:21:14  
 19 It wouldn't factor in traffic. It 17:21:15  
 20 would just tell you how long it took them to get 17:21:17  
 21 there. 17:21:19  
 22 Q. Chief, are you aware of the rules 17:21:20  
 23 within New York City concerning when a parade 17:21:24  
 24 permit is required? 17:21:26  
 25 A. I'm not real good at it. 17:21:27  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 Q. Okay. Do you know that the rules 17:21:30  
 3 governing parade permits were amended in 2007? 17:21:34  
 4 A. I had heard that recently. 17:21:38  
 5 Q. How recently? 17:21:40  
 6 A. Like in the last day. 17:21:42  
 7 Q. Okay. You are not aware of that 17:21:49  
 8 happening at the time in 2007? 17:21:53  
 9 A. Correct. 17:21:55  
 10 Q. I'd just like to ask you a couple of 17:21:56  
 11 questions about the FDR Drive incident and the 17:22:27  
 12 July 2004 incident, or Critical Mass ride I 17:22:30  
 13 should say. 17:22:33  
 14 You mentioned that you witnessed the 17:22:34  
 15 cyclists proceeding into the tunnel from which 17:22:37  
 16 they exited onto the FDR, correct? 17:22:39  
 17 MR. CIAPPETTA: Objection. 17:22:41  
 18 A. Yeah. And to be specific, it's -- we 17:22:41  
 19 don't call it a tunnel, it's called the Battery 17:22:45  
 20 Park underpass, which I said before. 17:22:47  
 21 Q. How did you receive the information 17:22:54  
 22 that that was where the ride was proceeding? 17:22:56  
 23 A. I saw them go in the underpass. 17:23:00  
 24 Q. Okay. But prior to being at that 17:23:04  
 25 location, where were you located? 17:23:06  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 A. I drove to West Street and about the 17:23:09  
 3 Brooklyn Battery Tunnel, not to be confused with 17:23:16  
 4 the little tunnel. 17:23:18  
 5 Q. Okay. And how did you know to 17:23:19  
 6 proceed to that location to observe the ride? 17:23:21  
 7 A. I don't remember. One would assume, 17:23:23  
 8 but I don't remember. 17:23:28  
 9 Q. Okay. Do you believe that you were 17:23:30  
 10 notified by the detail that that was the route 17:23:32  
 11 the ride was taking? 17:23:35  
 12 A. There are only two ways I could have 17:23:38  
 13 known where to go, and that would be by police 17:23:42  
 14 radio or telephone and I don't know which. 17:23:44  
 15 Q. Do you recall if you were in contact 17:23:48  
 16 with the detail via police radio during that 17:23:49  
 17 event? 17:23:53  
 18 A. With the detail itself? No. They 17:23:55  
 19 use a different frequency. 17:23:58  
 20 Q. Okay. So you don't -- you were not 17:24:00  
 21 monitoring the city-wide one broadcast frequency 17:24:06  
 22 at that time. 17:24:09  
 23 A. Not while I was on my way to the 17:24:09  
 24 location on West Street and the Brooklyn Battery 17:24:13  
 25 Tunnel. 17:24:16  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 Afterwards and during the detail I 17:24:17  
 3 flipped around, so I was on it for periods of 17:24:18  
 4 time listening. 17:24:22  
 5 Q. Okay.  
 6 A. I didn't speak. 17:24:23  
 7 Q. And I believe you said earlier that 17:24:24  
 8 you were not aware of Aviation being involved in 17:24:26  
 9 any aspect of the ride. 17:24:29  
 10 MR. CIAPPETTA: Objection. Asked and 17:24:30  
 11 answered. 17:24:31  
 12 A. I'm not aware of it now. 17:24:32  
 13 If I was there then and a helicopter 17:24:34  
 14 flew over my head, I certainly would have been 17:24:37  
 15 aware of it then, but I have absolutely no 17:24:38  
 16 recollection of it now. 17:24:41  
 17 Q. Okay. Apart from Critical Mass, are 17:24:42  
 18 you aware of any other large group bicycle rides 17:25:11  
 19 that take place, that have taken place in 17:25:15  
 20 Manhattan? 17:25:18  
 21 A. Yes. 17:25:19  
 22 Q. What rides are those? 17:25:19  
 23 A. I don't know the names of them but 17:25:22  
 24 there are a couple of bike rides every year. 17:25:26  
 25 One is called The Five Borough Bike 17:25:31  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 Ride. 17:25:34  
 3 There are a number of them that we 17:25:34  
 4 police that have very large numbers of 17:25:37  
 5 participants. Perhaps 10,000 bicycles. They 17:25:42  
 6 get a permit, there's a route, they go on the 17:25:46  
 7 route, they obey the laws and they're wonderful 17:25:51  
 8 events. 17:25:57  
 9 Q. At this point I think we have a video 17:25:59  
 10 clip I would like to show you so the way we've 17:26:04  
 11 done this in the past is we've asked the witness 17:26:07  
 12 to sort of move over closer to Mr. Ciappetta and 17:26:10  
 13 then you can see the video screen. 17:26:13  
 14 MR. CIAPPETTA: Is that going to 17:26:17  
 15 project up there? 17:26:19  
 16 MR. BERGSTRESSER: It is. 17:26:20  
 17 THE VIDEOGRAPHER: Do you want me to 17:26:21  
 18 go off the record? 17:26:22  
 19 MR. BERGSTRESSER: Sure. Let's go 17:26:23  
 20 off the record. 17:26:24  
 21 THE VIDEOGRAPHER: The time is 5:26. 17:26:24  
 22 We're off the record. 17:26:26  
 23 (Discussion off the record.) 17:30:03  
 24 THE VIDEOGRAPHER: The time is 5:30. 17:30:05  
 25 We're on the record. 17:30:25  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 BY MR. BERGSTRESSER: 17:30:26  
 3 Q. All right, Chief, I'm going to show 17:30:26  
 4 you portions of a video clip that has been 17:30:28  
 5 produced to the defendants as 5BBCVID0000014. 17:30:31  
 6 What I'll do is I'll show you 17:30:43  
 7 portions of the clip and then ask you questions, 17:30:47  
 8 and if, you know, you need to see something over 17:30:50  
 9 again or you want me to show more of the clip, I 17:30:52  
 10 will do that. Just let me know. 17:30:56  
 11 A. Okay. 17:30:59  
 12 MR. CIAPPETTA: This is from the 17:30:59  
 13 September 2007 -- 17:31:00  
 14 BY MR. BERGSTRESSER:  
 15 Q. At the beginning of the video clip, 17:31:02  
 16 it identifies -- it states that it takes place 17:31:05  
 17 at an event of Critical Mass Manhattan, 17:31:11  
 18 September 28, 2007 Broadway. 17:31:12  
 19 A. Which is a month after the RNC. 17:31:16  
 20 Q. Several years after the RNC. 17:31:18  
 21 A. Oh, I didn't notice the '07. 17:31:20  
 22 Q. Assuming that this took place on the 17:31:22  
 23 date as identified here. 17:31:26  
 24 MR. CIAPPETTA: Do you know who the 17:31:27  
 25 videographer was for this video? 17:31:28  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 MR. BERGSTRESSER: I believe it was 17:31:30  
 3 Stu Desser, but I would ask you to refer to 17:31:34  
 4 plaintiffs' Interrogatory responses in the 17:31:35  
 5 event that I'm wrong. 17:31:38  
 6 (Video clip playing.) 17:31:45  
 7 MR. BERGSTRESSER: I'm going to fast 17:31:49  
 8 forward to -- I'll start the clip at 17:31:52  
 9 approximately 4 minutes and 40 seconds. 17:31:55  
 10 (Video clip playing.) 17:32:02  
 11 BY MR. BERGSTRESSER: 17:32:25  
 12 Q. Now, Chief, I realize you've only 17:32:25  
 13 seen a small portion of this clip, but would you 17:32:27  
 14 agree with me that so far what you've seen 17:32:29  
 15 appears to show a tractor-trailer parked in the 17:32:31  
 16 bicycle lane facing against traffic? 17:32:36  
 17 MR. CIAPPETTA: Objection. 17:32:39  
 18 A. Okay. You're going to hate my 17:32:39  
 19 answer. I don't have a clue what that 17:32:41  
 20 indicates. That's such poor quality that I 17:32:43  
 21 don't know what I'm looking at. 17:32:46  
 22 Q. I don't hate your answer at all, 17:32:47  
 23 Chief. 17:32:49  
 24 I'll start the video a little earlier 17:32:49  
 25 and see if you get a better idea of what's going 17:32:51  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 on. 17:32:55  
 3 MR. CIAPPETTA: Please just note the 17:32:55  
 4 time that's he's referring to. 17:32:56  
 5 MR. BERGSTRESSER: Yeah. I'll start 17:32:56  
 6 the clip at four minutes even. 17:32:56  
 7 MR. CIAPPETTA: Okay. 17:32:59  
 8 (Video clip playing.) 17:33:04  
 9 BY MR. BERGSTRESSER: 17:34:19  
 10 Q. Now that you've seen a little bit 17:34:19  
 11 more of this video clip, I notice that you put 17:34:22  
 12 your glasses on partway through, Chief. 17:34:26  
 13 Would you like to watch the portion 17:34:27  
 14 of the clip again or... 17:34:29  
 15 A. Yeah. I mean I, I still don't know 17:34:30  
 16 what's happening. 17:34:32  
 17 Am I supposed to be seeing something 17:34:35  
 18 there that's significant? Because I don't. 17:34:36  
 19 Q. Okay. So based on what you've seen, 17:34:39  
 20 you can't tell that this is a truck parked the 17:34:41  
 21 wrong way on a street in which traffic is only 17:34:45  
 22 moving in one direction. 17:34:48  
 23 A. I cannot. 17:34:49  
 24 Q. Okay. Well, we can watch a little 17:34:50  
 25 bit more of the clip and see if that helps. 17:34:53  
 TSG Reporting - Worldwide 877-702-9580

1 M. Scagnelli  
 2 MR. BERGSTRESSER: I will start the 17:34:56  
 3 clip at three minutes. 17:34:58  
 4 (Video clip playing.) 17:35:00  
 5 THE WITNESS: I'm going to take this 17:35:03  
 6 off and stand back further. Maybe that 17:35:05  
 7 will work. 17:35:07  
 8 MR. BERGSTRESSER: Sure. 17:35:11  
 9 THE WITNESS: I can't see. 17:35:09  
 10 MR. BERGSTRESSER: I'll restart the 17:35:11  
 11 clip. 17:35:12  
 12 THE WITNESS: This is actually 17:35:16  
 13 better. 17:35:17  
 14 (Video clip playing.) 17:35:22  
 15 MR. BERGSTRESSER: I'll stop it right 17:36:30  
 16 here. This is about 4:10. 17:36:31  
 17 BY MR. BERGSTRESSER:  
 18 Q. Now, Chief, based on the minute or so 17:36:33  
 19 footage you've just watched, would you agree 17:36:35  
 20 with me that that footage appeared to show a 17:36:38  
 21 tractor-trailer making a right-hand turn going 17:36:40  
 22 the wrong direction down a one-way street? 17:36:43  
 23 A. I can't see that. 17:36:47  
 24 Q. Okay.  
 25 MR. BERGSTRESSER: I believe that's 17:36:57  
 TSG Reporting - Worldwide 877-702-9580

1  
 2 all the questions I have for you at this 17:36:58  
 3 time. 17:36:59  
 4 MR. MUSCHENHEIM: Thank you. 17:37:03  
 5 MR. CIAPPETTA: Thank you. 17:37:04  
 6 THE WITNESS: Okay. Thank you. 17:37:05  
 7 THE VIDEOGRAPHER: The time is 5:37. 17:37:05  
 8 We're off the record. 17:37:07  
 9 17:37:10  
 10  
 11 \_\_\_\_\_  
 12 MICHAEL SCAGNELLI  
 13  
 14  
 15 Subscribed and sworn to before me  
 16 this day of 2009.  
 17  
 18 \_\_\_\_\_  
 19  
 20  
 21  
 22  
 23  
 24  
 25  
 TSG Reporting - Worldwide 877-702-9580

CERTIFICATE

INDEX

STATE OF NEW YORK )
) ss.:
COUNTY OF QUEENS )

Witness Page
MICHAEL SCAGNELLI
MR. BERGSTRESSER 6

I, ANNETTE ARLEQUIN, a Notary Public
within and for the State of New York, do
hereby certify:

QUESTIONS INSTRUCTED NOT TO ANSWER

That MICHAEL SCAGNELLI, the witness
whose deposition is hereinbefore set forth,
was duly sworn by me and that such
deposition is a true record of the
testimony given by such witness.

Table with 2 columns: Page, Line. Rows: 16 12, 177 9, 178 4, 178 13

I further certify that I am not
related to any of the parties to this
action by blood or marriage; and that I am
in no way interested in the outcome of this
matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 3rd day of February, 2009.

ANNETTE ARLEQUIN, CSR, RPR

INDEX OF EXHIBITS

ERRATA SHEET FOR THE TRANSCRIPT OF:
CASE NAME: FIVE BOROUGH BICYCLE v. CITY OF NY
DATE: JANUARY 22, 2009
DEPONENT: MICHAEL SCAGNELLI

Table with 2 columns: Description, Page. Rows: Plaintiffs' Exhibit 1, Copy of document entitled "Section 4-12 Miscellaneous," not Bates stamped 43; Plaintiffs' Exhibit 2, Communication Referral Summary dated 12/30/04, Bates stamped NYC 013343 through 348 92; Plaintiffs' Exhibit 3, Letter dated 8/23/04 from Scagnelli to White, Bates stamped 5BBC00007863 187; Plaintiffs' Exhibit 4, Letter dated 8/23/04 from Scagnelli to White, unsigned, Bates stamped NYC 002162 188; Plaintiffs' Exhibit 5, Letter dated 9/23/04 from Scagnelli to Times Up, Bates stamped 5BBC00007862 237; Plaintiffs' Exhibit 6, Series of summonses, Bates stamped NYC 002167 through 2171 and 2361 257; Plaintiffs' Exhibit 7, NYC Administrative Code Title 19, Section 176.1 Transportation 265

Table with 4 columns: Pg. Ln., Now Reads, Should Read, Reason. Rows 7-17 are empty.

MICHAEL SCAGNELLI
SUBSCRIBED AND SWORN BEFORE ME
THIS DAY OF 2009.

(Notary Public)

MY COMMISSION EXPIRES:

<b>A</b>				
<b>abides (1)</b> 61:16	<b>activities (1)</b> 177:5	74:10 87:8 88:5	77:14 190:23 204:17 249:4	138:21 147:4,8,15 157:18,20 159:18
<b>abiding (2)</b> 132:20 272:8	<b>activity (15)</b> 113:10 138:4 155:18 156:18 160:5 165:7 165:11,18 183:7 244:2,8,9 254:3,9 268:20	<b>agents (10)</b> 63:3,22 64:15,17,19 64:22 73:19 84:6,14 226:20	<b>allowing (2)</b> 157:24 168:24	159:21 160:3,6,8,19 162:10,20 163:7,13 163:17,20 164:2,22 165:8 167:17,22 168:2,4,7 170:11 175:20,22,25 176:3 177:9 178:5,14 191:10,17,24 192:7 192:8 197:3,4 198:4 198:19,20 199:4 211:13 235:13 257:8,9 265:7 273:10 275:21 282:19,22 287:9
<b>able (10)</b> 53:6 59:2 62:6 88:20 97:13 155:8 194:14 232:22 246:8 247:17	<b>acts (1)</b> 241:23	<b>ago (16)</b> 15:24 17:17,19,25 31:10 33:7 37:17,19 38:5 42:3 78:13 87:2 90:5 184:6 229:23 270:23	<b>aloud (3)</b> 146:25 157:12 159:12	165:8 167:17,22 168:2,4,7 170:11 175:20,22,25 176:3 177:9 178:5,14 191:10,17,24 192:7 192:8 197:3,4 198:4 198:19,20 199:4 211:13 235:13 257:8,9 265:7 273:10 275:21 282:19,22 287:9
<b>abreast (2)</b> 49:7,10	<b>actual (2)</b> 73:14 223:12	<b>agree (24)</b> 47:16 54:11 90:21 143:5 144:21 151:20 158:6 160:24 168:12 169:13 170:12 189:2 201:10,16 216:8,13 258:24 259:20 261:13 262:20 263:20 266:17 282:14 284:19	<b>alter (3)</b> 45:13,14 87:11	165:8 167:17,22 168:2,4,7 170:11 175:20,22,25 176:3 177:9 178:5,14 191:10,17,24 192:7 192:8 197:3,4 198:4 198:19,20 199:4 211:13 235:13 257:8,9 265:7 273:10 275:21 282:19,22 287:9
<b>absolutely (7)</b> 59:13 60:13 67:4 123:22 145:2 204:13 279:15	<b>ad (1)</b> 80:25	<b>agreeable (1)</b> 47:25	<b>Alternatives (19)</b> 15:11 24:14 105:14 190:6,8 193:14 194:9,12,19,25 228:24 229:4,6,20 240:4 251:10,13,22 251:23	165:8 167:17,22 168:2,4,7 170:11 175:20,22,25 176:3 177:9 178:5,14 191:10,17,24 192:7 192:8 197:3,4 198:4 198:19,20 199:4 211:13 235:13 257:8,9 265:7 273:10 275:21 282:19,22 287:9
<b>academy (3)</b> 26:13,21,23	<b>add (1)</b> 207:14	<b>AGREED (3)</b> 4:2,7,11	<b>altogether (1)</b> 40:12	165:8 167:17,22 168:2,4,7 170:11 175:20,22,25 176:3 177:9 178:5,14 191:10,17,24 192:7 192:8 197:3,4 198:4 198:19,20 199:4 211:13 235:13 257:8,9 265:7 273:10 275:21 282:19,22 287:9
<b>acceptable (1)</b> 248:22	<b>addition (1)</b> 175:15	<b>ahead (4)</b> 51:9 162:11 179:6 204:3	<b>amazed (1)</b> 213:10	165:8 167:17,22 168:2,4,7 170:11 175:20,22,25 176:3 177:9 178:5,14 191:10,17,24 192:7 192:8 197:3,4 198:4 198:19,20 199:4 211:13 235:13 257:8,9 265:7 273:10 275:21 282:19,22 287:9
<b>access (1)</b> 252:6	<b>additions (1)</b> 45:25	<b>Albano (28)</b> 1:12 16:3,5,10,17 17:10 18:7,22 19:4 19:12,18 20:2,16 21:11,16 22:4,14 135:13,14,24 137:3 196:25 197:18,24 198:3,12,15 199:2	<b>ambulance (1)</b> 273:13	165:8 167:17,22 168:2,4,7 170:11 175:20,22,25 176:3 177:9 178:5,14 191:10,17,24 192:7 192:8 197:3,4 198:4 198:19,20 199:4 211:13 235:13 257:8,9 265:7 273:10 275:21 282:19,22 287:9
<b>account (1)</b> 276:12	<b>address (8)</b> 106:4 228:3 238:21 239:17 250:14,18 250:20 266:21	<b>Albany (1)</b> 67:16	<b>ambulances (5)</b> 273:20,22 274:16 275:4 276:6	165:8 167:17,22 168:2,4,7 170:11 175:20,22,25 176:3 177:9 178:5,14 191:10,17,24 192:7 192:8 197:3,4 198:4 198:19,20 199:4 211:13 235:13 257:8,9 265:7 273:10 275:21 282:19,22 287:9
<b>accidents (4)</b> 87:22,22 88:12,22	<b>addresses (1)</b> 97:18	<b>allegation (2)</b> 35:12,14	<b>amended (1)</b> 277:3	165:8 167:17,22 168:2,4,7 170:11 175:20,22,25 176:3 177:9 178:5,14 191:10,17,24 192:7 192:8 197:3,4 198:4 198:19,20 199:4 211:13 235:13 257:8,9 265:7 273:10 275:21 282:19,22 287:9
<b>account (2)</b> 23:18 24:18	<b>administer (1)</b> 4:14	<b>allegedly (1)</b> 132:19	<b>America (1)</b> 59:18	165:8 167:17,22 168:2,4,7 170:11 175:20,22,25 176:3 177:9 178:5,14 191:10,17,24 192:7 192:8 197:3,4 198:4 198:19,20 199:4 211:13 235:13 257:8,9 265:7 273:10 275:21 282:19,22 287:9
<b>accountability (1)</b> 87:19	<b>administration (9)</b> 192:23 199:25 201:6 202:23 203:6,9 204:11 241:25 242:7	<b>Albany (1)</b> 67:16	<b>amount (5)</b> 39:19 86:10 225:8,10 269:4	165:8 167:17,22 168:2,4,7 170:11 175:20,22,25 176:3 177:9 178:5,14 191:10,17,24 192:7 192:8 197:3,4 198:4 198:19,20 199:4 211:13 235:13 257:8,9 265:7 273:10 275:21 282:19,22 287:9
<b>accurate (1)</b> 152:15	<b>administrative (8)</b> 97:17 193:17,20 264:19 265:16,21 266:4 288:20	<b>Albany (1)</b> 67:16	<b>amounts (2)</b> 86:20 87:4	165:8 167:17,22 168:2,4,7 170:11 175:20,22,25 176:3 177:9 178:5,14 191:10,17,24 192:7 192:8 197:3,4 198:4 198:19,20 199:4 211:13 235:13 257:8,9 265:7 273:10 275:21 282:19,22 287:9
<b>accused (1)</b> 35:4	<b>adult (3)</b> 260:12,17 263:22	<b>alleviate (1)</b> 227:4	<b>analysis (1)</b> 89:10	165:8 167:17,22 168:2,4,7 170:11 175:20,22,25 176:3 177:9 178:5,14 191:10,17,24 192:7 192:8 197:3,4 198:4 198:19,20 199:4 211:13 235:13 257:8,9 265:7 273:10 275:21 282:19,22 287:9
<b>achieve (1)</b> 175:15	<b>advance (4)</b> 133:2 204:2 226:22 272:17	<b>allow (3)</b> 155:16,17 193:6	<b>and/or (1)</b> 276:13	165:8 167:17,22 168:2,4,7 170:11 175:20,22,25 176:3 177:9 178:5,14 191:10,17,24 192:7 192:8 197:3,4 198:4 198:19,20 199:4 211:13 235:13 257:8,9 265:7 273:10 275:21 282:19,22 287:9
<b>act (1)</b> 227:9	<b>advocacy (3)</b> 229:15,18,19	<b>allowed (12)</b> 35:18 46:25 47:2,4 50:22 52:6 61:9,21	<b>Annette (5)</b> 1:24 2:11 5:13 286:8 286:25	165:8 167:17,22 168:2,4,7 170:11 175:20,22,25 176:3 177:9 178:5,14 191:10,17,24 192:7 192:8 197:3,4 198:4 198:19,20 199:4 211:13 235:13 257:8,9 265:7 273:10 275:21 282:19,22 287:9
<b>action (23)</b> 62:24 81:12 82:2 83:23 100:7 130:4 137:14,19 138:3,14 144:25 193:9 203:20 205:8,14,21 208:10 227:17 228:11 254:19 269:16 271:19 286:18	<b>Affairs (1)</b> 35:13		<b>answer (89)</b> 7:8,9 8:2 9:18 10:21 12:4,17 16:13 17:5 17:13,14 18:24 20:19 34:5 37:25 41:16 42:13 46:24 48:14,25 50:6 51:9 52:19 55:25 56:2,13 57:15 59:2 65:8 69:13 76:9 120:3 124:4 135:12	165:8 167:17,22 168:2,4,7 170:11 175:20,22,25 176:3 177:9 178:5,14 191:10,17,24 192:7 192:8 197:3,4 198:4 198:19,20 199:4 211:13 235:13 257:8,9 265:7 273:10 275:21 282:19,22 287:9
<b>actions (5)</b> 215:17,23 216:4 232:2 269:10	<b>affixed (1)</b> 61:4		<b>answers (4)</b> 7:4 178:16 186:21 192:9	165:8 167:17,22 168:2,4,7 170:11 175:20,22,25 176:3 177:9 178:5,14 191:10,17,24 192:7 192:8 197:3,4 198:4 198:19,20 199:4 211:13 235:13 257:8,9 265:7 273:10 275:21 282:19,22 287:9
	<b>agencies (1)</b> 88:20		<b>anticipated (1)</b> 226:17	165:8 167:17,22 168:2,4,7 170:11 175:20,22,25 176:3 177:9 178:5,14 191:10,17,24 192:7 192:8 197:3,4 198:4 198:19,20 199:4 211:13 235:13 257:8,9 265:7 273:10 275:21 282:19,22 287:9
	<b>agent (3)</b>		<b>anybody (7)</b> 184:22 193:12 229:25 245:11,11 253:3 275:9	165:8 167:17,22 168:2,4,7 170:11 175:20,22,25 176:3 177:9 178:5,14 191:10,17,24 192:7 192:8 197:3,4 198:4 198:19,20 199:4 211:13 235:13 257:8,9 265:7 273:10 275:21 282:19,22 287:9

263:2,21,25 266:19	<b>area (7)</b> 28:8 127:22 138:14 163:6,10 164:5,17	18:18	120:8 122:5 128:22 131:13 148:4,8 159:6 161:17 165:13 184:18,21 184:23 185:2 253:9 271:7	<b>avoid (4)</b> 42:17 50:23,25 59:22
<b>appeared (2)</b> 11:20 284:20	<b>Arlequin (5)</b> 1:24 2:12 5:14 286:8 286:25	<b>assign (1)</b> 115:25		<b>avoided (1)</b> 61:9
<b>appearing (3)</b> 9:14 11:15 18:9	<b>arrest (16)</b> 193:12 194:15 219:13 219:21 244:20,23 244:24 245:4,8,11 249:20 255:7,9,13 255:16 256:18	<b>assigned (19)</b> 27:25 28:3,24 71:23 114:24 115:7,10,18 116:7 117:7 120:13 126:8,9 141:13 143:8 157:23 174:14,23 268:19		<b>aware (104)</b> 21:19 48:9,11 50:3 59:8,21 60:11,22 80:16 82:8,14,16 85:8 94:5,7 95:7,24 96:18,22 97:12,14 97:15,22 101:4,7 102:22 103:17 104:14 107:3 109:5 109:7 115:17 117:11,11 125:4 131:11,14 135:18 135:23 140:19 141:4 150:4 153:15 153:17 174:3,12 199:14 200:18 203:19 204:5 205:8 205:12 208:23 220:21 221:9,17 222:6 229:15,18,24 230:13 231:7,15 233:14 240:10 241:14 242:11,15 242:20 244:7,12,17 246:13,16,17,24 247:6 253:12,15 254:14,17 255:12 255:23 256:21,23 264:17 265:4 269:15 270:10,17 271:9,18,23,25 272:4 275:9,11,23 276:22 277:7 279:8 279:12,15,18
<b>appears (9)</b> 188:5 189:6 260:4,16 261:8 262:22 266:14,21 282:15	<b>arrested (17)</b> 33:2 35:8,11,11 193:21 203:5 205:2 218:12,15 220:3,7 220:10,16,20 254:15,21 255:25	<b>assignment (2)</b> 27:2 31:12	<b>attending (3)</b> 74:19 222:6 234:4	
<b>applicable (7)</b> 45:10 50:16 58:23 89:11 96:16,20 97:4	<b>arrests (10)</b> 10:12 193:10 216:7 217:20,24 218:2 219:6,10 220:22 245:15	<b>assignments (2)</b> 27:11 29:6	<b>attention (4)</b> 69:8 157:10 181:14 199:7	
<b>applicant (1)</b> 91:8	<b>arrested (17)</b> 33:2 35:8,11,11 193:21 203:5 205:2 218:12,15 220:3,7 220:10,16,20 254:15,21 255:25	<b>assist (1)</b> 22:18	<b>attorney (7)</b> 9:25 13:13,15,19 19:10 20:11 135:19	
<b>applicants (3)</b> 91:12,18 92:5	<b>arrived (1)</b> 130:11	<b>Assistance (1)</b> 174:13	<b>attorneys (5)</b> 3:5,13 4:3 10:4 15:18	
<b>application (1)</b> 90:12	<b>article (2)</b> 35:21,24	<b>assistant (12)</b> 5:23 27:20 28:20 29:4 29:5,10,11 30:11,13 30:24 46:8 118:8	<b>attorney-client (4)</b> 16:13 18:18 19:9 137:4	
<b>applications (3)</b> 89:20,24 93:2	<b>articles (2)</b> 25:22 181:11	<b>associated (1)</b> 183:7	<b>audibly (1)</b> 6:18	
<b>applied (3)</b> 50:12 53:8 235:7	<b>articulate (1)</b> 97:13	<b>association (1)</b> 5:14	<b>August (27)</b> 10:19,21 29:11 31:11 66:6 101:13 119:3 122:10 125:25 189:16 220:25 221:11,19 223:8,23 223:25 227:15 231:21 238:16 240:14,18 242:9,12 242:16 243:5,16 247:7	
<b>applies (1)</b> 60:15	<b>articulated (2)</b> 121:25 138:8	<b>assume (8)</b> 8:22 45:13 81:7,8 183:18 213:6 218:5 278:7	<b>authority (5)</b> 67:2 88:7 115:25 140:5,10	
<b>apply (5)</b> 48:6 53:12 245:21,25 247:2	<b>asked (21)</b> 20:16 32:13,23 48:19 48:23 56:14 72:22 73:2 128:8 135:7 149:9 162:7 195:18 205:23 211:11 242:23 252:18 256:16 257:5 279:10 280:11	<b>assuming (5)</b> 153:24 230:3 262:7 263:18 281:22	<b>authorized (1)</b> 4:14	
<b>appreciate (2)</b> 213:5 230:10	<b>asking (11)</b> 7:3 28:12 51:14 111:25 139:4 162:15 180:5 190:16 193:13 239:12 256:24	<b>assumption (3)</b> 183:19 207:16,17	<b>automatically (1)</b> 248:7	
<b>apprised (1)</b> 143:14	<b>aspect (3)</b> 88:25 227:12 279:9	<b>assuredness (1)</b> 208:20	<b>available (2)</b> 52:2 90:10	
<b>appropriate (3)</b> 115:24 117:19,22	<b>assert (1)</b>	<b>attached (3)</b> 60:24 61:7,11	<b>avenue (11)</b> 2:10 3:6 5:8 70:16 74:23,23 150:14 151:18 155:12 203:4 225:12	
<b>approval (3)</b> 70:20,25 72:13		<b>attempt (4)</b> 95:8 157:16 165:3,17	<b>average (5)</b> 55:10,19 57:19 275:19,24	
<b>approve (1)</b> 91:23		<b>attempts (1)</b> 165:5	<b>Aviation (3)</b> 174:22 175:4 279:8	
<b>approving (5)</b> 89:20,24 90:7,8 93:16		<b>attend (9)</b> 26:13 120:16 121:16 122:15 125:14,17 125:25 126:19 222:9		
<b>approximate (2)</b> 211:17 262:18		<b>attendant (1)</b> 76:5		
<b>approximately (21)</b> 5:10 7:22 8:9 11:8 19:25 22:9 26:10 36:16 37:8 38:15 54:2,20 91:13,17 95:20 184:9 240:4 261:11 263:4 264:7 282:9		<b>attended (15)</b>		
<b>April (3)</b> 113:4 259:2 260:16				<b>back (44)</b> 23:7,11 33:25 35:2 37:14 40:11 41:8,9

---

**B**


---

**B (1)**

288:2

**back (44)**

23:7,11 33:25 35:2

37:14 40:11 41:8,9

46:18,19 55:15,16 61:7 82:23 102:15 102:16 107:22 134:2 146:10,11 167:7 169:15 171:23 178:25 186:8,16,17 191:20 191:21 197:15,16 212:18 221:15,16 226:4 236:16 243:11,12 261:14 274:9,10,20 275:2 284:6	142:4 258:11 <b>bears (2)</b> 93:9 189:8 <b>becoming (1)</b> 100:24 <b>beg (3)</b> 226:10,11,12 <b>began (1)</b> 26:19 <b>begged (2)</b> 226:7,8 <b>beginning (7)</b> 90:17 99:5 104:20 115:19 192:6 253:18 281:15 <b>begins (1)</b> 151:15 <b>begun (1)</b> 109:10 <b>behavior (3)</b> 87:12 151:21 156:5 <b>belief (4)</b> 42:22 104:21 182:6 194:11 <b>believe (93)</b> 8:4 10:23 40:9 42:4 43:2 46:14,20 47:3 51:4 53:7 55:9,18 57:17 59:14 60:11 61:8 69:8 70:9 76:2 89:18 104:15,17,18 105:4 108:4 114:7 118:8,19,22 126:11 126:15 128:22 130:6 132:13 137:4 142:13 143:18,24 144:3,3,5 147:16,19 148:22 152:15,20 153:14 154:6 158:13,18 160:19 161:5,14 162:23 165:25 166:5 167:9 169:21 172:13 173:24 174:2 178:22 179:2,4,8 181:2,13 187:8 192:9,10 194:17 203:12,23 205:13 208:20 213:24 217:6,11 223:22 229:5 232:25 233:5	233:9 234:7 239:8 251:11 253:8 257:14 262:8 278:9 279:7 282:2 284:25 <b>believed (4)</b> 112:3 148:3 218:14 251:22 <b>bell (1)</b> 222:18 <b>Belt (1)</b> 255:8 <b>Bergstresser (138)</b> 3:8 5:18,19,25 6:12 6:15 9:4 12:5 16:15 16:21 17:3,8 18:20 19:11 20:9,14 24:10 31:6 32:25 33:17,23 40:8 43:5,20 44:9 48:21 49:25 50:20 54:17 57:16 65:5 69:2,6 71:14 76:8 76:25 77:4,10 92:10 92:19 101:25 102:14 112:12,18 134:8 135:7 136:11 136:14 137:9 139:6 140:25 141:23,24 142:12 144:9 146:9 149:11 150:18,19 152:13 156:24 157:4 158:5,10,11 162:9 165:21 168:17 175:21 177:11,16,22 178:6 178:15,20,21 179:7 187:5,14 188:7,14 188:23 189:5 190:25 191:6,11 193:25 194:5 196:19 197:8,21,22 202:16 221:14 231:19 232:15 234:22 236:8 237:3 237:12,18 242:25 243:10 250:6 251:20 254:25 257:13,23 258:7,16 258:18 261:19,24 263:16,17 264:25 265:3,10,19 274:8 274:19 275:19	280:16,19 281:2,14 282:2,7,11 283:5,9 284:2,8,10,15,17,25 287:7 <b>Bergstresser's (1)</b> 136:24 <b>best (3)</b> 6:17 7:4 274:25 <b>bet (1)</b> 207:17 <b>better (16)</b> 31:2 45:21 63:8 64:12 100:20 110:2 120:3 156:11 187:2,20 202:5 261:22 268:10,13 282:25 284:13 <b>betterment (1)</b> 88:21 <b>beyond (4)</b> 18:16 108:10 148:11 255:3 <b>bicycle (38)</b> 1:3 5:5 38:21 44:20 44:25 47:8 52:13 53:11 55:3,7,11,21 56:5,7,15,19,22 57:3,13 69:20 83:3 84:10,21 169:24 190:11 199:11 229:19 260:10 262:5,24 263:22 264:12,14 266:16 267:15 279:18 282:16 289:3 <b>bicycles (36)</b> 10:13 39:25 40:15 44:18 47:12 52:16 53:8 58:7,8 60:16 62:5 77:13 89:3 98:10,11,17 113:13 129:21 139:11 152:21,24 154:18 155:24 162:2 163:12 164:11 166:19 172:2,4 212:17 214:2,12 225:15 231:10 266:22 280:5 <b>bicycle-oriented (1)</b> 229:6	<b>bicycling (8)</b> 12:14 25:3,18 33:9 39:10 70:10 82:2 96:16 <b>bicyclist (30)</b> 41:5,14,21,25 42:6,15 45:19,22 46:14,21 47:3,17 48:17 50:21 51:22,22,24 52:2,5 57:18,20 59:10 60:19,23 61:3,5,8 93:25 95:7,16 <b>bicyclists (50)</b> 41:17 49:7 50:11 54:11 58:23 59:16 78:6,15,16,20,22 79:19 81:13 82:9 89:12 96:17,20 97:5 97:19 121:8 129:24 132:10,17 138:11 138:24 140:21 145:13 154:21 159:23 161:2 163:10 168:24,25 169:8,17 170:5 173:13 190:13 192:17 194:10 199:19 200:3 201:20 212:20 214:19 226:8 230:25 232:3 260:12 267:10 <b>big (8)</b> 113:14 122:18,23 123:7 164:12,12 224:10 230:3 <b>bigger (3)</b> 111:10,16 224:11 <b>bike (29)</b> 37:21 38:16,19,25 39:13,25 40:3,4,14 54:10 70:11,17 83:15 94:18 95:5,9 98:22 100:18 107:8 126:9 161:22 165:11 192:16 220:15 231:9,16 241:12 279:24,25 <b>bikes (3)</b> 204:18 220:18 235:2 <b>bike-mounted (1)</b>
---	--	--	--	--

39:4	42:12,14	<b>broad (4)</b>	139:17 229:12,14 230:23 270:4	252:24
<b>biking (1)</b>	<b>borough (27)</b>	62:8 63:18 168:20 276:3	<b>bus (2)</b>	<b>Cardozo (1)</b>
228:23	1:3,10,14 5:5 28:24	<b>broadcast (1)</b>	62:25 64:4	5:24
<b>birth (4)</b>	29:4 31:13,18 62:19	278:21	<b>buses (2)</b>	<b>career (1)</b>
260:15,25 262:6	63:19,20,24 72:25	<b>Broadway (3)</b>	62:24,24	27:5
263:19	76:17 88:2 90:4	164:7,25 281:18	<b>business (2)</b>	<b>carried (2)</b>
<b>bit (3)</b>	91:7,22 92:24 116:5	<b>broke (5)</b>	24:18,20	254:3,9
31:23 283:10,25	126:22 128:11	34:14 124:19 194:14	<b>busy (1)</b>	<b>carries (2)</b>
<b>BlackBerry (2)</b>	131:23 143:14	245:10 254:4	38:3	44:21 47:8
25:10,11	241:18 279:25	<b>Bronx (1)</b>		<b>carry (1)</b>
<b>blank (1)</b>	289:3	64:2	<b>C</b>	65:3
216:10	<b>boroughs (2)</b>	<b>Brooklyn (22)</b>	<b>C (7)</b>	<b>cars (17)</b>
<b>blaring (1)</b>	63:12 76:11	63:17 64:2 121:7	3:2 6:6,6 137:6,6	41:20 42:17 51:24
225:24	<b>bottom (10)</b>	130:16 203:14	286:2,2	53:5 59:16 62:5
<b>block (14)</b>	142:13,21 143:3	204:14,16 270:12	<b>cab (2)</b>	66:18 89:3 138:25
66:13,14 67:22 75:21	144:6,16,19 162:24	270:19,22 271:3,7	26:8 62:25	155:14 206:8 209:8
84:19 130:16	167:10 187:23	271:11,20 272:6,16	<b>cabs (1)</b>	214:13,14,23 227:2
157:24 168:24	238:7	272:20 273:2,6,8	62:23	273:19
211:14 212:8	<b>box (4)</b>	278:3,24	<b>calculation (1)</b>	<b>case (25)</b>
230:25 231:5	66:13,14,19 67:22	<b>brought (4)</b>	75:9	8:12,14,18 9:6,9,13
272:22 273:12	<b>Brad (3)</b>	8:25 11:19 35:16	<b>Caldon (3)</b>	9:20 11:2 18:12,15
<b>blocked (9)</b>	6:14 136:9 237:17	88:10	3:9 5:20,20	19:20,23 22:15,25
207:10 208:4 211:4,7	<b>Brandon (2)</b>	<b>Brown (13)</b>	<b>call (4)</b>	35:11,25 51:18
211:14 212:8	3:8 5:18	111:25 112:8,20	76:20 78:14 83:25	135:15,25 136:4
273:22 274:16	<b>break (20)</b>	179:9,18 180:4	277:19	138:2,11 141:6
275:5	16:19 33:15 76:22	181:18 182:3,10,13	<b>called (10)</b>	198:16 289:3
<b>blocking (11)</b>	112:11 124:18,21	182:17,21 253:6	6:6 30:11 62:22 88:2	<b>cases (10)</b>
66:18 83:3,15 129:24	134:8 150:12	<b>Bruce (3)</b>	107:14 161:22	7:24 11:12,14,16,18
157:22 159:16	151:16 155:10	118:8 252:14,17	174:14 239:16	11:20 32:5,7,10
169:2,8 202:25	197:6 218:10	<b>buddy (1)</b>	277:19 279:25	73:23
204:15 208:5	244:22,23 245:2,6	156:3	<b>calls (3)</b>	<b>cause (8)</b>
<b>blocks (12)</b>	245:16 253:23	<b>Budnick (6)</b>	35:9 76:17 264:22	126:15 153:21 154:7
156:18 170:7 203:3	257:24 272:12	190:7 192:14 194:24	<b>Canon (2)</b>	154:10,15,19,21
210:14 211:3,7	<b>breaking (12)</b>	195:4,7 199:10	116:13,17	156:7
224:8,20,23 225:4	57:13,21 58:4 153:9	<b>building (1)</b>	<b>capable (1)</b>	<b>caused (3)</b>
225:14,14	192:19 199:21	217:3	176:13	140:15 154:3 155:5
<b>blood (1)</b>	200:24 201:22	<b>bunch (1)</b>	<b>capacity (2)</b>	<b>causes (1)</b>
286:18	202:9 204:25 205:6	113:13	135:21 232:8	156:5
<b>blunder (1)</b>	241:22	<b>bureau (48)</b>	<b>captain (6)</b>	<b>causing (1)</b>
152:6	<b>Brendon (2)</b>	1:13 15:22 46:8 48:4	1:15 78:14,25 79:5	154:22
<b>BLYTHE (1)</b>	3:9 5:20	58:10,14 62:10,11	185:2,3	<b>CCR (1)</b>
1:4	<b>Bridge (5)</b>	62:12 65:2,14,22	<b>car (25)</b>	1:24
<b>board (1)</b>	78:16 80:18 83:13	68:10,18,22 71:6,17	52:20 53:5,10,13 54:4	<b>CCRB (4)</b>
190:9	137:15 138:22	72:8,11,16,21 73:9	55:6 56:6,18,22	35:7,12 36:17 37:5
<b>boggling (1)</b>	<b>brief (1)</b>	77:11,21 79:21 80:2	57:7 84:17,19 121:6	<b>center (8)</b>
225:18	27:6	81:19 82:12,20	130:8,10,12 139:12	41:18 42:2,6 46:15,22
<b>bond (1)</b>	<b>briefly (5)</b>	83:17,21,25 84:25	209:23,23 225:21	47:18 48:18 50:22
229:22	113:3,5 137:12	94:9,22 95:3 96:24	225:23,25,25 226:7	<b>centered (1)</b>
<b>bonus (1)</b>	254:13 266:14	100:25 115:8,14,17	276:11	157:21
64:6	<b>bring (1)</b>	115:24 116:9	<b>Caraballo (1)</b>	<b>Central (1)</b>
<b>book (2)</b>	219:22			38:12

<p><b>certain (9)</b> 14:25 40:16 50:11,15 68:11 69:8 86:20 276:11,14</p> <p><b>certainly (6)</b> 53:22 95:22 119:20 154:9 201:5 279:14</p> <p><b>certainty (1)</b> 42:21</p> <p><b>Certified (1)</b> 2:12</p> <p><b>certify (2)</b> 286:10,16</p> <p><b>cetera (5)</b> 64:3 155:12,12 255:19,19</p> <p><b>chain (1)</b> 126:25</p> <p><b>chairman (1)</b> 105:14</p> <p><b>chance (2)</b> 88:15 124:20</p> <p><b>change (8)</b> 67:3 68:3 116:22 117:3 140:5 210:22 216:9,14</p> <p><b>changed (4)</b> 66:22 74:7 109:20 186:5</p> <p><b>changes (7)</b> 65:23 67:25 70:11 88:16 112:21 210:15 212:13</p> <p><b>chaos (3)</b> 248:4,7,11</p> <p><b>charge (11)</b> 70:23 73:16 104:25 131:16 194:8 195:19 205:16 223:9,10,11 232:18</p> <p><b>charged (4)</b> 220:6,19 253:13 256:18</p> <p><b>charges (1)</b> 8:24</p> <p><b>checkbox (1)</b> 93:18</p> <p><b>checkboxes (1)</b> 93:13</p> <p><b>checkpoint (3)</b> 80:5,9,13</p>	<p><b>cheer (1)</b> 164:12</p> <p><b>chief (130)</b> 1:13 6:3,13 7:12 13:8 15:13 17:4,9 19:13 20:15 21:19 23:17 25:9,21,25 27:9,16 27:20 28:4,6,20,20 29:4,5,10,11,14,20 29:21,23 30:3,4,5 30:10,11,13,14,16 30:16,17,19,20,23 30:24 31:3,7,8 33:2 33:11 34:2 37:21 38:24 39:3,9 45:3 46:7,7,9 49:6,17 50:21 51:13,21 52:15 58:9,10 59:8 59:21 61:21,23 62:7 62:12 77:11 92:21 93:24 96:18 97:21 100:24 103:25 106:9 118:9 126:25 127:4,7 128:9 131:24 135:7,16 137:2,10 140:12 141:2 142:2,25 146:19 158:12 168:12 173:8,9 175:13 177:3,17 179:8 187:24 188:9 189:13 190:15 196:5 199:6,14 222:4,7 226:11 229:11 230:10 237:14 256:22 258:8,24 261:20 265:12 266:3,25 270:10 276:22 281:3 282:12,23 283:12 284:18</p> <p><b>chiefs (2)</b> 29:17 30:7</p> <p><b>children (1)</b> 245:12</p> <p><b>choice (3)</b> 51:2,6 54:5</p> <p><b>choose (1)</b> 53:20</p> <p><b>Church (1)</b> 3:14</p>	<p><b>Ciappetta (274)</b> 3:16 5:22,22 7:18,25 9:3,16 12:3,16 14:11 16:11,19 17:7 17:12 18:17,24 19:8 20:13,18 24:9 31:5 32:23 33:14 34:5 37:24 40:6 41:7,16 42:19 43:14,17 44:10 46:17,23 48:7 48:19,24 49:23 50:5 50:19 51:8 52:8 54:7,15,24 55:14,24 57:14,22 58:6,16 61:12 65:4 68:13,25 69:4,12,14 71:13 73:12 76:7,16 77:3 78:3 80:7,12,19 81:6 83:4,19 85:6 85:14 87:13 92:8 93:20 94:3 97:10 99:25 100:21 101:23 102:5 103:20 105:2 112:10 115:2 117:4 119:15 126:21 127:21 132:8 133:23 134:9 136:8 136:12,23 137:22 138:5,17 139:3,9 140:7,24 141:21 142:11 143:10,16 143:21 144:8 145:3 145:10 146:6 148:15 149:9 150:2 150:16 151:25 152:11,19 153:3,23 154:17 155:19 156:22 157:3 158:3 158:8,23 159:8 161:8,19 162:7,11 165:14,20,24 166:16 167:4 168:16 169:10,18 169:25 170:8 172:9 172:16 173:25 174:25 175:17,19 175:25 177:7,15,21 178:2,11,19,24 179:19 180:14 186:6,11,14 188:2</p>	<p>188:10 190:22 191:9,19 196:18,22 197:2,6,14,19 198:17 199:4 201:11,17 202:3,14 202:18 203:22 204:12 205:4,10,23 207:7 208:12 209:5 209:25 210:9 211:9 211:11 213:9 214:4 216:16,21 217:9,14 218:9 220:13 223:3 223:17 226:19 227:19 228:19 229:17 230:16,20 231:18 232:4,13 233:22 234:21 235:11 236:7,21 237:16 240:9 242:19,23 243:7,18 244:16 245:17 246:10 247:19 248:8,15,24 249:10 250:5 251:18,25 252:18 253:21 254:11,24 256:4,10 256:16 257:5,9,16 257:25 258:14 259:23 260:24 261:16 262:13 263:7,13,23 264:16 264:21 265:7 266:9 266:23 267:5,11 268:22 269:13 270:6 271:22 274:6 275:17 277:17 279:10 280:12,14 281:12,24 282:17 283:3,7 285:5</p> <p><b>circumstances (5)</b> 76:5 99:6 145:2 159:20 255:17</p> <p><b>cited (1)</b> 139:2</p> <p><b>cities (1)</b> 101:5</p> <p><b>citizen (2)</b> 62:2,3</p> <p><b>citizens (3)</b> 193:4 214:9 272:14</p> <p><b>city (66)</b> 1:8,9,11,12,14,15 3:11 5:6 7:18 8:14 10:8 12:11,14 13:24 28:14,17 38:7,9 39:10 45:10,16 49:8 50:12 52:17 62:24 65:24 67:19 69:18 70:19 72:14 75:22 96:17 98:7,9,20,22 100:20 108:25 126:17 139:22 140:14,22 141:4 152:5 155:15 177:6 206:18 214:23 221:10,18 226:24 228:21 229:7,16 231:6,10 233:12 241:22 242:17 245:6 247:22 260:13 265:21 276:2,23 289:3</p>	<p><b>city-wide (1)</b> 278:21</p> <p><b>Civ (1)</b> 1:7</p> <p><b>civil (3)</b> 8:20,22 12:7</p> <p><b>civilian (3)</b> 64:19 84:5 159:15</p> <p><b>civilians (1)</b> 79:8</p> <p><b>claims (2)</b> 8:24 103:18</p> <p><b>clarify (2)</b> 39:23 40:10</p> <p><b>clear (1)</b> 138:6</p> <p><b>clearer (2)</b> 263:11 274:25</p> <p><b>clearly (2)</b> 6:18 180:2</p> <p><b>clip (19)</b> 212:25 280:10 281:4 281:7,9,15 282:6,8 282:10,13 283:6,8 283:11,14,25 284:3 284:4,11,14</p> <p><b>close (3)</b> 147:10 244:11 274:23</p> <p><b>closer (1)</b> 280:12</p>
---	--	--	---	--

<b>closet (2)</b> 34:15,17	116:11 131:20 273:5	<b>complied (1)</b> 182:22	87:25 140:13 145:7 146:3,14 159:4	106:7 150:5
<b>cloth (1)</b> 34:15	<b>commands (1)</b> 27:7	<b>complies (4)</b> 162:25 167:11 261:6 262:16	161:16 162:17 185:11 186:9,18 254:18 271:19	<b>content (5)</b> 195:15,17,18 198:7 238:22
<b>Club (2)</b> 1:3 5:5	<b>commencing (1)</b> 133:16	<b>comport (1)</b> 145:5	<b>conducting (2)</b> 268:20 269:16	<b>context (1)</b> 179:17
<b>clue (1)</b> 282:19	<b>COMMISSION (1)</b> 289:25	<b>computer (1)</b> 24:20	<b>confer (1)</b> 33:20	<b>continue (6)</b> 100:17 126:12 136:25 163:22 191:12 193:6
<b>code (6)</b> 264:19 265:16,22 266:4,21 288:20	<b>commissioner (18)</b> 1:8 66:23 67:2,8,9 70:15 85:25 111:25 112:7 139:25 140:4 140:9 173:20	<b>COMSTAT (1)</b> 87:20	<b>confessing (3)</b> 35:15,18,24	<b>continues (1)</b> 244:19
<b>coincide (2)</b> 221:12,20	<b>coincidentally (1)</b> 180:16 184:17,20 196:7,9	<b>concern (1)</b> 138:15	<b>confidential (2)</b> 178:18 179:5	<b>control (11)</b> 1:11 62:14 63:16,18 84:2 116:4,12 127:23 128:10 174:4 226:15
<b>cold (1)</b> 6:16	<b>committed (5)</b> 79:19 201:4,4 202:2 204:10	<b>concerning (54)</b> 13:2 15:18,23 21:11 21:16 24:22 25:2,7 33:13 34:4 50:11 77:12 78:6 83:14 86:19 89:5,10 96:20 97:4 100:9 101:2 105:7 106:22 107:4 116:17 129:16 135:12 137:14 139:18 140:14 148:19 149:7,14,18 154:14 155:18 179:10 184:10 185:7,10 186:4 199:11 223:15 226:17 229:15 231:5,16,21 232:11 235:9 239:10 274:4 274:12 276:23	<b>confirm (1)</b> 48:12	<b>Cont'd (1)</b> 137:8
<b>collected (1)</b> 81:18	<b>committing (2)</b> 81:14,15	<b>common (1)</b> 75:4	<b>confirm (1)</b> 48:12	<b>convention (10)</b> 10:15,20 13:5 103:15 126:3,4,6,10,13 223:2
<b>collecting (1)</b> 22:19	<b>communicated (1)</b> 108:20	<b>communicated (1)</b> 108:20	<b>confused (6)</b> 29:25 94:24 152:7 175:12 240:17 278:3	<b>conversational (1)</b> 137:8
<b>collection (1)</b> 25:22	<b>Communication (2)</b> 92:15 288:7	<b>Communication (2)</b> 92:15 288:7	<b>confusing (2)</b> 29:6 51:12	<b>conversation (14)</b> 22:2 111:15 112:2,5 145:15 190:6 192:13 194:22,23 195:9,11 199:10 227:22 240:22
<b>college (1)</b> 26:7	<b>companies (1)</b> 86:6	<b>company (1)</b> 86:7	<b>conjunction (2)</b> 64:16 221:23	<b>conversations (10)</b> 111:16 116:19 133:21 134:5 147:21,25 148:23 149:6 195:14,16
<b>column (1)</b> 213:25	<b>comparatively (1)</b> 66:5	<b>comparatively (1)</b> 66:5	<b>connection (10)</b> 15:2 25:3 89:4 144:23 163:9 167:15 177:4 198:15 243:2,14	<b>cooperate (1)</b> 272:12
<b>combination (1)</b> 127:24	<b>compared (1)</b> 200:7	<b>compared (1)</b> 200:7	<b>consider (1)</b> 36:12	<b>cooperated (3)</b> 132:22 179:14 235:7
<b>come (12)</b> 14:9 91:2 113:6 152:5 164:6,6 188:5 203:4 204:15 233:18 252:7 269:21	<b>comparing (1)</b> 188:24	<b>comparing (1)</b> 188:24	<b>consideration (1)</b> 139:23	<b>cooperating (1)</b> 182:2
<b>coming (5)</b> 76:19 121:8 130:18 131:2 137:14	<b>comparison (2)</b> 30:9 188:9	<b>comparison (2)</b> 30:9 188:9	<b>considered (2)</b> 26:20 138:9	<b>cooperation (3)</b> 153:16 161:17 234:16
<b>command (16)</b> 27:24 28:19 29:8 48:10 58:22 59:2 71:20 79:11 96:19 99:11,23 100:3,8 127:2 230:24 269:10	<b>compatriot (1)</b> 190:7	<b>compatriot (1)</b> 190:7	<b>considering (2)</b> 117:22 266:20	<b>cooperative (3)</b> 251:4 272:7,10
<b>commander (4)</b> 1:12 63:20 128:11 143:14	<b>compiled (1)</b> 89:5	<b>compiled (1)</b> 89:5	<b>consisting (1)</b> 51:23	<b>cop (1)</b> 87:7
<b>commanders (3)</b> 63:19 88:10 273:9	<b>complaint (2)</b> 35:7 36:17	<b>complaint (2)</b> 35:7 36:17	<b>consists (1)</b> 62:15	<b>cops (1)</b> 204:3
<b>commanding (8)</b> 1:10 31:15 116:3,4,6	<b>complaints (8)</b> 37:5 79:8 82:6,8,13 82:19 83:9,18	<b>complaints (8)</b> 37:5 79:8 82:6,8,13 82:19 83:9,18	<b>construction (1)</b> 63:6	<b>copy (15)</b> 43:4,11,15 187:20 189:7 237:20 261:7
	<b>complete (2)</b> 90:23 93:3	<b>complete (2)</b> 90:23 93:3	<b>contact (5)</b> 112:11 195:4,5 230:8 278:15	
	<b>completed (2)</b> 93:17 140:16	<b>completed (2)</b> 93:17 140:16	<b>contacted (2)</b> 112:8,8	
		<b>conducted (13)</b> 83:22 129:2 166:14 166:18 183:7 186:5 192:22 199:24 201:5 231:22 234:19 235:18 241:24 242:6 269:10	<b>contained (1)</b> 200:19	
			<b>containing (2)</b> 87:25 140:13 145:7 146:3,14 159:4 161:16 162:17 185:11 186:9,18 254:18 271:19	

263:12,14,14 266:5 268:10,11,13 288:4 <b>corking (6)</b> 156:14,17 157:8 159:24 160:12 161:2 <b>corner (5)</b> 93:10 142:7,16 259:16 264:6 <b>Corporation (2)</b> 3:12 5:23 <b>corral (1)</b> 230:14 <b>correct (72)</b> 7:19 12:2 14:17 17:6 17:7 22:6,7 24:24 25:8 29:18 30:14 32:22 40:24 48:15 48:18 54:14 55:8,17 77:20 120:11,14,15 125:3 128:24 130:6 130:9 140:3,8 148:5 152:18 153:18 156:6 160:3 161:18 165:13,18,19 173:19 175:16 179:10 200:16 203:18 205:18 207:17 209:19,24 210:8 219:4,7 223:21 227:18 238:11 240:5,6,15 240:18 244:3 245:16 246:9 247:18 250:3 251:13 253:10,11 254:5 260:5 262:7 263:18 264:8 271:8 277:9,16 <b>corrected (1)</b> 138:10 <b>costume (1)</b> 159:25 <b>council (1)</b> 67:19 <b>counsel (14)</b> 3:12 5:16,23 7:7,11 7:14 17:4 20:9 21:6 33:20 48:22 135:10 135:17,23 <b>counselor (2)</b>	158:7 178:15 <b>countless (3)</b> 232:5,6 242:5 <b>COUNTY (1)</b> 286:6 <b>couple (16)</b> 31:10 33:6 36:2 86:23 87:2 154:12 156:8,8 183:22 184:11 198:24 228:5 235:24 257:12 277:10 279:24 <b>course (4)</b> 83:20 246:12 250:12 255:17 <b>court (16)</b> 1:2 2:12 4:16 5:13 35:22 43:5,7 92:11 187:6 188:14 219:20,22 237:4 257:13 265:10,12 <b>cover (1)</b> 106:19 <b>covered (2)</b> 137:4 181:12 <b>crash (2)</b> 50:25 51:6 <b>crazy (2)</b> 156:10 214:18 <b>cream (1)</b> 26:8 <b>create (1)</b> 15:13 <b>created (3)</b> 68:17 86:21,22 <b>criminal (2)</b> 8:20 219:22 <b>Critical (212)</b> 8:3,8 10:13 11:5 12:19 13:2 14:21 24:23 25:19,23 31:21 50:16 89:14 89:16 97:22,24 98:3 98:13 99:2,21 100:9 101:2,4,17 102:3,22 103:4,10,18 104:4 104:10,15 105:5,8 106:10,16,23 107:4 107:24 108:5,15,22 108:23 109:5,20 110:8 111:8,11,14	111:17 112:21 113:2 114:24 115:11 116:2,7,17 119:13 120:8,13 121:16,20 122:5,9 122:16 126:2,11,20 128:21 129:10,17 130:8 131:13,16 132:4,12 143:8 144:24 145:7 147:13 148:2,4,7,13 148:19 149:7,14,18 149:24 150:6 151:22,23 158:21 159:4,6 160:10,16 161:3,24 162:6 163:15 164:2,19 165:12 166:4,9,11 167:20 173:5 174:5 174:15,23 177:19 177:24 179:10,24 180:5,9,13 181:3,20 182:14 183:8 190:11 192:15,16 193:16 194:19 195:8,19 199:11,14 218:25 220:2,6,23 221:5,10,19,24 222:4,16 223:7,12 223:15,23 224:5,14 224:21,24 225:4 226:18,23 227:9 231:22 232:11,18 233:2,7,19 234:5,7 234:18 235:17 236:13,18 239:3,8 239:11,18,22 240:2 241:8,11 242:9,16 243:5,17 244:5 245:25 246:4,7,13 247:7,15 248:6 251:15,24 253:9,12 253:18 254:10,14 255:24 267:2 270:10,21,25 271:4 271:7,11,20,21 272:6,16,20 273:2,6 273:11 277:12 279:17 281:17 <b>cross (12)</b> 155:6,13,13,14,14	156:3 159:24 160:13 206:11 208:8 225:20,23 <b>crossed (1)</b> 208:7 <b>crossing (7)</b> 113:25 150:14 151:18 206:8 207:5 212:12 255:14 <b>crossstown (8)</b> 150:12 151:17 155:10 156:18 165:3 210:14 211:3,7 <b>cross-street (3)</b> 150:13 151:17 155:11 <b>crowds (3)</b> 172:6,11,23 <b>CSR (1)</b> 286:25 <b>curb (5)</b> 41:20 44:24 47:11 150:22,22 <b>curbside (2)</b> 41:3,13 <b>current (1)</b> 13:15 <b>currently (1)</b> 108:4 <b>cut (5)</b> 187:18 188:13 189:7 237:17,19 <b>cyclist (10)</b> 54:21 58:3 94:23 95:4 95:9 157:15,22,25 158:4 263:3 <b>cyclists (20)</b> 39:13 51:6 94:10 133:17 137:14,19 150:12 151:16,21 155:9 160:11 166:14,23 168:10 169:23 173:18 202:8 203:20 230:15 277:15	243:24 <b>dangerously (1)</b> 114:4 <b>Daniel (2)</b> 1:12 16:4 <b>date (28)</b> 15:4 43:13 92:18 120:25 121:2,3 166:23 187:12 188:22 211:18 214:22 221:4 237:11 238:13 240:23 241:15 253:22 257:20 260:15,25 262:6,9 263:19 264:7 265:18 267:2 281:23 289:4 <b>dated (11)</b> 92:15,23 187:10 188:19 218:13 220:25 237:8 288:7 288:10,12,15 <b>dates (4)</b> 14:15,16,25 15:3 <b>dating (1)</b> 23:7 <b>day (33)</b> 10:11 34:23 35:19,20 35:22 65:21 73:25 75:3,3 76:18 84:5 84:12,22 90:25,25 118:18 122:17 123:13 152:22,25 153:11 156:10 176:18 184:8 208:17 214:16 228:21,22 229:25 277:6 285:16 286:22 289:21 <b>days (2)</b> 240:21,23 <b>DCPI (10)</b> 112:20 179:9,18 180:4,20 181:18 182:3,10,13,17 <b>deal (4)</b> 62:17 86:8 90:20 226:22 <b>dealing (2)</b> 223:6 224:11
<b>D</b>				
<b>D (2)</b> 287:2 288:2 <b>dangerous (8)</b> 81:14,16 138:9 193:3 214:8,24 226:5				

<b>deals (2)</b> 63:12 75:25 <b>deaths (2)</b> 87:23 88:15 <b>Debevoise (3)</b> 2:10 3:4 5:8 <b>December (4)</b> 17:21,24 160:22 263:19 <b>decide (2)</b> 67:15 83:22 <b>decided (1)</b> 136:25 <b>deciding (1)</b> 69:19 <b>decision (10)</b> 74:17 125:13,17,21 135:11 183:6 185:6 185:9,21,23 <b>decisions (3)</b> 129:8,12,15 <b>decision-maker (4)</b> 125:19 185:13,14,18 <b>declare (1)</b> 171:20 <b>dedicated (3)</b> 71:10,16 72:3 <b>deem (3)</b> 70:16 78:4 82:17 <b>defendant (8)</b> 8:17 9:11 11:15 31:24 32:5,14,17 135:15 <b>defendants (8)</b> 1:16 3:13 5:24 19:16 136:2,24 189:9 281:5 <b>define (2)</b> 156:23 209:9 <b>definitely (1)</b> 101:14 <b>definition (1)</b> 157:7 <b>definitions (1)</b> 176:8 <b>definitive (2)</b> 42:10,11 <b>definitively (1)</b> 115:22 <b>defy (1)</b> 207:11 <b>degrees (1)</b>	71:8 <b>delay (3)</b> 275:14,20,22 <b>delivered (6)</b> 250:16,17,20,22,24 251:2 <b>demonstrate (3)</b> 59:24 60:5 61:10 <b>demonstrated (1)</b> 75:11 <b>demonstration (3)</b> 74:21 75:8 76:12 <b>demonstrations (7)</b> 12:23 75:11 129:14 223:12 224:13,16 224:22 <b>demonstrators (4)</b> 74:22 75:9,10,20 <b>denied (1)</b> 93:15 <b>deny (1)</b> 93:18 <b>denying (1)</b> 93:16 <b>depart (1)</b> 164:16 <b>department (57)</b> 1:9,11,13,14,16 3:11 7:18 10:8 11:22 12:11 13:24 15:22 20:6 21:10,15,20 23:18 25:12 26:4,21 26:25 27:5,8,22 29:9,18 30:5 48:5 50:10 67:13 68:2,8 69:18,22,25 70:3,15 86:6,17,21 96:13 100:19 108:13 139:16 147:22 175:13 193:6,8 196:6 215:17,22 216:4 232:7 245:23 252:22 271:10 275:12 <b>Departments (3)</b> 28:4,7,21 <b>depend (2)</b> 138:18 218:17 <b>depended (1)</b> 164:22 <b>depending (2)</b>	147:10 164:14 <b>deployed (1)</b> 85:4 <b>DEPONENT (1)</b> 289:5 <b>deposed (6)</b> 6:19 7:22 8:10 9:9 19:23 107:3 <b>deposition (23)</b> 1:18 2:8 4:12 5:4,7 9:15 10:2 12:25 13:9 14:3,6 15:19 15:23 17:11 18:16 18:23 19:5 21:12 22:10 43:3 199:3 286:12,14 <b>depositions (4)</b> 11:7 12:14,22 19:19 <b>Deputy (4)</b> 1:13 111:24 112:7 180:16 <b>dereliction (1)</b> 153:13 <b>describe (7)</b> 62:8 87:17 159:19 163:23 166:13 205:2 255:5 <b>described (8)</b> 100:17 116:22 157:17 165:11 169:14 242:3 249:7 262:4 <b>describing (1)</b> 169:7 <b>description (3)</b> 260:9 264:11 288:3 <b>designated (1)</b> 178:18 <b>desire (3)</b> 244:19 245:4,14 <b>despite (1)</b> 59:19 <b>Desser (1)</b> 282:3 <b>destination (2)</b> 275:16,25 <b>detail (27)</b> 115:25 120:9,13 121:13,21 122:11 122:16 126:2 128:23 131:21 132:12 143:13	159:14 164:19 166:6 167:14 168:14 205:16 253:9 268:19 271:7 271:10 273:6 278:10,16,18 279:2 <b>details (17)</b> 37:10 116:7,8 121:17 122:6,9 126:20 128:21 129:2 131:16 148:4 159:6 159:20 160:16 161:10 167:20 220:21 <b>detain (5)</b> 94:2,10,11,13 95:4 <b>detained (1)</b> 94:17 <b>detective (2)</b> 35:8 176:17 <b>determination (1)</b> 92:7 <b>determine (2)</b> 73:19,21 <b>determining (5)</b> 55:12,21 72:12,17 73:10 <b>device (1)</b> 25:10 <b>dictated (1)</b> 145:2 <b>die (1)</b> 88:23 <b>difference (6)</b> 176:5,20 271:18,23 271:25 272:3 <b>different (17)</b> 29:17 39:18 69:9,16 77:17 87:4 124:12 126:25 176:7,7 186:10,20,21 229:15 234:12 235:8 278:19 <b>differently (2)</b> 171:20 183:8 <b>difficult (1)</b> 74:13 <b>difficulty (1)</b> 6:16 <b>digests (1)</b> 97:8	<b>digit (1)</b> 37:9 <b>direct (13)</b> 44:3 63:4,22 83:9 84:7 128:25 135:11 141:22 157:9 165:5 199:6 204:19 269:9 <b>directed (2)</b> 5:25 138:23 <b>directing (3)</b> 17:4 62:17 64:20 <b>direction (9)</b> 44:21 47:9 77:16 178:4 225:14 248:21 249:9 283:22 284:22 <b>directly (2)</b> 82:5 135:24 <b>director (1)</b> 190:5 <b>directs (1)</b> 7:8 <b>disagree (1)</b> 48:24 <b>disagreeable (1)</b> 47:24 <b>disbelieve (1)</b> 166:2 <b>discernible (2)</b> 263:11,15 <b>disciplinary (4)</b> 33:12 34:3 36:22 135:19 <b>discouraging (1)</b> 228:12 <b>discovery (2)</b> 21:22 22:20 <b>discuss (26)</b> 16:20 18:15 19:18 33:15,16 74:8 116:20 179:24 192:15 195:20 196:24 197:17 198:2,9,11,14,25 236:12,17 252:10 252:16,21,23 253:2 253:4,6 <b>discussed (31)</b> 13:6 16:17 31:22 50:9 50:14 83:14 89:14 89:17 96:15 137:3
---	--	---	---	--

139:15,21 147:25 167:24 182:8 196:14 197:23 198:6,10 203:17 216:25 217:12,16 221:22 222:3 236:22 238:12 252:13 253:3,25 254:13 <b>discussing (4)</b> 25:18 59:4 232:2 266:6 <b>discussion (17)</b> 108:21 117:25 133:17 136:10,17 137:16 139:24 157:13,19 157:20 179:18,21 221:23 232:10 236:25 241:18 280:23 <b>discussions (28)</b> 18:12 21:9,14 86:19 111:10,22 112:19 116:16 117:18,20 117:21 118:7 125:20,24 135:13 149:13 178:23 182:15 205:17 223:5,14 231:20 233:6,25 240:14 246:23,24 247:11 <b>disengaged (1)</b> 131:4 <b>dismissed (1)</b> 35:25 <b>dismount (1)</b> 164:10 <b>dismounted (1)</b> 129:24 <b>dismounting (3)</b> 161:25 163:11 164:11 <b>disobedience (1)</b> 114:9 <b>disobeyed (1)</b> 114:3 <b>disobeying (1)</b> 78:17 <b>Disorder (2)</b> 1:11 174:4 <b>disorderly (5)</b> 192:21 199:23 201:5	241:23 242:6 <b>disperse (1)</b> 166:9 <b>disrespectful (1)</b> 232:2 <b>disruption (1)</b> 170:4 <b>disruptions (1)</b> 126:16 <b>disruptive (6)</b> 110:2,11 113:20 122:19 123:14,18 <b>distance (1)</b> 42:16 <b>distinctly (1)</b> 159:22 <b>distributed (2)</b> 97:3,9 <b>District (3)</b> 1:2,2 63:3 <b>divert (1)</b> 75:2 <b>division (9)</b> 31:16 46:9 62:14 84:2 116:4,12 127:24 128:10 176:19 <b>document (33)</b> 22:5,13 43:11,19 44:8 44:11 45:2,6 47:6 92:22,23 93:23 142:15,24 143:15 144:17,20 146:23 187:13 188:3,13,15 189:8 190:3 200:5 237:15,19,22,24 258:23 268:8,16 288:5 <b>documentary (1)</b> 202:6 <b>documented (2)</b> 121:3 276:9 <b>documents (18)</b> 14:2,8,22,25 20:2,7 20:11,16,22,25 21:21 22:24 23:22 23:25 24:5 150:4,8 257:12 <b>DOE (2)</b> 1:15,15 <b>doing (8)</b> 34:24 70:7 109:12	149:3 164:19 207:23 210:2 269:12 <b>door (2)</b> 34:17 42:18 <b>DOT (2)</b> 88:5,16 <b>double-park (1)</b> 86:11 <b>double-parked (2)</b> 50:23 51:7 <b>doubt (2)</b> 165:22 196:23 <b>drive (31)</b> 98:7,8,19 121:3,11,18 121:22 130:24 166:13,24 173:14 173:22 178:9 181:23 186:13,25 187:4 200:16,22 201:3 206:16,17,18 206:19,20 209:7 214:18 228:17 247:22 250:13 277:11 <b>driver (2)</b> 214:18 226:4 <b>drivers (2)</b> 62:25,25 <b>driving (6)</b> 113:8 114:4 122:2 155:24 206:8 224:10 <b>drove (7)</b> 26:8 130:20 206:18 211:20 226:14 241:21 278:2 <b>due (6)</b> 48:21 51:13 120:12 124:5 189:22 192:2 <b>duly (2)</b> 6:7 286:13 <b>dungarees (1)</b> 176:12 <b>duties (1)</b> 59:6 <b>duty (3)</b> 153:13 251:16,17	3:2,2 6:6,6 135:2,2 137:6,6 286:2,2 287:2 288:2,2 <b>earlier (13)</b> 21:7 71:5 96:15 107:2 147:25 157:17 168:24 169:7 178:22 241:2,3 279:7 282:24 <b>early (2)</b> 118:24 213:2 <b>easier (1)</b> 75:17 <b>east/west (1)</b> 129:25 <b>easy (2)</b> 73:23 74:13 <b>Ed (2)</b> 116:13,16 <b>edge (2)</b> 44:24 47:11 <b>educate (1)</b> 78:20 <b>educated (1)</b> 128:19 <b>educating (1)</b> 58:11 <b>effect (3)</b> 4:15 40:19 78:2 <b>effort (1)</b> 158:2 <b>efforts (6)</b> 77:22 80:11,17,22 82:24 83:12 <b>eight (3)</b> 88:2 110:22 164:14 <b>either (15)</b> 23:12 25:14 39:20 44:23 47:10 61:17 68:5 70:5 91:22 94:17 116:5 182:19 206:11 218:11 260:7 <b>elevated (2)</b> 117:7,13 <b>ELIZABETH (1)</b> 1:5 <b>email (5)</b> 23:18,21 24:17,22 25:2 <b>emails (1)</b>	25:7 <b>emergencies (1)</b> 64:9 <b>emergency (7)</b> 273:12,18 274:4,13 275:15,24 276:7 <b>emphasized (1)</b> 138:4 <b>employ (1)</b> 30:19 <b>employed (1)</b> 26:3 <b>employee (2)</b> 26:20 131:12 <b>employment (3)</b> 33:12 34:3 36:21 <b>enact (2)</b> 140:5,10 <b>encouraging (1)</b> 178:8 <b>ended (1)</b> 206:19 <b>enforce (9)</b> 51:14,15 61:15 63:5 68:3 77:15,19 217:7 253:19 <b>enforceable (1)</b> 72:8 <b>enforced (3)</b> 51:19 89:6 249:18 <b>enforcement (59)</b> 58:12 63:2 64:22 65:16 71:7,11,16 72:4 77:22 78:2,19 79:17 80:10,17,22 81:5,12,23 82:2,23 83:2,7,12,23 84:5 84:24 87:5,11 104:3 124:6 137:13,19 138:3,4,14,23 140:21 144:25 175:16 177:5,10,19 178:3,12 185:7 205:8,14,21 227:9 228:11 253:17 254:3,9,19 256:15 257:3 269:10,16 271:19 <b>enforcing (2)</b> 63:5 77:12 <b>engage (2)</b>
<hr/> <b>E</b> <hr/>				
<b>E (13)</b>				

165:6 265:24 <b>engaged (2)</b> 160:5,25 <b>engines (3)</b> 215:3 273:19 276:7 <b>ensure (2)</b> 168:9 267:3 <b>ensuring (2)</b> 64:13 168:19 <b>enter (3)</b> 66:14 121:10 131:8 <b>entered (3)</b> 130:14 173:18 263:19 <b>entering (2)</b> 164:8 166:12 <b>entire (9)</b> 28:10,17 88:20 141:25 150:22 203:16 212:17,20 224:22 <b>entirely (1)</b> 214:3 <b>entitled (3)</b> 43:11 107:8 288:5 <b>equipment (2)</b> 60:15 77:13 <b>errant (2)</b> 62:25 138:10 <b>ERRATA (1)</b> 289:2 <b>escalated (3)</b> 192:21 199:23 202:22 <b>escalating (6)</b> 192:19 199:21 200:23 201:7,22 204:22 <b>escort (6)</b> 100:20 114:24 115:11 115:18 116:2 132:3 <b>escorted (1)</b> 132:6 <b>escorting (1)</b> 248:13 <b>especially (1)</b> 123:7 <b>Esposito (2)</b> 222:4,8 <b>ESQ (4)</b> 3:8,9,16,17 <b>essence (2)</b> 62:22 179:12 <b>essentially (1)</b>	235:25 <b>Estevillo (1)</b> 127:9 <b>estimate (6)</b> 91:21 172:6,11,23 212:19 213:7 <b>estimation (5)</b> 113:15,16 235:3,8 236:3 <b>et (5)</b> 64:3 155:12,12 255:19,19 <b>evening (2)</b> 34:17 259:2 <b>event (20)</b> 25:4 73:24 74:19,20 74:20 99:24 104:24 108:24 129:17 135:22 153:6 180:24 201:9 213:2 218:25 240:11,13 278:17 281:17 282:5 <b>events (16)</b> 13:4 14:18,20 15:2,2 15:3 25:18 74:12,13 76:14 122:13 164:20 172:15 181:3 242:2 280:8 <b>everybody (7)</b> 57:8 59:15 61:16 65:17 95:10 132:21 171:19 <b>evidence (2)</b> 148:11 202:7 <b>exact (2)</b> 36:10 160:14 <b>exactly (7)</b> 46:11 75:17 86:14 91:3 163:23 228:7 270:16 <b>exaggerate (1)</b> 225:13 <b>exaggerating (1)</b> 213:6 <b>EXAMINATION (2)</b> 6:11 137:8 <b>examined (1)</b> 6:8 <b>examining (1)</b> 140:20	<b>example (13)</b> 53:16 66:2,5 67:16 68:21 138:20,22,25 159:21 172:15 202:25 210:7 255:18 <b>exceeded (2)</b> 119:3 254:21 <b>exception (1)</b> 104:22 <b>excerpt (2)</b> 45:16 265:21 <b>excessive (1)</b> 255:11 <b>exclusively (5)</b> 71:11,16 72:3,4 73:17 <b>excuse (4)</b> 154:13 164:6 187:7 261:16 <b>executive (5)</b> 28:25 29:3 88:9 128:14 190:5 <b>Exercise (1)</b> 38:20 <b>exhibit (18)</b> 43:2,8,10 92:12,14 187:9 188:8,18 237:7 257:17 265:15 288:4,7,9,12 288:14,17,19 <b>exhibits (1)</b> 188:24 <b>exigent (1)</b> 255:17 <b>exist (5)</b> 22:24 36:23 68:17 104:25 214:9 <b>existed (2)</b> 109:6 243:25 <b>existence (4)</b> 87:10 99:18 198:6,10 <b>exists (2)</b> 61:18 108:8 <b>exited (1)</b> 277:16 <b>expect (3)</b> 58:25 250:8 269:11 <b>experience (2)</b> 46:6 48:3 <b>expert (4)</b> 42:8 52:12 124:6	171:21 <b>experts (3)</b> 269:19,20,25 <b>expired (1)</b> 84:20 <b>EXPIRES (1)</b> 289:25 <b>explain (3)</b> 176:4 189:25 192:5 <b>explanation (1)</b> 157:5 <b>explore (1)</b> 16:16 <b>extending (1)</b> 225:4 <b>extent (2)</b> 244:11 264:22 <b>Extremists (1)</b> 107:8 <b>eyes (1)</b> 203:14 <hr/> <b>F</b> <hr/> <b>F (3)</b> 135:2 286:2 288:2 <b>fac (1)</b> 259:24 <b>facilitated (3)</b> 145:8 158:22 159:5 <b>facilitating (4)</b> 119:13,22 208:10 234:5 <b>facing (1)</b> 282:16 <b>facsimile (2)</b> 259:24 260:4 <b>fact (21)</b> 35:15,19 56:8,21 75:5 83:5 86:14 101:18 103:7 115:17 135:14,21 136:4 149:20 178:8 195:2 195:21 210:6 244:14 246:6 251:6 <b>factor (5)</b> 55:11,21 75:9,23 276:19 <b>factors (2)</b> 74:16,18 <b>facts (4)</b> 14:9,9,13 198:15	<b>faintest (3)</b> 105:6 143:23 251:8 <b>fair (2)</b> 62:4,4 <b>fairly (1)</b> 6:23 <b>fall (1)</b> 261:17 <b>falling (1)</b> 95:16 <b>Fallon (2)</b> 79:4,5 <b>familiar (11)</b> 6:23 39:9,16 49:17,21 85:12 140:12 141:15 156:13 229:12 264:13 <b>family (1)</b> 74:20 <b>far (8)</b> 23:11,15 146:4,16 220:5 246:4 249:20 282:14 <b>fashion (1)</b> 170:4 <b>fast (1)</b> 282:7 <b>FDR (49)</b> 121:2,11,18,22 122:17 129:3 130:7 130:14,23 131:4 166:13,23 170:19 171:24 173:14,18 173:22 178:9 182:24 183:9 186:12,13,25 187:4 200:6,16,21 201:3 202:20 203:11,13 203:21,25 204:7 205:9 206:15,17,19 206:20 207:24 211:18 228:17 240:11,13,17 246:19 254:2 277:11,16 <b>feasible (1)</b> 217:17 <b>feature (1)</b> 102:2 <b>February (2)</b> 23:16 286:22
--	---	---	--	---

<b>feel (1)</b> 188:25	<b>five (15)</b> 1:3 5:5 6:22 7:22 51:23 129:6 184:13 184:15,16 213:12 215:4 225:13 251:14 279:25 289:3	<b>footage (2)</b> 284:19,20	17:17,18 129:6 142:5 204:3 283:6	85:18
<b>feet (6)</b> 41:3,12 44:22 45:23 47:9 215:4	<b>five-page (1)</b> 44:11	<b>force (13)</b> 4:15 28:10 62:17 63:11 64:7,11 97:3 125:14,17 141:14 141:16 143:7 147:5	<b>fourth (1)</b> 245:19	<hr/> <b>G</b> <hr/>
<b>felony (1)</b> 218:22	<b>fixed (6)</b> 59:25 102:4,12,19 247:16 248:6	<b>forcibly (1)</b> 231:9	<b>four-and-a-half (1)</b> 184:6	<b>G (2)</b> 6:6 137:6
<b>felt (1)</b> 127:3	<b>flew (1)</b> 279:14	<b>forcing (2)</b> 236:13,18	<b>four-month (1)</b> 22:9	<b>gals (1)</b> 225:16
<b>Fifth (1)</b> 74:23	<b>flipped (1)</b> 279:3	<b>forefront (2)</b> 236:23,25	<b>frame (2)</b> 165:5 197:20	<b>gamut (1)</b> 88:20
<b>figure (4)</b> 73:18 75:5,18 128:8	<b>flow (2)</b> 64:13 88:22	<b>forever (2)</b> 213:3,7	<b>framework (1)</b> 245:20	<b>general (3)</b> 7:23 77:18 164:2
<b>filing (1)</b> 4:4	<b>flowing (1)</b> 54:2	<b>forget (1)</b> 227:25	<b>frankly (1)</b> 214:18	<b>generally (11)</b> 53:24 59:10 62:8 87:4 90:10 138:2 159:2 182:18,22 183:25 199:12
<b>fill (1)</b> 60:5	<b>focus (2)</b> 10:12 81:5	<b>forgotten (1)</b> 14:10	<b>free (1)</b> 188:25	<b>generate (1)</b> 72:24
<b>filled (1)</b> 41:20	<b>focused (16)</b> 77:25 79:16 80:10,17 80:21 81:22 82:2,23 83:2,7,12,22 84:23 137:13,18 138:2	<b>form (43)</b> 4:9 7:25 9:3,17 12:16 14:11 17:12 18:17 20:18 24:9 31:5 37:24 42:19 46:23 48:7 50:5,19 51:8 55:24 57:22 58:16 65:4 71:13 73:12 76:7,16 78:3 79:16 80:7,12 81:6 87:13 93:17 99:25 117:4 119:15 126:21 127:21 132:8 137:23 143:10,16 198:17	<b>frequency (2)</b> 278:19,21	<b>gentleman (1)</b> 7:15
<b>finance (4)</b> 85:25 86:5,17,21	<b>following (1)</b> 130:13	<b>formerly (1)</b> 46:8	<b>frequent (1)</b> 69:24	<b>geographical (1)</b> 28:8
<b>find (4)</b> 49:13 128:3 208:22 232:18	<b>follow (2)</b> 150:23 199:9	<b>forms (1)</b> 60:4	<b>frequently (3)</b> 38:14 90:11 252:3	<b>getting (5)</b> 6:15 67:20 74:7 111:16 203:25
<b>finding (1)</b> 240:21	<b>followed (1)</b> 67:24	<b>forth (2)</b> 93:13 286:12	<b>Friday (9)</b> 98:5 121:14 181:21 190:12 194:13 199:12,16 241:12 241:17	<b>give (47)</b> 7:4,23 27:6 39:17 42:13 43:14 56:25 57:5,8 60:18 63:4 63:23 65:7,9 66:2 78:20 83:11 84:4,7 84:8,11,13,15 86:3 90:21 129:19 138:20 139:13 148:25 160:13 170:10 172:10 192:8 198:23 218:19 219:19 230:7 243:9 244:25 245:7,10 247:24 248:3 249:11 253:22 273:24 276:16
<b>fine (6)</b> 7:9 85:13,16,16,18 190:25	<b>follows (17)</b> 6:9 33:25 41:9 46:19 55:16 102:16 134:2 137:7 146:11 186:16 191:21 197:16 221:16 236:16 243:12 274:10 275:2	<b>forty-four (2)</b> 144:9,10	<b>friends (2)</b> 232:6,6	<b>given (17)</b> 13:3 29:17 75:21 88:15 96:19,23 152:21,25 153:11 160:12 162:16 172:5 178:17 235:6 276:11,13 286:15
<b>finish (8)</b> 12:3 49:23 54:15 57:14 69:4 144:18 190:24 191:10	<b>follow-up (1)</b> 240:8	<b>forward (11)</b> 93:25 99:24 185:11 215:3 216:19 217:19 218:3 249:19 253:19,25 282:8	<b>front (6)</b> 35:20 53:18,19 66:18 209:23 212:18	<b>giving (9)</b>
<b>fire (3)</b> 273:19 275:11 276:6	<b>foot (3)</b> 78:15 80:17 224:19	<b>found (3)</b> 189:23 192:4 254:20	<b>Fuck (1)</b> 226:14	
<b>first (38)</b> 16:18 26:24 27:2 45:9 97:21,22 98:5,12,25 99:21 100:9 101:16 102:11,18 103:3,10 104:9,12 109:8 110:8 112:25 118:13 119:14 121:20 132:4 171:24 181:21 187:22 199:7 203:25 213:4 234:3 241:10 259:7,13 268:3 270:18,20		<b>four (6)</b>	<b>fulfills (1)</b> 58:15	
<b>fit (1)</b> 275:20			<b>full (6)</b> 31:2 41:4,13 151:14 192:8 215:20	
			<b>full-time (1)</b> 26:20	
			<b>function (1)</b> 84:15	
			<b>further (6)</b> 4:7,11 18:11 130:4 284:6 286:16	
			<b>future (8)</b> 126:19 193:9 215:18 215:23 216:4 218:7 218:11 227:16	
			<b>F-i-n-e (1)</b>	

62:18 84:6 100:7 129:8 157:8 187:4 190:19 255:10 274:24 <b>glasses (1)</b> 283:12 <b>go (56)</b> 27:13 51:9 53:6,20,22 67:6,10 74:7,16 75:12 76:22 81:2 82:23 83:10 84:11 98:22 100:18 121:24 122:21 127:2 130:2 138:15 142:11 145:16 156:3 162:11 164:3 171:23 179:6 182:9 184:8 204:3 206:9 206:12 207:11,12 209:11,16,21 210:16 218:19 219:19 225:7 227:3 228:24,25 257:22 261:14 276:12,12 276:13 277:23 278:13 280:6,18,19 <b>goals (1)</b> 65:3 <b>God (1)</b> 172:3 <b>goes (3)</b> 64:4 76:21 255:21 <b>going (100)</b> 16:11 43:14 44:2 45:13 53:16,17,19 53:24 57:3,7,8,18 65:8 67:19 70:17 73:16 74:7,19,22,24 75:2,17 76:14,22 78:12,17 80:22 81:2 84:11 91:3 99:24 107:12 109:17 117:12 123:24 124:18,21 125:10 133:2,7,10 139:12 141:21 145:15 150:23 151:7 156:23 167:14 171:25 175:19 177:7 180:11 185:11 190:18	193:8,21 209:12,14 212:23 214:20 215:4,7 216:6,18 217:6,18,20,24 218:2,11,20 219:13 219:22 220:16 224:13 226:5,24 233:10,17 235:13 247:22,23,23 248:14 249:9,18 253:19,25 254:2,3 255:7 256:19 264:21 280:14 281:3 282:7,18,25 284:5,21 <b>good (13)</b> 6:13 67:10 74:14 124:20 161:11 173:2 188:12 212:25 213:3 228:20 230:9 269:8 276:25 <b>GOSCIAK (1)</b> 1:4 <b>gosh (1)</b> 170:21 <b>gotten (2)</b> 106:5 238:20 <b>governing (2)</b> 72:13 277:3 <b>governmental (9)</b> 192:22 199:24 201:6 202:22 203:6,8 204:10 241:24 242:7 <b>grace (1)</b> 59:21 <b>graduate (1)</b> 26:17 <b>graduated (1)</b> 26:23 <b>graffiti (1)</b> 88:19 <b>Graham (3)</b> 1:11 173:8,10 <b>granted (1)</b> 72:18 <b>gray (1)</b> 127:22 <b>great (2)</b> 59:18 193:14	<b>green (8)</b> 66:15,19 155:7 156:2 206:14 209:16,17 209:18 <b>grew (1)</b> 109:24 <b>ground (1)</b> 48:13 <b>group (23)</b> 15:11,12 25:3,18 98:4 98:17 105:11,18 106:4 107:14 168:8 168:19,22 169:5,24 172:15 181:22 212:17 227:24 228:18 229:19 239:16 279:18 <b>grouping (1)</b> 104:20 <b>groups (11)</b> 90:20 100:17 114:7 118:14,15 129:24 177:6 227:16 229:15,18 230:2 <b>growing (2)</b> 110:11 111:10 <b>guess (7)</b> 49:12 84:24 128:6,19 181:5,5 212:25 <b>guilt (1)</b> 35:15 <b>gun (7)</b> 34:20,21,25,25 35:2,2 35:6 <b>guns (1)</b> 34:13 <b>guy (3)</b> 90:9 256:6,6 <b>guys (2)</b> 35:23 225:15	<b>hand (2)</b> 141:18 286:22 <b>handed (2)</b> 188:16 251:4 <b>handing (1)</b> 45:12 <b>handle (1)</b> 64:11 <b>handled (3)</b> 35:13 187:2 216:15 <b>handling (6)</b> 126:24 127:11,19,25 128:4 223:7 <b>hands (1)</b> 126:5 <b>handy (1)</b> 188:9 <b>happen (10)</b> 13:18 66:4 67:5 68:5 75:17 117:12 145:16 156:10,25 214:20 <b>happened (14)</b> 66:3 68:16 73:4 78:9 113:8 121:24 122:2 124:15 139:8 160:9 173:17 181:14 202:19 214:21 <b>happening (7)</b> 73:7 112:3 165:18 180:17 206:22 277:8 283:16 <b>happens (3)</b> 68:5 69:17 97:12 <b>hard (2)</b> 190:20 274:21 <b>hate (2)</b> 282:18,22 <b>head (4)</b> 46:9 162:2 235:13 279:14 <b>heading (1)</b> 164:7 <b>headlight (2)</b> 59:23,24 <b>headquarters (2)</b> 28:11 73:2 <b>heads (1)</b> 164:12 <b>hear (20)</b> 96:4 98:12,15 99:7	101:8 109:19,23 132:24,25 148:17 167:2 191:14 210:24 211:2 212:19 215:9,12 217:15 250:15 254:7 <b>heard (58)</b> 6:14 22:12 96:6 98:16 98:25 100:9 101:17 102:7,11,19 103:4 103:10 104:9 107:11,14,25 108:9 108:10 109:8,24 110:10 111:14,15 112:21 113:20 114:13 118:13 119:2,5,6,9,10,23 125:9 130:24 132:4 141:7 148:2,24 154:2 161:21,24 162:4,19 167:5 203:15 218:23 219:24 220:2 231:12,14 234:11 242:21 253:16 270:15,21 271:15 277:4 <b>hearing (6)</b> 103:10 108:2 149:23 166:3 205:20 234:13 <b>heart (1)</b> 136:4 <b>held (6)</b> 2:9 5:7 76:15 221:10 221:18 222:7 <b>helicopter (2)</b> 225:6 279:13 <b>helmet (6)</b> 61:7 260:10 262:4,23 263:21 268:3 <b>helmets (1)</b> 260:13 <b>help (2)</b> 63:21 88:23 <b>helps (1)</b> 283:25 <b>hereinbefore (1)</b> 286:12 <b>hereunto (1)</b>
--	--	--	---	--

286:21	<b>hundred (4)</b> 153:15 154:12 234:6 235:24	168:10 223:15 226:17 274:4,12	<b>incorrect (5)</b> 143:20,25 147:18,19 158:14	271:14 277:21
<b>Hey (1)</b> 222:22	<b>hundreds (14)</b> 35:9 210:14 211:3,6 211:15 212:3,6,9 226:21,21,21 242:10,10 268:25	<b>impacts (1)</b> 75:6	<b>incorrectly (1)</b> 56:24	<b>informed (17)</b> 18:4,8 22:4 99:16 100:16 111:9 116:23 152:17 153:2,6 227:5,8 241:11 248:13,20 267:18 268:5
<b>hidden (1)</b> 176:15	<b>hurt (3)</b> 81:17 132:10 226:5	<b>impede (4)</b> 53:6,14 58:7 272:13	<b>increase (3)</b> 85:4 88:13 200:7	<b>informing (2)</b> 227:16 244:14
<b>hierarchy (3)</b> 29:8,25 139:21	<b>hypothetical (1)</b> 139:5	<b>impeded (18)</b> 56:23 193:2 206:5 208:25 209:4,6,8,10 209:24 210:6,12,19 210:21,23 243:23 244:8,10,15	<b>increased (2)</b> 243:4,15	<b>infraction (6)</b> 66:10 84:21 220:6,9 255:3 260:9
<b>higher (2)</b> 30:23 131:12		<b>impeding (11)</b> 53:22 54:6,23 55:2,13 55:22 56:4,11,14 57:4 58:5	<b>indicate (4)</b> 79:5 123:6 160:25 259:6	<b>infractions (4)</b> 79:20 81:14 89:7,8
<b>Highway (3)</b> 62:15 63:25 88:4	<b>I</b>	<b>implication (1)</b> 30:22	<b>indicated (10)</b> 108:13 114:6 122:18 123:13 142:14 144:6 153:9 167:9 228:3 260:16	<b>infrequently (1)</b> 78:7
<b>highways (4)</b> 62:16 64:2,2,3	<b>ice (1)</b> 26:8	<b>implying (2)</b> 218:10 256:23	<b>indicates (4)</b> 93:4 124:17 264:9 282:20	<b>initial (1)</b> 6:2
<b>hijacked (1)</b> 107:8	<b>idea (18)</b> 7:23 9:22,24 67:10 95:21 105:6,7 143:23 144:3 148:6 202:7 205:15 233:18 236:13,18 251:8 263:9 282:25	<b>important (1)</b> 82:18	<b>individual (4)</b> 129:21 138:18 149:6 239:21	<b>initially (6)</b> 29:20 32:13 94:20 110:15 111:8,14
<b>history (2)</b> 74:21 75:8	<b>identification (14)</b> 43:9,13 92:13,17 141:19 187:7,12 188:17,21 237:5,10 257:20 265:14,18	<b>impossibility (1)</b> 217:2	<b>indicating (5)</b> 7:16,17 93:18 142:9 168:13	<b>injured (4)</b> 25:3 38:24 88:23 95:8
<b>hit (1)</b> 42:17	<b>identified (1)</b> 281:23	<b>impossible (4)</b> 154:6 155:3 216:22 216:24	<b>individuals (15)</b> 21:10,15 115:5,7 117:18 118:14 148:3,7,12 159:2,6 161:15 162:5,15 202:17	<b>injuries (4)</b> 87:22 88:14 215:9,12
<b>hoc (1)</b> 80:25	<b>identifies (1)</b> 281:16	<b>improper (3)</b> 60:20 261:2,2	<b>inform (4)</b> 190:4,17 238:24 249:8	<b>input (2)</b> 185:22 196:15
<b>hold (6)</b> 27:18 28:18,19 164:24 165:3 202:14	<b>identify (2)</b> 218:6 239:15	<b>improperly (6)</b> 60:23 61:3 264:2 266:12,20 267:25	<b>information (35)</b> 72:22 76:14 87:3 96:12 104:2 106:7 108:20 110:7 114:12,16 125:9 147:3 148:2,13,18 149:24 150:6 159:3 161:16 162:5,16 177:14 180:16 182:4,11,14 207:20 211:2,16 222:16 247:4 260:19,21	<b>instances (5)</b> 73:6 81:25 160:5 274:16 275:4
<b>holding (1)</b> 169:15	<b>ignorance (1)</b> 154:13	<b>inaccurate (1)</b> 161:7	<b>instruct (3)</b> 16:12 175:19 177:9	<b>instructed (2)</b> 144:23 287:9
<b>holidays (1)</b> 75:4	<b>ignored (1)</b> 138:16	<b>inch (1)</b> 226:3	<b>instructing (1)</b> 175:22	<b>instructions (1)</b> 178:13
<b>home (1)</b> 34:16	<b>illegal (3)</b> 53:10,10 210:3	<b>incident (12)</b> 95:19,25 96:5,13 130:8 173:21 205:9 206:16 228:17 254:2 277:11,12	<b>instructing (1)</b> 175:22	<b>instruction (1)</b> 178:13
<b>honest (2)</b> 152:2 179:25	<b>illegally (3)</b> 75:22 86:3 121:10	<b>incidents (1)</b> 214:17	<b>instructing (1)</b> 175:22	<b>instructions (1)</b> 100:8
<b>hopefully (1)</b> 61:16	<b>imagine (1)</b> 256:8	<b>included (1)</b> 116:8	<b>intend (1)</b> 157:2	<b>intend (1)</b> 88:21
<b>hot (1)</b> 139:14	<b>immediate (1)</b> 128:12	<b>including (3)</b> 63:24 251:12 273:18	<b>interact (1)</b> 88:21	<b>interaction (1)</b> 132:17
<b>hour (23)</b> 13:13 52:20 53:16,18 53:20 54:2,5,20,22 55:5 56:5,18,20,21 57:4,8,19,20 91:16 213:14,20,22 255:8	<b>immediately (5)</b> 27:19 30:3,4 34:19 84:11	<b>inconceivable (1)</b> 154:20	<b>interested (5)</b> 51:14 180:12 228:9	
<b>hours (5)</b> 59:25 61:11 65:8 75:14 91:16	<b>impact (8)</b> 72:23 74:22 75:5	<b>inconsistent (3)</b> 146:2,13 158:20		
<b>huge (5)</b> 200:7 224:24 225:8 225:10 233:11				
<b>human (2)</b> 36:14 251:16				

228:10 286:19 <b>interfere (2)</b> 154:25 155:2 <b>interfering (1)</b> 75:16 <b>internal (3)</b> 35:13,13 106:6 <b>Internet (2)</b> 106:22 124:17 <b>Interrogatory (1)</b> 282:4 <b>intersecting (1)</b> 157:16 <b>intersection (9)</b> 64:20 66:15,17 156:20 207:10 208:6 214:19 225:7 225:20 <b>intersections (5)</b> 168:25 207:12 212:12 226:22 272:23 <b>interspersing (1)</b> 169:23 <b>introduce (1)</b> 5:16 <b>introduction (1)</b> 191:8 <b>invalid (2)</b> 267:8 268:21 <b>investigation (1)</b> 92:5 <b>involved (41)</b> 8:3,8 12:14,22 33:11 34:3 58:11 63:19 68:22 73:10 77:22 86:18 89:23 91:19 93:16 95:25 99:23 100:4 108:14 117:18,20 125:16 125:20 129:10 133:20 134:4 135:25 173:5 178:8 183:13,17 223:14 224:9 227:12 228:23 232:10 239:22 246:23 249:23 256:7 279:8 <b>involvement (6)</b> 9:8 72:12,17 75:24 79:22 136:3 <b>involving (3)</b>	97:18 173:22 177:6 <b>in-line (1)</b> 265:25 <b>irrelevant (1)</b> 151:7 <b>Island (2)</b> 38:10 63:24 <b>issue (8)</b> 75:7 112:11 138:12 140:20 184:10 224:12 245:15 269:11 <b>issued (22)</b> 33:4 205:3 254:15,22 259:2,9,21 260:23 261:9,10 262:2,8,12 262:23 263:3,5,22 264:2,7 266:8,15 267:25 <b>issues (8)</b> 10:11 12:22 18:15 64:11 68:7 124:7 135:25 136:4 <hr/> <b>J</b> <hr/> <b>JACKSON (1)</b> 1:4 <b>JAMES (1)</b> 1:9 <b>JANE (1)</b> 1:15 <b>January (14)</b> 1:22 2:5 5:9 143:9 144:23 147:14 150:7 151:22,23 157:15 159:13 160:17,23 289:4 <b>Jeff (1)</b> 79:4 <b>job (7)</b> 1:25 74:14 180:15,22 267:3 269:23 276:12 <b>jobs (2)</b> 276:10,11 <b>Joey (1)</b> 222:23 <b>JOHN (1)</b> 1:15 <b>joining (4)</b> 26:3 110:3,12 113:21	<b>Jordan (2)</b> 3:21 5:11 <b>JOSH (1)</b> 1:4 <b>judge (1)</b> 151:4 <b>judgment (3)</b> 81:21 138:19 169:20 <b>July (38)</b> 122:10,15 125:2,6 130:7 131:17,21 145:8 146:3,15 166:11 167:15 168:2,3 170:17 173:14,21 174:5,10 174:14,19,23 175:5 177:24 181:14 183:8 186:9,19 203:9 215:10,13 228:16 240:13,17 246:14,17 253:19 277:12 <b>June (4)</b> 113:4 163:15 166:4 167:24 <b>jurisdiction (2)</b> 28:14,16 <b>jurisdictions (1)</b> 104:3 <hr/> <b>K</b> <hr/> <b>keep (8)</b> 25:21 32:18 143:13 158:2 168:22 169:16 188:8 275:12 <b>keeping (3)</b> 168:11,18 170:3 <b>Kelly (8)</b> 1:8 118:4 140:4,9 173:20 184:17,21 196:9 <b>Kelly's (1)</b> 107:7 <b>Kenneth (2)</b> 1:4 141:5 <b>kept (2)</b> 23:12 82:20 <b>kid (1)</b> 270:19 <b>kill (3)</b>	78:22 214:19 215:4 <b>kind (3)</b> 74:19 86:12 98:21 <b>kinds (1)</b> 161:10 <b>knew (8)</b> 119:9 130:18 195:19 211:19 232:19 233:23 246:5 270:16 <b>know (314)</b> 6:17 7:6 8:13,23 9:5 9:20 10:7 11:17,18 19:14,15,17 20:15 20:20,21,24 21:25 23:11,21,25 24:20 27:4 36:10 37:14,20 38:17 39:12,18,24 40:15 41:4,14,23 42:8,15,20 46:2,5 47:19,20,21 48:2 49:5,6,15,16,22 50:7,21 51:2,21 52:5,9,10,15,18 53:21 58:21,24 60:8 60:14,17,25 61:18 61:20 63:7 67:12 70:21 71:15,19,21 74:2 75:12,17 76:3 76:18 78:20 79:7 80:8,20,21 81:4,9 82:19,25 84:25 85:22 86:10,12 87:3 87:7,20 88:24 89:9 90:24 93:5 94:8,21 94:25 95:2,6 96:3 97:2,6,7,16,20 98:5 101:12,16,21,21 102:2,6 103:14 104:6,8 108:7,8,23 109:12 113:4 114:17,23 115:4,10 117:2,9,10 119:6,8 119:24 120:25 122:22 124:2,4,23 125:13 127:13,14 127:17 128:9,10,12 128:13,13,14 129:6 130:17,25 131:15 131:20 133:3,5,9,9 135:17,21,24 136:5	136:12 137:18,24 137:25 138:13,21 141:7 143:22 148:25 151:5,10 156:11,15 158:15 158:16,25 159:5,9 161:9,14,20 165:10 166:25 167:6 168:21 169:11,19 171:9 173:4,6,9,12 173:16,17,20,23 174:8,9,11,17,18,21 174:22 175:3,4,7,10 176:23 179:20 180:12,15,22 181:16,19 183:6,11 183:25 184:14,14 184:17,23 185:19 186:22,23 194:14 195:2 198:7,8 219:3 220:5 222:3,13,21 222:21,23 224:25 227:20 228:22,24 229:2,9,19 230:6 231:4,11 233:23,24 234:24 235:14,15 235:20 236:5,9,22 237:14 238:13 239:15 241:4 243:8 243:20 246:22 247:2,10 248:16 249:24 251:3,6 252:25 253:3,5 256:3,5,7 257:21 258:20 260:12 264:18 265:8 267:21 269:2,3,5,5 270:3,9,14 271:13 271:13,17 272:15 272:18,19,21,22,25 273:2,4,5,8,10 275:14 276:5,6,7,12 277:2 278:5,14 279:23 281:8,10,24 282:21 283:15 <b>knowledge (17)</b> 39:17 42:14 89:13 97:11 99:17 109:4 131:18 135:16 141:9 177:3 203:7 204:8,9 231:3,8
---	---	---	---	--

243:21 267:20 <b>knowledgeable (2)</b> 120:2,5 <b>known (9)</b> 87:5 156:14 173:15 174:6,16,20 175:2 240:25 278:13 <b>knows (1)</b> 177:2	47:14 48:6 49:9,18 50:2,4,11,15 51:3,4 51:19 52:11,13 57:11,12,13,21 58:4 59:3 60:8,12 61:18 61:19 66:5,6,8 67:17,17,18,20,23 69:15 70:8 77:19 104:2 124:6,18,20 132:19 144:25 153:9 175:15 177:5 177:10,18 178:3,12 192:20 193:9 194:15 199:22 202:21 205:2,7 215:18,24 216:5 218:7,11 220:19 227:17 228:13 235:9,12,14,15 241:25 242:8 244:22,23 245:2,7 245:10,16 254:4 257:3 264:15 265:5 267:20 272:8	98:21 <b>leader (1)</b> 105:14 <b>leaders (16)</b> 102:23 103:11 104:11 104:16,21 105:4,8 105:16 239:3,13,18 239:21,25,25 246:4 246:6 <b>leadership (9)</b> 104:14 107:23,24 108:5,15 239:8,24 247:2 252:6 <b>leading (1)</b> 239:22 <b>leads (1)</b> 121:11 <b>learned (14)</b> 99:21 101:13,20 102:25 103:13,22 104:12 110:15 111:8 119:14 202:12,17 234:4 270:25	47:22 61:14 140:11 <b>legitimate (3)</b> 255:20,21 256:15 <b>length (1)</b> 212:17 <b>letter (71)</b> 57:10,12 187:10 188:12,19 189:3,12 189:16,19,20 191:4 191:5,23,24 192:11 192:12,15 193:24 194:3 195:12,18,21 196:2,4,16,24 197:18,23 198:2,25 199:8 205:2 206:4 215:16 218:13 219:10 220:25 227:15,23 228:4,5,6 228:18 232:23 237:8 238:2,8,18,23 238:25 239:7 240:3 240:8,15,20,23 241:2 243:22 249:16,25 250:7,16 251:5,7,9,21 252:10 253:7 288:9,12,14	<b>life (4)</b> 84:15 162:12 207:17 241:9 <b>lift (3)</b> 161:22 164:11 165:11 <b>lifting (3)</b> 162:2 163:11 217:3 <b>light (23)</b> 66:15,16,19 139:12 155:7 156:2,3 206:14 209:16,17 209:18,21 210:15 210:18,22 218:20 219:14,23 220:17 254:20 255:15,22 256:19 <b>lights (10)</b> 78:17 113:25 138:24 138:25 183:4 210:20 212:13 225:24,25 272:20 <b>limit (6)</b> 52:16,23 53:2,4 170:4 254:21 <b>Limousine (1)</b> 88:7 <b>line (13)</b> 33:16 142:19,20 144:12 146:24 150:11,20 151:15 157:11 159:12 163:3 167:12 287:10 <b>lines (1)</b> 187:17 <b>listened (1)</b> 131:3 <b>listening (1)</b> 279:4 <b>lit (1)</b> 262:18 <b>literally (1)</b> 226:7 <b>litigation (11)</b> 18:5 19:13,16 21:17 21:23 22:20 23:23 25:7 31:22 106:25 107:2 <b>litigations (1)</b> 11:25 <b>little (15)</b>
<b>L (6)</b> 6:6,6,6 137:6,6,6 <b>labeled (1)</b> 5:3 <b>lack (5)</b> 31:2 63:8 64:12 100:19 109:25 <b>LAK (1)</b> 1:7 <b>lane (12)</b> 41:3,13,22 52:3 53:17 54:21 69:20 70:17 83:15 84:10,21 282:16 <b>lanes (20)</b> 39:13,25 40:3,4,14,25 41:2,11,12,19,20 51:23 52:2 53:25 54:18 68:11 69:10 69:19 70:12 83:3 <b>large (25)</b> 24:11 81:13 84:8 88:3 118:15 121:8 123:16 126:12 147:9 150:21 172:15 190:13 192:17 194:3,10 199:19 200:3,11,19 201:14,20,25 202:8 279:18 280:4 <b>larger (4)</b> 125:5,10,14,17 <b>Late (1)</b> 26:12 <b>latest (1)</b> 66:5 <b>law (92)</b> 3:11 7:18 10:8 12:11 13:24 42:5 43:24 45:9,10,24 46:10,12	<b>lawbreaking (10)</b> 122:20 123:14,19,24 124:9,11,14 125:2 125:11 126:12 <b>lawful (2)</b> 182:18,22 <b>laws (41)</b> 39:9 42:3,9 51:11,14 58:12,23 61:15 63:5 65:16 67:25 68:3,9 71:7 72:7 77:15 89:11 96:16,16,20 97:4,8 114:9 140:6 140:10 192:20 193:17,17,20,20 199:22 200:24 201:4,22 202:10 204:25 205:7 241:22 245:21 272:13 280:7 <b>lawsuit (1)</b> 31:24 <b>lawsuits (1)</b> 107:3 <b>lawyer (2)</b> 264:24 265:2 <b>lead (1)</b>	<b>leave (1)</b> 75:22 <b>leaving (2)</b> 88:8 211:18 <b>led (2)</b> 114:7 118:19 <b>left (14)</b> 39:20 40:19 41:18,19 41:21 44:23 47:11 52:3,7,10 88:18 142:16 204:17 251:5 <b>left-hand (1)</b> 52:6 <b>legal (12)</b> 1:13 3:21 5:12 15:22 67:6 75:15 139:22 209:11 210:6 236:5 236:9 264:23 <b>legally (4)</b> 16:17 219:15,21 235:20 <b>legislative (1)</b> 67:12 <b>legislator (1)</b> 61:14 <b>legislators (3)</b>	<b>level (1)</b> 192:23 <b>levels (3)</b> 29:17 192:21 199:23 <b>license (2)</b> 255:19,21 <b>lieutenant (28)</b> 1:12 16:4,10,17 17:10 18:7,22 19:4,12,18 20:2,15 21:11,16 22:3,4,14 135:13,14 135:24 137:3 196:25 197:18,24 198:3,11,14 199:2	

31:22 34:20 74:9,9 82:17 96:15 111:2 161:10 189:7 202:5 211:21 278:4 282:24 283:10,24	262:6,15 264:4 265:23 266:13 <b>looked (10)</b> 20:2 49:12 93:7 146:4 146:16 226:13 261:12 262:19 267:20,21	39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 50:1 51:1 52:1 53:1 54:1 55:1 56:1 57:1 58:1 59:1 60:1 61:1 62:1 63:1 64:1 65:1 66:1 67:1 68:1 69:1 70:1 71:1 72:1 73:1 74:1 75:1 76:1 77:1 78:1 79:1 80:1 81:1 82:1 83:1 84:1 85:1 86:1 87:1 88:1 89:1 90:1 91:1 92:1 93:1 94:1 95:1 96:1 97:1 98:1 99:1 100:1 101:1 102:1 103:1 104:1 105:1 106:1 107:1 108:1 109:1 110:1 111:1 112:1 113:1 114:1 115:1 116:1 117:1 118:1 119:1 120:1 121:1 122:1 123:1 124:1 125:1 126:1 127:1 128:1 129:1 130:1 131:1 132:1 133:1 134:1 135:1 136:1 137:1,6 138:1 139:1 140:1 141:1 142:1 143:1 144:1 145:1 146:1 147:1 148:1 149:1 150:1 151:1 152:1 153:1 154:1 155:1 156:1 157:1 158:1 159:1 160:1 161:1 162:1 163:1 164:1 165:1 166:1 167:1 168:1 169:1 170:1 171:1 172:1 173:1 174:1 175:1 176:1 177:1 178:1 179:1 180:1 181:1 182:1 183:1 184:1 185:1 186:1 187:1 188:1 189:1 190:1 191:1 192:1 193:1 194:1 195:1 196:1 197:1 198:1 199:1 200:1 201:1 202:1 203:1 204:1 205:1 206:1	207:1 208:1 209:1 210:1 211:1 212:1 213:1 214:1 215:1 216:1 217:1 218:1 219:1 220:1 221:1 222:1 223:1 224:1 225:1 226:1 227:1 228:1 229:1 230:1 231:1 232:1 233:1 234:1 235:1 236:1 237:1 238:1 239:1 240:1 241:1 242:1 243:1 244:1 245:1 246:1 247:1 248:1 249:1 250:1 251:1 252:1 253:1 254:1 255:1 256:1 257:1 258:1 259:1 260:1 261:1 262:1 263:1 264:1 265:1 266:1 267:1 268:1 269:1 270:1 271:1 272:1 273:1 274:1 275:1 276:1 277:1 278:1 279:1 280:1 281:1 282:1 283:1 284:1	<b>Manhattan (50)</b> 1:10,14 28:25 29:4 31:14,18 38:10,11 62:16,19 63:13,20 64:7,7,8,9,10,14 65:6 90:5 91:8,22 92:24 98:18 100:3 113:9 116:5 122:3 126:23 127:24 128:11 131:24 153:11,22 154:19 181:22 190:14 192:18 199:20 201:21 202:9 207:13 224:9 241:13,19 270:12 270:25 271:21 279:20 281:17 <b>manner (1)</b> 157:16 <b>manual (1)</b> 97:17 <b>march (1)</b> 75:22 <b>mark (13)</b> 3:17 13:13,19,19 43:6 43:8 92:12 187:7 188:15 237:5 257:14 265:11,13 <b>marked (14)</b> 42:25 43:3,12 68:12 69:9 92:17 187:11 188:21 225:25 237:10 257:19 258:9 265:17 273:19 <b>marking (3)</b> 69:19 141:18 179:4 <b>marriage (1)</b> 286:18 <b>mass (216)</b> 8:3,8 10:14 11:5 12:19 13:2 14:21 24:23 25:19,23 31:21 50:16 89:14 89:16 97:22,24 98:3 98:13 99:2,22 100:9 101:2,4,17 102:3,22 103:4,10,19 104:4 104:10,15 105:5,8 106:10,16,23 107:4
<b>live (1)</b> 245:13 <b>LLP (1)</b> 3:4 <b>Ln (1)</b> 289:6 <b>lobby (1)</b> 67:16 <b>local (3)</b> 67:20,23,25 <b>locale (1)</b> 28:12 <b>located (2)</b> 23:22 277:25 <b>location (21)</b> 75:13 79:20 81:5 85:2 85:5,11 90:19 130:12 161:25 203:15 224:5 230:19 251:3 261:12 262:19 264:8 266:15 267:9 277:25 278:6,24 <b>locations (2)</b> 226:6 227:3 <b>lock (2)</b> 216:11 217:22 <b>locking (1)</b> 216:23 <b>locks (2)</b> 231:9,16 <b>long (20)</b> 27:5 91:13,21 103:9 108:23 109:2,15 110:14 119:12 139:25 202:5 212:20 213:7,10,11 213:23 214:6 224:8 224:20 276:20 <b>look (22)</b> 20:17 42:12 43:22 44:6 92:20 127:3 142:3,6 146:24 150:9 172:3 207:11 237:13 257:12 258:9,19 260:15	<b>looking (11)</b> 43:23 48:16 93:12 172:3 186:8,17 247:20 259:7 266:5 268:13 282:21 <b>looks (2)</b> 171:19 188:12 <b>lose (1)</b> 179:3 <b>losing (1)</b> 35:5 <b>lot (13)</b> 39:15 63:21 71:25 86:2,4 129:19 139:14 172:4 214:22,23 218:19 269:3 272:13 <b>lots (7)</b> 58:20 124:12,22 129:13 215:6 229:20 273:18 <b>louder (1)</b> 274:25 <b>love (1)</b> 232:22 <b>LT (1)</b> 1:15 <b>LUKE (1)</b> 1:5 <b>lump (1)</b> 40:17 <b>Lunch (2)</b> 134:8,12	<hr/> <b>M</b> <hr/> <b>M (280)</b> 6:6 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1	<b>Macy's (1)</b> 73:25 <b>MADELINE (1)</b> 1:4 <b>magnitude (1)</b> 172:2 <b>mail (1)</b> 250:12 <b>main (1)</b> 84:3 <b>maintain (7)</b> 42:16 168:8 169:5 274:3,11,15 275:3 <b>major (2)</b> 135:21 155:15 <b>making (4)</b> 7:7 35:9 129:8 284:21 <b>man (2)</b> 35:9 75:4 <b>manage (1)</b> 104:4 <b>management (2)</b> 64:12 65:3 <b>managing (1)</b> 172:14	

107:24 108:6,15,22 108:23 109:5,20 110:8 111:8,11,14 111:17 112:22 113:2 114:24 115:11 116:2,7,17 119:13 120:9,13 121:16,20 122:6,9 122:16 126:2,11,20 128:21 129:10,17 130:8 131:13,16 132:4,12 143:8 144:24 145:7 147:13 148:2,4,7,13 148:19 149:7,14,18 149:24 150:6 151:22,23 158:21 159:4,6 160:10,16 161:3,24 162:6 163:15 164:3,19 165:12 166:4,9,12 167:20 173:5 174:5 174:15,23 177:19 177:25 179:10,24 180:5,9,13 181:3,20 182:14 183:8 190:11 192:15,16 193:16 194:20 195:8,19 199:11,15 212:20 215:8 218:25 220:3,6,23 221:5,10,19,24 222:4,16 223:7,12 223:15,23 224:5,15 224:21,24 225:4,15 225:17 226:18,23 227:9 231:22 232:11,19 233:3,7 233:19 234:5,7,18 235:17 236:13,19 239:3,8,11,18,23 240:2 241:8,12 242:9,16 243:5,17 244:5 246:2,4,7,14 247:7,15 248:6 251:16,24 253:9,13 253:18 254:10,14 255:24 267:2 270:11,21,25 271:4 271:7,11,20,21 272:6,16,20 273:3,6	273:11 277:12 279:17 281:17 <b>massive (2)</b> 153:10,21 <b>material (1)</b> 14:6 <b>materials (7)</b> 15:14 18:21 19:3 22:19 23:6,7 97:2 <b>matter (11)</b> 5:5 8:20,21,22 35:19 83:5 141:10 219:14 219:16 248:11 286:20 <b>matters (2)</b> 16:18 154:14 <b>maximize (1)</b> 169:22 <b>maximizes (1)</b> 169:16 <b>maximum (2)</b> 52:22,24 <b>mayor (3)</b> 67:14 70:22,22 <b>mayor's (3)</b> 67:11,15,18 <b>mean (48)</b> 30:17,17,21 37:16 39:22 43:23 45:12 47:2,4,19,21,23 49:3,4,20 50:7 53:13 65:7 113:22 113:23 124:11,22 133:5 136:8 156:17 157:2 158:3 180:20 181:7,10 184:2 190:22 196:9 200:2 201:23 206:6,7 208:24 210:12 214:25 224:7 225:8 235:15 239:4 244:21 249:20 272:9 283:15 <b>meaning (3)</b> 87:7 193:9 229:3 <b>means (5)</b> 97:25 198:18 248:17 271:6 272:11 <b>meant (3)</b> 30:23 201:2 210:13 <b>measured (1)</b>	81:12 <b>medallion (1)</b> 62:23 <b>media (1)</b> 181:13 <b>meet (11)</b> 90:11 91:8,12 98:4,6 98:19,21 145:14,14 181:23 249:7 <b>meeting (17)</b> 76:18,20 88:4,9 89:15 89:17 90:13 91:24 167:14,18,25 179:20,22,23 183:19 184:5 185:16 <b>meetings (17)</b> 86:23,24 91:13,17 92:4 179:21 183:12 183:14,20,20,22,25 184:9 222:7,9 236:23 247:11 <b>member (1)</b> 11:21 <b>members (15)</b> 12:10 83:24 143:6 147:22 193:15,18 194:10,12,14,18,25 229:21 239:17 251:23 252:6 <b>mentioned (15)</b> 7:21 15:7 70:9 71:5 83:14 87:15 105:25 107:2 137:13 162:17 178:22 179:8 227:14 234:13 277:14 <b>merely (1)</b> 239:21 <b>merge (3)</b> 50:22 52:6 164:6 <b>mesh (1)</b> 230:13 <b>messages (1)</b> 25:15 <b>met (1)</b> 17:10 <b>meter (1)</b> 84:20 <b>methods (1)</b> 104:2	<b>Michael (10)</b> 1:20 2:8 5:4,24 176:16 285:12 286:11 287:6 289:5 289:19 <b>microphone (3)</b> 88:10,14 261:20 <b>middle (4)</b> 47:15 53:17 103:12 213:22 <b>mike (1)</b> 261:17 <b>miles (18)</b> 52:20 53:16,17,20 54:2,4,20,21 55:5 56:5,17,20,21 57:4 57:7,18,20 255:8 <b>mind (6)</b> 14:10 127:23 142:4 200:10,12 225:18 <b>mine (2)</b> 232:6,6 <b>minimizing (1)</b> 168:10 <b>minimum (5)</b> 52:16,23,25 53:3 158:2 <b>minor (8)</b> 34:11 36:3,7,9,12,15 36:24 37:2 <b>minute (4)</b> 92:20 211:9 237:13 284:18 <b>minutes (19)</b> 13:14,16,16 31:10 43:17,21 156:8 164:14 213:12,16 213:18,21 214:2 225:7,19 261:11 282:9 283:6 284:3 <b>Miscellaneous (2)</b> 43:12 288:5 <b>missed (1)</b> 55:15 <b>mission (2)</b> 87:20 88:21 <b>mistake (1)</b> 267:23 <b>moment (2)</b> 135:9 197:7 <b>money (1)</b>	86:10 <b>monitor (2)</b> 143:13 144:24 <b>monitoring (4)</b> 157:14 166:22 168:18 278:21 <b>month (20)</b> 15:5 17:25 76:19 91:19 98:6 111:3 124:20,21 166:5 181:21 190:12 199:13,16 238:17 240:5,7 241:17,21 271:11 281:19 <b>monthly (2)</b> 101:5 270:11 <b>months (12)</b> 17:17,18 26:18 38:5 78:13 110:17,18,20 110:22 111:5,6 119:20 <b>morning (3)</b> 6:13 13:17 209:7 <b>mother (1)</b> 34:22 <b>motion (1)</b> 94:23 <b>motor (14)</b> 54:12,19 55:3,11,20 56:15 57:19 58:5 59:11 83:2 169:15 169:22 170:5 212:11 <b>motorcycles (2)</b> 59:17 88:25 <b>motorist (4)</b> 59:22,24 255:14,20 <b>motorists (4)</b> 60:5 138:11 215:2 254:20 <b>mounted (1)</b> 95:5 <b>move (8)</b> 54:11 87:21 88:22 130:2 170:6 203:5 210:23 280:12 <b>moved (4)</b> 34:18 130:3 139:21 210:15 <b>movement (1)</b> 93:25
---	--	--	---	---

<p><b>movie (2)</b> 62:19,20</p> <p><b>moving (8)</b> 33:7 54:19 66:9 95:9 212:24 213:3 215:3 283:22</p> <p><b>multiple (7)</b> 40:25 41:2,10,11 110:18 170:7 210:7</p> <p><b>multi-year (1)</b> 140:13</p> <p><b>Mummert (2)</b> 3:21 5:11</p> <p><b>murder (1)</b> 215:8</p> <p><b>Muschenheim (6)</b> 3:17 13:19 136:18 197:5 198:4 285:4</p> <p><b>myriad (1)</b> 27:11</p> <hr/> <p style="text-align: center;"><b>N</b></p> <hr/> <p><b>N (8)</b> 3:2 6:6 135:2,2,2 137:6 287:2 288:2</p> <p><b>name (21)</b> 5:11 6:14 13:13 15:11 15:12 16:7 105:10 105:17,18,19 106:4 107:7,16 108:2 222:17,18,21 227:24,24 238:21 289:3</p> <p><b>named (7)</b> 8:17 9:11 95:25 96:7 135:15 136:2,3</p> <p><b>names (5)</b> 19:22 105:11 230:7 239:19 279:23</p> <p><b>narcotics (2)</b> 34:13 176:19</p> <p><b>National (7)</b> 10:15 13:5 103:15 126:3,4,13 222:25</p> <p><b>nature (9)</b> 8:24 20:10 34:11 36:3 36:7,10,24 109:20 116:22</p> <p><b>near (5)</b> 44:22 47:10 147:23 165:2 244:10</p>	<p><b>nearly (1)</b> 240:7</p> <p><b>necessarily (5)</b> 110:9 115:19 129:10 145:24 158:24</p> <p><b>necessary (3)</b> 73:11 172:12 252:2</p> <p><b>need (15)</b> 33:15 74:10 76:22 85:3 100:12 127:4 141:25 142:6 188:25 233:13 234:18 235:3 236:3 257:21 281:8</p> <p><b>needed (10)</b> 73:19,22 74:17 138:9 232:11 233:7,19 234:7 235:17,20</p> <p><b>negotiable (1)</b> 91:5</p> <p><b>NELSON (1)</b> 1:5</p> <p><b>netting (3)</b> 230:14,25 231:5</p> <p><b>never (32)</b> 24:19,22 25:16 32:15 35:2 48:5 51:19 52:13,13 68:14 89:16 96:14 102:7 118:20 132:15 141:7 156:15 162:4 162:12,19,20 172:24 210:15 216:25 229:8 231:12,14 242:21 245:10 251:15 271:6 272:5</p> <p><b>new (86)</b> 1:2,8,9,11,12,14,15 1:21,21 2:11,11,14 3:7,7,11,15,15 5:6,8 5:9 7:18 8:14 10:7 11:21 12:11,15 13:24 15:22 20:6 21:10,15,19 23:17 26:4 29:8,18 35:21 38:6 39:10 45:10,16 49:8 50:12 52:16 62:24 65:23 66:5,5 67:17,22 69:17 72:13 74:13 96:17</p>	<p>100:18 103:4 106:22 107:7 108:12,24 126:16 140:14,22 141:4 155:15 160:22 175:13 177:6 214:23 221:10,18 226:24 228:21 229:7,16 242:12 245:6 259:9,21 260:13 265:21 271:9 275:25 276:23 286:4,9</p> <p><b>newspaper (1)</b> 106:10</p> <p><b>newspapers (1)</b> 181:12</p> <p><b>Nextel (1)</b> 25:10</p> <p><b>Nicholas (3)</b> 3:16 5:22 7:17</p> <p><b>Nick (1)</b> 127:9</p> <p><b>night (9)</b> 121:14 129:11 194:13 215:7 225:22 227:6 227:7 242:8 273:17</p> <p><b>nights (1)</b> 129:6</p> <p><b>Noah (7)</b> 190:7 192:13 194:24 195:4,7 199:10 229:3</p> <p><b>non-working (1)</b> 59:23</p> <p><b>normal (4)</b> 36:14 53:6,14 125:5</p> <p><b>normally (3)</b> 82:14 88:13 267:3</p> <p><b>north (1)</b> 131:4</p> <p><b>northbound (3)</b> 121:11 130:23 164:4</p> <p><b>nose (2)</b> 218:21,24</p> <p><b>Notary (4)</b> 2:14 6:8 286:8 289:24</p> <p><b>note (14)</b> 6:2 40:6 44:10 61:12 101:23 188:2,11 194:2 205:10</p>	<p>243:18 248:24 251:18 263:13 283:3</p> <p><b>noted (2)</b> 135:3 191:2</p> <p><b>notes (1)</b> 15:14</p> <p><b>notice (3)</b> 261:10 281:21 283:11</p> <p><b>notified (5)</b> 166:8 173:21,24 174:2 278:10</p> <p><b>notify (2)</b> 193:14 196:3</p> <p><b>notifying (2)</b> 193:7 215:22</p> <p><b>November (1)</b> 160:21</p> <p><b>number (22)</b> 37:9 71:6 85:3 88:11 90:5,9 93:9,13 96:16 117:13 129:21 153:8 160:12,14 181:25 237:17,20 259:8,16 270:15 273:17 280:3</p> <p><b>numbers (35)</b> 49:22 81:13 84:9 88:3 89:5 109:24 110:11 117:7 121:8 142:7 147:9,23 171:19,21 190:13 192:17 194:10 199:19 200:3,10,11,12,19 201:14,20 202:8 207:13 233:12 242:5 243:4,15 258:12 259:12 269:22 280:4</p> <p><b>numerous (12)</b> 58:19 199:22 200:24 201:22,25 202:9 204:25 205:7,17 210:15 225:22 241:22</p> <p><b>nutty (1)</b> 214:22</p> <p><b>NY (1)</b> 289:3</p> <p><b>NYC (13)</b></p>	<p>92:16 93:9 188:20 189:8 257:18 258:12 259:18 264:6 265:15 288:8 288:13,17,19</p> <p><b>NYPD (27)</b> 24:17 63:15 87:5 94:6 97:17 104:6 117:2 131:11 132:3 159:15 164:18 165:17 166:21 167:3 172:5 195:20 216:15 231:4,8,15 234:4 245:3 254:18 274:3,11 275:6 276:9</p> <p><b>NYPD's (1)</b> 248:23</p> <hr/> <p style="text-align: center;"><b>O</b></p> <hr/> <p><b>O (4)</b> 135:2,2,2 288:2</p> <p><b>oath (1)</b> 4:14</p> <p><b>obey (4)</b> 114:8 193:16,19 280:7</p> <p><b>obeyed (1)</b> 183:3</p> <p><b>object (5)</b> 16:11 19:8 143:16 177:7 264:22</p> <p><b>objecting (1)</b> 20:10</p> <p><b>objection (199)</b> 7:25 9:3,16 12:16 14:11 17:12 18:17 20:18 24:9 31:5 32:23 37:24 40:6 42:19 46:23 48:7,19 50:5,19 51:8 52:8 54:7,24 55:24 57:22 58:6,16 61:12 65:4 68:13 69:12 71:13 73:12 76:7,16 78:3 80:7,12,19 81:6 83:4,19 85:6,14 87:13 90:17 92:8 93:20 94:3 97:10 99:25 100:21 101:23 102:5</p>
---	---	--	--	--

103:20 105:2 115:2 117:4 119:15 126:21 127:21 132:8 136:25 137:22 138:5,17 139:3 140:7,24 143:10,21 145:3,10 146:6 148:15 149:9 150:2 151:25 152:11,19 153:3,23 154:17 155:19 158:23 159:8 161:8 161:19 162:7 163:25 165:14,20 165:24 166:16 167:4 168:16 169:10,18,25 170:8 172:9,16 173:25 174:25 175:17 177:12,21 178:2,11 179:19 180:14 186:6,11 196:18,22 197:2 198:17 201:11,17 202:3,18 203:22 204:12 205:4,10,23 207:7 208:12 209:5,25 210:9 211:11 213:9 214:4 216:16,21 217:9,14 218:9 220:13 223:3,17 226:19 227:19 228:19 229:17 230:16,20 231:18 232:4 233:22 234:21 235:11 236:7,21 240:9 242:19,23 243:7,18 244:16 245:17 246:10 247:19 248:8,15,24 249:10 250:5 251:18,25 252:18 253:21 254:11,24 256:4,10 256:16 257:5 259:23 260:24 262:13 263:7,23 264:16,21 266:9,23 267:5,11 268:22 269:13 270:6 271:22 274:6	275:17 277:17 279:10 282:17 <b>objections (3)</b> 4:8 7:7 90:18 <b>objectives (7)</b> 144:14 167:23 168:6 168:8,13 175:16 177:19 <b>obligation (1)</b> 77:18 <b>observation (1)</b> 166:18 <b>observations (3)</b> 79:10,11 242:4 <b>observe (10)</b> 113:6,10 120:18 121:17,24 122:6 126:20 131:7 206:21 278:6 <b>observed (12)</b> 112:25 113:9,15 122:9 130:7 165:10 166:6,12,15 202:11 241:23 242:8 <b>observing (2)</b> 121:5,21 <b>obstructed (2)</b> 201:5 207:5 <b>obstructing (7)</b> 199:24 202:22 203:6 203:8 204:10 241:24 242:6 <b>obstruction (1)</b> 192:22 <b>obtain (9)</b> 232:12 233:7,19 236:6,13,19 246:8 247:17 249:6 <b>obtaining (1)</b> 233:15 <b>obtains (1)</b> 273:3 <b>obviously (1)</b> 30:12 <b>occasion (3)</b> 201:15 214:25 255:6 <b>occasions (5)</b> 69:24 129:22 222:12 225:22 273:17 <b>occupied (1)</b> 150:21	<b>occur (2)</b> 163:18 270:11 <b>occurred (12)</b> 86:25 95:20,21 101:19 121:18 150:7 163:14 203:9 220:22 255:14 267:2 270:21 <b>occurrence (1)</b> 132:14 <b>occurring (15)</b> 104:24 108:24 110:16 112:21 113:11 119:14 123:25 124:10 143:8 153:16 215:10,13 223:24 224:6,7 <b>occurs (1)</b> 101:5 <b>October (3)</b> 159:22 160:2,20 <b>offense (3)</b> 255:3 263:4 266:16 <b>offenses (2)</b> 201:25 219:5 <b>office (13)</b> 3:12 5:23 23:4,7,9,12 28:5,7,21 67:11,15 67:18 252:7 <b>officer (71)</b> 1:10 4:13 25:2 28:25 29:3 31:15 33:5 39:4,7 46:6 77:14 95:15,25 96:7 99:11 116:3,4,6,11 128:15 131:21 138:19 139:11 141:5,12,20 143:5,19,22 144:22 145:22 146:4,16 147:17 150:11 151:20 152:3,16 155:9 157:10,23 158:13,15,19 159:11,15 160:24 161:6,9 162:22 165:9,16 168:12 169:4,14 172:21,25 173:4,7 176:16 190:9 218:24 250:13,16 267:6,17 267:22 268:4,6,7	273:6 <b>officers (88)</b> 35:23 48:9 58:11,21 58:25 62:15,17,20 71:10,15,25 72:2 73:18,22 74:17 77:18 79:11,18,23 79:24 81:22 83:10 84:3 88:9 94:8,21 95:2,8 96:19,23 99:23 100:3,4,5,19 114:23 115:10,18 116:2,8 117:8,14 128:25 129:20 131:15 138:6 147:5 157:14,23 164:19 166:22 172:5,17,22 175:14,15,24 176:6 176:10,10,21,22,23 176:24 177:4,18,24 178:8 182:5 204:19 226:21,25 227:2 255:9 267:8 268:19 268:24 269:3,4,6,9 269:16,19,21,24 270:3,7 271:10 <b>offices (1)</b> 2:9 <b>official (2)</b> 196:2 232:8 <b>officially (1)</b> 193:7 <b>oh (20)</b> 37:18 38:17 68:19 70:21 97:22 101:16 105:17 111:18 113:3 142:9 143:4 170:21 172:3 204:13 213:13 225:13 240:16 261:20,21 281:21 <b>okay (254)</b> 6:5,21,23 7:3,17 8:6 8:17,23 9:11,20,23 10:16,22,24 11:24 12:20 13:18 14:5 15:3,13 16:4,15 17:14,18,23 18:3,7 23:2,6,11 25:13 27:12,24 28:6,13,18 29:2,13,16,24 30:13	31:21 32:2,4,16,20 36:16,25 37:10,16 39:12,23 40:23 41:19 42:4,22,24 43:16,25 44:18 45:5 45:7,17 46:5,13 49:6,14 51:17,21 52:9,22,25 53:13,23 54:9 55:2,8 56:13 58:21 59:19 60:14 60:18 61:13 63:11 64:17,21 65:14,19 66:12,21,25 67:21 68:15 69:11,11,15 70:9 71:3 72:2 76:24 77:4,17 79:21 80:3,9,16,24 81:4 81:11 82:19 83:6 84:23 85:22 87:10 89:18 91:3 93:8,11 96:10 98:3,8,24 100:24 104:23 105:22 106:6 107:18 108:17 111:22 112:4 115:23 117:9,17 120:22,24 126:7 133:15 139:9,10 142:16,17,25 143:4 144:4,21 145:5,19 146:19 147:24 151:12 152:24 153:5,20 154:6,23 155:4,17,17,21 156:4,16 157:3,7,9 158:10,18 169:4,13 169:21 170:24 171:9 172:13 177:3 177:11 179:17 180:10,18 181:2,7 186:21 189:12 190:4 192:6,10 194:17 196:8 200:15 201:7,19 203:7,12,18 204:19 206:15 207:3,19 208:9,14 212:10 215:25 217:18 222:6 224:18 225:9 228:20 233:14 234:3,11 235:5,16
--	---	--	--	---

236:5 237:23 238:17 239:6,9 240:20,24 241:10 245:3 248:3 250:15 257:23,25 258:21 259:5,17,19 260:2,8 260:11 261:4,21 263:10,16 264:10 268:15 272:3 275:23 276:3 277:2 277:7,24 278:5,9,20 279:5,17 281:11 282:18 283:7,19,24 284:24 285:6	<b>opinion (8)</b> 61:13,22,24 124:8 156:4 171:12 266:6 266:11 <b>opportunity (2)</b> 48:5 190:23 <b>opposed (8)</b> 11:22 208:25 218:15 219:10 254:22 255:13,25 271:20 <b>option (2)</b> 219:11,13 <b>op-ed (2)</b> 107:6,11 <b>orange (1)</b> 230:24 <b>order (6)</b> 42:17 50:23 52:7 94:2 169:15 226:22 <b>ordered (1)</b> 176:14 <b>orders (2)</b> 129:20 143:12 <b>organization (6)</b> 103:18 104:19 193:14 228:22 229:7 239:22 <b>organizations (1)</b> 244:13 <b>organizers (1)</b> 182:4 <b>original (1)</b> 171:23 <b>originally (1)</b> 229:22 <b>outcome (1)</b> 286:19 <b>outdoor (2)</b> 62:20,21 <b>outside (2)</b> 71:17 96:23 <b>oversee (1)</b> 62:14 <b>overview (1)</b> 27:7	<b>page (46)</b> 35:20 44:16 93:9,12 142:4,6,6,14,14,16 142:19,19,21,22 143:3 144:5,5,7,15 144:16,19 146:20 146:22,24 150:9,10 157:10,12 159:10 162:23,24,24 163:2 167:8,10 187:24 188:6 258:11 259:7 259:13 261:5 262:15 264:5 287:4 287:10 288:3 <b>pages (2)</b> 142:5,5 <b>paginated (1)</b> 44:12 <b>pane (1)</b> 142:8 <b>paper (2)</b> 24:12 96:9 <b>papers (1)</b> 229:25 <b>parade (40)</b> 72:13,17,23 73:11,15 73:15,17,25 74:6 76:2,12,18 89:20,24 90:7,25 91:2,12,18 91:23 92:6 93:2,14 93:16 171:14 232:12,20,21,25 233:7,11,16,19 236:14,19 246:18 247:17,21 276:23 277:3 <b>parades (1)</b> 172:14 <b>parading (2)</b> 249:17 253:14 <b>Paragallo (4)</b> 1:13 128:18,19 149:13 <b>paragraph (7)</b> 206:3 214:8 215:16 215:20 243:22 244:18 245:19 <b>park (10)</b> 38:12 86:3 98:19 121:10 130:20 166:20 181:23	212:23 259:4 277:20 <b>parked (7)</b> 41:4,13 42:17 51:24 84:9 282:15 283:20 <b>parking (7)</b> 33:6 63:2,4,23 66:10 84:15,18 <b>Parkway (1)</b> 255:8 <b>part (9)</b> 26:5 57:25 58:9 79:25 131:7,8 175:12 207:16 232:24 <b>partaking (1)</b> 193:15 <b>participant (2)</b> 183:16 254:14 <b>participants (35)</b> 50:17 119:3 128:7 129:21 132:25 133:21 134:6 161:25 165:6 179:14 182:18,22 183:2 200:20 207:23 215:10 217:5 220:3 222:11 227:10 242:15 245:16 248:12,20 249:18 253:13,18 254:4,10 255:24 272:7,15,19 273:12 280:5 <b>participate (1)</b> 127:3 <b>participated (5)</b> 38:21 159:14 167:20 177:24 228:16 <b>participating (4)</b> 124:13 169:17 194:19 251:24 <b>particular (23)</b> 10:10 28:14 39:14 40:2 45:24 58:18 71:20 75:13 77:23 85:2 87:25 98:19 117:21 120:13 137:21 138:3,14 149:5 172:8 200:9 224:4 227:3 228:3 <b>particularly (4)</b>	112:24 181:16 249:23 267:18 <b>parties (2)</b> 4:4 286:17 <b>parts (2)</b> 191:5 194:3 <b>partway (1)</b> 283:12 <b>passed (1)</b> 212:8 <b>Patrick (2)</b> 95:25 96:7 <b>Patrick's (1)</b> 90:25 <b>patrol (21)</b> 1:10,14 28:24 31:13 31:18 62:15 63:25 72:25 76:10,17 88:2 88:4 90:4 91:7,22 92:24 116:5 126:22 127:7 131:23 241:18 <b>patrols (1)</b> 63:25 <b>Paul (33)</b> 15:11 105:13 106:3,5 108:2,10,13 111:25 179:9 182:21 189:17,18 190:4 191:22 192:11,12 194:7 195:11,14 227:22 229:3 232:17,19 233:6 238:21 239:2,9 240:14,22 246:3 252:3,5 253:6
<b>old (1)</b> 48:13 <b>once (6)</b> 35:7 38:17 52:12 87:25 115:21 225:11 <b>ones (6)</b> 84:8 130:5 131:5 163:20 229:9 267:24 <b>one-page (1)</b> 188:3 <b>one-star (1)</b> 29:21 <b>one-way (9)</b> 41:2,11 44:19 45:20 45:23 51:22 69:21 88:17 284:22 <b>ongoing (2)</b> 248:22 249:9 <b>open (1)</b> 34:18 <b>opened (1)</b> 42:18 <b>operated (1)</b> 80:5 <b>operates (1)</b> 86:16 <b>operating (5)</b> 44:20 47:7 234:16 262:24 263:22 <b>operation (6)</b> 254:19 264:12,14 265:25 266:16 267:15 <b>operations (2)</b> 90:12 129:2	<b>P</b> <b>p (5)</b> 3:2,2 44:7,15,16 <b>pack (3)</b> 157:25 164:24 168:11			<b>Pause (1)</b> 94:14 <b>pay (3)</b> 86:9,11,12 <b>PBMS (5)</b> 116:6 127:6,10,19 128:15 <b>PDA (1)</b> 25:9 <b>peaceful (1)</b> 75:12 <b>pedestrian (2)</b> 129:13 154:25 <b>pedestrians (6)</b> 59:17 89:2 206:11

207:5,13 208:4	<b>performed (1)</b>	148:4 159:23	245:12 246:14	96:2,7
<b>pegs (2)</b>	89:10	173:23 202:11	250:2,10 279:19,19	<b>point (19)</b>
74:9,9	<b>performing (1)</b>	204:13 225:3,19	281:16,22	42:24 92:10 109:19
<b>penal (4)</b>	81:22	241:23 242:8	<b>places (1)</b>	130:14 147:17
193:17,20 241:25	<b>period (9)</b>	273:15,16	228:25	158:14 159:10
242:8	10:17 15:24 22:9	<b>personnel (9)</b>	<b>plainclothes (7)</b>	161:6 164:5 173:12
<b>people (105)</b>	26:10 59:22 78:19	71:6 72:9 87:5 104:3	175:14,23 176:5,9,13	187:6 212:25
10:13 35:16,18 38:22	110:17 119:19	112:20 165:17	176:18,20	216:10 224:12
49:3 51:10,14 58:19	132:18	174:3,12 275:13	<b>plaintiff (5)</b>	226:9 237:4 248:23
58:20 59:16 61:17	<b>periods (1)</b>	<b>persons (1)</b>	31:23 32:8,11,12,15	257:11 280:9
62:4,5 66:13,19	279:3	154:18	<b>plaintiffs (25)</b>	<b>police (141)</b>
67:7 74:14,18 76:11	<b>permit (46)</b>	<b>Pg (1)</b>	1:6 3:5 5:19,21 9:5	1:8,9,11,13,14,16
82:15 88:3,23 90:11	90:8,21 91:2,9,12,18	289:6	10:25 21:22 22:5,13	11:22 15:22 20:6
90:13 98:4,17 100:8	91:23 93:2,19	<b>phone (5)</b>	43:10 92:14 187:9	21:10,15,20 23:17
104:20 105:10	178:16 232:12,21	13:21 78:13 195:10	188:4,18 237:7	24:18,19 25:2,16
110:2,12 113:13,24	232:21 233:2,7,13	195:14 227:22	257:17 265:15	26:4,13,21,25 27:5
113:25 114:15,20	233:16,19 234:8,19	<b>phones (2)</b>	282:4 288:4,7,9,12	27:8 28:11 29:9,18
122:24 123:2,12,15	235:17,21 236:3,6	25:12,14	288:14,17,19	33:5 35:10,13,14,23
124:13 128:8 129:9	236:14,19 245:21	<b>phoney (1)</b>	<b>plan (2)</b>	39:7 46:6 50:10
129:16 148:23	245:25 246:8,18,21	35:9	74:2 204:2	61:23 62:16 63:2
149:3 152:4,5,20,23	246:25 247:7,18,21	<b>physical (1)</b>	<b>planned (1)</b>	66:23,25 67:8,9,13
153:8,12,16,21	247:22,24 249:3,5,6	217:2	227:9	67:25 68:8 69:25
154:7 155:6,13	249:11,17 253:14	<b>Physically (1)</b>	<b>play (2)</b>	73:10 77:18 79:18
156:2,9 171:15	273:3 276:24 280:6	216:24	9:13 89:19	80:4 84:3 95:15
176:7 181:20 182:8	<b>permits (12)</b>	<b>pick (2)</b>	<b>playing (5)</b>	96:13 97:3,9 98:20
201:3 203:16	59:22 72:13,18 89:21	217:23 248:2	282:6,10 283:8 284:4	100:19 108:13
205:18 206:7,24	89:25 90:7 93:17	<b>piece (2)</b>	284:14	113:10,12 114:5,8
207:3 208:7 209:15	235:4,6 246:15	107:6,12	<b>Plaza (1)</b>	114:10 117:8,13
210:14 212:10	248:4 277:3	<b>pillar (1)</b>	222:7	119:12,21 125:5,14
214:14,22 215:5	<b>permitted (7)</b>	212:18	<b>please (41)</b>	125:17 129:20
216:23 218:10,15	41:5,14 42:16 44:18	<b>Pine (1)</b>	5:16 27:6 33:23 41:8	130:4,21 132:3,6,17
220:18 222:20	49:7 60:12,13	85:15	44:6 48:15 55:8,17	132:22,25 133:6,14
223:11 224:19	<b>permit's (1)</b>	<b>pipes (2)</b>	57:15 68:25 92:20	133:17,19 134:4
226:13 228:10,12	235:9	34:16,24	93:8 102:15 120:11	139:16,25 140:4
228:16 230:24	<b>perpendicularly (2)</b>	<b>pitch (1)</b>	142:3 144:4,12	141:5 145:8,14
233:12 234:2,6,25	150:15 151:19	67:14	146:10,19 162:22	153:17 158:22
235:2,25 239:13,17	<b>persevere (1)</b>	<b>place (46)</b>	167:7 176:4 184:7	159:5 161:17
239:19 242:11	274:24	11:9 14:16 22:8 36:11	189:25 191:12	172:17,21 175:13
245:5 248:10 251:2	<b>person (15)</b>	36:17 91:24 92:6	192:5 197:15	176:10,21,22,22,23
252:22 253:4 255:7	13:22,23 15:25 18:8	103:4 110:8 112:5	221:15 243:11	179:14 182:2,5,7,7
271:15	23:21 44:20 47:7	117:12,25 118:3,23	244:23,24,24,24	182:23 193:5,8
<b>peoples (1)</b>	58:18 110:7 114:13	126:2 131:17	261:5 264:4 265:11	196:6,8 203:4,20
67:12	126:5 156:18	132:18 140:22	265:13 274:7,18,20	204:6 208:9 215:17
<b>percent (2)</b>	228:21 245:5	147:14 153:18	283:3	215:22 216:3 222:7
65:20 82:16	265:24	163:24 164:20	<b>Plimpton (3)</b>	225:21,23 226:11
<b>percentage (1)</b>	<b>personal (9)</b>	167:19 184:10	2:10 3:4 5:8	226:20 229:22
65:21	25:17 61:22,24 81:21	190:11 199:12,15	<b>plumber (1)</b>	234:17 245:22
<b>perfectly (1)</b>	97:11 184:24 204:8	203:25 205:18	34:23	248:13,20 249:8
210:6	242:3 243:20	206:25 211:20,24	<b>PO (1)</b>	250:13,16 267:6,22
<b>perform (1)</b>	<b>personally (14)</b>	214:13,13 221:24	261:9	268:4 271:10
176:25	11:4 48:8 114:20	224:17 226:2 244:3	<b>Pogan (2)</b>	272:12,17 273:19

276:11 278:13,16 280:4 <b>policed (2)</b> 146:3,15 <b>policing (12)</b> 73:15 75:25 99:24 173:5 183:7 185:10 186:5,9,18 203:16 271:24 272:2 <b>policy (15)</b> 87:11 195:25 216:9 216:14,19 217:8,13 217:18 219:15,17 219:18 231:5,7,16 253:17 <b>poor (2)</b> 268:17 282:20 <b>portion (8)</b> 39:14 40:2,16 45:8 178:17 188:12 282:13 283:13 <b>portions (2)</b> 281:4,7 <b>position (7)</b> 136:6,13 157:22 159:16 164:22 186:3 248:5 <b>positioned (2)</b> 130:18 273:21 <b>positions (5)</b> 159:24 160:12 161:2 169:2,8 <b>possible (17)</b> 65:9 104:24 119:21 123:23 124:8 149:17,19 152:16 168:9,23 169:6 184:20,22,25 185:5 217:7,10 <b>possibly (3)</b> 16:4 252:13,23 <b>post (4)</b> 26:24 84:10 107:8 212:18 <b>posted (2)</b> 52:21 53:3 <b>potential (4)</b> 72:23 93:14 128:6 248:9 <b>potholes (1)</b> 88:19	<b>practicable (2)</b> 44:23 47:10 <b>practice (4)</b> 156:13 162:4,18,19 <b>precinct (6)</b> 27:3 88:9 141:14,16 143:7 268:9 <b>precincts (4)</b> 71:24 269:21 270:7 276:10 <b>precise (1)</b> 211:22 <b>preparation (3)</b> 14:6 15:14 199:3 <b>preparations (1)</b> 226:16 <b>prepare (5)</b> 13:9 17:10 20:22,24 106:6 <b>prepared (4)</b> 20:16 21:3 132:12 150:5 <b>preparing (6)</b> 14:3 18:16,22 19:4 222:25 223:6 <b>preprinted (1)</b> 60:4 <b>presence (3)</b> 73:11 125:5 132:3 <b>present (14)</b> 3:19 11:5 67:7 132:23 135:4 136:18,19 163:21 165:17 174:4,9,18 175:4 223:23 <b>presented (1)</b> 260:20 <b>president (2)</b> 15:10 105:13 <b>pretending (1)</b> 215:3 <b>pretty (6)</b> 73:23 212:24 213:3 230:5 267:23 274:2 <b>prevent (2)</b> 169:22 203:20 <b>prevented (7)</b> 173:13 203:24 206:8 209:12,13 212:11 212:16 <b>previous (3)</b>	43:3 168:14 261:11 <b>previously (4)</b> 14:10 89:18 216:15 238:5 <b>primarily (3)</b> 62:18 64:8 168:18 <b>primary (1)</b> 63:15 <b>prior (58)</b> 22:9,13 26:3 27:19 31:13 56:13 89:25 101:13 103:14 109:6 119:3 121:17 121:18 123:24 124:9 127:19 131:17 133:16 145:8 146:3,15 147:3,7,14 150:7 151:23 159:13 160:23 163:15 166:6,12 167:14,14 167:19,19 168:7 174:10,19 175:5 181:14 182:23 186:10,13,19,22 195:11,21 196:20 198:12 200:18 208:11 221:9,17 240:5 246:14 252:11 270:24 277:24 <b>private (3)</b> 11:24 62:2,3 <b>privilege (9)</b> 16:14 18:19 19:9 137:5 177:10 178:3 178:12 179:3,5 <b>privileged (2)</b> 16:18 136:7 <b>probable (1)</b> 234:2 <b>probably (31)</b> 6:22 31:25 32:3,18,19 38:5 54:25 56:4 88:8 96:9 106:11 110:25 118:10 123:8,20 148:20,21 149:2,2,22 154:12 171:5 179:25 185:24 202:4 213:17,22 228:7	230:4,5 252:12 <b>problem (8)</b> 78:15 83:2 153:10,22 154:10,16 155:15 156:8 <b>problematic (8)</b> 100:14,23 111:21 115:20,21 128:2 145:18 179:15 <b>problems (9)</b> 140:15 154:3,8,20,21 154:22 155:5 156:5 227:4 <b>procedure (1)</b> 139:20 <b>procedures (2)</b> 94:6 169:14 <b>proceed (15)</b> 40:15 41:5,15,21 42:6 45:20,22 46:15,21 66:20 102:3 156:19 178:9 204:6 278:6 <b>proceeded (7)</b> 9:21 130:23 163:9 166:14 182:24 183:9 248:14 <b>proceeding (14)</b> 47:18 48:17 54:21 57:20 113:18 163:5 166:23 173:13 203:21 207:24 230:25 248:6 277:15,22 <b>proceedings (6)</b> 5:1 6:1 12:7 33:12 34:4 36:22 <b>process (13)</b> 6:24 66:24 68:4 69:16 70:2,14 87:19,24 89:4,24 93:18 139:15 230:12 <b>produce (1)</b> 21:21 <b>produced (5)</b> 23:23 24:2 188:4 189:9 281:5 <b>product (2)</b> 19:10 20:12 <b>Professional (1)</b> 2:13 <b>program (11)</b>	85:13,15,16,17 86:2,6 86:16,22,22 87:11 87:16 <b>prohibited (1)</b> 47:12 <b>prohibits (3)</b> 47:17 48:17 264:19 <b>project (1)</b> 280:15 <b>promoted (2)</b> 29:3,13 <b>promotion (1)</b> 28:4 <b>proper (8)</b> 27:25 80:4 94:6,10,22 95:4 122:20 269:17 <b>properly (5)</b> 61:10 260:22 262:12 266:7 267:4 <b>proposed (1)</b> 92:6 <b>propose (2)</b> 132:7,9 <b>protected (1)</b> 20:11 <b>protest (7)</b> 12:22 177:6 242:12 242:17 244:2,8,9 <b>protested (1)</b> 244:14 <b>protesting (2)</b> 243:3,14 <b>prove (1)</b> 35:4 <b>provide (6)</b> 51:6 72:22 182:4,13 264:23 272:16 <b>provided (9)</b> 44:24 47:12 110:7 114:16 148:10,12 159:3 161:15 266:4 <b>provides (3)</b> 50:4 60:9 269:24 <b>provision (7)</b> 42:5 47:17 50:4 60:8 60:15 67:24 266:3 <b>provisions (2)</b> 50:11,15 <b>public (17)</b> 2:14 6:8 12:22 62:21 75:8 82:6,20 132:9
--	--	---	---	---



14:14,25	112:17 134:11	166:11 269:10	<b>remember (80)</b>	2:12,13 5:13 43:6,8
<b>receive (11)</b>	135:6 136:10,16,17	<b>regardless (1)</b>	8:5,7 11:11 12:24	92:11 187:6 188:15
25:14 82:5 94:9	136:21 188:3 189:6	150:22	31:20 34:9,10 36:4	237:5 257:14
148:18 172:22	191:3,21 197:10,13	<b>regards (9)</b>	36:6,8,10,11,13,25	265:11,13
250:9 269:17,20	258:3,6 280:18,20	22:15,24 25:16 90:7	93:21 99:3,8,9,13	<b>Reporting (2)</b>
270:4,8 277:21	280:22,23,25 285:8	121:15 122:11,12	100:2,5 101:9 110:5	5:12,14
<b>received (13)</b>	286:14	221:5 241:8	111:24,24 112:9	<b>reports (8)</b>
24:22,25 25:7 82:9,20	<b>records (4)</b>	<b>register (2)</b>	114:14 115:3,6	25:22 101:2 105:19
94:22 95:3 96:10,12	23:12 274:15 275:4	86:7,8	117:10 118:6	105:20,24 106:7
100:25 132:11	275:12	<b>Registered (1)</b>	120:21 129:7	132:11,14
172:24 251:7	<b>recurring (1)</b>	2:13	148:24 149:3	<b>represent (13)</b>
<b>receives (3)</b>	85:3	<b>regular (2)</b>	161:11 182:12	10:22 45:15 61:2
60:19 61:6 82:13	<b>red (16)</b>	37:23 176:10	183:5,15,16,23,24	67:13 121:17 139:7
<b>receiving (3)</b>	66:16 78:17 113:24	<b>regularly (2)</b>	184:4,5,12,19	141:12,19 152:8
59:25 222:15 255:25	138:24,25 139:12	104:24 108:24	185:12,15,20,25,25	156:16,17 238:15
<b>recess (6)</b>	156:3 183:3 209:21	<b>regulates (1)</b>	186:7 191:16,18	263:10
16:24 77:7 112:15	218:20 219:14,23	62:23	194:21,21 195:6,9	<b>representative (1)</b>
134:12 197:11	254:20 255:15,21	<b>regulations (5)</b>	195:13,15 196:7	135:20
258:4	272:20	53:11 68:7 139:19	206:2 207:25 218:4	<b>represented (3)</b>
<b>recipients (2)</b>	<b>reduce (4)</b>	183:3 245:23	225:11 227:13	7:11 10:2 12:10
15:6,9	87:21,22,23 88:22	<b>rehashing (1)</b>	228:7 230:21	<b>representing (3)</b>
<b>reckless (7)</b>	<b>reduced (1)</b>	48:13	231:24 232:7,23	19:12,15 135:16
264:12,13,19 265:5	86:20	<b>reject (1)</b>	234:2 239:12,12	<b>Republican (8)</b>
265:25 266:16	<b>refer (7)</b>	91:23	241:16,19 271:2,16	10:14 13:5 103:15
267:15	84:23 158:25 200:23	<b>rejecting (1)</b>	278:7,8	126:3,4,9,13 222:25
<b>recognize (5)</b>	201:14 202:21	89:20	<b>remembers (1)</b>	<b>request (1)</b>
45:9 92:25 189:12	205:6 282:3	<b>rejoin (1)</b>	161:10	79:7
237:15,24	<b>Referral (2)</b>	157:25	<b>remembrance (2)</b>	<b>requested (1)</b>
<b>recognized (1)</b>	92:15 288:7	<b>related (5)</b>	82:11 93:6	72:23
130:21	<b>referred (5)</b>	36:22 63:2 87:22	<b>reminded (1)</b>	<b>requests (3)</b>
<b>recollection (12)</b>	11:8 21:6 64:21	251:15 286:17	35:17	21:22 22:5,13
45:21 106:13 118:11	132:13 238:5	<b>relating (1)</b>	<b>remount (1)</b>	<b>require (1)</b>
119:25 123:20,22	<b>referring (17)</b>	25:22	164:16	70:19
124:24 140:17	84:24 86:15 95:12	<b>relationship (2)</b>	<b>removal (1)</b>	<b>required (19)</b>
160:9 184:24	147:24 178:24	229:10,23	231:16	21:20 39:13,25 40:15
223:20 279:16	200:15,21,25 201:8	<b>relative (3)</b>	<b>removed (1)</b>	41:21 45:20,22
<b>recommend (3)</b>	202:24 206:15	55:10,19 154:13	231:9	46:15,21,25 47:2,4
68:4 88:16 120:4	214:10 224:21	<b>relatively (3)</b>	<b>repeat (9)</b>	77:13 78:4 232:21
<b>recommendation (2)</b>	235:12 238:3 242:2	98:16 179:16 181:25	18:25 133:23,24	233:2 235:10
70:6,7	283:4	<b>relevant (1)</b>	146:7 186:14	260:13 276:24
<b>recommendations (2)</b>	<b>refers (5)</b>	56:22	221:13 236:15	<b>requirement (3)</b>
70:2 139:18	168:23 169:4 242:5	<b>relief (2)</b>	274:7,18	53:8 236:6,10
<b>recommending (2)</b>	249:25 265:5	158:4,9	<b>rephrase (9)</b>	<b>requirements (1)</b>
88:17,17	<b>regard (8)</b>	<b>relieve (3)</b>	40:12 56:2,9 69:3	233:15
<b>recommends (1)</b>	78:5 113:11 143:19	157:21 159:23 160:11	96:11 99:20 185:8	<b>requires (1)</b>
68:2	160:8 177:13	<b>relieved (1)</b>	204:23 229:12	42:5
<b>reconsider (2)</b>	239:11 253:17	159:15	<b>report (2)</b>	<b>research (1)</b>
135:11 136:6	255:14	<b>relieving (3)</b>	127:6 140:13	67:7
<b>record (30)</b>	<b>regarding (9)</b>	161:2 168:25 169:7	<b>Reported (1)</b>	<b>reserved (1)</b>
16:23 17:2 33:19,22	13:4 39:10 45:19 69:9	<b>remain (1)</b>	1:24	4:9
44:11 77:6,9 112:14	104:2 128:23 147:3	164:13	<b>reporter (12)</b>	<b>resources (1)</b>

85:4	<b>revving (1)</b>	<b>riders (16)</b>	181:22 190:14	240:18 242:4,9,13
<b>respect (5)</b>	215:2	133:14 147:10 156:19	192:18 194:12	242:18 243:3,15
48:22 51:13 124:5	<b>ridden (1)</b>	171:24 172:2	195:2 199:20	244:3,15 247:8
189:22 192:2	39:6	192:19 193:3	201:21 202:9	253:9 273:17
<b>respectfully (1)</b>	<b>ride (153)</b>	199:21 200:24	214:12 235:2,25	281:19,20
215:21	11:5 37:23 38:6,14,16	204:24 205:6 214:9	236:2 260:10 262:4	<b>road (8)</b>
<b>respective (1)</b>	38:19 39:14 40:2	241:21 243:24	<b>right (65)</b>	47:15 51:25 59:4,11
4:4	44:22 47:10 49:7	244:20 245:4	7:15 17:3 18:9,13	121:2 209:22 210:7
<b>respond (2)</b>	98:23 100:16,18	<b>rides (104)</b>	24:21 25:25 34:25	214:17
157:15 227:2	102:11,19 103:11	38:22 102:3,23 103:4	39:21 40:13,19	<b>roads (2)</b>
<b>response (19)</b>	104:11 113:2,7,14	106:20 107:9 109:9	41:18,19,22 43:7	59:15 74:25
21:21 79:8,13 83:17	113:18 115:18	109:10,20 110:3,12	44:4 59:11 60:6	<b>roadway (22)</b>
117:3,19,22 136:23	119:13,14,22	110:15 111:9,15	62:7 65:7 74:15	40:16 41:6,15 42:7
166:21 167:3	121:12 123:13,23	112:22 113:21	77:2 89:21 91:6,25	44:20,24 45:20,23
174:13 194:4 274:5	124:9 125:2,6,10,14	114:20 115:11	105:20 122:4	46:16,22 47:8,11,13
274:13 275:21,24	125:18 126:9 129:3	116:7,17,23 118:12	137:10 141:2	47:18 48:18 49:8
276:8,9,17	130:8,13 131:7,13	118:13,22 119:2	142:10 169:2 170:9	50:22 51:23 52:7
<b>responses (1)</b>	131:22 132:25	126:12 127:11,19	170:13,14 177:15	114:2 163:11 231:2
282:4	133:16 143:8,13	132:4,5,19 145:7	178:20 181:6 184:3	<b>roadways (3)</b>
<b>responsibilities (4)</b>	144:24,24,25 145:6	146:2,14 147:3,7,13	187:5 193:25 197:8	44:19 114:3 230:14
62:9,13,13 222:24	145:9,16 150:21	148:7,14,19 149:18	199:6 201:12	<b>roar (1)</b>
<b>responsibility (2)</b>	154:7 157:14	149:25 150:6	203:13 204:14	164:12
63:16 103:18	159:22,25 160:10	151:22,24 153:15	206:13 209:11	<b>robbery (1)</b>
<b>responsible (1)</b>	160:17,20,21,22	153:20 155:18	210:4,16 217:3	276:13
69:18	164:3,15 165:6	158:21 159:4 161:3	218:6 222:23	<b>rode (2)</b>
<b>restart (1)</b>	166:5,9,12,22	161:16,18 162:17	223:24 227:22	38:4 98:17
284:10	167:16,24 169:9,16	163:5,9,15 165:12	234:9 237:3 239:4	<b>role (11)</b>
<b>result (3)</b>	169:17,24 170:3,17	168:7,15 174:10,19	240:12 255:6	9:13 58:9,15 77:12,17
11:21 38:25 227:21	171:24 173:5,14	175:5 177:20	257:11,16 258:8,15	89:19 90:8 122:8
<b>resumed (1)</b>	174:5,15,24 177:25	179:10,13 181:3,11	260:25 281:3	128:23 230:11
137:6	178:9 181:9 182:3	183:8 185:10	284:15	239:10
<b>retrospect (1)</b>	182:17,21,23 183:9	190:11 192:16	<b>rights (2)</b>	<b>roller (1)</b>
186:25	186:10,12,19 200:6	193:16 194:13,20	75:16 272:13	265:25
<b>review (25)</b>	200:16 201:3,25	195:8 199:11,15	<b>right-hand (4)</b>	<b>rookies (1)</b>
14:2,5 18:21 19:3,7	202:20 203:10,11	200:8,18 208:11	44:23 52:3 142:7	269:23
43:18,19 44:8 45:2	204:11 211:17	216:14 217:4	284:21	<b>rooky (1)</b>
45:6 47:6 92:22	214:3 215:9,10,13	220:23 221:11,19	<b>ring (1)</b>	34:12
142:15,24 143:15	220:15 223:8,13,24	221:24 234:5,5,6,9	222:18	<b>room (8)</b>
144:17,20 146:23	224:6 228:17	234:14,19 235:18	<b>riots (1)</b>	23:5,9,13 34:16,17
187:13 190:3 200:5	231:22 241:12,15	246:14 251:24	234:11	135:8 136:19
237:22 258:23	242:16 243:6,17	270:11,21,25	<b>RNC (45)</b>	183:23
268:8,16	245:21 246:2,9,15	271:11 273:3	15:4 121:15,19 122:6	<b>route (14)</b>
<b>reviewed (6)</b>	246:18 247:8 248:6	279:18,22,24	126:22 127:20	74:6 102:4,12,20
14:8 21:6 45:8,11	248:12,13,14,19,21	<b>ride-hand (1)</b>	129:5,5,17 215:7	182:5 211:17
103:25 196:20	249:9,18,25 250:9	47:11	216:23 220:16,23	247:16,25 248:2,7
<b>reviewing (1)</b>	253:20 254:4 267:2	<b>Ridge (1)</b>	221:9,12,18,20	272:16 278:10
22:19	271:4,20,21 272:16	35:8	223:6 224:2,3	280:6,7
<b>revised (1)</b>	272:17,17,20,24	<b>riding (24)</b>	226:18 230:15	<b>RPR (2)</b>
93:4	273:3 277:12,22	38:25 54:10 113:13	231:13,21 232:16	1:24 286:25
<b>revisit (1)</b>	278:6,11 279:9	152:4,21,25 153:8	234:3 236:14,20	<b>rules (16)</b>
45:18	280:2	154:19 166:17,19	238:11,12,14	39:15,18 40:18 45:16

59:3 65:23 66:22 67:3 68:7 72:12 77:12 84:18 135:19 245:23 276:22 277:2	263:18 <b>says (22)</b> 45:24 46:3 47:7,14 49:10 51:3 144:13 145:4 151:2 158:4,8 161:4 165:15 168:22 208:22 215:21 241:20 260:6 262:25 263:9 265:24 276:17	138:1 139:1 140:1 141:1 142:1 143:1 144:1 145:1 146:1 147:1 148:1 149:1 150:1 151:1 152:1 153:1 154:1 155:1 156:1 157:1 158:1 159:1 160:1 161:1 162:1 163:1 164:1 165:1 166:1 167:1 168:1 169:1 170:1 171:1 172:1 173:1 174:1 175:1 176:1 176:16 177:1 178:1 179:1 180:1 181:1 182:1 183:1 184:1 185:1 186:1 187:1,9 187:10,24 188:1,9 188:18,19 189:1,13 190:1,15 191:1 192:1 193:1 194:1 195:1 196:1 197:1 198:1 199:1 200:1 201:1 202:1 203:1 204:1 205:1 206:1 207:1 208:1 209:1 210:1 211:1 212:1 213:1 214:1 215:1 216:1 217:1 218:1 219:1 220:1 221:1 222:1 223:1 224:1 225:1 226:1 227:1 228:1 229:1 230:1 231:1 232:1 233:1 234:1 235:1 236:1 237:1,7,8,14 238:1 239:1 240:1 241:1 242:1 243:1 244:1 245:1 246:1 247:1 248:1 249:1 250:1 251:1 252:1 253:1 254:1 255:1 256:1 257:1,17 258:1 259:1 260:1 261:1 262:1 263:1 264:1 265:1,15 266:1 267:1 268:1 269:1 270:1 271:1 272:1 273:1 274:1 275:1 276:1 277:1 278:1 279:1 280:1 281:1	282:1 283:1 284:1 285:12 286:11 287:6 288:10,12,15 289:5,19 <b>Scagnelli-1 (1)</b> 43:9 <b>Scagnelli-2 (1)</b> 92:12 <b>Scagnelli-3 (1)</b> 187:8 <b>Scagnelli-4 (3)</b> 188:16 189:3,10 <b>Scagnelli-5 (1)</b> 237:6 <b>Scagnelli-6 (4)</b> 257:15 258:10,14,17 <b>Scagnelli-7 (1)</b> 265:13 <b>scale (5)</b> 192:19 199:21 200:23 201:8,22 <b>scary (1)</b> 215:6 <b>scenario (4)</b> 54:9 57:17 60:18 61:5 <b>scene (2)</b> 138:19 276:15 <b>scheduled (5)</b> 221:11,19 241:12,15 250:2 <b>scooter (5)</b> 39:6 141:14,16 143:7 147:5 <b>scope (1)</b> 180:22 <b>scream (1)</b> 75:14 <b>screaming (1)</b> 215:2 <b>screen (1)</b> 280:13 <b>sealing (1)</b> 4:5 <b>search (3)</b> 21:20 22:23 23:3 <b>searched (2)</b> 23:4,5 <b>second (9)</b> 105:19 199:18 206:3 214:7 225:12 232:23 238:2	241:20 243:22 <b>seconds (1)</b> 282:9 <b>section (12)</b> 43:11 44:7 49:18 97:16 141:22 264:18 265:5,9,16 265:22 288:5,20 <b>secure (1)</b> 179:5 <b>secured (1)</b> 231:9 <b>see (30)</b> 18:6 29:6 54:25 57:23 57:25 68:19 84:9,17 84:19 122:2,21 130:24 152:10 170:10 204:19 225:13,16,16 227:20 228:6 232:22 259:8 261:25 262:17 280:13 281:8 282:25 283:25 284:9,23 <b>seeing (2)</b> 57:25 283:17 <b>seen (10)</b> 106:15,18,19 162:12 162:14 272:5 282:13,14 283:10 283:19 <b>self-explanatory (4)</b> 189:21,24 191:25 192:4 <b>send (12)</b> 25:14 189:18 191:22 196:2 221:3 227:14 228:18 238:18 240:8 251:9,12,21 <b>sending (5)</b> 195:11,21,22 196:4 252:11 <b>sends (1)</b> 271:10 <b>sense (4)</b> 151:11 156:21 157:5 275:22 <b>sent (24)</b> 24:14,22,25 25:6,13 138:6 139:22
<b>S</b>				
<b>S (7)</b> 3:2 6:6 135:2,2,2 137:6 288:2				
<b>SA (2)</b> 260:6,7				
<b>safe (1)</b> 42:16				
<b>safety (4)</b> 168:9,19 169:16,22				
<b>sanctioned (1)</b> 245:22				
<b>Sanitation (1)</b> 88:6				
<b>sat (2)</b> 129:3 210:14				
<b>satisfied (1)</b> 81:15				
<b>saw (28)</b> 14:24 95:11,14,22 96:8 113:3 118:18 121:9 139:12 168:24 171:10,10 171:11,24,25 203:13 204:14 212:22 214:25 215:2 225:2 234:25 242:10 244:9 273:22,23,25 277:23	1:20 2:9 5:4 6:3,4,13 7:1,12 8:1 9:1 10:1 11:1 12:1 13:1,8 14:1 15:1 16:1 17:1 17:5,9 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 37:1,21 38:1 39:1 40:1 41:1 42:1 43:1,10 44:1 45:1 46:1 47:1 48:1 49:1 50:1 51:1 52:1 53:1 54:1 55:1 56:1 57:1 58:1,9 59:1 60:1 61:1 62:1 63:1 64:1 65:1 66:1 67:1 68:1 69:1 70:1 71:1 72:1 73:1 74:1 75:1 76:1 77:1 78:1 79:1 80:1 81:1 82:1 83:1 84:1 85:1 86:1 87:1 88:1 89:1 90:1 91:1 92:1 92:14,21 93:1,24 94:1 95:1 96:1 97:1 98:1 99:1 100:1 101:1 102:1 103:1 104:1 105:1 106:1 107:1 108:1 109:1 110:1 111:1 112:1 113:1 114:1 115:1 116:1 117:1 118:1 119:1 120:1 121:1 122:1 123:1 124:1 125:1 126:1 127:1 128:1 129:1 130:1 131:1 132:1 133:1 134:1 135:1,8,17 136:1 137:1,2,10			
<b>saying (27)</b> 35:10 49:2 57:24,24 68:19,20 74:9 94:19 124:15 133:8 136:9 152:7,9,16 154:4 161:12,13 172:3 175:9 196:12,13 201:23 205:11 216:3 224:22 234:9				

189:21 191:25 196:14,16,21 219:10 240:3,5,15 241:4,6,8 244:13 249:16 250:7,9 251:15	<b>short (1)</b> 78:19 <b>show (9)</b> 42:25 82:18 100:18 280:10 281:3,6,9 282:15 284:20 <b>showed (1)</b> 35:24 <b>SHURA (1)</b> 1:5 <b>shut (2)</b> 74:23,25 <b>side (6)</b> 39:20,21 52:6 150:10 157:24 165:2 <b>sides (2)</b> 44:19 51:25 <b>sign (2)</b> 78:18 88:19 <b>signal (2)</b> 88:18 276:16 <b>signature (2)</b> 187:23 238:7 <b>signed (2)</b> 4:13,15 <b>significant (6)</b> 36:4 126:16 153:7 154:3,8 283:18 <b>significantly (8)</b> 109:25 193:2 206:4 208:25 210:12,21 210:23 243:23 <b>signs (1)</b> 114:3 <b>silly (2)</b> 219:18 267:23 <b>similar (9)</b> 60:15 93:2,17 167:18 221:3 227:15 241:4 251:9 267:8 <b>similarly (1)</b> 61:8 <b>simple (1)</b> 88:18 <b>simply (4)</b> 189:4 191:3 194:2 202:11 <b>single (4)</b> 37:9 84:17 211:14 212:8 <b>singular (2)</b>	30:5 156:7 <b>sir (5)</b> 33:3 39:5 175:6,8,11 <b>sirens (1)</b> 225:24 <b>sit (6)</b> 39:23 49:14 74:8 213:24 233:14 256:13 <b>sites (1)</b> 63:6 <b>sitting (5)</b> 94:18 123:9 124:24 210:21 214:14 <b>situation (9)</b> 53:23 55:4 56:16 83:13 137:20 143:14 151:7 255:5 255:13 <b>situations (3)</b> 209:19 210:5 255:2 <b>six (4)</b> 26:18 38:5 110:20 225:14 <b>Sixth (1)</b> 74:23 <b>size (11)</b> 118:23 147:7 148:13 148:19 149:24 150:6 153:6 164:15 170:17 172:6,23 <b>skateboard (2)</b> 266:2 267:16 <b>skateboarding (2)</b> 264:20 265:6 <b>skates (2)</b> 265:25 266:2 <b>sketch (1)</b> 65:12 <b>skill (1)</b> 172:14 <b>skipped (1)</b> 191:7 <b>skipping (1)</b> 27:10 <b>slow (12)</b> 53:6,19 55:6,6 56:6,6 56:18,19,21,22 189:22 192:3 <b>slower (1)</b> 54:12	<b>small (9)</b> 37:9 98:17 100:17 118:16 179:16,16 181:25 230:5 282:13 <b>smaller (7)</b> 65:21 118:14 132:5 132:19 155:18 179:13 234:14 <b>smiling (1)</b> 50:24 <b>Smolka (3)</b> 118:8 252:14,17 <b>smooth (1)</b> 64:13 <b>sold (1)</b> 26:8 <b>somebody (7)</b> 72:25 99:13 211:6 212:2 218:23,25 226:5 <b>Somewhat (1)</b> 39:11 <b>son (2)</b> 1:5 34:25 <b>sorry (37)</b> 5:10 28:19 55:15 66:11 95:12 112:10 119:18 121:13 133:4,24 139:4 142:10 146:21 151:23 163:2 168:3 170:16 172:19 175:9,11,21 178:24 180:18 181:8,15 186:15 188:11 191:7 198:21 199:9 211:10,21 212:2 236:15 251:10 259:15 261:18 <b>sort (13)</b> 11:12 13:3 73:10 74:16 76:2 89:9 111:22 119:18 138:15 140:10 159:16 202:6 280:12 <b>sorts (5)</b> 7:24 36:12 68:7 133:20 134:5 <b>sought (1)</b>	229:21 <b>sound (1)</b> 201:14 <b>sounds (6)</b> 55:9,18 170:9,13 201:8,23 <b>source (1)</b> 147:2 <b>sources (1)</b> 182:10 <b>south (18)</b> 1:10,14 28:25 29:4 31:14,18 90:5 91:8 91:22 92:25 100:4 116:5 126:23 127:24 128:11 131:24 164:7 241:19 <b>southbound (4)</b> 121:9 164:24 166:17 166:19 <b>SOUTHERN (1)</b> 1:2 <b>space (1)</b> 53:21 <b>spaces (1)</b> 62:21 <b>span (1)</b> 28:10 <b>speak (10)</b> 6:17 13:21 15:17,21 16:9 64:6 76:11 129:20 252:9 279:6 <b>speaking (3)</b> 22:13 59:10 149:15 <b>specialist (2)</b> 3:21 5:13 <b>specific (32)</b> 32:4,7,10,21 42:5 50:4 59:6 63:9 73:6 77:15 78:19 79:20 80:14,25 81:4 82:11 103:17 106:12 116:19 120:21,23 141:22 144:14 159:3 177:14 181:19 223:5,19 276:4,10,10 277:18 <b>specifically (44)</b> 38:9 50:16 58:22 65:15 70:10 78:24
--	---	---	--	---

85:10 97:17 98:25 99:3 109:14 123:3 126:8,23 127:11,15 128:4 129:23 139:17 140:20 155:4 166:4 180:5 181:17 185:25 190:21,21 194:18 200:16 201:2 202:23 207:22 208:2 211:3 212:11 218:15 220:15 223:7 231:25 239:9 242:17 245:25 247:12 265:22	<b>St (1)</b> 90:25 <b>staff (3)</b> 22:23 23:2,22 <b>staffs (1)</b> 128:12 <b>stamp (1)</b> 189:8 <b>stamped (15)</b> 43:12 92:16 187:11 188:4,20 237:9 257:18 264:5 265:17 288:5,8,10 288:13,15,17 <b>stand (1)</b> 284:6 <b>standing (4)</b> 84:20 94:17 130:11 171:13 <b>stars (1)</b> 29:17 <b>start (8)</b> 5:2 144:12 182:20 192:6 282:8,24 283:5 284:2 <b>starting (6)</b> 142:18 150:20 157:11 159:12 163:3 167:12 <b>starts (1)</b> 167:9 <b>state (4)</b> 2:14 189:5 286:4,9 <b>statement (6)</b> 41:24 87:21 136:24 141:3 179:2 244:21 <b>statements (7)</b> 136:6 146:5,17 148:11 158:19 160:25 165:10 <b>Staten (2)</b> 38:10 63:24 <b>states (4)</b> 1:2 250:11 264:10 281:16 <b>stationary (2)</b> 80:5,9 <b>statistics (4)</b> 81:18 89:5 274:3,12 <b>stay (3)</b> 75:13 169:9 170:5	<b>staying (1)</b> 32:19 <b>Stead (1)</b> 62:22 <b>step (2)</b> 34:20 135:8 <b>STEPHEN (1)</b> 1:13 <b>steps (2)</b> 22:18,22 <b>Steve (3)</b> 128:18,19 149:13 <b>Steven (1)</b> 252:24 <b>stick (1)</b> 74:3 <b>Stipulated (6)</b> 4:2,7,11 85:12,15,16 <b>stole (1)</b> 35:2 <b>stool (1)</b> 34:21 <b>stop (19)</b> 88:19 94:23 95:9,15 129:25 138:10 139:13 143:2 150:12 151:16 155:10,22,25 164:9 165:18 204:4 226:8 226:10 284:15 <b>stopped (7)</b> 81:5 93:25 94:16,18 183:3 204:18 226:15 <b>stopping (4)</b> 113:25 155:20 161:25 164:10 <b>storage (3)</b> 23:5,9,13 <b>story (1)</b> 232:5 <b>stragglers (1)</b> 158:2 <b>street (38)</b> 3:14 39:14,19 40:2,14 40:25 41:2,10,11 63:6 69:21,22 87:7 87:8 88:17 98:6 121:6,9 130:16 150:14,22 151:18 155:11,25 157:24	164:8 165:2 203:3 206:11,12,13 207:6 212:23 226:9 278:2 278:24 283:21 284:22 <b>streets (20)</b> 39:12,24 40:18 52:17 69:8 83:10 155:7 159:24 160:13 164:10 206:9 207:9 208:8 210:17 231:6 231:10 233:12 235:3 236:2 273:24 <b>stretched (1)</b> 212:21 <b>strongly (1)</b> 208:21 <b>Stu (1)</b> 282:3 <b>stuck (1)</b> 214:14 <b>student (1)</b> 26:7 <b>studies (1)</b> 140:19 <b>study (2)</b> 70:4 140:13 <b>stuff (1)</b> 215:2 <b>sub (2)</b> 262:2,23 <b>subject (2)</b> 37:4 194:15 <b>submit (6)</b> 93:13 122:10 124:5 261:9 265:20 266:25 <b>Subscribed (2)</b> 285:15 289:20 <b>substance (1)</b> 150:20 <b>subunits (1)</b> 63:8 <b>subway (1)</b> 223:10 <b>subways (2)</b> 223:4 224:12 <b>success (1)</b> 81:11 <b>successful (2)</b> 80:18 81:10	<b>suddenly (1)</b> 42:18 <b>suggest (4)</b> 65:23 105:15 245:20 245:24 <b>suggesting (1)</b> 105:9 <b>suggestion (1)</b> 105:12 <b>suggestions (3)</b> 66:22 68:11 139:18 <b>suit (1)</b> 176:18 <b>Summary (2)</b> 92:15 288:7 <b>summer (4)</b> 95:20 99:5 110:13 233:16 <b>summons (33)</b> 33:4 59:23 60:2 61:9 138:12 193:12 219:2 244:19 245:4 245:8,11 249:21 254:16 259:9,20,25 260:4,22 261:3,7,8 261:10,25 262:12 262:17 263:2,12,21 263:25 264:6 266:5 266:7 268:17 <b>summonsed (5)</b> 137:20 193:21 218:12 218:16 220:4 <b>summonses (27)</b> 62:18 84:4 86:19 87:4 88:15 138:3 205:3 219:6,11 244:25 245:15 254:22 255:25 257:18 258:10,25 259:14 267:4,9,14,17 268:21 269:6,7,12 269:17 288:17 <b>summonsing (3)</b> 220:22 255:13 268:20 <b>supervisor (3)</b> 88:5 147:4 267:19 <b>supervisory (5)</b> 122:8 128:23 129:8 129:12,15 <b>support (1)</b> 202:7
---	---	---	--	---

<p><b>suppose (1)</b> 47:4</p> <p><b>supposed (8)</b> 75:20 122:18,22 123:7 257:7 267:16 276:16 283:17</p> <p><b>supposedly (2)</b> 133:20 134:4</p> <p><b>Supreme (1)</b> 35:21</p> <p><b>sure (61)</b> 16:2,3,21 33:17 37:18 40:23 48:14 49:4,11 53:9 54:10 70:25 73:5,5 77:3 80:3,15 85:7,21 101:21 108:16 111:18,19 112:12,23 116:18 117:16 121:3 125:22 127:22 131:24 134:9 136:11,14 146:8 150:18 185:5,17 190:2 191:15 195:23,24 197:21 205:19,22,25 208:13,14 222:5,14 223:18 229:8 237:18 250:19 252:16,20,21 253:23 273:9 280:19 284:8</p> <p><b>Surely (1)</b> 180:20</p> <p><b>surveillance (1)</b> 177:5</p> <p><b>suspended (1)</b> 255:19</p> <p><b>switch (2)</b> 253:17 254:8</p> <p><b>sworn (8)</b> 4:12,16 6:7 13:3 77:14 285:15 286:13 289:20</p> <p><b>synopses (1)</b> 97:7</p> <p><b>system (4)</b> 71:4 72:20 87:16 223:10</p> <hr/> <p style="text-align: center;"><b>T</b></p> <hr/>	<p><b>T (5)</b> 1:4 135:2 286:2,2 288:2</p> <p><b>tacit (1)</b> 70:25</p> <p><b>taillight (5)</b> 60:20,24 61:4,6,10</p> <p><b>take (49)</b> 16:19 22:18,22 24:21 25:6 33:15 43:17,21 44:5,6 49:20 65:8 76:25 79:17 92:6,20 112:10 142:3 144:25 150:9 164:20 188:25 190:11 193:8 197:6 207:11 213:7,8,12 213:14,16 215:17 215:23 216:4 225:7 237:13 248:21 250:2 257:12,24 258:9,19 262:15 264:4 265:23 266:13 271:6 279:19 284:5</p> <p><b>taken (23)</b> 16:24 19:19 64:9 77:7 83:7 91:24 112:15 117:25 118:3 134:12 137:14 140:22 197:11 199:12,15 205:9,14 205:21 213:20 227:17 228:11 258:4 279:19</p> <p><b>takes (2)</b> 62:24 281:16</p> <p><b>talk (7)</b> 88:16,24,25 89:2,2 124:13 192:14</p> <p><b>talked (3)</b> 36:18 133:10 252:3</p> <p><b>talking (10)</b> 10:18 14:22,24 152:3 159:17 220:15 232:7,14 259:15 275:20</p> <p><b>tape (1)</b> 5:3</p> <p><b>TARU (2)</b> 174:14,18</p>	<p><b>task (9)</b> 62:17 63:11 64:7,10 84:3 141:14,16 143:7 147:5</p> <p><b>tasked (7)</b> 65:15,17 71:7 126:23 127:11,12,15</p> <p><b>tax (1)</b> 269:22</p> <p><b>Taxi (2)</b> 64:4 88:7</p> <p><b>taxis (1)</b> 62:23</p> <p><b>TBTA (1)</b> 88:7</p> <p><b>TEAs (1)</b> 64:24</p> <p><b>Technical (1)</b> 174:13</p> <p><b>telephone (4)</b> 194:23,24 252:3 278:14</p> <p><b>television (6)</b> 95:11,14,17,23 106:16,18</p> <p><b>tell (48)</b> 19:22 49:19 90:14,15 97:14 108:12 123:23 124:9,14 129:16 130:2 133:6 147:6 151:2 152:5 153:12,25 156:9 179:12 180:9 181:17 182:3,10,17 182:21 183:2 190:18 191:13 192:13,16,25 193:11,18 194:7 195:7 203:4 207:3 208:9 212:2,10 232:20 233:21 239:10 247:23 250:24 270:16 276:20 283:20</p> <p><b>telling (6)</b> 113:24 129:9 147:22 193:5 216:10 232:19</p> <p><b>ten (2)</b> 37:16 114:18</p> <p><b>tend (1)</b></p>	<p>54:11</p> <p><b>term (15)</b> 27:25 31:2 63:8,19 64:12 76:3 100:20 110:2 119:12 156:15,17,25 212:5 212:6,9</p> <p><b>terminate (1)</b> 166:9</p> <p><b>terminology (1)</b> 80:4</p> <p><b>terms (2)</b> 56:25 169:7</p> <p><b>terrible (2)</b> 152:6 210:25</p> <p><b>testified (10)</b> 6:8 10:11 137:7 141:5 141:8,10,13 143:6 153:14 251:11</p> <p><b>testifies (1)</b> 150:11</p> <p><b>testify (1)</b> 40:21</p> <p><b>testifying (2)</b> 151:21 165:9</p> <p><b>testimony (14)</b> 13:4 39:17 141:20 143:19,25 144:22 145:23 147:17 157:11 158:13 159:11 161:6 165:23 286:15</p> <p><b>text (2)</b> 25:14 145:4</p> <p><b>Thank (4)</b> 151:13 285:4,5,6</p> <p><b>thanks (1)</b> 261:23</p> <p><b>Thanksgiving (4)</b> 73:25 76:18,19 90:25</p> <p><b>theory (2)</b> 170:9,13</p> <p><b>they'd (7)</b> 11:10 50:25 51:2 70:25 90:14,15 104:21</p> <p><b>thing (10)</b> 45:25 84:3 85:20,23 86:12 95:10 142:2 169:6 203:16 230:9</p> <p><b>things (16)</b></p>	<p>14:16 26:9 30:6 34:18 36:3,6,11,12,14 45:25 63:9,16 70:3 90:19 156:10 194:7</p> <p><b>think (45)</b> 7:21 15:12 16:2 18:18 30:18 33:6 36:15 40:17 50:25 61:19 70:22 74:6 76:9 93:22 98:6 101:15 101:18 104:23 107:16 120:5 128:18 135:23 145:25 146:12 149:2 172:12 181:21 182:16 186:8,18 189:20 190:22 191:24 230:22 243:2,13 256:14,25 257:3 260:14 261:2 268:18,23,25 280:9</p> <p><b>thinking (3)</b> 36:14 56:25 85:24</p> <p><b>thinks (1)</b> 67:9</p> <p><b>third (12)</b> 2:10 3:6 5:8 70:16 191:17 203:4 213:2 215:16,20 244:18 268:6,7</p> <p><b>Thomas (2)</b> 1:10 173:9</p> <p><b>thought (11)</b> 34:19 68:23 90:23 118:18 122:20 123:7 214:20,24 215:7 232:24 233:20</p> <p><b>thousand (2)</b> 147:9 154:18</p> <p><b>thousands (25)</b> 170:21,22,22,22,23 200:13,13,13,14,14 206:7,10,10,10 207:4,4,4,14,14,14 207:15 222:20 228:15,16 241:21</p> <p><b>three (30)</b> 17:17 30:12 46:3 47:25 49:7,10,11</p>
---	---	---	---	---

52:2 53:25 54:18 75:13 78:13 111:5,6 114:17 129:6 148:3 148:23 159:2 161:3 164:14 171:17 184:8 259:12 267:8 267:14,16 268:18 269:4 284:3 <b>three-lane (1)</b> 69:21 <b>three-star (8)</b> 29:22 30:3,4,10,16,23 46:7 127:4 <b>threw (1)</b> 175:11 <b>throwing (1)</b> 215:2 <b>thrown (1)</b> 82:21 <b>thumbnail (1)</b> 65:12 <b>Thursday (2)</b> 1:22 176:12 <b>ticket (17)</b> 57:2,5,9 60:19 61:6 67:23 84:12,14,22 86:9 87:6,9,14 139:13 218:20 255:10,22 <b>tickets (13)</b> 33:6 63:4,23 78:21 79:19 83:11 84:6,7 84:8,16 86:3,4 219:19 <b>time (161)</b> 4:10 10:14,17 12:10 15:24 16:22,25 18:11 23:12 26:5,10 26:19 27:8,23 28:2 28:3 33:18,21 38:4 38:14 44:5 74:15 75:2 77:5,8 78:8 82:16 83:6 84:11 89:25 90:6 91:11,25 92:24 93:15 99:19 100:7,16 101:17,20 102:11,18 103:3 104:9,14,20 109:8 109:13 110:17 111:7,12,13 112:13 112:16,25 115:8,11	116:8,12 118:9 119:19 120:21 127:8,12 128:10,11 128:15 131:18 132:18 134:10 135:3,4,5 136:15,20 140:18 141:2 148:14,19 149:7,13 149:25 150:5,15 151:19 160:10,11 164:20 165:5 167:5 171:14 176:13,25 178:10 180:6 182:6 185:11 186:4 188:25 190:20 197:9,12,19,24 198:12 199:2 205:25 213:10,23 214:6 217:13 218:4 218:14 219:9 221:25 222:8 223:10,16 224:14 225:8,10 227:23 232:11,13,15 233:2 233:5 236:10,14,20 241:5 246:7 249:16 252:7,8 254:7 258:2 258:5,19 262:18 263:4 266:15 267:10 269:23 270:18,20 273:25 274:21 275:21,24 276:8,14,18 277:8 278:22 279:4 280:21,24 283:4 285:3,7 <b>times (56)</b> 6:21 7:22 15:12 24:14 35:21 46:4 47:25 74:24 75:19 106:22 107:15,21,23,25 108:5,7,9,14 120:23 120:24 127:25 129:7 160:14 163:5 163:10 164:4,8,16 164:21 165:12 188:6 210:22 218:19 237:9 238:18,20,24 239:10,16,19,24 240:8,10,20,21	245:24 246:6 250:8 251:6,14 252:4 271:16 274:5,13 276:10 288:15 <b>title (4)</b> 190:9 265:16,22 288:20 <b>today (13)</b> 7:8,12 13:9 14:3 15:15 21:12 39:24 59:4 199:3 213:24 216:24 233:15 256:13 <b>told (58)</b> 34:22 37:5 78:22 99:9 99:13 100:11 101:10 108:17 109:11 110:4 114:11 122:24,25 123:2 127:16,17 132:21,24,25 133:9 144:13 145:13,20 147:13 152:22 158:21 162:20 179:15 181:20,24 182:7 183:5 186:24 190:12 194:24 195:3 200:4,7 204:6 205:25 206:24 207:19,23 208:2,3,5 211:6,8 212:7,16 232:5 239:5 246:3 247:3,13 270:17 272:5,6 <b>tolerance (6)</b> 216:19,24,25 217:8 217:12,21 <b>tomorrow (1)</b> 230:8 <b>Tons (1)</b> 74:18 <b>top (2)</b> 142:16 157:12 <b>topic (1)</b> 111:20 <b>topics (1)</b> 137:11 <b>touched (1)</b> 137:12 <b>tow (1)</b> 63:4	<b>tractor-trailer (2)</b> 282:15 284:21 <b>traffic (168)</b> 44:21 47:8 49:18 50:2 51:23 52:2 53:6,11 53:14,22,24,25 54:6 54:19,19,23 55:3,13 55:23 56:4,11,15,23 56:24 57:5,19 58:5 58:12 62:14,16,18 63:3,4,11,16,18,22 63:23 64:7,10,11,12 64:13,15,17,19,20 64:22 65:3,16,23 67:17 68:6 71:7,11 71:16,24 72:4,7,23 73:16,18,19,21 74:2 74:10 75:2 76:10 78:6 84:2,5,7,14 87:21 88:5,22,25 89:11 97:8,18 116:3 116:12 126:16 127:23 128:9 129:25 139:19 140:6,14 150:13,13 151:17,17 154:3,8 154:14 155:2,3,5,10 155:11,20,23 156:2 156:5,7,19 157:16 164:24 165:3 168:11 169:8,15 170:6 183:3 192:20 192:24,25 193:17 193:19 199:22 200:24 201:4,22 202:10 203:2 204:25 205:7 206:4 208:7,24 209:3,4,9 210:5,11 219:19,20 220:6,9 223:4,9,16 224:11 226:17,20 226:25 241:22 243:23 244:8,10,15 254:16 255:3 256:2 256:6,19 269:11,19 269:25 272:23 274:4,12,17 275:5 276:19 282:16 283:21 <b>TrafficStat (6)</b> 69:25 87:15,16,18	89:15,17 <b>trained (1)</b> 58:22 <b>training (17)</b> 39:8 58:11 94:9,22 95:3 96:18,22 172:5 172:11,23,24 269:17,20,25 270:2 270:5,8 <b>transcript (7)</b> 141:20 144:7 162:23 167:8 178:17 179:4 289:2 <b>transferred (1)</b> 31:19 <b>transit (6)</b> 31:16,19 46:9 48:4 88:6 256:6 <b>transportation (79)</b> 15:10 24:14 27:10,16 27:22 46:8 48:4 58:10 62:10,11,12 65:2,14,22 68:10,18 68:22 69:18,22 70:3 70:16 71:17 72:8,11 72:16,21 73:9 75:25 76:13 77:11,21 79:21,25 81:19 82:5 82:12 83:17,21,25 84:25 89:19,25 94:9 94:21 95:3 96:23 100:25 105:14 115:8,13,16,24 116:9 139:17 153:10,22 190:5,8 193:13 194:9,12,18 194:25 228:23 229:4,5,11,14,16,20 230:23 240:4 251:10,12,22,23 265:17 270:4 288:20 <b>traveling (2)</b> 54:4 209:22 <b>treated (1)</b> 34:15 <b>trial (2)</b> 4:10 9:21 <b>trick (2)</b> 35:18,23 <b>tricked (1)</b>
---	---	--	---	--

35:14	186:21 188:24	81:9 99:22 100:15	24:20 119:12 138:19	<b>vicinity (3)</b>
<b>tried (3)</b>	226:6 241:7 251:17	100:22 102:10,18	156:17,25 201:12	121:7 164:9 259:3
74:12 225:22 226:3	268:2,3 278:12	104:10 107:20	207:8 230:13 231:5	<b>video (15)</b>
<b>trouble (1)</b>	<b>two-star (5)</b>	109:10 114:19	278:19	3:21 5:12 14:5 280:9
35:10	30:6,14,19 31:7,8	118:15,24 119:11	<b>useful (2)</b>	280:13 281:4,15,25
<b>truck (5)</b>	<b>type (1)</b>	119:16 123:17	172:14,18	282:6,10,24 283:8
26:8 63:5 86:6,7	116:2	124:25 125:8 132:2	<b>uses (1)</b>	283:11 284:4,14
283:20	<b>types (3)</b>	132:16 133:15	175:14	<b>videographer (25)</b>
<b>trucks (8)</b>	110:2,12 113:20	145:6 146:2,14	<b>usual (1)</b>	5:2 6:2,5 16:22,25
59:16 85:20,23 86:2,2	<b>typical (1)</b>	216:2,18 217:25	268:23	33:18,21 77:5,8
89:3 140:14,15	275:14	218:18 219:9	<b>usually (1)</b>	112:13,16 134:10
<b>true (9)</b>	<b>typo (1)</b>	220:12,14 240:19	150:21	135:5 136:15,20
68:6 74:12 177:17,23	158:6	249:15 274:21	<b>utopia (1)</b>	197:9,12 258:2,5
178:7 209:3 229:9		<b>understood (4)</b>	245:9	261:23 280:17,21
247:15 286:14		113:23 114:5,25		280:24 281:25
<b>truth (3)</b>	<b>U</b>	123:18	<b>V</b>	285:7
176:9 198:22,23	<b>ultimately (3)</b>	<b>undoubtedly (1)</b>	<b>v (1)</b>	<b>videos (1)</b>
<b>try (4)</b>	67:15 70:5,23	223:16	289:3	106:21
67:16 184:5,7 227:3	<b>um-hmm (10)</b>	<b>uneventful (1)</b>	<b>Vaguely (1)</b>	<b>videotaped (3)</b>
<b>trying (4)</b>	16:8 29:19 54:3 64:25	179:13	17:15	1:18 2:8 5:3
95:15 107:16 154:25	94:12 215:25	<b>unfamiliarity (1)</b>	<b>valid (1)</b>	<b>view (4)</b>
232:18	234:15 244:6 254:6	29:7	269:12	68:8 234:20 235:17
<b>TSG (2)</b>	262:10	<b>uniform (5)</b>	<b>vans (1)</b>	248:23
5:11,14	<b>unclear (1)</b>	64:20 176:11,14	227:3	<b>violate (1)</b>
<b>Tuesday (1)</b>	7:5	226:7,12	<b>variables (1)</b>	218:8
176:11	<b>uncomfortable (1)</b>	<b>uniformed (2)</b>	74:3	<b>violating (1)</b>
<b>TULLER (1)</b>	42:9	157:22 175:15	<b>various (1)</b>	228:12
1:9	<b>undercover (13)</b>	<b>Union (2)</b>	89:7	<b>violation (15)</b>
<b>tunnel (13)</b>	34:12,13 175:14,24	167:15 259:4	<b>varying (1)</b>	33:7 60:23 61:3 66:9
121:7 130:17 131:5,9	176:5,21,22,24,25	<b>unit (10)</b>	71:8	84:18 87:8 135:18
166:15 203:14	177:4,17,23 178:7	1:12 27:24,25 62:19	<b>vehicle (23)</b>	137:20 254:16
204:15,16 277:15	<b>underpass (10)</b>	62:22,22 64:4 174:4	49:17 50:2 51:7 54:19	259:9,21 260:5
277:19 278:3,4,25	121:10 130:21,23	174:13,22	55:3,10,11,12,20,20	262:2 264:11,14
<b>turn (15)</b>	131:2,6 166:20	<b>United (2)</b>	55:22 56:11,15	<b>violations (35)</b>
52:4,7,10 69:9 88:18	171:25 212:24	1:2 250:11	57:19 58:5 59:12	60:16 63:6 72:5 77:19
93:8 144:4 146:20	277:20,23	<b>units (2)</b>	155:3 169:15	77:23 78:6 82:3
146:21 159:10	<b>understand (34)</b>	63:7 65:15	273:12,18 274:5,13	85:3 89:6,11 97:18
162:22 167:7,8	7:6 29:16 30:21 46:3	<b>unmarked (2)</b>	275:25	138:8,15 140:15,20
261:4 284:21	48:6 51:15,20 52:11	225:21,23	<b>vehicles (13)</b>	140:21 192:20,24
<b>TV (4)</b>	56:12 66:13 69:11	<b>unquote (2)</b>	41:4,13 50:23 54:12	199:22 202:21
62:19,21 96:8 181:12	74:5 97:25 99:19	113:21 245:4	63:5 83:3,15 169:22	203:8 204:25 205:7
<b>twice (1)</b>	113:22 120:11	<b>unsigned (3)</b>	170:5 210:7 212:11	216:20 220:3,19
38:17	133:6 150:24,24	188:20 189:4 288:13	275:15 276:7	241:25 242:6,7,10
<b>two (29)</b>	152:3 157:7 158:17	<b>unusual (4)</b>	<b>vehicle-related (1)</b>	243:4,15 253:19
15:4 17:17 20:5 24:12	161:12 169:3	132:13 267:7 268:18	87:23	256:2 269:11
24:13 25:12 30:12	170:17 180:19	268:25	<b>vehicular (2)</b>	<b>violator (2)</b>
34:10,13 49:10,11	181:8 198:18	<b>upper (2)</b>	168:11 272:23	84:9 218:7
65:8 78:13 90:9	230:11 238:22	142:7 184:23	<b>version (1)</b>	<b>violators (7)</b>
105:19 120:23	256:12,22 257:2	<b>Up's (1)</b>	189:4	83:11 193:9 215:18
128:17,21 155:24	260:19	239:10	<b>versus (1)</b>	215:23 216:5
171:17 184:8	<b>understanding (37)</b>	<b>use (10)</b>	5:5	217:23 227:17
	6:16 45:21 46:10,11			

<b>visited (1)</b> 242:12	247:21 280:17 281:9	176:18 260:13	<b>White (28)</b> 15:11 105:13 106:3,5 108:2,10,13 187:11 188:20 189:17,18 191:23 192:11,12 194:7 195:11 227:22 232:17 233:6 238:21 239:2 239:10 240:14,22 246:3 252:3 288:10 288:12	<b>witnesses (1)</b> 141:10
<b>visiting (1)</b> 242:17	<b>wanted (19)</b> 67:16 78:18 90:15,16 128:3 140:2 155:13 155:14 182:8 187:16 192:14,15 192:25 193:11,18 194:13 206:9,12 255:18	<b>weather (1)</b> 147:11	<b>width (4)</b> 39:19 41:3,12 45:23	<b>Wolfgang (2)</b> 222:13,17
<b>voice (1)</b> 274:23	<b>wants (1)</b> 52:3	<b>web (1)</b> 188:6	<b>Williamsburg (5)</b> 78:16 80:18 83:13 137:15 138:22	<b>wonderful (2)</b> 245:12 280:7
<b>voided (1)</b> 267:22	<b>warning (1)</b> 228:10	<b>week (4)</b> 38:18 75:3 87:25 199:10	<b>wind (2)</b> 66:16 67:19	<b>word (6)</b> 32:18 78:21 201:12 201:18 226:11,12
<b>volume (4)</b> 24:4,6,11 210:3	<b>wasn't (25)</b> 81:16 90:10 92:2 100:14,23 115:20 125:19 126:8 127:19 139:10 145:17 183:21 185:12,17 201:19 205:11,16 208:19 227:11 236:23 240:10 249:23 252:2 256:11,12	<b>weeks (1)</b> 228:5	<b>Wish (2)</b> 238:24 245:9	<b>words (1)</b> 207:8
<b>voluntarily (1)</b> 120:16	<b>watch (2)</b> 283:13,24	<b>went (12)</b> 34:17,21 126:24 129:5 131:3,5 133:11 143:4 166:20 184:16 208:6 250:17	<b>working (1)</b> 26:19	<b>work (22)</b> 19:10 20:11 25:16 34:13,20,24 35:3 39:3 63:2 64:16 74:14 79:24 82:15 90:20 176:12,24,25 204:4 222:20 245:20 247:25 284:7
<b>vs (1)</b> 1:7	<b>watched (4)</b> 106:21 121:8 129:4 284:19	<b>weren't (9)</b> 154:24 179:15 185:19 203:19 208:13,15 214:16 249:4 251:4	<b>works (6)</b> 7:2 29:25 64:8 65:17 176:20 222:19	<b>worldwide (2)</b> 101:5,19
<b>VTL (4)</b> 53:11 259:10,21 260:5	<b>watching (1)</b> 210:22	<b>West (6)</b> 121:6,9 130:15 212:23 278:2,24	<b>worldwide (2)</b> 101:5,19	<b>wouldn't (29)</b> 40:20,20 47:20 53:5 57:5 69:15 78:22 80:14 81:16 114:5 154:2,21 155:7 156:9 172:18 198:22,23 208:16 217:15,17 219:25 226:2 229:14 245:7 247:24 249:11 257:10 268:25 276:19
<hr/> <b>W</b> <hr/>	<b>water (1)</b> 139:14	<b>westbound (1)</b> 203:3	<b>withdraw (15)</b> 11:13,19 59:9,20 60:21 79:6 96:5 97:22 105:22 113:19 116:15 141:3 145:21 209:2 233:4	<b>wound (2)</b> 95:15,16
<b>Wagner (16)</b> 141:5,13 143:6,22 150:11 151:20 152:16 158:15,19 161:9 165:9,16 167:8 168:13 169:4 169:14	<b>way (36)</b> 37:14,14,14 47:21 51:5 66:20 69:9 74:11 87:12 94:6,10 94:22 95:4 121:25 124:14 125:16 142:4 143:4 151:4 171:10,11 186:9,18 187:16 191:17 209:15 213:13 216:14 224:9 230:7 240:17 254:8 278:23 280:10 283:21 286:19	<b>we'll (3)</b> 73:25 74:3,11	<b>withdrawn (1)</b> 116:21	<b>wrapped (1)</b> 34:14
<b>Wagner's (13)</b> 141:20 143:19 144:22 145:23 146:5,16 147:17 157:10 158:13 159:11 160:25 161:6 162:23	<b>ways (3)</b> 124:12,22 278:12	<b>we're (30)</b> 16:23 17:2 33:19,22 48:13 51:13 74:7 76:9 77:6,9 91:3 112:14,17 134:11 135:6 136:16,21 187:8 197:10,13 247:22,23,23 257:14 258:3,6 276:17 280:22,25 285:8	<b>witness (45)</b> 6:7 9:14 11:15 16:12 16:18 18:4,9 33:20 43:16 69:13 135:4 135:12,22 136:7,19 141:22 162:25 167:11 175:20,22 177:9 178:4,13 190:23 191:3,5 194:2 197:4 211:10 230:18 257:7,21 261:6,18 262:16 264:23 280:11 284:5,9,12 285:6 286:11,15,21 287:4	<b>write (14)</b> 51:11 84:21 87:6,9,14 105:22 192:11 199:8,18 210:11 215:16 241:11
<b>wait (4)</b> 202:14 211:9 225:19 240:7	<b>wear (2)</b>	<b>we've (9)</b> 31:22 45:18 57:18 59:4 83:13 146:4,16 280:10,11	<b>witnessed (11)</b> 114:20 213:25 225:3 231:23 243:5,16 271:3 273:11,15,16 277:14	
<b>waived (1)</b> 4:6		<b>whacky (1)</b> 250:18		
<b>walk (3)</b> 84:13,19 222:22		<b>whatsoever (1)</b> 116:19		
<b>walked (1)</b> 225:12		<b>WHEREOF (1)</b> 286:21		
<b>want (28)</b> 27:13 39:16 40:11,20 40:21 47:23,24 67:6 70:25 75:15 143:2 144:18 155:6 193:12,22 194:7,16 216:11 218:5 225:13 233:11 244:22,24,25 245:5		<b>whichever (4)</b> 150:13 151:18 155:11 251:2		

243:23 244:18	283:5,15	<b>zero (6)</b>	5:14	<b>09:50:22 (1)</b>
<b>writes (1)</b>	<b>year (15)</b>	216:19,24,25 217:8	<b>09:49:07 (2)</b>	7:5
267:6	8:11 15:5 66:7 73:24	217:12,21	5:15,16	<b>09:50:24 (1)</b>
<b>writing (6)</b>	74:2,5 91:2 95:22		<b>09:49:10 (2)</b>	7:6
199:8,9 218:25 239:7	95:23 110:24	<hr/> <b>0</b> <hr/>	5:17,18	<b>09:50:26 (1)</b>
267:8 268:20	119:22,24 263:8,11	<b>002162 (3)</b>	<b>09:49:12 (1)</b>	7:7
<b>written (16)</b>	279:24	188:20 189:8 288:13	5:19	<b>09:50:28 (1)</b>
15:4 35:5 47:20 51:5	<b>years (12)</b>	<b>002167 (4)</b>	<b>09:49:13 (1)</b>	7:8
97:2 106:2 202:4	11:11 33:7 37:17,19	257:19 258:12 259:18	5:20	<b>09:50:31 (1)</b>
238:24 241:2	42:3 87:2 90:5	288:17	<b>09:49:15 (1)</b>	7:9
262:18 266:12,20	184:6 229:23	<b>002170 (1)</b>	5:21	<b>09:50:34 (1)</b>
267:4,17 268:3	270:15,23 281:20	264:6	<b>09:49:16 (1)</b>	7:10
269:7	<b>Year's (1)</b>	<b>013 (1)</b>	5:22	<b>09:50:36 (1)</b>
<b>wrong (17)</b>	160:22	268:9	<b>09:49:18 (1)</b>	7:11
40:22 48:15 55:9,18	<b>yell (1)</b>	<b>013343 (2)</b>	5:23	<b>09:50:39 (1)</b>
120:12 130:7	75:14	92:16 288:8	<b>09:49:20 (1)</b>	7:12
155:22 170:14	<b>yellow (1)</b>	<b>013347 (1)</b>	5:24	<b>09:50:41 (2)</b>
171:17,18 201:18	62:23	93:9	<b>09:49:26 (1)</b>	7:13,14
203:18 208:20	<b>Yesterday (1)</b>	<b>02 (1)</b>	5:25	<b>09:50:43 (1)</b>
219:5 282:5 283:21	13:12	93:4	<b>09:49:27 (1)</b>	7:15
284:22	<b>York (80)</b>	<b>04 (7)</b>	6:2	<b>09:50:44 (2)</b>
<b>wrote (21)</b>	1:2,8,9,11,12,14,15	10:20 98:14 107:22	<b>09:49:28 (1)</b>	7:16,17
47:20,23 49:3 105:18	1:21,21 2:11,11,14	109:4 110:13 113:4	6:3	<b>09:50:46 (1)</b>
105:19 106:3,3	3:7,7,11,15,15 5:6,9	160:23	<b>09:49:31 (2)</b>	7:18
189:16,25 190:4	5:9 7:18 8:15 10:8	<b>06:15:56 (1)</b>	6:4,5	<b>09:50:49 (1)</b>
192:5,12 193:23	11:21 12:11,15	1:2	<b>09:49:52 (1)</b>	7:20
214:7 227:21 228:4	13:24 15:22 20:6	<b>07 (1)</b>	6:13	<b>09:50:50 (1)</b>
228:6 240:20	21:10,15,20 23:17	281:21	<b>09:49:54 (1)</b>	7:21
245:19 268:17	26:4 29:8,18 35:21	<b>09:47:55 (1)</b>	6:14	<b>09:50:54 (1)</b>
269:6	38:6 39:10 45:10,16	5:2	<b>09:49:57 (1)</b>	7:22
<hr/> <b>X</b> <hr/>	49:8 50:12 52:16	<b>09:48:33 (1)</b>	6:15	<b>09:50:56 (1)</b>
<b>X (7)</b>	62:24 65:23 69:17	5:3	<b>09:50:00 (1)</b>	7:23
1:3,17 39:19 269:4	72:14 96:17 100:19	<b>09:48:35 (1)</b>	6:16	<b>09:50:58 (1)</b>
287:2 288:2,2	103:5 106:22 107:7	5:4	<b>09:50:01 (1)</b>	7:24
<b>XO (2)</b>	108:12,24 126:16	<b>09:48:39 (1)</b>	6:17	<b>09:51:02 (1)</b>
31:13,17	140:14,22 141:4	5:5	<b>09:50:04 (1)</b>	7:25
<hr/> <b>Y</b> <hr/>	155:15 175:13	<b>09:48:43 (2)</b>	6:18	<b>09:51:04 (2)</b>
<b>yeah (28)</b>	177:6 214:23	5:6,7	<b>09:50:05 (1)</b>	8:2,3
10:12 19:2 32:15	221:10,18 226:24	<b>09:48:45 (1)</b>	6:19	<b>09:51:17 (1)</b>
55:25 70:13 112:12	228:21 229:7,16	5:8	<b>09:50:08 (2)</b>	8:4
123:16 152:10	242:12 245:6	<b>09:48:48 (1)</b>	6:20,21	<b>09:51:18 (1)</b>
196:10 200:12	259:10,21 260:13	5:9	<b>09:50:09 (1)</b>	8:5
201:18 202:4	265:21 271:9	<b>09:48:54 (1)</b>	6:22	<b>09:51:20 (2)</b>
204:13,14 205:6	275:25 276:23	5:10	<b>09:50:15 (1)</b>	8:6,7
211:25 213:19	286:4,9	<b>09:48:59 (1)</b>	6:23	<b>09:51:21 (1)</b>
225:16 234:12	<b>young (1)</b>	5:11	<b>09:50:17 (3)</b>	8:8
239:14 246:11	35:8	<b>09:49:01 (1)</b>	6:24,25 7:2	<b>09:51:24 (1)</b>
259:12,15 260:3	<b>Yup (3)</b>	5:12	<b>09:50:18 (1)</b>	8:9
261:23 277:18	69:14 173:11 228:14	<b>09:49:03 (1)</b>	7:3	<b>09:51:25 (1)</b>
	<hr/> <b>Z</b> <hr/>	5:13	<b>09:50:20 (1)</b>	8:10
		<b>09:49:05 (1)</b>	7:4	<b>09:51:26 (1)</b>

8:11	<b>09:52:28 (1)</b>	10:21	<b>09:54:53 (1)</b>	13:4
<b>09:51:30 (1)</b>	9:16	<b>09:53:36 (1)</b>	11:25	<b>09:56:07 (1)</b>
8:12	<b>09:52:29 (1)</b>	10:22	<b>09:54:54 (1)</b>	13:5
<b>09:51:34 (1)</b>	9:17	<b>09:53:37 (2)</b>	12:2	<b>09:56:09 (1)</b>
8:13	<b>09:52:30 (1)</b>	10:23,24	<b>09:54:55 (1)</b>	13:6
<b>09:51:36 (1)</b>	9:18	<b>09:53:41 (1)</b>	12:3	<b>09:56:13 (2)</b>
8:14	<b>09:52:31 (2)</b>	10:25	<b>09:54:56 (1)</b>	13:7,8
<b>09:51:40 (2)</b>	9:19,20	<b>09:53:44 (1)</b>	12:4	<b>09:56:15 (1)</b>
8:15,16	<b>09:52:34 (1)</b>	11:2	<b>09:54:57 (2)</b>	13:9
<b>09:51:41 (1)</b>	9:21	<b>09:53:45 (1)</b>	12:5,6	<b>09:56:18 (1)</b>
8:17	<b>09:52:35 (1)</b>	11:3	<b>09:55:00 (1)</b>	13:10
<b>09:51:42 (2)</b>	9:22	<b>09:53:46 (1)</b>	12:7	<b>09:56:19 (2)</b>
8:18,19	<b>09:52:36 (1)</b>	11:4	<b>09:55:05 (1)</b>	13:11,12
<b>09:51:43 (1)</b>	9:23	<b>09:53:55 (1)</b>	12:8	<b>09:56:24 (1)</b>
8:20	<b>09:52:37 (1)</b>	11:5	<b>09:55:08 (1)</b>	13:13
<b>09:51:47 (1)</b>	9:24	<b>09:53:58 (1)</b>	12:9	<b>09:56:29 (1)</b>
8:21	<b>09:52:38 (1)</b>	11:6	<b>09:55:09 (1)</b>	13:14
<b>09:51:51 (1)</b>	9:25	<b>09:54:00 (1)</b>	12:10	<b>09:56:31 (1)</b>
8:22	<b>09:52:41 (1)</b>	11:7	<b>09:55:12 (1)</b>	13:15
<b>09:51:54 (1)</b>	10:2	<b>09:54:04 (1)</b>	12:11	<b>09:56:37 (1)</b>
8:23	<b>09:52:43 (1)</b>	11:8	<b>09:55:13 (1)</b>	13:16
<b>09:51:58 (1)</b>	10:3	<b>09:54:06 (1)</b>	12:12	<b>09:56:41 (2)</b>
8:24	<b>09:52:44 (1)</b>	11:9	<b>09:55:16 (1)</b>	13:17,18
<b>09:52:01 (1)</b>	10:4	<b>09:54:08 (1)</b>	12:13	<b>09:56:45 (1)</b>
8:25	<b>09:52:46 (3)</b>	11:10	<b>09:55:18 (1)</b>	13:19
<b>09:52:02 (1)</b>	10:5,6,7	<b>09:54:18 (1)</b>	12:14	<b>09:56:47 (1)</b>
9:2	<b>09:52:49 (2)</b>	11:11	<b>09:55:27 (2)</b>	13:20
<b>09:52:03 (1)</b>	10:8,9	<b>09:54:21 (1)</b>	12:15,16	<b>09:56:48 (1)</b>
9:3	<b>09:52:50 (1)</b>	11:12	<b>09:55:28 (1)</b>	13:21
<b>09:52:05 (2)</b>	10:10	<b>09:54:24 (1)</b>	12:17	<b>09:56:50 (2)</b>
9:4,5	<b>09:52:55 (1)</b>	11:13	<b>09:55:31 (1)</b>	13:22,23
<b>09:52:07 (1)</b>	10:11	<b>09:54:25 (1)</b>	12:18	<b>09:56:51 (1)</b>
9:6	<b>09:52:59 (1)</b>	11:14	<b>09:55:32 (1)</b>	13:24
<b>09:52:08 (1)</b>	10:12	<b>09:54:30 (1)</b>	12:19	<b>09:56:53 (2)</b>
9:7	<b>09:53:11 (1)</b>	11:15	<b>09:55:34 (1)</b>	13:25 14:2
<b>09:52:09 (1)</b>	10:13	<b>09:54:33 (1)</b>	12:20	<b>09:56:57 (1)</b>
9:8	<b>09:53:17 (1)</b>	11:16	<b>09:55:35 (1)</b>	14:3
<b>09:52:13 (1)</b>	10:14	<b>09:54:35 (1)</b>	12:21	<b>09:56:59 (1)</b>
9:9	<b>09:53:21 (1)</b>	11:17	<b>09:55:39 (1)</b>	14:4
<b>09:52:15 (1)</b>	10:15	<b>09:54:37 (1)</b>	12:22	<b>09:57:00 (1)</b>
9:10	<b>09:53:24 (1)</b>	11:18	<b>09:55:43 (1)</b>	14:5
<b>09:52:16 (1)</b>	10:16	<b>09:54:39 (1)</b>	12:23	<b>09:57:03 (1)</b>
9:11	<b>09:53:25 (1)</b>	11:19	<b>09:55:47 (1)</b>	14:6
<b>09:52:19 (1)</b>	10:17	<b>09:54:43 (1)</b>	12:24	<b>09:57:04 (1)</b>
9:12	<b>09:53:28 (1)</b>	11:20	<b>09:55:49 (1)</b>	14:7
<b>09:52:23 (1)</b>	10:18	<b>09:54:46 (1)</b>	12:25	<b>09:57:05 (1)</b>
9:13	<b>09:53:30 (1)</b>	11:21	<b>09:55:57 (1)</b>	14:8
<b>09:52:26 (1)</b>	10:19	<b>09:54:51 (2)</b>	13:2	<b>09:57:11 (1)</b>
9:14	<b>09:53:31 (1)</b>	11:22,23	<b>09:56:00 (1)</b>	14:9
<b>09:52:27 (1)</b>	10:20	<b>09:54:52 (1)</b>	13:3	<b>09:57:15 (1)</b>
9:15	<b>09:53:33 (1)</b>	11:24	<b>09:56:02 (1)</b>	14:10

<b>09:57:21 (1)</b> 14:11	15:14	<b>09:59:40 (1)</b> 16:20	<b>10:06:09 (1)</b> 17:12	18:19
<b>09:57:23 (2)</b> 14:12,13	<b>09:58:44 (1)</b> 15:15	<b>09:59:41 (2)</b> 16:21,22	<b>10:06:19 (1)</b> 17:13	<b>10:07:24 (1)</b> 18:20
<b>09:57:26 (2)</b> 14:14,15	<b>09:58:45 (1)</b> 15:16	<b>09:59:43 (1)</b> 16:23	<b>10:06:20 (1)</b> 17:14	<b>10:07:26 (1)</b> 18:21
<b>09:57:27 (1)</b> 14:16	<b>09:58:46 (1)</b> 15:17	<b>09:59:45 (1)</b> 16:24	<b>10:06:22 (1)</b> 17:15	<b>10:07:28 (1)</b> 18:22
<b>09:57:29 (1)</b> 14:17	<b>09:58:49 (1)</b> 15:18		<b>10:06:25 (1)</b> 17:16	<b>10:07:29 (1)</b> 18:23
<b>09:57:31 (1)</b> 14:18	<b>09:58:51 (3)</b> 15:19,20,21	<b>1</b>	<b>10:06:26 (1)</b> 17:17	<b>10:07:39 (1)</b> 18:24
<b>09:57:35 (1)</b> 14:19	<b>09:58:55 (1)</b> 15:22	<b>1 (3)</b> 5:3 43:10 288:4	<b>10:06:32 (1)</b> 17:18	<b>10:07:43 (1)</b> 18:25
<b>09:57:36 (1)</b> 14:20	<b>09:58:58 (1)</b> 15:23	<b>1st (3)</b> 141:14,15 143:7	<b>10:06:34 (3)</b> 17:19,20,21	<b>10:07:45 (1)</b> 19:2
<b>09:57:37 (1)</b> 14:21	<b>09:59:00 (1)</b> 15:24	<b>1,000 (4)</b> 119:3 152:24 154:7 154:11	<b>10:06:36 (1)</b> 17:22	<b>10:07:46 (1)</b> 19:3
<b>09:57:46 (1)</b> 14:22	<b>09:59:05 (1)</b> 15:25	<b>1:47 (3)</b> 134:13 135:3,5	<b>10:06:37 (1)</b> 17:23	<b>10:07:48 (1)</b> 19:4
<b>09:57:47 (1)</b> 14:23	<b>09:59:06 (1)</b> 16:2	<b>1:49 (1)</b> 136:15	<b>10:06:39 (1)</b> 17:24	<b>10:07:49 (1)</b> 19:5
<b>09:57:48 (1)</b> 14:24	<b>09:59:10 (1)</b> 16:3	<b>10 (15)</b> 54:4,21 55:5 56:5,17 56:20,21 57:3,7,18	<b>10:06:40 (1)</b> 17:25	<b>10:07:50 (2)</b> 19:6,7
<b>09:57:49 (1)</b> 14:25	<b>09:59:12 (1)</b> 16:4	142:14 151:15	<b>10:06:43 (2)</b> 18:2,3	<b>10:07:55 (1)</b> 19:8
<b>09:57:52 (1)</b> 15:2	<b>09:59:14 (2)</b> 16:5,6	213:16 248:10	<b>10:06:44 (1)</b> 18:4	<b>10:07:57 (1)</b> 19:9
<b>09:57:54 (1)</b> 15:3	<b>09:59:15 (1)</b> 16:7	261:11	<b>10:06:47 (2)</b> 18:5,6	<b>10:07:59 (1)</b> 19:10
<b>09:57:58 (1)</b> 15:4	<b>09:59:16 (2)</b> 16:8,9	<b>10,000 (2)</b> 171:2 280:5	<b>10:06:49 (1)</b> 18:7	<b>10:08:04 (2)</b> 19:11,12
<b>09:58:11 (1)</b> 15:5	<b>09:59:18 (1)</b> 16:10	<b>10:00 (1)</b> 259:3	<b>10:06:53 (1)</b> 18:8	<b>10:08:06 (1)</b> 19:13
<b>09:58:13 (1)</b> 15:6	<b>09:59:19 (1)</b> 16:11	<b>10:04:18 (1)</b> 16:25	<b>10:06:54 (1)</b> 18:9	<b>10:08:09 (1)</b> 19:14
<b>09:58:16 (1)</b> 15:7	<b>09:59:20 (1)</b> 16:12	<b>10:05:55 (1)</b> 17:2	<b>10:06:56 (2)</b> 18:10,11	<b>10:08:11 (1)</b> 19:15
<b>09:58:18 (1)</b> 15:8	<b>09:59:23 (1)</b> 16:13	<b>10:05:58 (1)</b> 17:3	<b>10:06:59 (1)</b> 18:12	<b>10:08:12 (1)</b> 19:16
<b>09:58:19 (1)</b> 15:9	<b>09:59:24 (1)</b> 16:14	<b>10:05:59 (1)</b> 17:4	<b>10:07:03 (1)</b> 18:14	<b>10:08:14 (1)</b> 19:17
<b>09:58:21 (1)</b> 15:10	<b>09:59:28 (1)</b> 16:15	<b>10:06 (1)</b> 16:25	<b>10:07:04 (1)</b> 18:15	<b>10:08:15 (1)</b> 19:18
<b>09:58:26 (1)</b> 15:11	<b>09:59:30 (1)</b> 16:16	<b>10:06:01 (1)</b> 17:5	<b>10:07:09 (1)</b> 18:16	<b>10:08:20 (1)</b> 19:19
<b>09:58:35 (1)</b> 15:12	<b>09:59:32 (1)</b> 16:17	<b>10:06:02 (2)</b> 17:6,7	<b>10:07:12 (1)</b> 18:17	<b>10:08:23 (2)</b> 19:20,21
<b>09:58:38 (1)</b> 15:13	<b>09:59:35 (1)</b> 16:18	<b>10:06:03 (2)</b> 17:8,9	<b>10:07:20 (1)</b> 18:18	<b>10:08:25 (1)</b> 19:22
<b>09:58:42 (1)</b>	<b>09:59:38 (1)</b> 16:19	<b>10:06:05 (1)</b> 17:10	<b>10:07:23 (1)</b>	<b>10:08:28 (1)</b> 19:23
		<b>10:06:07 (1)</b> 17:11		

<b>10:08:30 (1)</b>	21:6	<b>10:11:01 (1)</b>	23:16	<b>10:13:25 (1)</b>
19:24	<b>10:09:46 (1)</b>	22:10	<b>10:12:22 (1)</b>	24:25
<b>10:08:31 (1)</b>	21:7	<b>10:11:02 (2)</b>	23:17	<b>10:13:30 (1)</b>
19:25	<b>10:09:47 (1)</b>	22:11,12	<b>10:12:28 (1)</b>	25:2
<b>10:08:40 (1)</b>	21:8	<b>10:11:03 (1)</b>	23:18	<b>10:13:33 (1)</b>
20:2	<b>10:09:48 (1)</b>	22:13	<b>10:12:29 (1)</b>	25:3
<b>10:08:43 (1)</b>	21:9	<b>10:11:06 (1)</b>	23:19	<b>10:13:37 (2)</b>
20:3	<b>10:10:06 (1)</b>	22:14	<b>10:12:31 (1)</b>	25:4,5
<b>10:08:44 (1)</b>	21:10	<b>10:11:07 (1)</b>	23:20	<b>10:13:38 (1)</b>
20:4	<b>10:10:09 (1)</b>	22:15	<b>10:12:32 (1)</b>	25:6
<b>10:08:45 (1)</b>	21:11	<b>10:11:10 (2)</b>	23:21	<b>10:13:41 (1)</b>
20:5	<b>10:10:11 (1)</b>	22:17,18	<b>10:12:36 (1)</b>	25:7
<b>10:08:46 (1)</b>	21:12	<b>10:11:17 (1)</b>	23:22	<b>10:13:43 (1)</b>
20:6	<b>10:10:12 (1)</b>	22:19	<b>10:12:39 (1)</b>	25:8
<b>10:08:51 (1)</b>	21:13	<b>10:11:20 (1)</b>	23:23	<b>10:13:46 (1)</b>
20:7	<b>10:10:13 (1)</b>	22:20	<b>10:12:40 (1)</b>	25:9
<b>10:08:56 (1)</b>	21:14	<b>10:11:21 (2)</b>	23:24	<b>10:13:54 (1)</b>
20:8	<b>10:10:15 (1)</b>	22:21,22	<b>10:12:41 (1)</b>	25:10
<b>10:08:59 (2)</b>	21:15	<b>10:11:26 (1)</b>	23:25	<b>10:13:58 (1)</b>
20:9,10	<b>10:10:16 (1)</b>	22:23	<b>10:12:43 (1)</b>	25:11
<b>10:09:02 (1)</b>	21:16	<b>10:11:33 (1)</b>	24:2	<b>10:14:04 (1)</b>
20:11	<b>10:10:18 (1)</b>	22:24	<b>10:12:44 (2)</b>	25:12
<b>10:09:05 (2)</b>	21:17	<b>10:11:37 (2)</b>	24:3,4	<b>10:14:06 (1)</b>
20:12,13	<b>10:10:19 (1)</b>	22:25 23:2	<b>10:12:49 (3)</b>	25:13
<b>10:09:16 (2)</b>	21:18	<b>10:11:41 (1)</b>	24:5,6,7	<b>10:14:10 (1)</b>
20:14,15	<b>10:10:20 (1)</b>	23:3	<b>10:12:50 (2)</b>	25:14
<b>10:09:19 (1)</b>	21:19	<b>10:11:42 (1)</b>	24:8,9	<b>10:14:13 (1)</b>
20:16	<b>10:10:26 (1)</b>	23:4	<b>10:12:53 (1)</b>	25:15
<b>10:09:22 (1)</b>	21:20	<b>10:11:47 (1)</b>	24:11	<b>10:14:17 (1)</b>
20:17	<b>10:10:27 (1)</b>	23:5	<b>10:12:54 (1)</b>	25:16
<b>10:09:23 (1)</b>	21:21	<b>10:11:50 (1)</b>	24:12	<b>10:14:24 (1)</b>
20:18	<b>10:10:30 (1)</b>	23:6	<b>10:12:57 (1)</b>	25:17
<b>10:09:26 (1)</b>	21:22	<b>10:11:55 (1)</b>	24:13	<b>10:14:31 (1)</b>
20:19	<b>10:10:32 (1)</b>	23:7	<b>10:13:00 (1)</b>	25:18
<b>10:09:27 (1)</b>	21:23	<b>10:11:58 (1)</b>	24:14	<b>10:14:35 (2)</b>
20:20	<b>10:10:33 (1)</b>	23:8	<b>10:13:03 (2)</b>	25:19,20
<b>10:09:28 (1)</b>	21:24	<b>10:12:02 (1)</b>	24:15,16	<b>10:14:40 (1)</b>
20:21	<b>10:10:35 (1)</b>	23:9	<b>10:13:05 (1)</b>	25:21
<b>10:09:29 (1)</b>	21:25	<b>10:12:04 (1)</b>	24:17	<b>10:14:44 (1)</b>
20:22	<b>10:10:36 (1)</b>	23:10	<b>10:13:09 (1)</b>	25:22
<b>10:09:32 (1)</b>	22:2	<b>10:12:05 (1)</b>	24:18	<b>10:14:47 (1)</b>
20:23	<b>10:10:46 (1)</b>	23:11	<b>10:13:14 (1)</b>	25:23
<b>10:09:33 (1)</b>	22:3	<b>10:12:08 (1)</b>	24:19	<b>10:14:48 (1)</b>
20:24	<b>10:10:47 (1)</b>	23:12	<b>10:13:17 (1)</b>	25:24
<b>10:09:35 (3)</b>	22:4	<b>10:12:11 (1)</b>	24:20	<b>10:14:49 (1)</b>
20:25 21:2,3	<b>10:10:49 (1)</b>	23:13	<b>10:13:19 (1)</b>	25:25
<b>10:09:36 (1)</b>	22:5	<b>10:12:14 (1)</b>	24:21	<b>10:14:54 (1)</b>
21:4	<b>10:10:53 (2)</b>	23:14	<b>10:13:21 (1)</b>	26:2
<b>10:09:37 (1)</b>	22:7,8	<b>10:12:15 (1)</b>	24:22	<b>10:14:57 (1)</b>
21:5	<b>10:10:58 (1)</b>	23:15	<b>10:13:24 (2)</b>	26:3
<b>10:09:42 (1)</b>	22:9	<b>10:12:17 (1)</b>	24:23,24	<b>10:14:58 (1)</b>

26:4	<b>10:16:13 (1)</b>	28:11	<b>10:18:37 (1)</b>	30:20
<b>10:15:06 (1)</b>	27:7	<b>10:17:24 (1)</b>	29:16	<b>10:19:48 (1)</b>
26:5	<b>10:16:17 (1)</b>	28:12	<b>10:18:40 (1)</b>	30:21
<b>10:15:14 (1)</b>	27:8	<b>10:17:25 (1)</b>	29:17	<b>10:19:50 (1)</b>
26:6	<b>10:16:21 (1)</b>	28:13	<b>10:18:44 (1)</b>	30:22
<b>10:15:15 (1)</b>	27:9	<b>10:17:27 (1)</b>	29:18	<b>10:19:51 (1)</b>
26:7	<b>10:16:27 (1)</b>	28:14	<b>10:18:45 (2)</b>	30:23
<b>10:15:19 (1)</b>	27:10	<b>10:17:29 (2)</b>	29:19,20	<b>10:19:55 (1)</b>
26:8	<b>10:16:32 (1)</b>	28:15,16	<b>10:18:49 (1)</b>	30:24
<b>10:15:23 (2)</b>	27:11	<b>10:17:31 (1)</b>	29:21	<b>10:19:56 (1)</b>
26:9,10	<b>10:16:36 (1)</b>	28:17	<b>10:18:52 (1)</b>	30:25
<b>10:15:25 (1)</b>	27:13	<b>10:17:33 (1)</b>	29:22	<b>10:19:58 (1)</b>
26:11	<b>10:16:37 (1)</b>	28:18	<b>10:18:56 (1)</b>	31:2
<b>10:15:26 (1)</b>	27:14	<b>10:17:37 (1)</b>	29:23	<b>10:20:00 (2)</b>
26:12	<b>10:16:38 (1)</b>	28:19	<b>10:18:57 (1)</b>	31:3,4
<b>10:15:32 (1)</b>	27:15	<b>10:17:41 (1)</b>	29:24	<b>10:20:01 (1)</b>
26:13	<b>10:16:40 (1)</b>	28:20	<b>10:19:00 (1)</b>	31:5
<b>10:15:33 (1)</b>	27:16	<b>10:17:45 (1)</b>	29:25	<b>10:20:03 (2)</b>
26:14	<b>10:16:41 (1)</b>	28:21	<b>10:19:03 (1)</b>	31:6,7
<b>10:15:34 (1)</b>	27:17	<b>10:17:48 (1)</b>	30:2	<b>10:20:06 (1)</b>
26:15	<b>10:16:44 (1)</b>	28:22	<b>10:19:06 (1)</b>	31:8
<b>10:15:35 (1)</b>	27:18	<b>10:17:51 (1)</b>	30:3	<b>10:20:17 (1)</b>
26:16	<b>10:16:48 (1)</b>	28:24	<b>10:19:09 (1)</b>	31:10
<b>10:15:36 (1)</b>	27:19	<b>10:17:54 (1)</b>	30:4	<b>10:20:20 (1)</b>
26:17	<b>10:16:49 (1)</b>	28:25	<b>10:19:11 (1)</b>	31:11
<b>10:15:38 (1)</b>	27:20	<b>10:17:55 (1)</b>	30:5	<b>10:20:25 (1)</b>
26:18	<b>10:16:51 (1)</b>	29:2	<b>10:19:14 (1)</b>	31:12
<b>10:15:40 (1)</b>	27:21	<b>10:17:59 (1)</b>	30:6	<b>10:20:29 (1)</b>
26:19	<b>10:16:55 (1)</b>	29:3	<b>10:19:16 (1)</b>	31:13
<b>10:15:45 (1)</b>	27:22	<b>10:18:02 (1)</b>	30:7	<b>10:20:41 (2)</b>
26:20	<b>10:16:57 (1)</b>	29:4	<b>10:19:17 (2)</b>	31:14,15
<b>10:15:47 (1)</b>	27:23	<b>10:18:05 (1)</b>	30:8,9	<b>10:20:44 (1)</b>
26:21	<b>10:16:58 (1)</b>	29:5	<b>10:19:21 (1)</b>	31:16
<b>10:15:49 (1)</b>	27:24	<b>10:18:08 (1)</b>	30:10	<b>10:20:45 (1)</b>
26:22	<b>10:17:02 (1)</b>	29:6	<b>10:19:22 (1)</b>	31:17
<b>10:15:53 (1)</b>	27:25	<b>10:18:10 (1)</b>	30:11	<b>10:20:50 (1)</b>
26:23	<b>10:17:05 (1)</b>	29:7	<b>10:19:24 (1)</b>	31:18
<b>10:15:56 (1)</b>	28:2	<b>10:18:13 (1)</b>	30:12	<b>10:20:53 (1)</b>
26:24	<b>10:17:06 (1)</b>	29:8	<b>10:19:27 (1)</b>	31:19
<b>10:16:01 (1)</b>	28:3	<b>10:18:19 (2)</b>	30:13	<b>10:20:57 (1)</b>
26:25	<b>10:17:09 (1)</b>	29:9,10	<b>10:19:33 (1)</b>	31:20
<b>10:16:02 (1)</b>	28:4	<b>10:18:22 (1)</b>	30:14	<b>10:21:01 (1)</b>
27:2	<b>10:17:12 (2)</b>	29:11	<b>10:19:35 (2)</b>	31:21
<b>10:16:05 (1)</b>	28:5,6	<b>10:18:25 (1)</b>	30:15,16	<b>10:21:10 (1)</b>
27:3	<b>10:17:14 (1)</b>	29:12	<b>10:19:40 (1)</b>	31:22
<b>10:16:07 (1)</b>	28:7	<b>10:18:27 (1)</b>	30:17	<b>10:21:12 (1)</b>
27:4	<b>10:17:17 (1)</b>	29:13	<b>10:19:41 (1)</b>	31:23
<b>10:16:09 (1)</b>	28:8	<b>10:18:29 (1)</b>	30:18	<b>10:21:15 (1)</b>
27:5	<b>10:17:20 (1)</b>	29:14	<b>10:19:44 (1)</b>	31:24
<b>10:16:11 (1)</b>	28:10	<b>10:18:31 (1)</b>	30:19	<b>10:21:18 (1)</b>
27:6	<b>10:17:21 (1)</b>	29:15	<b>10:19:47 (1)</b>	31:25

<b>10:21:24 (1)</b>	33:5	<b>10:29:31 (1)</b>	35:10	<b>10:32:30 (1)</b>
32:2	<b>10:22:29 (1)</b>	34:8	<b>10:31:15 (1)</b>	36:13
<b>10:21:38 (1)</b>	33:6	<b>10:29:33 (1)</b>	35:11	<b>10:32:33 (1)</b>
32:3	<b>10:22:35 (1)</b>	34:9	<b>10:31:18 (1)</b>	36:14
<b>10:21:41 (1)</b>	33:7	<b>10:29:40 (1)</b>	35:12	<b>10:32:38 (1)</b>
32:4	<b>10:22:39 (1)</b>	34:10	<b>10:31:21 (1)</b>	36:15
<b>10:21:44 (1)</b>	33:8	<b>10:29:42 (1)</b>	35:13	<b>10:32:40 (1)</b>
32:5	<b>10:22:41 (1)</b>	34:11	<b>10:31:27 (1)</b>	36:16
<b>10:21:46 (2)</b>	33:9	<b>10:29:47 (1)</b>	35:14	<b>10:32:44 (1)</b>
32:6,7	<b>10:22:42 (1)</b>	34:12	<b>10:31:29 (1)</b>	36:17
<b>10:21:48 (1)</b>	33:10	<b>10:29:50 (1)</b>	35:15	<b>10:32:49 (1)</b>
32:8	<b>10:22:43 (1)</b>	34:13	<b>10:31:36 (1)</b>	36:18
<b>10:21:49 (1)</b>	33:11	<b>10:29:55 (1)</b>	35:16	<b>10:32:56 (1)</b>
32:9	<b>10:22:47 (1)</b>	34:14	<b>10:31:40 (1)</b>	36:20
<b>10:21:51 (1)</b>	34:2	<b>10:30:02 (1)</b>	35:17	<b>10:33:04 (1)</b>
32:10	<b>10:22:48 (2)</b>	34:15	<b>10:31:44 (1)</b>	36:21
<b>10:21:53 (1)</b>	33:12 34:3	<b>10:30:07 (1)</b>	35:18	<b>10:33:07 (1)</b>
32:11	<b>10:22:50 (1)</b>	34:16	<b>10:31:47 (1)</b>	36:22
<b>10:21:54 (1)</b>	34:4	<b>10:30:14 (1)</b>	35:19	<b>10:33:09 (1)</b>
32:12	<b>10:22:51 (1)</b>	34:17	<b>10:31:51 (1)</b>	36:23
<b>10:21:55 (1)</b>	33:13	<b>10:30:17 (1)</b>	35:20	<b>10:33:13 (1)</b>
32:13	<b>10:22:52 (1)</b>	34:18	<b>10:31:53 (1)</b>	36:24
<b>10:21:57 (1)</b>	33:14	<b>10:30:21 (1)</b>	35:21	<b>10:33:15 (1)</b>
32:14	<b>10:22:53 (1)</b>	34:19	<b>10:31:58 (1)</b>	36:25
<b>10:21:58 (1)</b>	33:15	<b>10:30:23 (1)</b>	35:22	<b>10:33:17 (1)</b>
32:15	<b>10:22:55 (1)</b>	34:20	<b>10:32:01 (1)</b>	37:2
<b>10:21:59 (1)</b>	33:16	<b>10:30:29 (1)</b>	35:23	<b>10:33:19 (1)</b>
32:16	<b>10:22:57 (1)</b>	34:21	<b>10:32:04 (1)</b>	37:3
<b>10:22:02 (1)</b>	33:17	<b>10:30:31 (1)</b>	35:24	<b>10:33:20 (1)</b>
32:17	<b>10:22:58 (1)</b>	34:22	<b>10:32:07 (1)</b>	37:4
<b>10:22:03 (1)</b>	33:18	<b>10:30:34 (1)</b>	35:25	<b>10:33:26 (1)</b>
32:18	<b>10:23 (1)</b>	34:23	<b>10:32:09 (1)</b>	37:5
<b>10:22:06 (1)</b>	33:18	<b>10:30:36 (1)</b>	36:2	<b>10:33:29 (2)</b>
32:19	<b>10:23:01 (1)</b>	34:24	<b>10:32:10 (1)</b>	37:6,7
<b>10:22:08 (1)</b>	33:19	<b>10:30:38 (1)</b>	36:3	<b>10:33:31 (1)</b>
32:20	<b>10:28:44 (1)</b>	34:25	<b>10:32:13 (1)</b>	37:8
<b>10:22:09 (1)</b>	33:20	<b>10:30:42 (1)</b>	36:4	<b>10:33:32 (1)</b>
32:21	<b>10:28:54 (1)</b>	35:2	<b>10:32:15 (2)</b>	37:9
<b>10:22:10 (1)</b>	33:21	<b>10:30:45 (2)</b>	36:5,6	<b>10:33:39 (1)</b>
32:22	<b>10:29 (1)</b>	35:3,4	<b>10:32:17 (1)</b>	37:10
<b>10:22:11 (1)</b>	33:21	<b>10:30:47 (1)</b>	36:7	<b>10:33:40 (2)</b>
32:23	<b>10:29:12 (1)</b>	35:5	<b>10:32:18 (1)</b>	37:11,12
<b>10:22:12 (1)</b>	33:22	<b>10:30:52 (1)</b>	36:8	<b>10:33:41 (1)</b>
32:24	<b>10:29:17 (2)</b>	35:6	<b>10:32:19 (1)</b>	37:13
<b>10:22:16 (2)</b>	33:23,24	<b>10:30:55 (1)</b>	36:9	<b>10:33:43 (1)</b>
32:25 33:2	<b>10:29:28 (1)</b>	35:7	<b>10:32:23 (1)</b>	37:14
<b>10:22:18 (1)</b>	34:5	<b>10:30:58 (1)</b>	36:10	<b>10:33:49 (1)</b>
33:3	<b>10:29:29 (1)</b>	35:8	<b>10:32:26 (1)</b>	37:15
<b>10:22:19 (1)</b>	34:6	<b>10:31:03 (1)</b>	36:11	<b>10:33:50 (1)</b>
33:4	<b>10:29:30 (1)</b>	35:9	<b>10:32:27 (1)</b>	37:16
<b>10:22:23 (1)</b>	34:7	<b>10:31:10 (1)</b>	36:12	<b>10:33:51 (1)</b>

37:17	<b>10:35:07 (1)</b>	39:24	<b>10:37:43 (1)</b>	42:12
<b>10:33:52 (1)</b>	38:21	<b>10:36:39 (1)</b>	41:4	<b>10:39:22 (1)</b>
37:18	<b>10:35:11 (1)</b>	39:25	<b>10:37:45 (1)</b>	42:13
<b>10:33:53 (1)</b>	38:22	<b>10:36:42 (1)</b>	41:14	<b>10:39:24 (1)</b>
37:19	<b>10:35:12 (1)</b>	40:2	<b>10:37:47 (1)</b>	42:14
<b>10:33:54 (1)</b>	38:23	<b>10:36:43 (1)</b>	41:5	<b>10:39:27 (1)</b>
37:20	<b>10:35:15 (1)</b>	40:3	<b>10:37:48 (1)</b>	42:15
<b>10:33:56 (1)</b>	38:24	<b>10:36:45 (1)</b>	41:15	<b>10:39:28 (1)</b>
37:21	<b>10:35:18 (2)</b>	40:9	<b>10:37:50 (1)</b>	42:16
<b>10:34:05 (1)</b>	38:25 39:2	<b>10:36:49 (2)</b>	41:7	<b>10:39:32 (1)</b>
37:22	<b>10:35:29 (1)</b>	40:5,6	<b>10:37:51 (1)</b>	42:17
<b>10:34:07 (1)</b>	39:3	<b>10:36:50 (1)</b>	41:8	<b>10:39:36 (1)</b>
37:23	<b>10:35:33 (1)</b>	40:7	<b>10:38:15 (1)</b>	42:18
<b>10:34:09 (1)</b>	39:4	<b>10:36:54 (1)</b>	41:16	<b>10:39:38 (1)</b>
37:24	<b>10:35:35 (1)</b>	40:10	<b>10:38:19 (1)</b>	42:19
<b>10:34:13 (1)</b>	39:5	<b>10:36:55 (1)</b>	41:17	<b>10:39:39 (1)</b>
37:25	<b>10:35:37 (1)</b>	40:11	<b>10:38:21 (1)</b>	42:20
<b>10:34:15 (1)</b>	39:6	<b>10:36:57 (1)</b>	41:18	<b>10:39:45 (1)</b>
38:2	<b>10:35:42 (1)</b>	40:12	<b>10:38:27 (1)</b>	42:21
<b>10:34:18 (1)</b>	39:7	<b>10:36:59 (2)</b>	41:19	<b>10:39:48 (1)</b>
38:3	<b>10:35:48 (1)</b>	40:13,14	<b>10:38:31 (1)</b>	42:22
<b>10:34:20 (1)</b>	39:8	<b>10:37:03 (1)</b>	41:20	<b>10:39:51 (1)</b>
38:4	<b>10:35:52 (1)</b>	40:15	<b>10:38:35 (1)</b>	42:23
<b>10:34:22 (1)</b>	39:9	<b>10:37:07 (1)</b>	41:21	<b>10:39:53 (1)</b>
38:5	<b>10:35:56 (1)</b>	40:16	<b>10:38:37 (1)</b>	42:24
<b>10:34:24 (1)</b>	39:10	<b>10:37:12 (1)</b>	41:22	<b>10:40:00 (1)</b>
38:6	<b>10:35:59 (1)</b>	40:17	<b>10:38:38 (1)</b>	42:25
<b>10:34:29 (3)</b>	39:11	<b>10:37:14 (1)</b>	41:23	<b>10:40:05 (1)</b>
38:7,8,9	<b>10:36:04 (1)</b>	40:18	<b>10:38:43 (1)</b>	43:2
<b>10:34:33 (1)</b>	39:12	<b>10:37:18 (1)</b>	41:24	<b>10:40:07 (1)</b>
38:10	<b>10:36:07 (1)</b>	40:19	<b>10:38:46 (1)</b>	43:3
<b>10:34:37 (1)</b>	39:13	<b>10:37:20 (1)</b>	41:25	<b>10:40:12 (1)</b>
38:11	<b>10:36:11 (1)</b>	40:20	<b>10:38:50 (1)</b>	43:5
<b>10:34:38 (1)</b>	39:14	<b>10:37:22 (1)</b>	42:2	<b>10:40:13 (1)</b>
38:12	<b>10:36:15 (1)</b>	40:21	<b>10:38:53 (1)</b>	43:6
<b>10:34:41 (1)</b>	39:15	<b>10:37:26 (2)</b>	42:3	<b>10:40:15 (1)</b>
38:13	<b>10:36:18 (1)</b>	40:22,23	<b>10:38:58 (1)</b>	43:7
<b>10:34:47 (1)</b>	39:16	<b>10:37:27 (1)</b>	42:4	<b>10:40:16 (1)</b>
38:14	<b>10:36:21 (1)</b>	40:24	<b>10:39:00 (1)</b>	43:8
<b>10:34:50 (1)</b>	39:17	<b>10:37:32 (2)</b>	42:5	<b>10:40:19 (2)</b>
38:15	<b>10:36:24 (1)</b>	40:25 41:10	<b>10:39:02 (1)</b>	43:9,10
<b>10:34:54 (1)</b>	39:18	<b>10:37:34 (1)</b>	42:6	<b>10:40:33 (2)</b>
38:16	<b>10:36:25 (1)</b>	41:11	<b>10:39:05 (2)</b>	43:13,14
<b>10:34:58 (1)</b>	39:19	<b>10:37:35 (1)</b>	42:7,8	<b>10:40:34 (1)</b>
38:17	<b>10:36:28 (1)</b>	41:2	<b>10:39:08 (1)</b>	43:15
<b>10:35:01 (1)</b>	39:20	<b>10:37:37 (1)</b>	42:9	<b>10:40:35 (1)</b>
38:18	<b>10:36:31 (2)</b>	41:12	<b>10:39:15 (1)</b>	43:17
<b>10:35:02 (1)</b>	39:21,22	<b>10:37:38 (1)</b>	42:10	<b>10:40:36 (1)</b>
38:19	<b>10:36:33 (1)</b>	41:3	<b>10:39:20 (1)</b>	43:18
<b>10:35:05 (1)</b>	39:23	<b>10:37:41 (1)</b>	42:11	<b>10:40:37 (1)</b>
38:20	<b>10:36:37 (1)</b>	41:13	<b>10:39:21 (1)</b>	43:16

<b>10:40:38 (3)</b>	45:4	<b>10:44:01 (1)</b>	47:12	<b>10:46:49 (1)</b>
43:19,20,21	<b>10:42:18 (3)</b>	46:8	<b>10:45:32 (1)</b>	48:14
<b>10:40:40 (2)</b>	45:5,6,7	<b>10:44:05 (1)</b>	47:13	<b>10:46:53 (1)</b>
43:22,23	<b>10:42:52 (1)</b>	46:9	<b>10:45:34 (1)</b>	48:15
<b>10:40:42 (1)</b>	45:8	<b>10:44:07 (1)</b>	47:14	<b>10:46:56 (1)</b>
43:24	<b>10:42:54 (1)</b>	46:10	<b>10:45:36 (1)</b>	48:16
<b>10:40:43 (1)</b>	45:9	<b>10:44:11 (1)</b>	47:15	<b>10:47:00 (1)</b>
43:25	<b>10:42:59 (1)</b>	46:11	<b>10:45:38 (1)</b>	48:17
<b>10:40:44 (1)</b>	45:10	<b>10:44:13 (1)</b>	47:16	<b>10:47:03 (1)</b>
44:2	<b>10:43:04 (1)</b>	46:12	<b>10:45:40 (1)</b>	48:18
<b>10:40:46 (1)</b>	45:11	<b>10:44:16 (1)</b>	47:17	<b>10:47:05 (1)</b>
44:3	<b>10:43:05 (1)</b>	46:13	<b>10:45:42 (1)</b>	48:19
<b>10:40:47 (1)</b>	45:12	<b>10:44:18 (1)</b>	47:18	<b>10:47:07 (1)</b>
44:4	<b>10:43:07 (1)</b>	46:14	<b>10:45:45 (1)</b>	48:21
<b>10:40:49 (1)</b>	45:13	<b>10:44:19 (1)</b>	47:19	<b>10:47:08 (1)</b>
44:5	<b>10:43:10 (1)</b>	46:20	<b>10:45:52 (1)</b>	48:22
<b>10:40:51 (1)</b>	45:14	<b>10:44:21 (1)</b>	47:20	<b>10:47:09 (1)</b>
44:6	<b>10:43:12 (1)</b>	46:21	<b>10:45:54 (1)</b>	48:23
<b>10:40:53 (1)</b>	45:15	<b>10:44:22 (2)</b>	47:21	<b>10:47:12 (1)</b>
44:7	<b>10:43:14 (1)</b>	46:15,22	<b>10:45:56 (1)</b>	48:24
<b>10:40:56 (1)</b>	45:16	<b>10:44:23 (1)</b>	47:22	<b>10:47:15 (1)</b>
44:8	<b>10:43:17 (1)</b>	46:16	<b>10:45:59 (1)</b>	48:25
<b>10:41:00 (1)</b>	45:17	<b>10:44:25 (1)</b>	47:23	<b>10:47:16 (1)</b>
44:9	<b>10:43:19 (1)</b>	46:17	<b>10:46:02 (1)</b>	49:2
<b>10:41:01 (1)</b>	45:18	<b>10:44:27 (1)</b>	47:24	<b>10:47:17 (1)</b>
44:10	<b>10:43:20 (1)</b>	46:18	<b>10:46:03 (1)</b>	49:3
<b>10:41:03 (1)</b>	45:19	<b>10:44:33 (1)</b>	47:25	<b>10:47:20 (1)</b>
44:11	<b>10:43:23 (1)</b>	46:23	<b>10:46:09 (1)</b>	49:4
<b>10:41:04 (1)</b>	45:20	<b>10:44:37 (1)</b>	48:2	<b>10:47:22 (1)</b>
44:12	<b>10:43:29 (1)</b>	46:24	<b>10:46:11 (1)</b>	49:5
<b>10:41:10 (1)</b>	45:21	<b>10:44:39 (1)</b>	48:3	<b>10:47:23 (1)</b>
44:13	<b>10:43:31 (1)</b>	46:25	<b>10:46:13 (1)</b>	49:6
<b>10:41:13 (1)</b>	45:22	<b>10:44:42 (1)</b>	48:4	<b>10:47:30 (1)</b>
44:14	<b>10:43:36 (1)</b>	47:2	<b>10:46:17 (1)</b>	49:7
<b>10:41:16 (1)</b>	45:23	<b>10:44:46 (1)</b>	48:5	<b>10:47:33 (1)</b>
44:15	<b>10:43:39 (1)</b>	47:3	<b>10:46:23 (1)</b>	49:8
<b>10:41:19 (1)</b>	45:24	<b>10:44:52 (1)</b>	48:6	<b>10:47:39 (1)</b>
44:16	<b>10:43:42 (1)</b>	47:4	<b>10:46:28 (1)</b>	49:9
<b>10:41:23 (2)</b>	45:25	<b>10:44:56 (1)</b>	48:7	<b>10:47:40 (1)</b>
44:17,18	<b>10:43:47 (1)</b>	47:5	<b>10:46:31 (1)</b>	49:10
<b>10:41:27 (1)</b>	46:2	<b>10:45:03 (2)</b>	48:8	<b>10:47:43 (1)</b>
44:19	<b>10:43:53 (1)</b>	47:6,7	<b>10:46:33 (1)</b>	49:11
<b>10:41:30 (1)</b>	46:3	<b>10:45:12 (1)</b>	48:9	<b>10:47:45 (1)</b>
44:20	<b>10:43:54 (1)</b>	47:8	<b>10:46:34 (1)</b>	49:12
<b>10:41:41 (2)</b>	46:4	<b>10:45:15 (1)</b>	48:10	<b>10:47:48 (2)</b>
44:23,24	<b>10:43:55 (1)</b>	47:9	<b>10:46:35 (1)</b>	49:13,14
<b>10:41:54 (2)</b>	46:5	<b>10:45:19 (1)</b>	48:11	<b>10:47:50 (2)</b>
44:25 45:2	<b>10:43:57 (1)</b>	47:10	<b>10:46:36 (1)</b>	49:15,16
<b>10:42:06 (1)</b>	46:6	<b>10:45:26 (1)</b>	48:12	<b>10:47:51 (1)</b>
45:3	<b>10:43:59 (1)</b>	47:11	<b>10:46:46 (1)</b>	49:17
<b>10:42:16 (1)</b>	46:7	<b>10:45:30 (1)</b>	48:13	<b>10:47:59 (1)</b>

49:18	<b>10:49:20 (1)</b>	52:4,5	<b>10:51:48 (1)</b>	54:11
<b>10:48:01 (1)</b>	50:24	<b>10:50:33 (1)</b>	53:9	<b>10:53:04 (2)</b>
49:19	<b>10:49:32 (1)</b>	52:6	<b>10:51:53 (1)</b>	54:12,13
<b>10:48:03 (1)</b>	50:25	<b>10:50:36 (1)</b>	53:10	<b>10:53:06 (1)</b>
49:20	<b>10:49:35 (1)</b>	52:7	<b>10:51:56 (1)</b>	54:18
<b>10:48:06 (2)</b>	51:2	<b>10:50:38 (2)</b>	53:11	<b>10:53:08 (1)</b>
49:21,22	<b>10:49:37 (1)</b>	52:8,9	<b>10:52:01 (1)</b>	54:19
<b>10:48:08 (1)</b>	51:3	<b>10:50:44 (1)</b>	53:12	<b>10:53:10 (1)</b>
49:23	<b>10:49:38 (1)</b>	52:10	<b>10:52:02 (1)</b>	54:20
<b>10:48:09 (1)</b>	51:4	<b>10:50:47 (1)</b>	53:13	<b>10:53:13 (1)</b>
49:24	<b>10:49:39 (1)</b>	52:11	<b>10:52:05 (1)</b>	54:21
<b>10:48:10 (2)</b>	51:5	<b>10:50:50 (1)</b>	53:14	<b>10:53:16 (1)</b>
49:25 50:2	<b>10:49:41 (1)</b>	52:12	<b>10:52:07 (1)</b>	54:23
<b>10:48:13 (1)</b>	51:6	<b>10:50:51 (1)</b>	53:15	<b>10:53:18 (1)</b>
50:3	<b>10:49:44 (1)</b>	52:13	<b>10:52:13 (1)</b>	54:24
<b>10:48:18 (1)</b>	51:7	<b>10:50:55 (1)</b>	53:16	<b>10:53:21 (1)</b>
50:4	<b>10:49:45 (1)</b>	52:14	<b>10:52:15 (1)</b>	54:25
<b>10:48:20 (1)</b>	51:8	<b>10:50:59 (1)</b>	53:17	<b>10:53:23 (1)</b>
50:5	<b>10:49:48 (1)</b>	52:15	<b>10:52:23 (1)</b>	55:2
<b>10:48:25 (1)</b>	51:9	<b>10:51:01 (1)</b>	53:18	<b>10:53:25 (1)</b>
50:6	<b>10:49:51 (1)</b>	52:16	<b>10:52:25 (1)</b>	55:3
<b>10:48:26 (1)</b>	51:10	<b>10:51:04 (1)</b>	53:19	<b>10:53:29 (1)</b>
50:7	<b>10:49:52 (1)</b>	52:17	<b>10:52:28 (1)</b>	55:4
<b>10:48:28 (1)</b>	51:11	<b>10:51:05 (1)</b>	53:20	<b>10:53:36 (1)</b>
50:8	<b>10:49:56 (2)</b>	52:18	<b>10:52:31 (1)</b>	55:5
<b>10:48:30 (1)</b>	51:12,13	<b>10:51:07 (1)</b>	53:21	<b>10:53:42 (1)</b>
50:9	<b>10:49:58 (1)</b>	52:19	<b>10:52:33 (1)</b>	55:6
<b>10:48:36 (1)</b>	51:14	<b>10:51:08 (1)</b>	53:22	<b>10:53:47 (1)</b>
50:10	<b>10:50:00 (1)</b>	52:20	<b>10:52:36 (1)</b>	55:7
<b>10:48:39 (1)</b>	51:15	<b>10:51:12 (1)</b>	53:23	<b>10:53:48 (2)</b>
50:11	<b>10:50:03 (3)</b>	52:21	<b>10:52:37 (1)</b>	55:8,17
<b>10:48:45 (1)</b>	51:16,17,18	<b>10:51:13 (1)</b>	53:24	<b>10:53:52 (2)</b>
50:12	<b>10:50:05 (1)</b>	52:22	<b>10:52:39 (1)</b>	55:9,18
<b>10:48:47 (1)</b>	51:19	<b>10:51:14 (1)</b>	53:25	<b>10:53:54 (1)</b>
50:13	<b>10:50:07 (1)</b>	52:23	<b>10:52:41 (1)</b>	55:19
<b>10:48:48 (1)</b>	51:20	<b>10:51:15 (1)</b>	54:2	<b>10:53:55 (1)</b>
50:14	<b>10:50:08 (1)</b>	52:24	<b>10:52:43 (2)</b>	55:10
<b>10:48:55 (1)</b>	51:21	<b>10:51:17 (1)</b>	54:3,4	<b>10:53:57 (1)</b>
50:15	<b>10:50:13 (1)</b>	52:25	<b>10:52:45 (1)</b>	55:20
<b>10:49:00 (1)</b>	51:22	<b>10:51:18 (2)</b>	54:5	<b>10:53:58 (1)</b>
50:16	<b>10:50:14 (1)</b>	53:2,3	<b>10:52:48 (1)</b>	55:11
<b>10:49:04 (2)</b>	51:23	<b>10:51:27 (1)</b>	54:6	<b>10:54:00 (1)</b>
50:17,18	<b>10:50:19 (1)</b>	53:4	<b>10:52:49 (1)</b>	55:21
<b>10:49:05 (1)</b>	51:24	<b>10:51:29 (1)</b>	54:7	<b>10:54:02 (1)</b>
50:19	<b>10:50:23 (1)</b>	53:5	<b>10:52:50 (1)</b>	55:12
<b>10:49:07 (2)</b>	51:25	<b>10:51:33 (1)</b>	54:8	<b>10:54:03 (1)</b>
50:20,21	<b>10:50:25 (1)</b>	53:6	<b>10:52:51 (1)</b>	55:22
<b>10:49:10 (1)</b>	52:2	<b>10:51:40 (1)</b>	54:9	<b>10:54:04 (1)</b>
50:22	<b>10:50:28 (1)</b>	53:7	<b>10:52:56 (1)</b>	55:13
<b>10:49:13 (1)</b>	52:3	<b>10:51:45 (1)</b>	54:10	<b>10:54:05 (2)</b>
50:23	<b>10:50:31 (2)</b>	53:8	<b>10:52:59 (1)</b>	55:14,23

<b>10:54:07 (1)</b>	56:25	<b>10:57:08 (1)</b>	59:11	<b>10:59:45 (1)</b>
55:15	<b>10:55:44 (1)</b>	58:8	<b>10:58:24 (1)</b>	60:17
<b>10:54:27 (1)</b>	57:2	<b>10:57:10 (1)</b>	59:12	<b>10:59:48 (1)</b>
55:24	<b>10:55:50 (1)</b>	58:9	<b>10:58:25 (1)</b>	60:18
<b>10:54:29 (1)</b>	57:3	<b>10:57:12 (1)</b>	59:13	<b>10:59:53 (1)</b>
55:25	<b>10:55:54 (1)</b>	58:10	<b>10:58:28 (1)</b>	60:19
<b>10:54:31 (1)</b>	57:4	<b>10:57:16 (1)</b>	59:14	<b>10:59:54 (1)</b>
56:2	<b>10:55:57 (1)</b>	58:11	<b>10:58:30 (1)</b>	60:20
<b>10:54:33 (1)</b>	57:5	<b>10:57:21 (1)</b>	59:15	<b>10:59:57 (1)</b>
56:3	<b>10:55:59 (2)</b>	58:12	<b>10:58:36 (1)</b>	60:21
<b>10:54:37 (1)</b>	57:6,7	<b>10:57:23 (1)</b>	59:16	<b>10:59:58 (1)</b>
56:4	<b>10:56:03 (1)</b>	58:13	<b>10:58:40 (1)</b>	60:22
<b>10:54:39 (1)</b>	57:8	<b>10:57:24 (1)</b>	59:17	<b>100 (14)</b>
56:5	<b>10:56:05 (2)</b>	58:14	<b>10:58:45 (1)</b>	3:14 65:20 82:15 88:4
<b>10:54:42 (1)</b>	57:9,10	<b>10:57:28 (1)</b>	59:18	207:12 211:15
56:6	<b>10:56:06 (2)</b>	58:15	<b>10:58:51 (1)</b>	212:3,5,9 224:8,20
<b>10:54:44 (2)</b>	57:11,12	<b>10:57:29 (1)</b>	59:19	224:23 225:4 255:7
56:7,8	<b>10:56:07 (1)</b>	58:16	<b>10:58:57 (1)</b>	<b>10007-2601 (1)</b>
<b>10:54:50 (1)</b>	57:13	<b>10:57:31 (2)</b>	59:20	3:15
56:9	<b>10:56:09 (1)</b>	58:17,18	<b>10:58:58 (1)</b>	<b>10022 (1)</b>
<b>10:54:52 (1)</b>	57:14	<b>10:57:34 (1)</b>	59:21	3:7
56:10	<b>10:56:11 (1)</b>	58:19	<b>10:59:05 (1)</b>	<b>101 (1)</b>
<b>10:54:54 (1)</b>	57:15	<b>10:57:35 (1)</b>	59:22	167:8
56:11	<b>10:56:12 (2)</b>	58:20	<b>10:59:08 (1)</b>	<b>1084 (1)</b>
<b>10:54:59 (1)</b>	57:16,17	<b>10:57:36 (1)</b>	59:23	276:16
56:12	<b>10:56:19 (1)</b>	58:21	<b>10:59:11 (1)</b>	<b>11 (1)</b>
<b>10:55:02 (1)</b>	57:18	<b>10:57:40 (1)</b>	59:24	150:11
56:13	<b>10:56:29 (1)</b>	58:22	<b>10:59:13 (1)</b>	<b>11:00:01 (1)</b>
<b>10:55:07 (1)</b>	57:19	<b>10:57:46 (1)</b>	59:25	60:23
56:14	<b>10:56:31 (1)</b>	58:23	<b>10:59:15 (1)</b>	<b>11:00:04 (1)</b>
<b>10:55:10 (1)</b>	57:20	<b>10:57:50 (1)</b>	60:2	60:24
56:15	<b>10:56:35 (1)</b>	58:24	<b>10:59:16 (2)</b>	<b>11:00:05 (1)</b>
<b>10:55:12 (1)</b>	57:21	<b>10:57:51 (1)</b>	60:3,4	60:25
56:16	<b>10:56:38 (1)</b>	58:25	<b>10:59:20 (1)</b>	<b>11:00:06 (1)</b>
<b>10:55:13 (1)</b>	57:22	<b>10:57:54 (1)</b>	60:5	61:2
56:17	<b>10:56:43 (1)</b>	59:2	<b>10:59:22 (2)</b>	<b>11:00:11 (1)</b>
<b>10:55:14 (1)</b>	57:23	<b>10:57:57 (1)</b>	60:7,8	61:3
56:18	<b>10:56:46 (1)</b>	59:3	<b>10:59:25 (2)</b>	<b>11:00:14 (1)</b>
<b>10:55:17 (1)</b>	57:24	<b>10:58:01 (1)</b>	60:9,10	61:4
56:19	<b>10:56:49 (1)</b>	59:4	<b>10:59:27 (1)</b>	<b>11:00:15 (1)</b>
<b>10:55:19 (1)</b>	57:25	<b>10:58:05 (1)</b>	60:11	61:5
56:20	<b>10:56:53 (2)</b>	59:5	<b>10:59:30 (1)</b>	<b>11:00:19 (1)</b>
<b>10:55:26 (1)</b>	58:2,3	<b>10:58:07 (1)</b>	60:12	61:6
56:21	<b>10:56:56 (1)</b>	59:6	<b>10:59:32 (1)</b>	<b>11:00:23 (1)</b>
<b>10:55:28 (1)</b>	58:4	<b>10:58:09 (2)</b>	60:13	61:7
56:22	<b>10:56:57 (1)</b>	59:7,8	<b>10:59:34 (1)</b>	<b>11:00:27 (1)</b>
<b>10:55:31 (1)</b>	58:5	<b>10:58:18 (1)</b>	60:14	61:8
56:23	<b>10:57:00 (1)</b>	59:9	<b>10:59:36 (1)</b>	<b>11:00:30 (1)</b>
<b>10:55:39 (1)</b>	58:6	<b>10:58:19 (1)</b>	60:15	61:9
56:24	<b>10:57:04 (1)</b>	59:10	<b>10:59:43 (1)</b>	<b>11:00:45 (1)</b>
<b>10:55:42 (1)</b>	58:7	<b>10:58:22 (1)</b>	60:16	61:10

<b>11:00:47 (1)</b>	62:15	<b>11:04:57 (1)</b>	64:21	<b>11:07:40 (1)</b>
61:11	<b>11:02:27 (1)</b>	63:18	<b>11:06:27 (1)</b>	66:4
<b>11:00:49 (1)</b>	62:16	<b>11:05:05 (1)</b>	64:22	<b>11:07:45 (1)</b>
61:12	<b>11:02:34 (1)</b>	63:19	<b>11:06:28 (1)</b>	66:5
<b>11:00:50 (1)</b>	62:17	<b>11:05:10 (1)</b>	64:23	<b>11:07:55 (1)</b>
61:13	<b>11:02:38 (1)</b>	63:20	<b>11:06:29 (2)</b>	66:6
<b>11:00:56 (1)</b>	62:18	<b>11:05:14 (1)</b>	64:24,25	<b>11:07:58 (1)</b>
61:14	<b>11:02:43 (1)</b>	63:21	<b>11:06:31 (1)</b>	66:7
<b>11:01:01 (1)</b>	62:19	<b>11:05:16 (1)</b>	65:2	<b>11:07:59 (1)</b>
61:15	<b>11:02:51 (1)</b>	63:22	<b>11:06:40 (1)</b>	66:8
<b>11:01:04 (1)</b>	62:20	<b>11:05:18 (1)</b>	65:3	<b>11:08:07 (1)</b>
61:16	<b>11:02:57 (1)</b>	63:23	<b>11:06:44 (1)</b>	66:9
<b>11:01:07 (1)</b>	62:21	<b>11:05:21 (1)</b>	65:4	<b>11:08:09 (1)</b>
61:17	<b>11:03:07 (1)</b>	63:24	<b>11:06:45 (2)</b>	66:10
<b>11:01:10 (1)</b>	62:22	<b>11:05:24 (1)</b>	65:5,6	<b>11:08:12 (1)</b>
61:18	<b>11:03:13 (1)</b>	63:25	<b>11:06:50 (1)</b>	66:11
<b>11:01:13 (1)</b>	62:23	<b>11:05:26 (1)</b>	65:7	<b>11:08:14 (1)</b>
61:19	<b>11:03:21 (1)</b>	64:2	<b>11:06:55 (1)</b>	66:12
<b>11:01:16 (2)</b>	62:24	<b>11:05:28 (1)</b>	65:8	<b>11:08:18 (1)</b>
61:20,21	<b>11:03:30 (1)</b>	64:3	<b>11:06:58 (1)</b>	66:13
<b>11:01:19 (2)</b>	62:25	<b>11:05:31 (1)</b>	65:9	<b>11:08:21 (1)</b>
61:22,23	<b>11:03:36 (1)</b>	64:4	<b>11:07:00 (1)</b>	66:14
<b>11:01:22 (1)</b>	63:2	<b>11:05:38 (2)</b>	65:10	<b>11:08:25 (1)</b>
61:24	<b>11:03:43 (1)</b>	64:5,6	<b>11:07:01 (1)</b>	66:15
<b>11:01:23 (1)</b>	63:3	<b>11:05:44 (1)</b>	65:12	<b>11:08:29 (1)</b>
62:2	<b>11:03:52 (1)</b>	64:7	<b>11:07:02 (2)</b>	66:16
<b>11:01:24 (1)</b>	63:4	<b>11:05:49 (1)</b>	65:13,14	<b>11:08:32 (1)</b>
62:3	<b>11:04:00 (1)</b>	64:8	<b>11:07:06 (1)</b>	66:17
<b>11:01:28 (1)</b>	63:5	<b>11:05:51 (1)</b>	65:15	<b>11:08:34 (1)</b>
62:4	<b>11:04:10 (1)</b>	64:9	<b>11:07:10 (1)</b>	66:18
<b>11:01:33 (1)</b>	63:6	<b>11:05:55 (1)</b>	65:16	<b>11:08:37 (1)</b>
62:5	<b>11:04:24 (1)</b>	64:10	<b>11:07:13 (1)</b>	66:19
<b>11:01:35 (1)</b>	63:7	<b>11:05:59 (1)</b>	65:17	<b>11:08:40 (1)</b>
62:6	<b>11:04:30 (1)</b>	64:11	<b>11:07:16 (1)</b>	66:20
<b>11:01:36 (1)</b>	63:8	<b>11:06:02 (1)</b>	65:18	<b>11:08:42 (1)</b>
62:7	<b>11:04:32 (1)</b>	64:12	<b>11:07:17 (1)</b>	66:21
<b>11:01:46 (1)</b>	63:9	<b>11:06:05 (1)</b>	65:20	<b>11:08:47 (1)</b>
62:8	<b>11:04:35 (1)</b>	64:13	<b>11:07:23 (1)</b>	66:22
<b>11:01:49 (1)</b>	63:10	<b>11:06:10 (1)</b>	65:21	<b>11:08:51 (1)</b>
62:9	<b>11:04:36 (1)</b>	64:14	<b>11:07:28 (1)</b>	66:23
<b>11:01:50 (1)</b>	63:11	<b>11:06:11 (1)</b>	65:22	<b>11:08:55 (1)</b>
62:10	<b>11:04:40 (1)</b>	64:15	<b>11:07:30 (1)</b>	66:24
<b>11:01:55 (1)</b>	63:12	<b>11:06:14 (1)</b>	65:23	<b>11:08:58 (1)</b>
62:11	<b>11:04:44 (2)</b>	64:16	<b>11:07:33 (1)</b>	66:25
<b>11:02:04 (1)</b>	63:13,14	<b>11:06:16 (1)</b>	65:24	<b>11:09:01 (1)</b>
62:12	<b>11:04:46 (1)</b>	64:17	<b>11:07:35 (1)</b>	67:2
<b>11:02:08 (1)</b>	63:15	<b>11:06:18 (2)</b>	65:25	<b>11:09:02 (2)</b>
62:13	<b>11:04:53 (1)</b>	64:18,19	<b>11:07:36 (1)</b>	67:3,4
<b>11:02:13 (1)</b>	63:16	<b>11:06:20 (1)</b>	66:2	<b>11:09:04 (1)</b>
62:14	<b>11:04:55 (1)</b>	64:20	<b>11:07:39 (1)</b>	67:5
<b>11:02:18 (1)</b>	63:17	<b>11:06:23 (1)</b>	66:3	<b>11:09:07 (1)</b>

67:6	<b>11:10:32 (1)</b>	69:16	<b>11:12:36 (1)</b>	71:23,24
<b>11:09:12 (1)</b>	68:11	<b>11:11:24 (1)</b>	70:20	<b>11:13:47 (1)</b>
67:7	<b>11:10:34 (1)</b>	69:17	<b>11:12:37 (1)</b>	71:25
<b>11:09:14 (1)</b>	68:12	<b>11:11:27 (1)</b>	70:21	<b>11:13:50 (1)</b>
67:8	<b>11:10:35 (1)</b>	69:18	<b>11:12:38 (1)</b>	72:2
<b>11:09:16 (1)</b>	68:13	<b>11:11:30 (1)</b>	70:22	<b>11:13:51 (1)</b>
67:9	<b>11:10:37 (1)</b>	69:19	<b>11:12:42 (1)</b>	72:3
<b>11:09:17 (1)</b>	68:14	<b>11:11:34 (1)</b>	70:23	<b>11:13:55 (1)</b>
67:10	<b>11:10:42 (1)</b>	69:20	<b>11:12:45 (1)</b>	72:4
<b>11:09:21 (2)</b>	68:15	<b>11:11:37 (1)</b>	70:24	<b>11:13:57 (2)</b>
67:11,12	<b>11:10:44 (1)</b>	69:21	<b>11:12:47 (1)</b>	72:5,6
<b>11:09:23 (1)</b>	68:16	<b>11:11:39 (1)</b>	70:25	<b>11:13:58 (1)</b>
67:13	<b>11:10:45 (1)</b>	69:22	<b>11:12:52 (2)</b>	72:7
<b>11:09:27 (1)</b>	68:17	<b>11:11:41 (1)</b>	71:2,3	<b>11:14:02 (1)</b>
67:14	<b>11:10:48 (1)</b>	69:23	<b>11:12:54 (1)</b>	72:8
<b>11:09:30 (1)</b>	68:18	<b>11:11:42 (1)</b>	71:4	<b>11:14:05 (2)</b>
67:15	<b>11:10:50 (1)</b>	69:24	<b>11:12:55 (1)</b>	72:9,10
<b>11:09:32 (1)</b>	68:19	<b>11:11:46 (1)</b>	71:5	<b>11:14:12 (1)</b>
67:16	<b>11:10:52 (1)</b>	69:25	<b>11:13:05 (1)</b>	72:11
<b>11:09:37 (1)</b>	68:20	<b>11:11:50 (1)</b>	71:6	<b>11:14:16 (1)</b>
67:17	<b>11:10:53 (1)</b>	70:2	<b>11:13:07 (1)</b>	72:12
<b>11:09:39 (1)</b>	68:21	<b>11:11:55 (1)</b>	71:7	<b>11:14:20 (1)</b>
67:18	<b>11:10:55 (1)</b>	70:3	<b>11:13:09 (1)</b>	72:13
<b>11:09:42 (1)</b>	68:22	<b>11:11:56 (1)</b>	71:8	<b>11:14:22 (2)</b>
67:19	<b>11:10:58 (1)</b>	70:4	<b>11:13:11 (1)</b>	72:14,15
<b>11:09:46 (1)</b>	68:23	<b>11:12:00 (1)</b>	71:9	<b>11:14:24 (1)</b>
67:20	<b>11:11:00 (1)</b>	70:5	<b>11:13:12 (1)</b>	72:16
<b>11:09:52 (1)</b>	68:24	<b>11:12:03 (1)</b>	71:10	<b>11:14:31 (1)</b>
67:22	<b>11:11:01 (1)</b>	70:6	<b>11:13:15 (1)</b>	72:17
<b>11:09:53 (1)</b>	68:25	<b>11:12:05 (1)</b>	71:11	<b>11:14:34 (1)</b>
67:23	<b>11:11:02 (2)</b>	70:7	<b>11:13:18 (1)</b>	72:18
<b>11:09:54 (1)</b>	69:2,3	<b>11:12:09 (1)</b>	71:12	<b>11:14:35 (1)</b>
67:24	<b>11:11:03 (1)</b>	70:8	<b>11:13:19 (1)</b>	72:19
<b>11:09:57 (1)</b>	69:4	<b>11:12:12 (1)</b>	71:13	<b>11:14:37 (2)</b>
67:25	<b>11:11:04 (3)</b>	70:9	<b>11:13:20 (2)</b>	72:20,21
<b>11:10:04 (2)</b>	69:5,6,7	<b>11:12:16 (2)</b>	71:14,15	<b>11:14:41 (1)</b>
68:2,3	<b>11:11:06 (1)</b>	70:10,11	<b>11:13:24 (1)</b>	72:22
<b>11:10:07 (1)</b>	69:8	<b>11:12:19 (1)</b>	71:16	<b>11:14:43 (1)</b>
68:4	<b>11:11:10 (1)</b>	70:12	<b>11:13:26 (1)</b>	72:23
<b>11:10:11 (1)</b>	69:9	<b>11:12:20 (1)</b>	71:17	<b>11:14:48 (1)</b>
68:5	<b>11:11:12 (2)</b>	70:14	<b>11:13:28 (1)</b>	72:24
<b>11:10:14 (1)</b>	69:10,11	<b>11:12:21 (1)</b>	71:18	<b>11:14:50 (1)</b>
68:6	<b>11:11:17 (1)</b>	70:15	<b>11:13:29 (1)</b>	72:25
<b>11:10:16 (1)</b>	69:12	<b>11:12:24 (1)</b>	71:19	<b>11:14:58 (1)</b>
68:7	<b>11:11:18 (1)</b>	70:16	<b>11:13:33 (1)</b>	73:2
<b>11:10:20 (1)</b>	69:13	<b>11:12:25 (1)</b>	71:20	<b>11:15:01 (1)</b>
68:8	<b>11:11:19 (1)</b>	70:17	<b>11:13:36 (1)</b>	73:3
<b>11:10:23 (1)</b>	69:14	<b>11:12:29 (1)</b>	71:21	<b>11:15:02 (1)</b>
68:9	<b>11:11:20 (1)</b>	70:18	<b>11:13:37 (1)</b>	73:4
<b>11:10:30 (1)</b>	69:15	<b>11:12:33 (1)</b>	71:22	<b>11:15:03 (1)</b>
68:10	<b>11:11:22 (1)</b>	70:19	<b>11:13:43 (2)</b>	73:5

<b>11:15:06 (1)</b> 73:6	74:7	<b>11:17:54 (1)</b> 75:9	76:13	<b>11:35:30 (1)</b> 77:16
<b>11:15:08 (1)</b> 73:7	<b>11:16:27 (1)</b> 74:8	<b>11:17:58 (1)</b> 75:10	<b>11:19:20 (1)</b> 76:14	<b>11:35:32 (1)</b> 77:17
<b>11:15:09 (1)</b> 73:8	<b>11:16:32 (1)</b> 74:9	<b>11:18:02 (1)</b> 75:11	<b>11:19:22 (1)</b> 76:15	<b>11:35:37 (1)</b> 77:18
<b>11:15:15 (1)</b> 73:9	<b>11:16:35 (1)</b> 74:10	<b>11:18:07 (1)</b> 75:12	<b>11:19:23 (1)</b> 76:16	<b>11:35:40 (1)</b> 77:19
<b>11:15:19 (1)</b> 73:10	<b>11:16:37 (1)</b> 74:11	<b>11:18:09 (1)</b> 75:13	<b>11:19:29 (1)</b> 76:17	<b>11:35:41 (1)</b> 77:20
<b>11:15:23 (1)</b> 73:11	<b>11:16:38 (1)</b> 74:12	<b>11:18:11 (1)</b> 75:14	<b>11:19:31 (1)</b> 76:18	<b>11:35:42 (1)</b> 77:21
<b>11:15:27 (1)</b> 73:12	<b>11:16:41 (1)</b> 74:13	<b>11:18:14 (1)</b> 75:15	<b>11:19:37 (1)</b> 76:19	<b>11:35:46 (1)</b> 77:22
<b>11:15:31 (1)</b> 73:13	<b>11:16:43 (1)</b> 74:14	<b>11:18:20 (1)</b> 75:16	<b>11:19:39 (1)</b> 76:20	<b>11:35:49 (1)</b> 77:23
<b>11:15:33 (1)</b> 73:14	<b>11:16:45 (1)</b> 74:15	<b>11:18:22 (1)</b> 75:17	<b>11:19:42 (1)</b> 76:21	<b>11:35:51 (1)</b> 77:24
<b>11:15:35 (1)</b> 73:15	<b>11:16:47 (1)</b> 74:16	<b>11:18:25 (1)</b> 75:18	<b>11:19:52 (1)</b> 76:22	<b>11:35:52 (1)</b> 77:25
<b>11:15:37 (1)</b> 73:16	<b>11:16:51 (1)</b> 74:17	<b>11:18:26 (1)</b> 75:19	<b>11:19:53 (1)</b> 76:23	<b>11:35:59 (1)</b> 78:2
<b>11:15:41 (1)</b> 73:17	<b>11:16:54 (1)</b> 74:18	<b>11:18:28 (1)</b> 75:20	<b>11:19:55 (2)</b> 76:24,25	<b>11:36:01 (1)</b> 78:3
<b>11:15:45 (1)</b> 73:18	<b>11:17:00 (1)</b> 74:19	<b>11:18:32 (1)</b> 75:21	<b>11:19:56 (1)</b> 77:2	<b>11:36:08 (1)</b> 78:4
<b>11:15:49 (1)</b> 73:19	<b>11:17:04 (1)</b> 74:20	<b>11:18:35 (1)</b> 75:22	<b>11:19:57 (2)</b> 77:4,5	<b>11:36:09 (1)</b> 78:5
<b>11:15:51 (1)</b> 73:20	<b>11:17:08 (1)</b> 74:21	<b>11:18:38 (1)</b> 75:23	<b>11:19:59 (1)</b> 77:6	<b>11:36:12 (1)</b> 78:6
<b>11:15:52 (1)</b> 73:21	<b>11:17:11 (1)</b> 74:22	<b>11:18:41 (1)</b> 75:24	<b>11:20 (1)</b> 77:5	<b>11:36:19 (1)</b> 78:7
<b>11:15:56 (1)</b> 73:22	<b>11:17:16 (1)</b> 74:23	<b>11:18:48 (1)</b> 75:25	<b>11:20:00 (1)</b> 77:7	<b>11:36:28 (1)</b> 78:8
<b>11:15:58 (1)</b> 73:23	<b>11:17:20 (1)</b> 74:24	<b>11:18:51 (1)</b> 76:2	<b>11:25:44 (1)</b> 77:8	<b>11:36:30 (2)</b> 78:9,10
<b>11:16:07 (1)</b> 73:24	<b>11:17:23 (1)</b> 74:25	<b>11:18:53 (1)</b> 76:3	<b>11:35 (1)</b> 77:8	<b>11:36:31 (1)</b> 78:11
<b>11:16:09 (1)</b> 73:25	<b>11:17:26 (1)</b> 75:2	<b>11:18:55 (1)</b> 76:5	<b>11:35:03 (1)</b> 77:9	<b>11:36:35 (1)</b> 78:12
<b>11:16:12 (1)</b> 74:2	<b>11:17:29 (1)</b> 75:3	<b>11:18:57 (2)</b> 76:6,7	<b>11:35:04 (1)</b> 77:10	<b>11:36:40 (1)</b> 78:13
<b>11:16:15 (1)</b> 74:3	<b>11:17:35 (1)</b> 75:4	<b>11:19:03 (2)</b> 76:8,9	<b>11:35:07 (1)</b> 77:11	<b>11:36:44 (1)</b> 78:14
<b>11:16:19 (1)</b> 74:4	<b>11:17:39 (1)</b> 75:5	<b>11:19:05 (1)</b> 76:10	<b>11:35:09 (1)</b> 77:12	<b>11:36:46 (1)</b> 78:15
<b>11:16:20 (1)</b> 74:5	<b>11:17:42 (1)</b> 75:6	<b>11:19:08 (1)</b> 76:11	<b>11:35:13 (1)</b> 77:13	<b>11:36:54 (1)</b> 78:16
<b>11:16:23 (1)</b> 74:6	<b>11:17:45 (1)</b> 75:7	<b>11:19:11 (1)</b> 76:12	<b>11:35:16 (1)</b> 77:14	<b>11:37:00 (1)</b> 78:17
<b>11:16:26 (1)</b>	<b>11:17:52 (1)</b> 75:8	<b>11:19:15 (1)</b>	<b>11:35:25 (1)</b> 77:15	<b>11:37:02 (1)</b>

78:18	<b>11:38:21 (1)</b>	80:25	<b>11:41:01 (1)</b>	83:7
<b>11:37:06 (1)</b>	79:21	<b>11:39:45 (1)</b>	82:6	<b>11:42:29 (1)</b>
78:19	<b>11:38:22 (1)</b>	81:2	<b>11:41:03 (1)</b>	83:8
<b>11:37:10 (1)</b>	79:22	<b>11:39:47 (2)</b>	82:7	<b>11:42:32 (1)</b>
78:20	<b>11:38:24 (1)</b>	81:3,4	<b>11:41:05 (1)</b>	83:9
<b>11:37:14 (1)</b>	79:23	<b>11:39:50 (1)</b>	82:8	<b>11:42:37 (1)</b>
78:21	<b>11:38:26 (1)</b>	81:5	<b>11:41:06 (1)</b>	83:10
<b>11:37:17 (1)</b>	79:24	<b>11:39:58 (1)</b>	82:9	<b>11:42:41 (1)</b>
78:22	<b>11:38:30 (1)</b>	81:6	<b>11:41:12 (1)</b>	83:11
<b>11:37:20 (1)</b>	79:25	<b>11:40:00 (1)</b>	82:10	<b>11:42:45 (1)</b>
78:23	<b>11:38:32 (2)</b>	81:7	<b>11:41:16 (1)</b>	83:12
<b>11:37:22 (1)</b>	80:2,3	<b>11:40:02 (1)</b>	82:11	<b>11:42:48 (1)</b>
78:24	<b>11:38:36 (1)</b>	81:8	<b>11:41:18 (1)</b>	83:13
<b>11:37:26 (2)</b>	80:4	<b>11:40:04 (1)</b>	82:12	<b>11:42:51 (1)</b>
78:25 79:2	<b>11:38:39 (1)</b>	81:9	<b>11:41:22 (1)</b>	83:14
<b>11:37:27 (1)</b>	80:5	<b>11:40:05 (1)</b>	82:13	<b>11:42:54 (1)</b>
79:3	<b>11:38:42 (2)</b>	81:10	<b>11:41:24 (1)</b>	83:15
<b>11:37:28 (1)</b>	80:6,7	<b>11:40:07 (1)</b>	82:14	<b>11:43:00 (1)</b>
79:4	<b>11:38:44 (1)</b>	81:11	<b>11:41:26 (1)</b>	83:16
<b>11:37:32 (1)</b>	80:8	<b>11:40:11 (1)</b>	82:15	<b>11:43:03 (1)</b>
79:5	<b>11:38:47 (1)</b>	81:12	<b>11:41:40 (1)</b>	83:17
<b>11:37:37 (1)</b>	80:9	<b>11:40:15 (1)</b>	82:16	<b>11:43:05 (1)</b>
79:6	<b>11:38:49 (1)</b>	81:13	<b>11:41:42 (1)</b>	83:18
<b>11:37:38 (1)</b>	80:10	<b>11:40:18 (1)</b>	82:17	<b>11:43:06 (1)</b>
79:7	<b>11:38:52 (1)</b>	81:14	<b>11:41:47 (1)</b>	83:19
<b>11:37:42 (1)</b>	80:11	<b>11:40:21 (1)</b>	82:18	<b>11:43:08 (1)</b>
79:8	<b>11:38:53 (1)</b>	81:15	<b>11:41:50 (1)</b>	83:20
<b>11:37:46 (1)</b>	80:12	<b>11:40:27 (1)</b>	82:19	<b>11:43:09 (1)</b>
79:9	<b>11:39:08 (1)</b>	81:16	<b>11:41:55 (1)</b>	83:21
<b>11:37:47 (1)</b>	80:13	<b>11:40:30 (1)</b>	82:20	<b>11:43:11 (1)</b>
79:10	<b>11:39:10 (1)</b>	81:17	<b>11:42:03 (1)</b>	83:22
<b>11:37:54 (1)</b>	80:14	<b>11:40:31 (1)</b>	82:21	<b>11:43:14 (1)</b>
79:11	<b>11:39:14 (1)</b>	81:18	<b>11:42:06 (1)</b>	83:23
<b>11:37:56 (1)</b>	80:15	<b>11:40:34 (1)</b>	82:22	<b>11:43:16 (1)</b>
79:12	<b>11:39:16 (1)</b>	81:19	<b>11:42:09 (1)</b>	83:24
<b>11:37:57 (1)</b>	80:16	<b>11:40:35 (1)</b>	82:23	<b>11:43:29 (1)</b>
79:13	<b>11:39:18 (1)</b>	81:20	<b>11:42:12 (1)</b>	83:25
<b>11:38:01 (1)</b>	80:17	<b>11:40:36 (1)</b>	82:24	<b>11:43:33 (1)</b>
79:14	<b>11:39:20 (1)</b>	81:21	<b>11:42:13 (1)</b>	84:2
<b>11:38:03 (1)</b>	80:18	<b>11:40:40 (1)</b>	82:25	<b>11:43:36 (1)</b>
79:15	<b>11:39:24 (1)</b>	81:22	<b>11:42:15 (1)</b>	84:3
<b>11:38:05 (1)</b>	80:19	<b>11:40:43 (1)</b>	83:2	<b>11:43:40 (1)</b>
79:16	<b>11:39:27 (1)</b>	81:23	<b>11:42:20 (1)</b>	84:4
<b>11:38:09 (1)</b>	80:20	<b>11:40:44 (2)</b>	83:3	<b>11:43:44 (1)</b>
79:17	<b>11:39:28 (1)</b>	81:24,25	<b>11:42:23 (1)</b>	84:5
<b>11:38:10 (1)</b>	80:21	<b>11:40:49 (1)</b>	83:4	<b>11:43:48 (1)</b>
79:18	<b>11:39:32 (1)</b>	82:2	<b>11:42:24 (1)</b>	84:6
<b>11:38:13 (1)</b>	80:22	<b>11:40:53 (2)</b>	83:5	<b>11:43:51 (1)</b>
79:19	<b>11:39:37 (1)</b>	82:3,4	<b>11:42:25 (1)</b>	84:7
<b>11:38:18 (1)</b>	80:23	<b>11:40:57 (1)</b>	83:6	<b>11:43:55 (1)</b>
79:20	<b>11:39:41 (1)</b>	82:5	<b>11:42:27 (1)</b>	84:8

<b>11:43:58 (1)</b>	85:12	<b>11:46:27 (1)</b>	87:18,19	<b>11:49:54 (1)</b>
84:9	<b>11:45:16 (1)</b>	86:16	<b>11:48:02 (1)</b>	88:21
<b>11:44:04 (1)</b>	85:13	<b>11:46:28 (1)</b>	87:20	<b>11:50:00 (1)</b>
84:10	<b>11:45:18 (1)</b>	86:17	<b>11:48:08 (1)</b>	88:22
<b>11:44:07 (1)</b>	85:14	<b>11:46:30 (1)</b>	87:21	<b>11:50:03 (1)</b>
84:11	<b>11:45:19 (1)</b>	86:18	<b>11:48:16 (1)</b>	88:23
<b>11:44:10 (1)</b>	85:15	<b>11:46:31 (1)</b>	87:22	<b>11:50:06 (1)</b>
84:12	<b>11:45:22 (1)</b>	86:19	<b>11:48:20 (1)</b>	88:24
<b>11:44:12 (1)</b>	85:16	<b>11:46:36 (1)</b>	87:23	<b>11:50:13 (1)</b>
84:13	<b>11:45:24 (1)</b>	86:20	<b>11:48:25 (1)</b>	88:25
<b>11:44:15 (1)</b>	85:18	<b>11:46:43 (1)</b>	87:24	<b>11:50:18 (1)</b>
84:14	<b>11:45:26 (1)</b>	86:21	<b>11:48:29 (1)</b>	89:2
<b>11:44:16 (1)</b>	85:20	<b>11:46:54 (1)</b>	87:25	<b>11:50:21 (1)</b>
84:15	<b>11:45:29 (1)</b>	86:22	<b>11:48:32 (1)</b>	89:3
<b>11:44:19 (2)</b>	85:21	<b>11:47:00 (1)</b>	88:2	<b>11:50:27 (1)</b>
84:16,17	<b>11:45:30 (1)</b>	86:23	<b>11:48:39 (1)</b>	89:4
<b>11:44:21 (1)</b>	85:22	<b>11:47:03 (1)</b>	88:3	<b>11:50:30 (1)</b>
84:18	<b>11:45:33 (1)</b>	86:24	<b>11:48:41 (1)</b>	89:5
<b>11:44:26 (1)</b>	85:23	<b>11:47:05 (2)</b>	88:4	<b>11:50:34 (1)</b>
84:19	<b>11:45:36 (1)</b>	86:25 87:2	<b>11:48:45 (1)</b>	89:6
<b>11:44:28 (1)</b>	85:24	<b>11:47:08 (1)</b>	88:5	<b>11:50:41 (1)</b>
84:20	<b>11:45:37 (1)</b>	87:3	<b>11:48:48 (1)</b>	89:7
<b>11:44:31 (1)</b>	85:25	<b>11:47:14 (1)</b>	88:6	<b>11:50:42 (1)</b>
84:21	<b>11:45:41 (1)</b>	87:4	<b>11:48:54 (1)</b>	89:8
<b>11:44:34 (1)</b>	86:2	<b>11:47:16 (1)</b>	88:7	<b>11:50:46 (1)</b>
84:22	<b>11:45:48 (1)</b>	87:5	<b>11:49:01 (1)</b>	89:9
<b>11:44:35 (1)</b>	86:3	<b>11:47:21 (1)</b>	88:8	<b>11:50:48 (1)</b>
84:23	<b>11:45:50 (1)</b>	87:6	<b>11:49:02 (1)</b>	89:10
<b>11:44:38 (1)</b>	86:4	<b>11:47:25 (1)</b>	88:9	<b>11:50:51 (1)</b>
84:24	<b>11:45:52 (1)</b>	87:7	<b>11:49:06 (1)</b>	89:11
<b>11:44:40 (1)</b>	86:5	<b>11:47:29 (1)</b>	88:10	<b>11:50:54 (1)</b>
84:25	<b>11:45:56 (1)</b>	87:8	<b>11:49:11 (1)</b>	89:12
<b>11:44:42 (1)</b>	86:6	<b>11:47:33 (1)</b>	88:11	<b>11:50:55 (1)</b>
85:2	<b>11:46:00 (1)</b>	87:9	<b>11:49:18 (1)</b>	89:13
<b>11:44:45 (1)</b>	86:7	<b>11:47:34 (1)</b>	88:12	<b>11:50:59 (1)</b>
85:3	<b>11:46:02 (1)</b>	87:10	<b>11:49:19 (1)</b>	89:14
<b>11:44:51 (1)</b>	86:8	<b>11:47:37 (1)</b>	88:13	<b>11:51:01 (1)</b>
85:4	<b>11:46:08 (1)</b>	87:11	<b>11:49:20 (1)</b>	89:15
<b>11:44:55 (2)</b>	86:9	<b>11:47:40 (1)</b>	88:14	<b>11:51:05 (1)</b>
85:5,6	<b>11:46:11 (1)</b>	87:12	<b>11:49:24 (1)</b>	89:16
<b>11:44:57 (1)</b>	86:10	<b>11:47:42 (1)</b>	88:15	<b>11:51:06 (1)</b>
85:7	<b>11:46:15 (1)</b>	87:13	<b>11:49:30 (1)</b>	89:17
<b>11:44:58 (1)</b>	86:11	<b>11:47:45 (1)</b>	88:16	<b>11:51:09 (1)</b>
85:8	<b>11:46:18 (1)</b>	87:14	<b>11:49:37 (1)</b>	89:18
<b>11:45:01 (1)</b>	86:12	<b>11:47:47 (1)</b>	88:17	<b>11:51:22 (1)</b>
85:9	<b>11:46:21 (1)</b>	87:15	<b>11:49:40 (1)</b>	89:19
<b>11:45:02 (1)</b>	86:13	<b>11:47:50 (1)</b>	88:18	<b>11:51:26 (1)</b>
85:10	<b>11:46:22 (1)</b>	87:16	<b>11:49:45 (1)</b>	89:20
<b>11:45:09 (1)</b>	86:14	<b>11:47:53 (1)</b>	88:19	<b>11:51:27 (1)</b>
85:11	<b>11:46:26 (1)</b>	87:17	<b>11:49:49 (1)</b>	89:21
<b>11:45:11 (1)</b>	86:15	<b>11:47:55 (2)</b>	88:20	<b>11:51:28 (1)</b>

89:22	<b>11:53:00 (1)</b>	92:2	<b>11:57:24 (1)</b>	94:9
<b>11:51:29 (1)</b>	90:24	<b>11:54:47 (1)</b>	93:8	<b>11:59:24 (1)</b>
89:23	<b>11:53:02 (1)</b>	92:3	<b>11:57:34 (1)</b>	94:10
<b>11:51:38 (1)</b>	90:25	<b>11:54:49 (1)</b>	93:9	<b>11:59:29 (1)</b>
89:24	<b>11:53:06 (1)</b>	92:4	<b>11:57:39 (1)</b>	94:11
<b>11:51:40 (1)</b>	91:2	<b>11:54:52 (1)</b>	93:10	<b>11:59:30 (1)</b>
89:25	<b>11:53:09 (1)</b>	92:5	<b>11:57:49 (1)</b>	94:12
<b>11:51:42 (1)</b>	91:3	<b>11:54:54 (1)</b>	93:11	<b>11:59:33 (1)</b>
90:2	<b>11:53:11 (1)</b>	92:6	<b>11:57:50 (1)</b>	94:13
<b>11:51:43 (1)</b>	91:4	<b>11:54:59 (1)</b>	93:12	<b>11:59:51 (1)</b>
90:3	<b>11:53:14 (1)</b>	92:7	<b>11:57:54 (1)</b>	94:14
<b>11:51:45 (1)</b>	91:5	<b>11:55:01 (1)</b>	93:13	<b>11:59:58 (1)</b>
90:4	<b>11:53:17 (1)</b>	92:8	<b>11:57:59 (1)</b>	94:15
<b>11:51:48 (1)</b>	91:6	<b>11:55:07 (1)</b>	93:14	<b>12 (2)</b>
90:5	<b>11:53:18 (1)</b>	92:9	<b>11:58:01 (1)</b>	144:7 287:11
<b>11:51:51 (1)</b>	91:7	<b>11:55:31 (1)</b>	93:15	<b>12/30/04 (2)</b>
90:6	<b>11:53:22 (1)</b>	92:10	<b>11:58:04 (1)</b>	92:16 288:8
<b>11:52:01 (1)</b>	91:8	<b>11:55:32 (1)</b>	93:16	<b>12:00:03 (1)</b>
90:7	<b>11:53:26 (2)</b>	92:11	<b>11:58:08 (1)</b>	94:16
<b>11:52:04 (1)</b>	91:9,10	<b>11:55:34 (1)</b>	93:17	<b>12:00:07 (1)</b>
90:8	<b>11:53:28 (1)</b>	92:12	<b>11:58:13 (1)</b>	94:17
<b>11:52:05 (1)</b>	91:11	<b>11:55:36 (1)</b>	93:18	<b>12:00:10 (1)</b>
90:9	<b>11:53:47 (1)</b>	92:13	<b>11:58:17 (1)</b>	94:18
<b>11:52:07 (1)</b>	91:12	<b>11:55:37 (1)</b>	93:19	<b>12:00:13 (1)</b>
90:10	<b>11:53:50 (1)</b>	92:14	<b>11:58:18 (1)</b>	94:19
<b>11:52:15 (1)</b>	91:13	<b>11:56:01 (2)</b>	93:20	<b>12:00:14 (1)</b>
90:11	<b>11:53:52 (1)</b>	92:18,19	<b>11:58:19 (1)</b>	94:20
<b>11:52:17 (1)</b>	91:14	<b>11:56:05 (1)</b>	93:21	<b>12:00:18 (1)</b>
90:12	<b>11:53:53 (1)</b>	92:20	<b>11:58:20 (1)</b>	94:21
<b>11:52:21 (1)</b>	91:15	<b>11:56:08 (1)</b>	93:22	<b>12:00:20 (1)</b>
90:13	<b>11:54:00 (1)</b>	92:21	<b>11:58:31 (1)</b>	94:22
<b>11:52:23 (1)</b>	91:16	<b>11:56:12 (1)</b>	93:23	<b>12:00:21 (1)</b>
90:14	<b>11:54:03 (1)</b>	92:22	<b>11:58:39 (1)</b>	94:23
<b>11:52:25 (1)</b>	91:17	<b>11:56:54 (1)</b>	93:24	<b>12:00:24 (1)</b>
90:15	<b>11:54:06 (1)</b>	92:23	<b>11:58:40 (1)</b>	94:24
<b>11:52:29 (1)</b>	91:18	<b>11:56:57 (1)</b>	93:25	<b>12:00:26 (2)</b>
90:16	<b>11:54:09 (1)</b>	92:24	<b>11:58:43 (1)</b>	94:25 95:2
<b>11:52:33 (1)</b>	91:19	<b>11:57:00 (1)</b>	94:2	<b>12:00:28 (1)</b>
90:17	<b>11:54:12 (1)</b>	92:25	<b>11:58:46 (1)</b>	95:3
<b>11:52:35 (1)</b>	91:20	<b>11:57:02 (1)</b>	94:3	<b>12:00:30 (1)</b>
90:18	<b>11:54:15 (1)</b>	93:2	<b>11:58:59 (1)</b>	95:4
<b>11:52:37 (1)</b>	91:21	<b>11:57:07 (1)</b>	94:4	<b>12:00:34 (1)</b>
90:19	<b>11:54:25 (1)</b>	93:3	<b>11:59:02 (1)</b>	95:5
<b>11:52:44 (1)</b>	91:22	<b>11:57:14 (1)</b>	94:5	<b>12:00:37 (1)</b>
90:20	<b>11:54:31 (1)</b>	93:4	<b>11:59:04 (1)</b>	95:6
<b>11:52:47 (1)</b>	91:23	<b>11:57:17 (1)</b>	94:6	<b>12:00:42 (1)</b>
90:21	<b>11:54:34 (1)</b>	93:5	<b>11:59:11 (1)</b>	95:7
<b>11:52:54 (1)</b>	91:24	<b>11:57:20 (1)</b>	94:7	<b>12:00:53 (1)</b>
90:22	<b>11:54:35 (1)</b>	93:6	<b>11:59:13 (1)</b>	95:8
<b>11:52:57 (1)</b>	91:25	<b>11:57:23 (1)</b>	94:8	<b>12:00:56 (1)</b>
90:23	<b>11:54:44 (1)</b>	93:7	<b>11:59:20 (1)</b>	95:9

<b>12:01:04 (1)</b>	96:14	<b>12:03:38 (1)</b>	98:22	<b>12:06:36 (1)</b>
95:10	<b>12:02:12 (1)</b>	97:18	<b>12:05:13 (1)</b>	99:25
<b>12:01:07 (1)</b>	96:15	<b>12:03:41 (1)</b>	98:23	<b>12:06:38 (1)</b>
95:11	<b>12:02:19 (1)</b>	97:19	<b>12:05:15 (1)</b>	100:2
<b>12:01:09 (1)</b>	96:16	<b>12:03:43 (1)</b>	98:24	<b>12:06:44 (1)</b>
95:12	<b>12:02:22 (1)</b>	97:20	<b>12:05:16 (1)</b>	100:3
<b>12:01:11 (2)</b>	96:17	<b>12:03:44 (1)</b>	98:25	<b>12:06:46 (1)</b>
95:13,14	<b>12:02:24 (1)</b>	97:21	<b>12:05:19 (2)</b>	100:4
<b>12:01:14 (1)</b>	96:18	<b>12:03:52 (1)</b>	99:2,3	<b>12:06:49 (1)</b>
95:15	<b>12:02:25 (1)</b>	97:22	<b>12:05:24 (1)</b>	100:5
<b>12:01:21 (1)</b>	96:19	<b>12:03:54 (2)</b>	99:4	<b>12:06:53 (1)</b>
95:16	<b>12:02:27 (1)</b>	97:23,24	<b>12:05:30 (1)</b>	100:6
<b>12:01:24 (1)</b>	96:20	<b>12:03:59 (1)</b>	99:5	<b>12:07:02 (1)</b>
95:17	<b>12:02:29 (1)</b>	97:25	<b>12:05:32 (1)</b>	100:7
<b>12:01:27 (2)</b>	96:21	<b>12:04:00 (1)</b>	99:6	<b>12:07:05 (1)</b>
95:18,19	<b>12:02:31 (1)</b>	98:2	<b>12:05:34 (1)</b>	100:8
<b>12:01:28 (1)</b>	96:22	<b>12:04:01 (1)</b>	99:7	<b>12:07:09 (1)</b>
95:20	<b>12:02:34 (1)</b>	98:3	<b>12:05:37 (1)</b>	100:9
<b>12:01:31 (1)</b>	96:23	<b>12:04:03 (1)</b>	99:8	<b>12:07:13 (1)</b>
95:21	<b>12:02:36 (2)</b>	98:4	<b>12:05:38 (1)</b>	100:10
<b>12:01:33 (1)</b>	96:24,25	<b>12:04:11 (1)</b>	99:9	<b>12:07:14 (1)</b>
95:22	<b>12:02:37 (1)</b>	98:5	<b>12:05:40 (1)</b>	100:11
<b>12:01:35 (1)</b>	97:2	<b>12:04:13 (1)</b>	99:10	<b>12:07:19 (1)</b>
95:23	<b>12:02:41 (1)</b>	98:6	<b>12:05:41 (1)</b>	100:12
<b>12:01:36 (1)</b>	97:3	<b>12:04:17 (1)</b>	99:11	<b>12:07:21 (1)</b>
95:24	<b>12:02:43 (1)</b>	98:7	<b>12:05:44 (1)</b>	100:13
<b>12:01:38 (1)</b>	97:4	<b>12:04:20 (1)</b>	99:12	<b>12:07:22 (1)</b>
95:25	<b>12:02:45 (2)</b>	98:8	<b>12:05:48 (1)</b>	100:14
<b>12:01:41 (2)</b>	97:5,6	<b>12:04:22 (2)</b>	99:13	<b>12:07:29 (1)</b>
96:2,3	<b>12:02:46 (1)</b>	98:9,10	<b>12:05:52 (1)</b>	100:15
<b>12:01:42 (1)</b>	97:7	<b>12:04:24 (1)</b>	99:14	<b>12:07:33 (1)</b>
96:4	<b>12:02:53 (1)</b>	98:11	<b>12:05:55 (1)</b>	100:16
<b>12:01:43 (1)</b>	97:8	<b>12:04:25 (1)</b>	99:15	<b>12:07:38 (1)</b>
96:5	<b>12:02:56 (1)</b>	98:12	<b>12:05:57 (1)</b>	100:17
<b>12:01:47 (1)</b>	97:9	<b>12:04:27 (2)</b>	99:16	<b>12:07:40 (1)</b>
96:6	<b>12:03:04 (1)</b>	98:13,14	<b>12:05:59 (1)</b>	100:18
<b>12:01:50 (1)</b>	97:10	<b>12:04:33 (1)</b>	99:17	<b>12:07:45 (1)</b>
96:7	<b>12:03:11 (1)</b>	98:15	<b>12:06:04 (1)</b>	100:19
<b>12:01:51 (1)</b>	97:11	<b>12:04:36 (1)</b>	99:18	<b>12:07:47 (1)</b>
96:8	<b>12:03:17 (1)</b>	98:16	<b>12:06:05 (1)</b>	100:20
<b>12:01:55 (1)</b>	97:12	<b>12:04:44 (1)</b>	99:19	<b>12:07:50 (1)</b>
96:9	<b>12:03:19 (1)</b>	98:17	<b>12:06:09 (1)</b>	100:21
<b>12:01:57 (1)</b>	97:13	<b>12:04:49 (1)</b>	99:20	<b>12:07:51 (1)</b>
96:10	<b>12:03:26 (1)</b>	98:18	<b>12:06:20 (1)</b>	100:22
<b>12:02:03 (1)</b>	97:14	<b>12:04:51 (1)</b>	99:21	<b>12:07:52 (1)</b>
96:11	<b>12:03:29 (1)</b>	98:19	<b>12:06:25 (1)</b>	100:23
<b>12:02:04 (1)</b>	97:15	<b>12:04:56 (1)</b>	99:22	<b>12:08:14 (1)</b>
96:12	<b>12:03:30 (1)</b>	98:20	<b>12:06:28 (1)</b>	100:24
<b>12:02:06 (1)</b>	97:16	<b>12:05:03 (1)</b>	99:23	<b>12:08:16 (1)</b>
96:13	<b>12:03:35 (1)</b>	98:21	<b>12:06:33 (1)</b>	100:25
<b>12:02:09 (1)</b>	97:17	<b>12:05:07 (1)</b>	99:24	<b>12:08:18 (1)</b>

101:2	<b>12:09:42 (2)</b>	103:13	<b>12:12:22 (1)</b>	105:20
<b>12:08:21 (1)</b>	102:6,7	<b>12:11:05 (1)</b>	104:17	<b>12:14:10 (1)</b>
101:3	<b>12:09:44 (2)</b>	103:14	<b>12:12:28 (1)</b>	105:21
<b>12:08:25 (1)</b>	102:8,9	<b>12:11:07 (1)</b>	104:18	<b>12:14:11 (1)</b>
101:4	<b>12:09:45 (1)</b>	103:15	<b>12:12:31 (1)</b>	105:22
<b>12:08:34 (1)</b>	102:10	<b>12:11:10 (1)</b>	104:19	<b>12:14:16 (2)</b>
101:5	<b>12:09:50 (1)</b>	103:16	<b>12:12:37 (1)</b>	105:23,24
<b>12:08:37 (1)</b>	102:17	<b>12:11:11 (1)</b>	104:20	<b>12:14:20 (1)</b>
101:6	<b>12:09:52 (1)</b>	103:17	<b>12:12:39 (1)</b>	105:25
<b>12:08:40 (1)</b>	102:18	<b>12:11:15 (1)</b>	104:21	<b>12:14:21 (1)</b>
101:7	<b>12:09:53 (1)</b>	103:18	<b>12:12:42 (1)</b>	106:2
<b>12:08:42 (1)</b>	102:11	<b>12:11:18 (1)</b>	104:22	<b>12:14:23 (1)</b>
101:8	<b>12:09:54 (1)</b>	103:19	<b>12:12:47 (1)</b>	106:3
<b>12:08:43 (1)</b>	102:19	<b>12:11:19 (1)</b>	104:23	<b>12:14:29 (1)</b>
101:9	<b>12:09:57 (2)</b>	103:20	<b>12:12:48 (1)</b>	106:4
<b>12:08:51 (1)</b>	102:12,20	<b>12:11:20 (1)</b>	104:24	<b>12:14:34 (1)</b>
101:10	<b>12:10:02 (1)</b>	103:21	<b>12:12:54 (1)</b>	106:5
<b>12:08:53 (2)</b>	102:13	<b>12:11:21 (1)</b>	104:25	<b>12:14:35 (1)</b>
101:11,12	<b>12:10:13 (1)</b>	103:22	<b>12:12:56 (1)</b>	106:6
<b>12:09:01 (1)</b>	102:15	<b>12:11:24 (2)</b>	105:2	<b>12:14:37 (1)</b>
101:13	<b>12:10:21 (1)</b>	103:23,24	<b>12:12:59 (2)</b>	106:7
<b>12:09:05 (1)</b>	102:21	<b>12:11:25 (1)</b>	105:3,4	<b>12:14:41 (2)</b>
101:14	<b>12:10:23 (1)</b>	103:25	<b>12:13:05 (1)</b>	106:8,9
<b>12:09:08 (1)</b>	102:22	<b>12:11:30 (1)</b>	105:5	<b>12:14:47 (1)</b>
101:15	<b>12:10:27 (1)</b>	104:2	<b>12:13:07 (1)</b>	106:10
<b>12:09:10 (1)</b>	102:23	<b>12:11:32 (1)</b>	105:6	<b>12:14:51 (1)</b>
101:16	<b>12:10:30 (1)</b>	104:3	<b>12:13:10 (1)</b>	106:11
<b>12:09:12 (1)</b>	102:24	<b>12:11:36 (2)</b>	105:7	<b>12:14:54 (1)</b>
101:17	<b>12:10:31 (1)</b>	104:4,5	<b>12:13:15 (1)</b>	106:12
<b>12:09:19 (1)</b>	102:25	<b>12:11:38 (1)</b>	105:8	<b>12:14:55 (2)</b>
101:18	<b>12:10:35 (1)</b>	104:6	<b>12:13:18 (1)</b>	106:13,14
<b>12:09:21 (1)</b>	103:2	<b>12:11:43 (1)</b>	105:9	<b>12:14:56 (1)</b>
101:19	<b>12:10:39 (1)</b>	104:7	<b>12:13:30 (1)</b>	106:15
<b>12:09:23 (1)</b>	103:3	<b>12:11:44 (1)</b>	105:10	<b>12:14:58 (1)</b>
101:20	<b>12:10:40 (1)</b>	104:8	<b>12:13:37 (1)</b>	106:16
<b>12:09:25 (1)</b>	103:4	<b>12:11:45 (1)</b>	105:11	<b>12:14:59 (1)</b>
101:21	<b>12:10:42 (2)</b>	104:9	<b>12:13:41 (1)</b>	106:17
<b>12:09:27 (1)</b>	103:5,6	<b>12:11:55 (1)</b>	105:12	<b>12:15:00 (1)</b>
101:22	<b>12:10:43 (1)</b>	104:10	<b>12:13:43 (1)</b>	106:18
<b>12:09:29 (1)</b>	103:7	<b>12:11:57 (1)</b>	105:13	<b>12:15:03 (1)</b>
101:23	<b>12:10:46 (1)</b>	104:11	<b>12:13:48 (1)</b>	106:19
<b>12:09:30 (1)</b>	103:8	<b>12:12:02 (1)</b>	105:14	<b>12:15:06 (1)</b>
101:24	<b>12:10:47 (1)</b>	104:12	<b>12:13:51 (1)</b>	106:20
<b>12:09:33 (2)</b>	103:9	<b>12:12:05 (1)</b>	105:15	<b>12:15:07 (1)</b>
101:25 102:2	<b>12:10:50 (1)</b>	104:13	<b>12:13:54 (2)</b>	106:21
<b>12:09:37 (1)</b>	103:10	<b>12:12:07 (1)</b>	105:16,17	<b>12:15:13 (1)</b>
102:3	<b>12:10:53 (1)</b>	104:14	<b>12:13:59 (1)</b>	106:22
<b>12:09:39 (1)</b>	103:11	<b>12:12:09 (1)</b>	105:18	<b>12:15:15 (1)</b>
102:4	<b>12:10:58 (1)</b>	104:15	<b>12:14:04 (1)</b>	106:23
<b>12:09:40 (1)</b>	103:12	<b>12:12:20 (1)</b>	105:19	<b>12:15:16 (2)</b>
102:5	<b>12:11:02 (1)</b>	104:16	<b>12:14:08 (1)</b>	106:24,25

<b>12:15:24 (1)</b>	108:8	<b>12:18:21 (1)</b>	110:17	<b>12:20:44 (1)</b>
107:2	<b>12:16:54 (1)</b>	109:15	<b>12:19:42 (1)</b>	111:20
<b>12:15:27 (1)</b>	108:9	<b>12:18:22 (2)</b>	110:18	<b>12:20:49 (1)</b>
107:3	<b>12:17:01 (1)</b>	109:16,17	<b>12:19:43 (1)</b>	111:21
<b>12:15:30 (1)</b>	108:10	<b>12:18:23 (1)</b>	110:19	<b>12:20:52 (1)</b>
107:4	<b>12:17:03 (2)</b>	109:18	<b>12:19:44 (1)</b>	111:22
<b>12:15:31 (1)</b>	108:11,12	<b>12:18:24 (1)</b>	110:20	<b>12:20:55 (2)</b>
107:5	<b>12:17:13 (1)</b>	109:19	<b>12:19:46 (1)</b>	111:23,24
<b>12:15:33 (1)</b>	108:13	<b>12:18:32 (1)</b>	110:21	<b>12:21 (1)</b>
107:6	<b>12:17:15 (1)</b>	109:20	<b>12:19:47 (1)</b>	112:13
<b>12:15:40 (1)</b>	108:14	<b>12:18:33 (1)</b>	110:22	<b>12:21:07 (1)</b>
107:8	<b>12:17:16 (1)</b>	109:21	<b>12:19:50 (1)</b>	111:25
<b>12:15:43 (2)</b>	108:15	<b>12:18:34 (1)</b>	110:23	<b>12:21:09 (1)</b>
107:9,10	<b>12:17:18 (1)</b>	109:22	<b>12:19:52 (1)</b>	112:2
<b>12:15:45 (1)</b>	108:16	<b>12:18:38 (1)</b>	110:24	<b>12:21:13 (1)</b>
107:11	<b>12:17:20 (1)</b>	109:23	<b>12:19:54 (1)</b>	112:3
<b>12:15:48 (1)</b>	108:17	<b>12:18:40 (1)</b>	110:25	<b>12:21:16 (1)</b>
107:12	<b>12:17:23 (2)</b>	109:24	<b>12:19:55 (1)</b>	112:4
<b>12:15:50 (1)</b>	108:18,19	<b>12:18:49 (1)</b>	111:2	<b>12:21:18 (1)</b>
107:13	<b>12:17:28 (1)</b>	109:25	<b>12:19:59 (2)</b>	112:5
<b>12:15:56 (1)</b>	108:20	<b>12:19:00 (1)</b>	111:3,4	<b>12:21:19 (2)</b>
107:14	<b>12:17:30 (1)</b>	110:2	<b>12:20:02 (1)</b>	112:6,7
<b>12:16:05 (1)</b>	108:21	<b>12:19:04 (1)</b>	111:5	<b>12:21:25 (1)</b>
107:15	<b>12:17:34 (1)</b>	110:3	<b>12:20:04 (1)</b>	112:8
<b>12:16:06 (1)</b>	108:22	<b>12:19:06 (1)</b>	111:6	<b>12:21:28 (1)</b>
107:16	<b>12:17:36 (1)</b>	110:4	<b>12:20:09 (1)</b>	112:9
<b>12:16:08 (1)</b>	108:23	<b>12:19:09 (1)</b>	111:7	<b>12:21:34 (1)</b>
107:17	<b>12:17:41 (1)</b>	110:5	<b>12:20:16 (1)</b>	112:10
<b>12:16:09 (2)</b>	108:24	<b>12:19:10 (1)</b>	111:8	<b>12:21:35 (1)</b>
107:18,19	<b>12:17:44 (2)</b>	110:6	<b>12:20:18 (1)</b>	112:11
<b>12:16:10 (1)</b>	108:25 109:2	<b>12:19:13 (1)</b>	111:9	<b>12:21:37 (2)</b>
107:20	<b>12:17:47 (1)</b>	110:7	<b>12:20:21 (1)</b>	112:12,13
<b>12:16:13 (2)</b>	109:4	<b>12:19:15 (1)</b>	111:10	<b>12:21:39 (1)</b>
107:21,22	<b>12:17:49 (1)</b>	110:8	<b>12:20:24 (1)</b>	112:14
<b>12:16:19 (1)</b>	109:5	<b>12:19:16 (1)</b>	111:11	<b>12:21:41 (1)</b>
107:23	<b>12:17:51 (1)</b>	110:9	<b>12:20:27 (1)</b>	112:15
<b>12:16:26 (1)</b>	109:6	<b>12:19:18 (1)</b>	111:12	<b>12:25:06 (1)</b>
107:24	<b>12:17:53 (1)</b>	110:10	<b>12:20:28 (1)</b>	112:16
<b>12:16:28 (1)</b>	109:7	<b>12:19:21 (1)</b>	111:13	<b>12:27 (1)</b>
107:25	<b>12:17:54 (1)</b>	110:11	<b>12:20:30 (1)</b>	112:16
<b>12:16:31 (1)</b>	109:8	<b>12:19:24 (1)</b>	111:14	<b>12:27:17 (1)</b>
108:2	<b>12:18:01 (1)</b>	110:12	<b>12:20:32 (1)</b>	112:17
<b>12:16:32 (1)</b>	109:9	<b>12:19:25 (1)</b>	111:15	<b>12:27:18 (1)</b>
108:3	<b>12:18:04 (1)</b>	110:13	<b>12:20:35 (1)</b>	112:18
<b>12:16:33 (1)</b>	109:10	<b>12:19:30 (1)</b>	111:16	<b>12:27:20 (1)</b>
108:4	<b>12:18:06 (1)</b>	110:14	<b>12:20:37 (1)</b>	112:19
<b>12:16:43 (1)</b>	109:11	<b>12:19:33 (1)</b>	111:17	<b>12:27:22 (1)</b>
108:5	<b>12:18:15 (1)</b>	110:15	<b>12:20:39 (1)</b>	112:20
<b>12:16:48 (2)</b>	109:12	<b>12:19:34 (1)</b>	111:18	<b>12:27:28 (1)</b>
108:6,7	<b>12:18:16 (2)</b>	110:16	<b>12:20:42 (1)</b>	112:21
<b>12:16:53 (1)</b>	109:13,14	<b>12:19:37 (1)</b>	111:19	<b>12:27:31 (1)</b>

112:22	<b>12:29:21 (1)</b>	115:3	<b>12:31:59 (1)</b>	117:9
<b>12:27:34 (1)</b>	113:25	<b>12:30:40 (1)</b>	116:6	<b>12:33:15 (1)</b>
112:23	<b>12:29:27 (1)</b>	115:4	<b>12:32:02 (1)</b>	117:10
<b>12:27:37 (1)</b>	114:2	<b>12:30:43 (1)</b>	116:7	<b>12:33:21 (1)</b>
112:24	<b>12:29:29 (1)</b>	115:5	<b>12:32:05 (1)</b>	117:11
<b>12:27:40 (1)</b>	114:3	<b>12:30:44 (1)</b>	116:8	<b>12:33:24 (1)</b>
112:25	<b>12:29:34 (1)</b>	115:6	<b>12:32:08 (1)</b>	117:12
<b>12:27:43 (1)</b>	114:4	<b>12:30:52 (1)</b>	116:9	<b>12:33:28 (1)</b>
113:2	<b>12:29:39 (1)</b>	115:7	<b>12:32:09 (1)</b>	117:13
<b>12:27:46 (1)</b>	114:5	<b>12:30:54 (1)</b>	116:10	<b>12:33:30 (2)</b>
113:3	<b>12:29:43 (1)</b>	115:8	<b>12:32:10 (1)</b>	117:14,15
<b>12:28:00 (1)</b>	114:6	<b>12:30:57 (1)</b>	116:11	<b>12:33:31 (1)</b>
113:4	<b>12:29:46 (1)</b>	115:9	<b>12:32:13 (1)</b>	117:16
<b>12:28:08 (1)</b>	114:7	<b>12:30:59 (1)</b>	116:12	<b>12:33:33 (1)</b>
113:5	<b>12:29:47 (1)</b>	115:10	<b>12:32:15 (1)</b>	117:17
<b>12:28:12 (1)</b>	114:8	<b>12:31:04 (1)</b>	116:13	<b>12:33:34 (1)</b>
113:6	<b>12:29:53 (1)</b>	115:11	<b>12:32:18 (1)</b>	117:18
<b>12:28:16 (2)</b>	114:9	<b>12:31:06 (1)</b>	116:14	<b>12:33:37 (1)</b>
113:7,8	<b>12:29:57 (1)</b>	115:12	<b>12:32:20 (1)</b>	117:19
<b>12:28:20 (1)</b>	114:10	<b>12:31:08 (1)</b>	116:15	<b>12:33:39 (1)</b>
113:9	<b>12:29:58 (1)</b>	115:13	<b>12:32:22 (1)</b>	117:20
<b>12:28:25 (1)</b>	114:11	<b>12:31:09 (2)</b>	116:16	<b>12:33:40 (1)</b>
113:10	<b>12:30:00 (1)</b>	115:14,15	<b>12:32:23 (1)</b>	117:21
<b>12:28:27 (1)</b>	114:12	<b>12:31:11 (1)</b>	116:17	<b>12:33:43 (1)</b>
113:11	<b>12:30:01 (1)</b>	115:16	<b>12:32:26 (1)</b>	117:22
<b>12:28:29 (1)</b>	114:13	<b>12:31:19 (1)</b>	116:18	<b>12:33:44 (1)</b>
113:12	<b>12:30:03 (1)</b>	115:17	<b>12:32:30 (1)</b>	117:23
<b>12:28:31 (1)</b>	114:14	<b>12:31:22 (1)</b>	116:19	<b>12:33:45 (1)</b>
113:13	<b>12:30:04 (1)</b>	115:18	<b>12:32:33 (1)</b>	117:24
<b>12:28:34 (1)</b>	114:15	<b>12:31:26 (1)</b>	116:20	<b>12:33:46 (1)</b>
113:14	<b>12:30:06 (1)</b>	115:19	<b>12:32:45 (1)</b>	117:25
<b>12:28:38 (1)</b>	114:16	<b>12:31:31 (1)</b>	116:21	<b>12:33:48 (2)</b>
113:15	<b>12:30:07 (1)</b>	115:20	<b>12:32:46 (1)</b>	118:2,3
<b>12:28:40 (1)</b>	114:17	<b>12:31:33 (1)</b>	116:22	<b>12:33:52 (2)</b>
113:16	<b>12:30:17 (1)</b>	115:21	<b>12:32:55 (1)</b>	118:4,5
<b>12:28:45 (1)</b>	114:18	<b>12:31:36 (1)</b>	116:23	<b>12:33:54 (1)</b>
113:17	<b>12:30:18 (1)</b>	115:22	<b>12:32:58 (1)</b>	118:6
<b>12:28:46 (1)</b>	114:19	<b>12:31:37 (1)</b>	116:24	<b>12:33:55 (1)</b>
113:18	<b>12:30:20 (1)</b>	115:23	<b>12:32:59 (2)</b>	118:7
<b>12:28:57 (1)</b>	114:20	<b>12:31:39 (1)</b>	116:25 117:2	<b>12:33:57 (1)</b>
113:19	<b>12:30:23 (2)</b>	115:24	<b>12:33:02 (1)</b>	118:8
<b>12:28:59 (1)</b>	114:21,22	<b>12:31:43 (1)</b>	117:3	<b>12:34:00 (1)</b>
113:20	<b>12:30:24 (1)</b>	115:25	<b>12:33:04 (1)</b>	118:9
<b>12:29:05 (1)</b>	114:23	<b>12:31:47 (1)</b>	117:4	<b>12:34:01 (1)</b>
113:21	<b>12:30:28 (1)</b>	116:2	<b>12:33:08 (2)</b>	118:10
<b>12:29:07 (1)</b>	114:24	<b>12:31:49 (1)</b>	117:5,6	<b>12:34:03 (1)</b>
113:22	<b>12:30:35 (1)</b>	116:3	<b>12:33:10 (1)</b>	118:11
<b>12:29:09 (1)</b>	114:25	<b>12:31:53 (1)</b>	117:7	<b>12:34:04 (1)</b>
113:23	<b>12:30:36 (1)</b>	116:4	<b>12:33:13 (1)</b>	118:12
<b>12:29:14 (1)</b>	115:2	<b>12:31:56 (1)</b>	117:8	<b>12:34:10 (1)</b>
113:24	<b>12:30:37 (1)</b>	116:5	<b>12:33:14 (1)</b>	118:13

<b>12:34:12 (1)</b>	119:17	<b>12:36:41 (1)</b>	121:25	<b>12:39:31 (1)</b>
118:14	<b>12:35:33 (1)</b>	120:23	<b>12:38:07 (1)</b>	123:7
<b>12:34:15 (1)</b>	119:18	<b>12:36:42 (1)</b>	122:2	<b>12:39:34 (1)</b>
118:15	<b>12:35:36 (1)</b>	120:24	<b>12:38:10 (2)</b>	123:8
<b>12:34:18 (1)</b>	119:19	<b>12:36:44 (1)</b>	122:3,4	<b>12:39:38 (1)</b>
118:16	<b>12:35:37 (1)</b>	120:25	<b>12:38:11 (1)</b>	123:9
<b>12:34:26 (1)</b>	119:20	<b>12:36:48 (1)</b>	122:5	<b>12:39:39 (2)</b>
118:18	<b>12:35:42 (1)</b>	121:2	<b>12:38:15 (1)</b>	123:10,11
<b>12:34:29 (1)</b>	119:21	<b>12:36:54 (1)</b>	122:6	<b>12:39:40 (1)</b>
118:19	<b>12:35:46 (1)</b>	121:3	<b>12:38:20 (1)</b>	123:12
<b>12:34:31 (1)</b>	119:22	<b>12:36:56 (1)</b>	122:7	<b>12:39:44 (1)</b>
118:20	<b>12:35:48 (1)</b>	121:4	<b>12:38:28 (1)</b>	123:13
<b>12:34:34 (1)</b>	119:23	<b>12:36:58 (1)</b>	122:8	<b>12:39:47 (1)</b>
118:21	<b>12:35:49 (1)</b>	121:5	<b>12:38:31 (1)</b>	123:14
<b>12:34:35 (1)</b>	119:24	<b>12:37:02 (1)</b>	122:9	<b>12:39:49 (1)</b>
118:22	<b>12:35:51 (1)</b>	121:6	<b>12:38:35 (1)</b>	123:15
<b>12:34:37 (1)</b>	119:25	<b>12:37:07 (1)</b>	122:10	<b>12:39:55 (1)</b>
118:23	<b>12:35:54 (1)</b>	121:7	<b>12:38:39 (1)</b>	123:16
<b>12:34:39 (1)</b>	120:2	<b>12:37:10 (1)</b>	122:11	<b>12:39:57 (1)</b>
118:24	<b>12:35:57 (2)</b>	121:8	<b>12:38:42 (1)</b>	123:17
<b>12:34:43 (1)</b>	120:3,4	<b>12:37:16 (1)</b>	122:12	<b>12:40:00 (1)</b>
118:25	<b>12:36:00 (1)</b>	121:9	<b>12:38:46 (1)</b>	123:18
<b>12:34:49 (1)</b>	120:5	<b>12:37:20 (1)</b>	122:13	<b>12:40:03 (1)</b>
119:2	<b>12:36:02 (2)</b>	121:10	<b>12:38:47 (2)</b>	123:19
<b>12:34:52 (1)</b>	120:6,7	<b>12:37:26 (1)</b>	122:14,15	<b>12:40:04 (1)</b>
119:3	<b>12:36:03 (1)</b>	121:11	<b>12:38:53 (1)</b>	123:20
<b>12:34:57 (1)</b>	120:8	<b>12:37:32 (1)</b>	122:16	<b>12:40:12 (1)</b>
119:4	<b>12:36:11 (1)</b>	121:12	<b>12:38:55 (1)</b>	123:21
<b>12:34:59 (1)</b>	120:9	<b>12:37:35 (1)</b>	122:17	<b>12:40:16 (1)</b>
119:5	<b>12:36:13 (1)</b>	121:13	<b>12:39:01 (1)</b>	123:22
<b>12:35:00 (1)</b>	120:10	<b>12:37:36 (1)</b>	122:18	<b>12:40:20 (1)</b>
119:6	<b>12:36:15 (1)</b>	121:14	<b>12:39:07 (1)</b>	123:23
<b>12:35:03 (2)</b>	120:11	<b>12:37:40 (1)</b>	122:19	<b>12:40:22 (1)</b>
119:7,8	<b>12:36:20 (1)</b>	121:15	<b>12:39:09 (1)</b>	123:24
<b>12:35:07 (1)</b>	120:12	<b>12:37:43 (1)</b>	122:20	<b>12:40:25 (2)</b>
119:9	<b>12:36:23 (1)</b>	121:16	<b>12:39:13 (1)</b>	123:25 124:2
<b>12:35:09 (1)</b>	120:13	<b>12:37:46 (1)</b>	122:21	<b>12:40:32 (1)</b>
119:10	<b>12:36:26 (3)</b>	121:17	<b>12:39:16 (1)</b>	124:3
<b>12:35:11 (1)</b>	120:14,15,16	<b>12:37:50 (1)</b>	122:22	<b>12:40:35 (1)</b>
119:11	<b>12:36:29 (1)</b>	121:18	<b>12:39:19 (2)</b>	124:4
<b>12:35:19 (1)</b>	120:17	<b>12:37:54 (2)</b>	122:23,24	<b>12:40:36 (1)</b>
119:12	<b>12:36:30 (1)</b>	121:19,20	<b>12:39:21 (1)</b>	124:5
<b>12:35:22 (1)</b>	120:18	<b>12:37:55 (1)</b>	122:25	<b>12:40:44 (1)</b>
119:13	<b>12:36:31 (1)</b>	121:21	<b>12:39:23 (1)</b>	124:9
<b>12:35:24 (1)</b>	120:19	<b>12:37:57 (1)</b>	123:2	<b>12:40:53 (1)</b>
119:14	<b>12:36:33 (1)</b>	121:22	<b>12:39:26 (1)</b>	124:11
<b>12:35:26 (1)</b>	120:20	<b>12:37:58 (1)</b>	123:3	<b>12:40:54 (1)</b>
119:15	<b>12:36:34 (1)</b>	121:23	<b>12:39:28 (2)</b>	124:12
<b>12:35:29 (1)</b>	120:21	<b>12:38:02 (1)</b>	123:4,5	<b>12:40:57 (1)</b>
119:16	<b>12:36:37 (1)</b>	121:24	<b>12:39:29 (1)</b>	124:13
<b>12:35:31 (1)</b>	120:22	<b>12:38:05 (1)</b>	123:6	<b>12:41:00 (1)</b>

124:14	<b>12:42:08 (1)</b>	126:19	<b>12:45:03 (1)</b>	128:24
<b>12:41:03 (1)</b>	125:17	<b>12:43:34 (1)</b>	127:22	<b>12:46:33 (1)</b>
124:15	<b>12:42:11 (1)</b>	126:20	<b>12:45:06 (1)</b>	128:25
<b>12:41:04 (1)</b>	125:18	<b>12:43:36 (1)</b>	127:23	<b>12:46:39 (1)</b>
124:16	<b>12:42:12 (1)</b>	126:21	<b>12:45:10 (1)</b>	129:2
<b>12:41:09 (1)</b>	125:19	<b>12:43:42 (1)</b>	127:24	<b>12:46:43 (1)</b>
124:17	<b>12:42:15 (1)</b>	126:22	<b>12:45:12 (1)</b>	129:3
<b>12:41:11 (1)</b>	125:20	<b>12:43:50 (1)</b>	127:25	<b>12:46:53 (1)</b>
124:18	<b>12:42:18 (1)</b>	126:23	<b>12:45:17 (1)</b>	129:4
<b>12:41:15 (1)</b>	125:21	<b>12:43:53 (1)</b>	128:2	<b>12:46:55 (1)</b>
124:19	<b>12:42:20 (1)</b>	126:24	<b>12:45:22 (1)</b>	129:5
<b>12:41:18 (1)</b>	125:22	<b>12:43:56 (1)</b>	128:3	<b>12:46:59 (1)</b>
124:20	<b>12:42:21 (1)</b>	126:25	<b>12:45:24 (1)</b>	129:6
<b>12:41:21 (1)</b>	125:23	<b>12:44:00 (1)</b>	128:4	<b>12:47:01 (1)</b>
124:21	<b>12:42:22 (1)</b>	127:2	<b>12:45:26 (1)</b>	129:7
<b>12:41:23 (1)</b>	125:24	<b>12:44:02 (1)</b>	128:5	<b>12:47:04 (1)</b>
124:22	<b>12:42:26 (1)</b>	127:3	<b>12:45:30 (1)</b>	129:8
<b>12:41:24 (1)</b>	125:25	<b>12:44:08 (1)</b>	128:6	<b>12:47:07 (1)</b>
124:23	<b>12:42:45 (1)</b>	127:4	<b>12:45:40 (1)</b>	129:9
<b>12:41:26 (1)</b>	126:2	<b>12:44:11 (2)</b>	128:7	<b>12:47:11 (1)</b>
124:24	<b>12:42:48 (1)</b>	127:5,6	<b>12:45:43 (1)</b>	129:10
<b>12:41:27 (1)</b>	126:3	<b>12:44:15 (1)</b>	128:8	<b>12:47:13 (1)</b>
124:25	<b>12:42:49 (1)</b>	127:7	<b>12:45:49 (1)</b>	129:11
<b>12:41:30 (1)</b>	126:4	<b>12:44:17 (1)</b>	128:9	<b>12:47:15 (1)</b>
125:2	<b>12:42:52 (1)</b>	127:8	<b>12:45:51 (1)</b>	129:12
<b>12:41:35 (1)</b>	126:5	<b>12:44:18 (1)</b>	128:10	<b>12:47:17 (1)</b>
125:3	<b>12:42:58 (1)</b>	127:9	<b>12:45:54 (1)</b>	129:13
<b>12:41:36 (1)</b>	126:6	<b>12:44:21 (1)</b>	128:11	<b>12:47:20 (1)</b>
125:4	<b>12:43:00 (1)</b>	127:10	<b>12:45:56 (1)</b>	129:14
<b>12:41:43 (1)</b>	126:7	<b>12:44:27 (1)</b>	128:12	<b>12:47:22 (1)</b>
125:5	<b>12:43:03 (1)</b>	127:11	<b>12:45:59 (1)</b>	129:15
<b>12:41:45 (1)</b>	126:8	<b>12:44:30 (1)</b>	128:13	<b>12:47:25 (1)</b>
125:6	<b>12:43:05 (1)</b>	127:12	<b>12:46:01 (1)</b>	129:16
<b>12:41:47 (1)</b>	126:9	<b>12:44:36 (1)</b>	128:14	<b>12:47:27 (1)</b>
125:7	<b>12:43:09 (1)</b>	127:13	<b>12:46:06 (1)</b>	129:17
<b>12:41:48 (1)</b>	126:10	<b>12:44:38 (1)</b>	128:15	<b>12:47:29 (1)</b>
125:8	<b>12:43:11 (1)</b>	127:14	<b>12:46:07 (1)</b>	129:18
<b>12:41:51 (1)</b>	126:11	<b>12:44:41 (1)</b>	128:16	<b>12:47:30 (1)</b>
125:9	<b>12:43:15 (1)</b>	127:15	<b>12:46:12 (2)</b>	129:19
<b>12:41:55 (1)</b>	126:12	<b>12:44:42 (1)</b>	128:17,18	<b>12:47:35 (1)</b>
125:10	<b>12:43:18 (1)</b>	127:16	<b>12:46:16 (1)</b>	129:20
<b>12:41:58 (1)</b>	126:13	<b>12:44:43 (1)</b>	128:19	<b>12:47:42 (1)</b>
125:11	<b>12:43:21 (1)</b>	127:17	<b>12:46:19 (1)</b>	129:21
<b>12:41:59 (1)</b>	126:14	<b>12:44:44 (1)</b>	128:20	<b>12:47:47 (1)</b>
125:12	<b>12:43:23 (1)</b>	127:18	<b>12:46:21 (1)</b>	129:22
<b>12:42:00 (1)</b>	126:15	<b>12:44:45 (1)</b>	128:21	<b>12:47:48 (1)</b>
125:13	<b>12:43:26 (1)</b>	127:19	<b>12:46:25 (1)</b>	129:23
<b>12:42:02 (1)</b>	126:16	<b>12:44:52 (1)</b>	128:22	<b>12:47:52 (1)</b>
125:14	<b>12:43:29 (2)</b>	127:20	<b>12:46:29 (1)</b>	129:24
<b>12:42:05 (2)</b>	126:17,18	<b>12:44:55 (1)</b>	128:23	<b>12:47:56 (1)</b>
125:15,16	<b>12:43:30 (1)</b>	127:21	<b>12:46:32 (1)</b>	129:25

<b>12:48:03 (1)</b>	131:4	<b>12:51:11 (2)</b>	133:9	<b>12:53:43 (1)</b>
130:2	<b>12:49:30 (1)</b>	132:7,8	<b>12:52:40 (1)</b>	134:13
<b>12:48:09 (1)</b>	131:5	<b>12:51:13 (1)</b>	133:10	<b>1234 (2)</b>
130:3	<b>12:49:33 (2)</b>	132:9	<b>12:52:42 (1)</b>	49:18 50:3
<b>12:48:10 (1)</b>	131:6,7	<b>12:51:17 (1)</b>	133:11	<b>1238 (3)</b>
130:4	<b>12:49:35 (1)</b>	132:10	<b>12:52:45 (1)</b>	260:7 262:2,23
<b>12:48:14 (1)</b>	131:8	<b>12:51:23 (1)</b>	133:12	<b>1238A (2)</b>
130:5	<b>12:49:38 (1)</b>	132:11	<b>12:52:47 (1)</b>	259:22 260:5
<b>12:48:18 (1)</b>	131:9	<b>12:51:27 (1)</b>	133:13	<b>13 (3)</b>
130:6	<b>12:49:39 (1)</b>	132:12	<b>12:52:49 (1)</b>	11:10 159:12 287:14
<b>12:48:20 (1)</b>	131:10	<b>12:51:30 (1)</b>	133:14	<b>13th (1)</b>
130:7	<b>12:49:40 (1)</b>	132:13	<b>12:52:50 (1)</b>	268:9
<b>12:48:25 (1)</b>	131:11	<b>12:51:32 (1)</b>	133:15	<b>13:28:22 (1)</b>
130:8	<b>12:49:52 (1)</b>	132:14	<b>12:52:56 (1)</b>	135:4
<b>12:48:30 (1)</b>	131:12	<b>12:51:33 (1)</b>	133:16	<b>13:47:27 (1)</b>
130:10	<b>12:49:56 (1)</b>	132:15	<b>12:52:57 (1)</b>	135:5
<b>12:48:33 (1)</b>	131:13	<b>12:51:41 (1)</b>	133:17	<b>13:47:30 (1)</b>
130:11	<b>12:49:57 (1)</b>	132:16	<b>12:53 (2)</b>	135:6
<b>12:48:35 (1)</b>	131:14	<b>12:51:46 (1)</b>	134:10,12	<b>13:47:31 (1)</b>
130:12	<b>12:49:59 (1)</b>	132:17	<b>12:53:00 (1)</b>	135:7
<b>12:48:36 (1)</b>	131:15	<b>12:51:53 (1)</b>	133:18	<b>13:47:36 (1)</b>
130:13	<b>12:50:08 (1)</b>	132:18	<b>12:53:04 (2)</b>	135:8
<b>12:48:40 (1)</b>	131:16	<b>12:51:57 (1)</b>	133:19 134:3	<b>13:47:38 (2)</b>
130:14	<b>12:50:11 (1)</b>	132:19	<b>12:53:07 (1)</b>	135:9,10
<b>12:48:41 (1)</b>	131:17	<b>12:52:00 (1)</b>	134:4	<b>13:47:40 (1)</b>
130:15	<b>12:50:19 (1)</b>	132:20	<b>12:53:08 (1)</b>	135:11
<b>12:48:49 (1)</b>	131:18	<b>12:52:02 (1)</b>	133:20	<b>13:47:43 (1)</b>
130:16	<b>12:50:23 (1)</b>	132:21	<b>12:53:10 (1)</b>	135:12
<b>12:48:53 (1)</b>	131:19	<b>12:52:05 (1)</b>	134:5	<b>13:47:45 (1)</b>
130:17	<b>12:50:24 (1)</b>	132:22	<b>12:53:11 (1)</b>	135:13
<b>12:48:59 (1)</b>	131:20	<b>12:52:08 (1)</b>	133:21	<b>13:47:48 (1)</b>
130:18	<b>12:50:27 (1)</b>	132:23	<b>12:53:12 (1)</b>	135:14
<b>12:49:01 (1)</b>	131:21	<b>12:52:11 (1)</b>	134:6	<b>13:47:50 (1)</b>
130:19	<b>12:50:34 (1)</b>	132:24	<b>12:53:13 (2)</b>	135:15
<b>12:49:04 (1)</b>	131:22	<b>12:52:16 (1)</b>	133:22,23	<b>13:47:56 (1)</b>
130:20	<b>12:50:36 (1)</b>	132:25	<b>12:53:14 (1)</b>	135:16
<b>12:49:06 (1)</b>	131:23	<b>12:52:18 (1)</b>	133:24	<b>13:48:00 (1)</b>
130:21	<b>12:50:43 (1)</b>	133:2	<b>12:53:15 (1)</b>	135:17
<b>12:49:11 (1)</b>	131:24	<b>12:52:21 (1)</b>	133:25	<b>13:48:03 (1)</b>
130:22	<b>12:50:45 (1)</b>	133:3	<b>12:53:23 (1)</b>	135:18
<b>12:49:14 (1)</b>	131:25	<b>12:52:25 (1)</b>	134:7	<b>13:48:06 (1)</b>
130:23	<b>12:50:47 (1)</b>	133:4	<b>12:53:26 (1)</b>	135:19
<b>12:49:16 (1)</b>	132:2	<b>12:52:26 (1)</b>	134:8	<b>13:48:08 (1)</b>
130:24	<b>12:50:59 (1)</b>	133:5	<b>12:53:29 (1)</b>	135:20
<b>12:49:18 (1)</b>	132:3	<b>12:52:28 (1)</b>	134:9	<b>13:48:13 (1)</b>
130:25	<b>12:51:03 (1)</b>	133:6	<b>12:53:37 (1)</b>	135:21
<b>12:49:21 (1)</b>	132:4	<b>12:52:29 (1)</b>	134:10	<b>13:48:17 (1)</b>
131:2	<b>12:51:06 (1)</b>	133:7	<b>12:53:40 (1)</b>	135:22
<b>12:49:23 (1)</b>	132:5	<b>12:52:30 (1)</b>	134:11	<b>13:48:18 (1)</b>
131:3	<b>12:51:10 (1)</b>	133:8	<b>12:53:42 (1)</b>	135:23
<b>12:49:26 (1)</b>	132:6	<b>12:52:37 (1)</b>	134:12	<b>13:48:22 (1)</b>

135:24	<b>14:05:34 (1)</b>	138:9	<b>14:08:01 (1)</b>	140:16
<b>13:48:23 (1)</b>	137:4	<b>14:06:45 (1)</b>	139:13	<b>14:09:28 (1)</b>
135:25	<b>14:05:35 (1)</b>	138:10	<b>14:08:03 (1)</b>	140:17
<b>13:48:25 (1)</b>	137:5	<b>14:06:49 (1)</b>	139:14	<b>14:09:30 (1)</b>
136:2	<b>14:05:39 (1)</b>	138:11	<b>14:08:06 (1)</b>	140:18
<b>13:48:29 (1)</b>	137:10	<b>14:06:52 (1)</b>	139:15	<b>14:09:35 (1)</b>
136:3	<b>14:05:41 (1)</b>	138:12	<b>14:08:12 (1)</b>	140:19
<b>13:48:31 (1)</b>	137:11	<b>14:06:56 (1)</b>	139:16	<b>14:09:40 (1)</b>
136:4	<b>14:05:43 (1)</b>	138:13	<b>14:08:15 (1)</b>	140:20
<b>13:48:35 (1)</b>	137:12	<b>14:06:59 (1)</b>	139:17	<b>14:09:46 (1)</b>
136:5	<b>14:05:46 (1)</b>	138:14	<b>14:08:17 (1)</b>	140:21
<b>13:48:39 (1)</b>	137:13	<b>14:07:03 (1)</b>	139:18	<b>14:09:50 (1)</b>
136:6	<b>14:05:50 (1)</b>	138:15	<b>14:08:20 (1)</b>	140:22
<b>13:48:43 (1)</b>	137:14	<b>14:07:08 (1)</b>	139:19	<b>14:09:52 (2)</b>
136:7	<b>14:05:55 (1)</b>	138:16	<b>14:08:23 (1)</b>	140:23,24
<b>13:48:47 (1)</b>	137:15	<b>14:07:10 (1)</b>	139:20	<b>14:09:53 (2)</b>
136:8	<b>14:05:56 (1)</b>	138:17	<b>14:08:27 (1)</b>	140:25 141:2
<b>13:48:48 (1)</b>	137:16	<b>14:07:13 (1)</b>	139:21	<b>14:09:59 (1)</b>
136:9	<b>14:05:57 (1)</b>	138:18	<b>14:08:30 (1)</b>	141:3
<b>13:48:57 (1)</b>	137:17	<b>14:07:16 (1)</b>	139:22	<b>14:10:02 (1)</b>
136:10	<b>14:05:58 (1)</b>	138:19	<b>14:08:33 (2)</b>	141:4
<b>13:48:59 (1)</b>	137:18	<b>14:07:20 (1)</b>	139:23,24	<b>14:10:05 (1)</b>
136:11	<b>14:06:00 (1)</b>	138:20	<b>14:08:35 (1)</b>	141:5
<b>13:49:00 (1)</b>	137:19	<b>14:07:22 (1)</b>	139:25	<b>14:10:07 (1)</b>
136:12	<b>14:06:05 (1)</b>	138:21	<b>14:08:37 (1)</b>	141:6
<b>13:49:02 (2)</b>	137:20	<b>14:07:24 (1)</b>	140:2	<b>14:10:08 (1)</b>
136:13,14	<b>14:06:09 (1)</b>	138:22	<b>14:08:39 (1)</b>	141:7
<b>13:49:03 (1)</b>	137:21	<b>14:07:27 (1)</b>	140:3	<b>14:10:10 (1)</b>
136:15	<b>14:06:10 (1)</b>	138:23	<b>14:08:41 (1)</b>	141:8
<b>13:49:05 (1)</b>	137:22	<b>14:07:31 (1)</b>	140:4	<b>14:10:13 (1)</b>
136:16	<b>14:06:11 (1)</b>	138:24	<b>14:08:44 (1)</b>	141:9
<b>13:49:07 (1)</b>	137:23	<b>14:07:35 (1)</b>	140:5	<b>14:10:16 (1)</b>
136:17	<b>14:06:13 (1)</b>	138:25	<b>14:08:49 (1)</b>	141:10
<b>14th (1)</b>	137:24	<b>14:07:39 (1)</b>	140:6	<b>14:10:18 (1)</b>
98:6	<b>14:06:16 (1)</b>	139:2	<b>14:08:50 (1)</b>	141:11
<b>14:04:19 (1)</b>	137:25	<b>14:07:41 (1)</b>	140:7	<b>14:10:27 (1)</b>
136:18	<b>14:06:19 (1)</b>	139:3	<b>14:08:51 (2)</b>	141:12
<b>14:05:17 (2)</b>	138:2	<b>14:07:45 (1)</b>	140:8,9	<b>14:10:34 (1)</b>
136:19,20	<b>14:06:21 (1)</b>	139:4	<b>14:08:54 (1)</b>	141:13
<b>14:05:19 (1)</b>	138:3	<b>14:07:46 (1)</b>	140:10	<b>14:10:38 (1)</b>
136:21	<b>14:06:24 (1)</b>	139:5	<b>14:08:59 (1)</b>	141:14
<b>14:05:20 (2)</b>	138:4	<b>14:07:47 (1)</b>	140:11	<b>14:10:41 (1)</b>
136:22,23	<b>14:06:27 (1)</b>	139:7	<b>14:09:03 (1)</b>	141:15
<b>14:05:21 (1)</b>	138:5	<b>14:07:49 (2)</b>	140:12	<b>14:10:43 (1)</b>
136:24	<b>14:06:32 (1)</b>	139:8,9	<b>14:09:13 (1)</b>	141:16
<b>14:05:25 (1)</b>	138:6	<b>14:07:50 (1)</b>	140:13	<b>14:10:44 (1)</b>
136:25	<b>14:06:36 (1)</b>	139:10	<b>14:09:16 (1)</b>	141:17
<b>14:05:27 (1)</b>	138:7	<b>14:07:54 (1)</b>	140:14	<b>14:10:53 (1)</b>
137:2	<b>14:06:40 (1)</b>	139:11	<b>14:09:21 (1)</b>	141:18
<b>14:05:31 (1)</b>	138:8	<b>14:07:58 (1)</b>	140:15	<b>14:10:56 (1)</b>
137:3	<b>14:06:43 (1)</b>	139:12	<b>14:09:23 (1)</b>	141:19

<b>14:10:58 (1)</b>	143:3	<b>14:15:08 (1)</b>	145:7	<b>14:18:25 (1)</b>
141:20	<b>14:13:38 (1)</b>	144:5	<b>14:17:07 (1)</b>	146:16
<b>14:11:04 (1)</b>	143:4	<b>14:15:11 (1)</b>	145:8	<b>14:18:29 (3)</b>
141:21	<b>14:13:42 (1)</b>	144:6	<b>14:17:11 (1)</b>	146:5,6,17
<b>14:11:05 (1)</b>	143:5	<b>14:15:14 (1)</b>	145:9	<b>14:18:30 (1)</b>
141:22	<b>14:13:44 (1)</b>	144:7	<b>14:17:12 (1)</b>	146:7
<b>14:11:07 (3)</b>	143:6	<b>14:15:17 (1)</b>	145:10	<b>14:18:31 (1)</b>
141:23,24,25	<b>14:13:45 (1)</b>	144:8	<b>14:17:14 (1)</b>	146:8
<b>14:11:11 (1)</b>	143:7	<b>14:15:18 (1)</b>	145:11	<b>14:18:32 (2)</b>
142:3	<b>14:13:47 (1)</b>	144:9	<b>14:17:15 (1)</b>	146:9,10
<b>14:11:13 (1)</b>	143:8	<b>14:15:21 (1)</b>	145:12	<b>14:18:53 (2)</b>
142:4	<b>14:13:49 (1)</b>	144:10	<b>14:17:16 (1)</b>	146:18,19
<b>14:11:16 (1)</b>	143:9	<b>14:15:22 (1)</b>	145:13	<b>14:18:57 (1)</b>
142:5	<b>14:13:54 (1)</b>	144:11	<b>14:17:23 (1)</b>	146:20
<b>14:11:19 (1)</b>	143:10	<b>14:15:23 (1)</b>	145:14	<b>14:18:59 (1)</b>
142:6	<b>14:14:04 (1)</b>	144:12	<b>14:17:25 (1)</b>	146:21
<b>14:11:21 (1)</b>	143:11	<b>14:15:24 (1)</b>	145:15	<b>14:19:01 (1)</b>
142:7	<b>14:14:05 (1)</b>	144:13	<b>14:17:27 (1)</b>	146:22
<b>14:11:25 (2)</b>	143:12	<b>14:15:26 (1)</b>	145:16	<b>14:19:02 (1)</b>
142:8,9	<b>14:14:06 (1)</b>	144:14	<b>14:17:34 (1)</b>	146:23
<b>14:11:27 (1)</b>	143:13	<b>14:15:29 (1)</b>	145:17	<b>14:19:08 (1)</b>
142:10	<b>14:14:09 (1)</b>	144:15	<b>14:17:39 (1)</b>	146:24
<b>14:11:30 (1)</b>	143:14	<b>14:15:34 (1)</b>	145:18	<b>14:19:12 (1)</b>
142:11	<b>14:14:19 (1)</b>	144:16	<b>14:17:41 (1)</b>	146:25
<b>14:11:32 (2)</b>	143:15	<b>14:15:35 (1)</b>	145:19	<b>14:19:13 (1)</b>
142:12,13	<b>14:14:22 (1)</b>	144:17	<b>14:17:42 (1)</b>	147:2
<b>14:11:34 (1)</b>	143:16	<b>14:16:06 (1)</b>	145:20	<b>14:19:15 (1)</b>
142:14	<b>14:14:36 (1)</b>	144:18	<b>14:17:43 (1)</b>	147:3
<b>14:11:38 (1)</b>	143:17	<b>14:16:08 (1)</b>	145:21	<b>14:19:17 (1)</b>
142:15	<b>14:14:37 (1)</b>	144:19	<b>14:17:47 (1)</b>	147:4
<b>14:11:41 (1)</b>	143:18	<b>14:16:15 (1)</b>	145:22	<b>14:19:19 (1)</b>
142:16	<b>14:14:38 (1)</b>	144:20	<b>14:17:59 (1)</b>	147:5
<b>14:11:47 (2)</b>	143:19	<b>14:16:38 (1)</b>	145:23	<b>14:19:22 (1)</b>
142:17,18	<b>14:14:40 (1)</b>	144:21	<b>14:18:05 (1)</b>	147:6
<b>14:11:49 (1)</b>	143:20	<b>14:16:40 (1)</b>	145:24	<b>14:19:25 (1)</b>
142:19	<b>14:14:41 (1)</b>	144:22	<b>14:18:13 (1)</b>	147:7
<b>14:11:55 (1)</b>	143:21	<b>14:16:42 (1)</b>	145:25	<b>14:19:27 (1)</b>
142:20	<b>14:14:42 (1)</b>	144:23	<b>14:18:17 (1)</b>	147:8
<b>14:11:57 (1)</b>	143:22	<b>14:16:45 (1)</b>	146:12	<b>14:19:29 (1)</b>
142:21	<b>14:14:49 (1)</b>	144:24	<b>14:18:18 (1)</b>	147:9
<b>14:11:59 (1)</b>	143:23	<b>14:16:47 (1)</b>	146:13	<b>14:19:31 (1)</b>
142:22	<b>14:14:51 (1)</b>	144:25	<b>14:18:19 (1)</b>	147:10
<b>14:12:02 (1)</b>	143:24	<b>14:16:50 (1)</b>	146:2	<b>14:19:34 (1)</b>
142:23	<b>14:14:53 (1)</b>	145:2	<b>14:18:20 (1)</b>	147:11
<b>14:12:03 (1)</b>	143:25	<b>14:16:53 (2)</b>	146:14	<b>14:19:35 (1)</b>
142:24	<b>14:14:55 (1)</b>	145:3,4	<b>14:18:21 (1)</b>	147:12
<b>14:13:31 (1)</b>	144:2	<b>14:16:55 (1)</b>	146:3	<b>14:19:36 (1)</b>
142:25	<b>14:14:58 (1)</b>	145:5	<b>14:18:22 (1)</b>	147:13
<b>14:13:32 (1)</b>	144:3	<b>14:17:01 (1)</b>	146:15	<b>14:19:38 (1)</b>
143:2	<b>14:15:04 (1)</b>	145:6	<b>14:18:24 (1)</b>	147:14
<b>14:13:35 (1)</b>	144:4	<b>14:17:05 (1)</b>	146:4	<b>14:19:41 (1)</b>

147:15	<b>14:20:57 (1)</b>	149:23	<b>14:23:18 (1)</b>	152:6
<b>14:19:44 (1)</b>	148:19	<b>14:22:08 (1)</b>	151:3	<b>14:24:33 (1)</b>
147:16	<b>14:21:00 (1)</b>	149:24	<b>14:23:19 (1)</b>	152:7
<b>14:19:48 (1)</b>	148:20	<b>14:22:09 (1)</b>	151:4	<b>14:24:36 (1)</b>
147:17	<b>14:21:03 (1)</b>	149:25	<b>14:23:21 (1)</b>	152:8
<b>14:19:51 (1)</b>	148:21	<b>14:22:12 (2)</b>	151:5	<b>14:24:37 (1)</b>
147:18	<b>14:21:06 (1)</b>	150:2,3	<b>14:23:24 (1)</b>	152:9
<b>14:19:53 (1)</b>	148:22	<b>14:22:14 (1)</b>	151:6	<b>14:24:40 (1)</b>
147:19	<b>14:21:08 (1)</b>	150:4	<b>14:23:25 (1)</b>	152:10
<b>14:19:55 (1)</b>	148:23	<b>14:22:22 (1)</b>	151:7	<b>14:24:41 (1)</b>
147:20	<b>14:21:10 (1)</b>	150:5	<b>14:23:27 (1)</b>	152:11
<b>14:19:57 (1)</b>	148:24	<b>14:22:24 (1)</b>	151:8	<b>14:24:42 (1)</b>
147:21	<b>14:21:14 (1)</b>	150:6	<b>14:23:28 (1)</b>	152:12
<b>14:20:00 (1)</b>	148:25	<b>14:22:26 (1)</b>	151:9	<b>14:24:44 (1)</b>
147:22	<b>14:21:16 (1)</b>	150:7	<b>14:23:29 (1)</b>	152:13
<b>14:20:07 (1)</b>	149:2	<b>14:22:30 (1)</b>	151:10	<b>14:24:45 (1)</b>
147:23	<b>14:21:19 (1)</b>	150:8	<b>14:23:31 (2)</b>	152:14
<b>14:20:11 (1)</b>	149:3	<b>14:22:35 (1)</b>	151:11,12	<b>14:24:52 (1)</b>
147:24	<b>14:21:23 (1)</b>	150:9	<b>14:23:32 (1)</b>	152:15
<b>14:20:14 (1)</b>	149:4	<b>14:22:40 (1)</b>	151:13	<b>14:24:56 (1)</b>
147:25	<b>14:21:26 (1)</b>	150:10	<b>14:23:33 (1)</b>	152:16
<b>14:20:16 (1)</b>	149:5	<b>14:22:44 (1)</b>	151:14	<b>14:25:01 (1)</b>
148:2	<b>14:21:28 (1)</b>	150:11	<b>14:23:38 (1)</b>	152:17
<b>14:20:19 (1)</b>	149:6	<b>14:22:48 (1)</b>	151:15	<b>14:25:04 (2)</b>
148:3	<b>14:21:30 (1)</b>	150:12	<b>14:23:42 (1)</b>	152:18,19
<b>14:20:21 (1)</b>	149:7	<b>14:22:51 (1)</b>	151:16	<b>14:25:09 (1)</b>
148:4	<b>14:21:32 (1)</b>	150:13	<b>14:23:45 (1)</b>	152:20
<b>14:20:23 (2)</b>	149:8	<b>14:22:53 (1)</b>	151:17	<b>14:25:11 (1)</b>
148:5,6	<b>14:21:33 (1)</b>	150:14	<b>14:23:48 (1)</b>	152:21
<b>14:20:27 (1)</b>	149:9	<b>14:22:55 (1)</b>	151:18	<b>14:25:16 (1)</b>
148:7	<b>14:21:34 (3)</b>	150:15	<b>14:23:51 (1)</b>	152:22
<b>14:20:29 (1)</b>	149:10,11,12	<b>14:22:57 (1)</b>	151:19	<b>14:25:18 (1)</b>
148:8	<b>14:21:37 (1)</b>	150:16	<b>14:23:55 (1)</b>	152:23
<b>14:20:30 (1)</b>	149:13	<b>14:22:58 (1)</b>	151:20	<b>14:25:20 (1)</b>
148:9	<b>14:21:42 (1)</b>	150:17	<b>14:23:58 (1)</b>	152:24
<b>14:20:31 (1)</b>	149:14	<b>14:22:59 (1)</b>	151:21	<b>14:25:22 (1)</b>
148:10	<b>14:21:46 (1)</b>	150:18	<b>14:24:02 (1)</b>	152:25
<b>14:20:39 (1)</b>	149:15	<b>14:23:02 (2)</b>	151:22	<b>14:25:24 (1)</b>
148:11	<b>14:21:48 (2)</b>	150:19,20	<b>14:24:06 (1)</b>	153:2
<b>14:20:43 (1)</b>	149:16,17	<b>14:23:04 (1)</b>	151:23	<b>14:25:25 (1)</b>
148:12	<b>14:21:55 (1)</b>	150:21	<b>14:24:08 (2)</b>	153:3
<b>14:20:45 (1)</b>	149:18	<b>14:23:07 (1)</b>	151:24,25	<b>14:25:26 (1)</b>
148:13	<b>14:21:56 (1)</b>	150:22	<b>14:24:10 (1)</b>	153:4
<b>14:20:46 (1)</b>	149:19	<b>14:23:09 (1)</b>	152:2	<b>14:25:31 (1)</b>
148:14	<b>14:21:59 (1)</b>	150:23	<b>14:24:12 (1)</b>	153:5
<b>14:20:49 (2)</b>	149:20	<b>14:23:14 (1)</b>	152:3	<b>14:25:32 (1)</b>
148:15,16	<b>14:22:01 (1)</b>	150:24	<b>14:24:22 (1)</b>	153:6
<b>14:20:50 (1)</b>	149:21	<b>14:23:15 (1)</b>	152:4	<b>14:25:35 (1)</b>
148:17	<b>14:22:02 (1)</b>	150:25	<b>14:24:25 (1)</b>	153:7
<b>14:20:54 (1)</b>	149:22	<b>14:23:16 (1)</b>	152:5	<b>14:25:44 (1)</b>
148:18	<b>14:22:03 (1)</b>	151:2	<b>14:24:28 (1)</b>	153:8

<b>14:25:48 (1)</b>	154:12	<b>14:28:54 (1)</b>	156:20	<b>14:30:56 (1)</b>
153:9	<b>14:27:09 (1)</b>	155:17	<b>14:29:59 (1)</b>	157:24
<b>14:25:51 (1)</b>	154:13	<b>14:28:56 (1)</b>	156:21	<b>14:30:58 (1)</b>
153:10	<b>14:27:18 (1)</b>	155:18	<b>14:30:00 (1)</b>	157:25
<b>14:25:57 (1)</b>	154:15	<b>14:29:00 (1)</b>	156:22	<b>14:31:00 (1)</b>
153:11	<b>14:27:19 (2)</b>	155:19	<b>14:30:01 (1)</b>	158:2
<b>14:26:00 (1)</b>	154:16,17	<b>14:29:02 (1)</b>	156:23	<b>14:31:03 (1)</b>
153:12	<b>14:27:20 (1)</b>	155:20	<b>14:30:03 (1)</b>	158:3
<b>14:26:03 (1)</b>	154:18	<b>14:29:05 (1)</b>	156:24	<b>14:31:04 (1)</b>
153:13	<b>14:27:33 (1)</b>	155:21	<b>14:30:05 (1)</b>	158:4
<b>14:26:07 (1)</b>	154:19	<b>14:29:06 (1)</b>	156:25	<b>14:31:08 (1)</b>
153:14	<b>14:27:43 (1)</b>	155:22	<b>14:30:06 (1)</b>	158:5
<b>14:26:08 (1)</b>	154:20	<b>14:29:10 (1)</b>	157:2	<b>14:31:09 (1)</b>
153:15	<b>14:27:48 (1)</b>	155:23	<b>14:30:08 (1)</b>	158:6
<b>14:26:13 (1)</b>	154:21	<b>14:29:11 (1)</b>	157:3	<b>14:31:12 (1)</b>
153:16	<b>14:27:54 (1)</b>	155:24	<b>14:30:09 (1)</b>	158:7
<b>14:26:16 (1)</b>	154:22	<b>14:29:13 (1)</b>	157:5	<b>14:31:13 (1)</b>
153:17	<b>14:27:56 (1)</b>	155:25	<b>14:30:12 (1)</b>	158:8
<b>14:26:18 (1)</b>	154:23	<b>14:29:16 (1)</b>	157:7	<b>14:31:14 (1)</b>
153:18	<b>14:27:58 (1)</b>	156:2	<b>14:30:15 (1)</b>	158:9
<b>14:26:20 (1)</b>	154:24	<b>14:29:18 (1)</b>	157:8	<b>14:31:15 (1)</b>
153:19	<b>14:28:01 (1)</b>	156:3	<b>14:30:17 (1)</b>	158:10
<b>14:26:21 (1)</b>	154:25	<b>14:29:19 (1)</b>	157:9	<b>14:31:19 (2)</b>
153:20	<b>14:28:04 (1)</b>	156:4	<b>14:30:19 (1)</b>	158:11,12
<b>14:26:24 (1)</b>	155:2	<b>14:29:22 (1)</b>	157:10	<b>14:31:22 (1)</b>
153:21	<b>14:28:06 (1)</b>	156:5	<b>14:30:22 (1)</b>	158:13
<b>14:26:29 (1)</b>	155:3	<b>14:29:25 (2)</b>	157:11	<b>14:31:24 (1)</b>
153:22	<b>14:28:12 (1)</b>	156:6,7	<b>14:30:25 (1)</b>	158:14
<b>14:26:32 (1)</b>	155:4	<b>14:29:27 (1)</b>	157:12	<b>14:31:31 (1)</b>
153:23	<b>14:28:15 (1)</b>	156:8	<b>14:30:28 (1)</b>	158:15
<b>14:26:33 (1)</b>	155:5	<b>14:29:29 (1)</b>	157:13	<b>14:31:35 (1)</b>
153:24	<b>14:28:22 (1)</b>	156:9	<b>14:30:30 (1)</b>	158:16
<b>14:26:38 (1)</b>	155:6	<b>14:29:31 (1)</b>	157:14	<b>14:31:42 (1)</b>
153:25	<b>14:28:24 (1)</b>	156:10	<b>14:30:34 (1)</b>	158:17
<b>14:26:40 (1)</b>	155:7	<b>14:29:36 (1)</b>	157:15	<b>14:31:44 (1)</b>
154:2	<b>14:28:27 (2)</b>	156:11	<b>14:30:39 (1)</b>	158:18
<b>14:26:42 (1)</b>	155:8,9	<b>14:29:39 (2)</b>	157:16	<b>14:31:47 (1)</b>
154:3	<b>14:28:34 (1)</b>	156:12,13	<b>14:30:41 (1)</b>	158:19
<b>14:26:45 (3)</b>	155:10	<b>14:29:42 (1)</b>	157:17	<b>14:31:49 (1)</b>
154:4,5,6	<b>14:28:39 (1)</b>	156:14	<b>14:30:43 (1)</b>	158:20
<b>14:26:47 (1)</b>	155:11	<b>14:29:44 (1)</b>	157:18	<b>14:31:53 (1)</b>
154:7	<b>14:28:41 (1)</b>	156:15	<b>14:30:44 (1)</b>	158:21
<b>14:26:53 (1)</b>	155:12	<b>14:29:45 (1)</b>	157:19	<b>14:31:57 (1)</b>
154:8	<b>14:28:44 (1)</b>	156:16	<b>14:30:47 (1)</b>	158:22
<b>14:26:54 (1)</b>	155:13	<b>14:29:47 (1)</b>	157:20	<b>14:31:59 (1)</b>
154:9	<b>14:28:46 (1)</b>	156:17	<b>14:30:49 (1)</b>	158:23
<b>14:27:01 (1)</b>	155:14	<b>14:29:50 (1)</b>	157:21	<b>14:32:00 (1)</b>
154:10	<b>14:28:49 (1)</b>	156:18	<b>14:30:51 (1)</b>	158:24
<b>14:27:03 (1)</b>	155:15	<b>14:29:55 (1)</b>	157:22	<b>14:32:03 (1)</b>
154:11	<b>14:28:51 (1)</b>	156:19	<b>14:30:54 (1)</b>	158:25
<b>14:27:05 (1)</b>	155:16	<b>14:29:58 (1)</b>	157:23	<b>14:32:21 (1)</b>

159:2	<b>14:33:55 (1)</b>	161:6	<b>14:36:38 (1)</b>	163:15
<b>14:32:24 (1)</b>	160:4	<b>14:35:08 (3)</b>	162:13	<b>14:38:01 (2)</b>
159:3	<b>14:33:56 (1)</b>	161:7,8,9	<b>14:36:41 (1)</b>	163:16,17
<b>14:32:26 (1)</b>	160:5	<b>14:35:20 (1)</b>	162:14	<b>14:38:02 (1)</b>
159:4	<b>14:34:01 (1)</b>	161:10	<b>14:36:43 (1)</b>	163:18
<b>14:32:30 (1)</b>	160:6	<b>14:35:23 (1)</b>	162:15	<b>14:38:05 (2)</b>
159:5	<b>14:34:03 (1)</b>	161:11	<b>14:36:45 (1)</b>	163:19,20
<b>14:32:32 (1)</b>	160:8	<b>14:35:28 (1)</b>	162:16	<b>14:38:14 (1)</b>
159:6	<b>14:34:05 (1)</b>	161:12	<b>14:36:47 (1)</b>	163:21
<b>14:32:35 (1)</b>	160:9	<b>14:35:31 (1)</b>	162:17	<b>14:38:15 (1)</b>
159:7	<b>14:34:06 (1)</b>	161:13	<b>14:36:50 (1)</b>	163:22
<b>14:32:36 (1)</b>	160:10	<b>14:35:35 (1)</b>	162:18	<b>14:38:16 (1)</b>
159:8	<b>14:34:08 (1)</b>	161:14	<b>14:36:57 (1)</b>	163:23
<b>14:32:38 (1)</b>	160:11	<b>14:35:38 (1)</b>	162:19	<b>14:38:19 (1)</b>
159:9	<b>14:34:11 (1)</b>	161:15	<b>14:37:01 (1)</b>	163:24
<b>14:32:39 (1)</b>	160:12	<b>14:35:40 (1)</b>	162:20	<b>14:38:20 (1)</b>
159:10	<b>14:34:13 (1)</b>	161:16	<b>14:37:05 (1)</b>	163:25
<b>14:33:07 (1)</b>	160:13	<b>14:35:43 (1)</b>	162:21	<b>14:38:21 (1)</b>
159:11	<b>14:34:14 (1)</b>	161:17	<b>14:37:06 (1)</b>	164:2
<b>14:33:12 (1)</b>	160:14	<b>14:35:45 (1)</b>	162:22	<b>14:38:23 (1)</b>
159:12	<b>14:34:17 (1)</b>	161:18	<b>14:37:12 (1)</b>	164:3
<b>14:33:17 (1)</b>	160:15	<b>14:35:47 (2)</b>	162:23	<b>14:38:25 (1)</b>
159:13	<b>14:34:19 (1)</b>	161:19,20	<b>14:37:15 (1)</b>	164:4
<b>14:33:19 (1)</b>	160:16	<b>14:35:48 (1)</b>	162:24	<b>14:38:27 (1)</b>
159:14	<b>14:34:21 (1)</b>	161:21	<b>14:37:23 (1)</b>	164:5
<b>14:33:23 (1)</b>	160:17	<b>14:35:54 (1)</b>	162:25	<b>14:38:28 (1)</b>
159:15	<b>14:34:24 (1)</b>	161:22	<b>14:37:25 (1)</b>	164:6
<b>14:33:26 (1)</b>	160:18	<b>14:35:57 (1)</b>	163:2	<b>14:38:31 (1)</b>
159:16	<b>14:34:25 (1)</b>	161:23	<b>14:37:35 (1)</b>	164:7
<b>14:33:28 (1)</b>	160:19	<b>14:35:58 (1)</b>	163:3	<b>14:38:34 (1)</b>
159:17	<b>14:34:28 (1)</b>	161:24	<b>14:37:38 (1)</b>	164:8
<b>14:33:29 (1)</b>	160:20	<b>14:36:01 (1)</b>	163:4	<b>14:38:36 (1)</b>
159:18	<b>14:34:31 (1)</b>	161:25	<b>14:37:40 (1)</b>	164:9
<b>14:33:31 (1)</b>	160:21	<b>14:36:04 (1)</b>	163:5	<b>14:38:38 (1)</b>
159:19	<b>14:34:33 (1)</b>	162:2	<b>14:37:42 (2)</b>	164:10
<b>14:33:33 (1)</b>	160:22	<b>14:36:07 (1)</b>	163:6,7	<b>14:38:42 (1)</b>
159:20	<b>14:34:36 (1)</b>	162:3	<b>14:37:44 (1)</b>	164:11
<b>14:33:35 (1)</b>	160:23	<b>14:36:08 (1)</b>	163:8	<b>14:38:45 (1)</b>
159:21	<b>14:34:47 (1)</b>	162:4	<b>14:37:47 (1)</b>	164:12
<b>14:33:38 (1)</b>	160:24	<b>14:36:12 (1)</b>	163:9	<b>14:38:47 (1)</b>
159:22	<b>14:34:50 (1)</b>	162:5	<b>14:37:49 (1)</b>	164:13
<b>14:33:41 (1)</b>	160:25	<b>14:36:15 (1)</b>	163:10	<b>14:38:50 (1)</b>
159:23	<b>14:34:54 (1)</b>	162:6	<b>14:37:51 (1)</b>	164:14
<b>14:33:44 (1)</b>	161:2	<b>14:36:17 (1)</b>	163:11	<b>14:38:51 (1)</b>
159:24	<b>14:34:59 (1)</b>	162:7	<b>14:37:54 (1)</b>	164:15
<b>14:33:47 (1)</b>	161:3	<b>14:36:28 (2)</b>	163:12	<b>14:38:53 (1)</b>
159:25	<b>14:35:02 (1)</b>	162:9,10	<b>14:37:55 (1)</b>	164:16
<b>14:33:49 (1)</b>	161:4	<b>14:36:31 (1)</b>	163:13	<b>14:38:55 (1)</b>
160:2	<b>14:35:03 (1)</b>	162:11	<b>14:37:56 (1)</b>	164:17
<b>14:33:52 (1)</b>	161:5	<b>14:36:35 (1)</b>	163:14	<b>14:38:57 (1)</b>
160:3	<b>14:35:05 (1)</b>	162:12	<b>14:37:58 (1)</b>	164:18

<b>14:38:59 (1)</b>	165:24	<b>14:42:28 (1)</b>	168:7	<b>14:45:03 (1)</b>
164:19	<b>14:40:15 (1)</b>	167:3	<b>14:43:53 (1)</b>	169:12
<b>14:39:01 (1)</b>	165:25	<b>14:42:30 (2)</b>	168:8	<b>14:45:07 (1)</b>
164:20	<b>14:40:17 (1)</b>	167:4,5	<b>14:43:55 (1)</b>	169:13
<b>14:39:02 (1)</b>	166:2	<b>14:42:33 (2)</b>	168:9	<b>14:45:10 (1)</b>
164:21	<b>14:40:30 (1)</b>	167:6,7	<b>14:43:59 (1)</b>	169:14
<b>14:39:04 (1)</b>	166:3	<b>14:42:51 (1)</b>	168:10	<b>14:45:14 (1)</b>
164:22	<b>14:40:38 (1)</b>	167:8	<b>14:44:01 (1)</b>	169:15
<b>14:39:06 (1)</b>	166:4	<b>14:42:59 (1)</b>	168:11	<b>14:45:16 (1)</b>
164:23	<b>14:40:42 (1)</b>	167:9	<b>14:44:07 (1)</b>	169:16
<b>14:39:08 (1)</b>	166:5	<b>14:43:01 (1)</b>	168:12	<b>14:45:19 (1)</b>
164:24	<b>14:40:43 (1)</b>	167:10	<b>14:44:09 (1)</b>	169:17
<b>14:39:13 (2)</b>	166:6	<b>14:43:10 (2)</b>	168:13	<b>14:45:21 (1)</b>
165:2,3	<b>14:40:46 (1)</b>	167:11,12	<b>14:44:12 (1)</b>	169:18
<b>14:39:16 (1)</b>	166:7	<b>14:43:16 (1)</b>	168:14	<b>14:45:24 (1)</b>
165:4	<b>14:40:47 (1)</b>	167:13	<b>14:44:14 (1)</b>	169:19
<b>14:39:18 (1)</b>	166:8	<b>14:43:17 (1)</b>	168:15	<b>14:45:25 (1)</b>
165:5	<b>14:40:58 (1)</b>	167:14	<b>14:44:15 (3)</b>	169:20
<b>14:39:20 (1)</b>	166:9	<b>14:43:20 (1)</b>	168:16,17,18	<b>14:45:26 (1)</b>
165:6	<b>14:41:02 (1)</b>	167:15	<b>14:44:17 (1)</b>	169:21
<b>14:39:21 (1)</b>	166:10	<b>14:43:23 (1)</b>	168:19	<b>14:45:32 (1)</b>
165:7	<b>14:41:10 (1)</b>	167:16	<b>14:44:20 (1)</b>	169:22
<b>14:39:22 (1)</b>	166:11	<b>14:43:24 (1)</b>	168:20	<b>14:45:39 (1)</b>
165:8	<b>14:41:20 (1)</b>	167:17	<b>14:44:22 (1)</b>	169:23
<b>14:39:32 (1)</b>	166:12	<b>14:43:25 (1)</b>	168:21	<b>14:45:42 (1)</b>
165:9	<b>14:41:25 (1)</b>	167:18	<b>14:44:23 (1)</b>	169:24
<b>14:39:33 (1)</b>	166:13	<b>14:43:28 (1)</b>	168:22	<b>14:45:45 (1)</b>
165:10	<b>14:41:28 (1)</b>	167:19	<b>14:44:29 (1)</b>	169:25
<b>14:39:38 (1)</b>	166:14	<b>14:43:31 (1)</b>	168:23	<b>14:45:46 (1)</b>
165:11	<b>14:41:32 (1)</b>	167:20	<b>14:44:33 (1)</b>	170:2
<b>14:39:41 (1)</b>	166:15	<b>14:43:33 (1)</b>	168:24	<b>14:45:48 (1)</b>
165:12	<b>14:41:33 (1)</b>	167:21	<b>14:44:39 (1)</b>	170:3
<b>14:39:43 (1)</b>	166:16	<b>14:43:34 (1)</b>	168:25	<b>14:45:51 (1)</b>
165:13	<b>14:41:34 (1)</b>	167:22	<b>14:44:40 (1)</b>	170:4
<b>14:39:46 (1)</b>	166:17	<b>14:43:36 (1)</b>	169:2	<b>14:45:56 (1)</b>
165:14	<b>14:42:01 (1)</b>	167:23	<b>14:44:43 (1)</b>	170:5
<b>14:39:47 (1)</b>	166:18	<b>14:43:38 (1)</b>	169:3	<b>14:46:00 (1)</b>
165:15	<b>14:42:03 (1)</b>	167:24	<b>14:44:44 (1)</b>	170:6
<b>14:39:48 (1)</b>	166:19	<b>14:43:41 (1)</b>	169:4	<b>14:46:02 (1)</b>
165:16	<b>14:42:07 (1)</b>	167:25	<b>14:44:48 (1)</b>	170:7
<b>14:39:52 (1)</b>	166:20	<b>14:43:42 (1)</b>	169:5	<b>14:46:03 (2)</b>
165:17	<b>14:42:13 (1)</b>	168:2	<b>14:44:50 (1)</b>	170:8,9
<b>14:39:54 (1)</b>	166:21	<b>14:43:44 (1)</b>	169:6	<b>14:46:06 (1)</b>
165:18	<b>14:42:17 (1)</b>	168:3	<b>14:44:54 (1)</b>	170:10
<b>14:39:58 (1)</b>	166:22	<b>14:43:46 (1)</b>	169:7	<b>14:46:09 (2)</b>
165:19	<b>14:42:20 (1)</b>	168:4	<b>14:44:56 (1)</b>	170:11,12
<b>14:39:59 (3)</b>	166:23	<b>14:43:48 (1)</b>	169:8	<b>14:46:14 (2)</b>
165:20,21,22	<b>14:42:23 (2)</b>	168:5	<b>14:44:58 (1)</b>	170:13,14
<b>14:40:01 (1)</b>	166:24,25	<b>14:43:50 (1)</b>	169:9	<b>14:46:19 (1)</b>
165:23	<b>14:42:26 (1)</b>	168:6	<b>14:45:01 (2)</b>	170:15
<b>14:40:02 (1)</b>	167:2	<b>14:43:51 (1)</b>	169:10,11	<b>14:46:24 (1)</b>

170:16	<b>14:47:32 (1)</b>	172:24	<b>14:50:43 (1)</b>	175:11
<b>14:46:28 (1)</b>	171:20	<b>14:49:01 (1)</b>	174:6	<b>14:51:49 (1)</b>
170:17	<b>14:47:36 (1)</b>	172:25	<b>14:50:45 (2)</b>	175:12
<b>14:46:31 (1)</b>	171:21	<b>14:49:04 (1)</b>	174:7,8	<b>14:51:51 (1)</b>
170:18	<b>14:47:42 (1)</b>	173:2	<b>14:50:47 (1)</b>	175:13
<b>14:46:32 (1)</b>	171:23	<b>14:49:09 (2)</b>	174:9	<b>14:52:04 (1)</b>
170:19	<b>14:47:44 (1)</b>	173:3,4	<b>14:50:48 (1)</b>	175:14
<b>14:46:37 (1)</b>	171:24	<b>14:49:13 (1)</b>	174:10	<b>14:52:13 (1)</b>
170:21	<b>14:47:49 (1)</b>	173:5	<b>14:50:51 (1)</b>	175:15
<b>14:46:42 (1)</b>	171:25	<b>14:49:15 (2)</b>	174:11	<b>14:52:17 (1)</b>
170:22	<b>14:47:51 (1)</b>	173:6,7	<b>14:50:52 (1)</b>	175:16
<b>14:46:43 (1)</b>	172:2	<b>14:49:16 (1)</b>	174:12	<b>14:52:18 (1)</b>
170:23	<b>14:47:57 (1)</b>	173:8	<b>14:51:01 (1)</b>	175:17
<b>14:46:45 (1)</b>	172:3	<b>14:49:23 (1)</b>	174:13	<b>14:52:19 (2)</b>
170:24	<b>14:48:01 (1)</b>	173:9	<b>14:51:02 (1)</b>	175:18,19
<b>14:46:47 (1)</b>	172:4	<b>14:49:27 (2)</b>	174:14	<b>14:52:20 (1)</b>
170:25	<b>14:48:06 (1)</b>	173:10,11	<b>14:51:05 (1)</b>	175:20
<b>14:46:49 (1)</b>	172:5	<b>14:49:34 (1)</b>	174:15	<b>14:52:22 (1)</b>
171:2	<b>14:48:10 (1)</b>	173:12	<b>14:51:06 (1)</b>	175:21
<b>14:46:50 (1)</b>	172:6	<b>14:49:48 (1)</b>	174:16	<b>14:52:23 (1)</b>
171:3	<b>14:48:12 (1)</b>	173:13	<b>14:51:09 (2)</b>	175:22
<b>14:46:51 (1)</b>	172:7	<b>14:49:50 (1)</b>	174:17,18	<b>14:52:24 (1)</b>
171:4	<b>14:48:14 (1)</b>	173:14	<b>14:51:11 (1)</b>	175:23
<b>14:46:55 (1)</b>	172:8	<b>14:49:54 (1)</b>	174:19	<b>14:52:26 (1)</b>
171:5	<b>14:48:17 (1)</b>	173:15	<b>14:51:13 (1)</b>	175:24
<b>14:46:56 (1)</b>	172:9	<b>14:49:56 (1)</b>	174:20	<b>14:52:28 (1)</b>
171:6	<b>14:48:18 (1)</b>	173:16	<b>14:51:14 (1)</b>	175:25
<b>14:46:57 (1)</b>	172:10	<b>14:49:57 (1)</b>	174:21	<b>14:52:29 (1)</b>
171:7	<b>14:48:20 (1)</b>	173:17	<b>14:51:15 (1)</b>	176:2
<b>14:46:59 (2)</b>	172:11	<b>14:50:00 (1)</b>	174:22	<b>14:52:31 (1)</b>
171:8,9	<b>14:48:22 (1)</b>	173:18	<b>14:51:19 (1)</b>	176:3
<b>14:47:01 (1)</b>	172:12	<b>14:50:02 (1)</b>	174:23	<b>14:52:32 (1)</b>
171:10	<b>14:48:25 (1)</b>	173:19	<b>14:51:23 (1)</b>	176:4
<b>14:47:04 (1)</b>	172:13	<b>14:50:04 (1)</b>	175:2	<b>14:52:35 (1)</b>
171:11	<b>14:48:28 (1)</b>	173:20	<b>14:51:24 (1)</b>	176:5
<b>14:47:07 (1)</b>	172:14	<b>14:50:07 (1)</b>	175:3	<b>14:52:37 (1)</b>
171:12	<b>14:48:31 (1)</b>	173:21	<b>14:51:25 (1)</b>	176:6
<b>14:47:09 (1)</b>	172:15	<b>14:50:12 (1)</b>	175:4	<b>14:52:38 (1)</b>
171:13	<b>14:48:33 (2)</b>	173:22	<b>14:51:30 (1)</b>	176:7
<b>14:47:15 (1)</b>	172:16,17	<b>14:50:13 (1)</b>	175:5	<b>14:52:45 (1)</b>
171:14	<b>14:48:38 (1)</b>	173:23	<b>14:51:32 (1)</b>	176:8
<b>14:47:18 (1)</b>	172:18	<b>14:50:16 (1)</b>	175:6	<b>14:52:48 (1)</b>
171:15	<b>14:48:40 (2)</b>	173:24	<b>14:51:33 (1)</b>	176:9
<b>14:47:21 (1)</b>	172:19,20	<b>14:50:18 (2)</b>	175:7	<b>14:52:54 (1)</b>
171:16	<b>14:48:42 (1)</b>	173:25 174:2	<b>14:51:37 (1)</b>	176:10
<b>14:47:28 (1)</b>	172:21	<b>14:50:25 (1)</b>	175:8	<b>14:53:01 (1)</b>
171:17	<b>14:48:47 (1)</b>	174:3	<b>14:51:40 (1)</b>	176:11
<b>14:47:30 (1)</b>	172:22	<b>14:50:38 (1)</b>	175:9	<b>14:53:04 (1)</b>
171:18	<b>14:48:52 (1)</b>	174:4	<b>14:51:42 (1)</b>	176:12
<b>14:47:31 (1)</b>	172:23	<b>14:50:40 (1)</b>	175:10	<b>14:53:08 (1)</b>
171:19	<b>14:48:54 (1)</b>	174:5	<b>14:51:46 (1)</b>	176:13

<b>14:53:11 (1)</b>	177:16	<b>14:55:29 (1)</b>	179:25	<b>14:57:56 (1)</b>
176:14	<b>14:54:27 (1)</b>	178:23	<b>14:56:49 (1)</b>	181:8
<b>14:53:15 (1)</b>	177:17	<b>14:55:30 (2)</b>	180:2	<b>14:57:57 (1)</b>
176:15	<b>14:54:29 (1)</b>	178:24,25	<b>14:56:52 (2)</b>	181:9
<b>14:53:17 (1)</b>	177:18	<b>14:55:33 (1)</b>	180:3,4	<b>14:57:59 (1)</b>
176:16	<b>14:54:33 (2)</b>	179:2	<b>14:56:56 (1)</b>	181:10
<b>14:53:19 (1)</b>	177:19,20	<b>14:55:36 (1)</b>	180:5	<b>14:58:00 (1)</b>
176:17	<b>14:54:34 (1)</b>	179:3	<b>14:56:58 (1)</b>	181:11
<b>14:53:24 (1)</b>	177:21	<b>14:55:41 (1)</b>	180:6	<b>14:58:02 (1)</b>
176:18	<b>14:54:36 (2)</b>	179:4	<b>14:56:59 (1)</b>	181:12
<b>14:53:28 (1)</b>	177:22,23	<b>14:55:44 (1)</b>	180:7	<b>14:58:05 (1)</b>
176:19	<b>14:54:42 (1)</b>	179:5	<b>14:57:00 (1)</b>	181:13
<b>14:53:31 (1)</b>	177:24	<b>14:55:49 (1)</b>	180:8	<b>14:58:08 (1)</b>
176:20	<b>14:54:45 (1)</b>	179:6	<b>14:57:01 (1)</b>	181:14
<b>14:53:35 (1)</b>	177:25	<b>14:55:50 (1)</b>	180:9	<b>14:58:14 (1)</b>
176:21	<b>14:54:46 (1)</b>	179:7	<b>14:57:07 (1)</b>	181:15
<b>14:53:38 (1)</b>	178:2	<b>14:55:53 (1)</b>	180:11	<b>14:58:16 (1)</b>
176:22	<b>14:54:47 (1)</b>	179:8	<b>14:57:08 (1)</b>	181:16
<b>14:53:40 (1)</b>	178:3	<b>14:55:55 (1)</b>	180:12	<b>14:58:19 (1)</b>
176:23	<b>14:54:49 (1)</b>	179:9	<b>14:57:11 (1)</b>	181:17
<b>14:53:43 (1)</b>	178:4	<b>14:55:58 (1)</b>	180:13	<b>14:58:23 (1)</b>
176:24	<b>14:54:52 (1)</b>	179:10	<b>14:57:12 (2)</b>	181:18
<b>14:53:47 (1)</b>	178:5	<b>14:56:01 (1)</b>	180:14,15	<b>14:58:26 (1)</b>
176:25	<b>14:54:53 (2)</b>	179:11	<b>14:57:19 (1)</b>	181:19
<b>14:53:52 (1)</b>	178:6,7	<b>14:56:02 (1)</b>	180:16	<b>14:58:30 (1)</b>
177:2	<b>14:54:55 (1)</b>	179:12	<b>14:57:21 (1)</b>	181:20
<b>14:53:54 (1)</b>	178:8	<b>14:56:08 (1)</b>	180:17	<b>14:58:40 (1)</b>
177:3	<b>14:54:57 (1)</b>	179:13	<b>14:57:28 (1)</b>	181:21
<b>14:53:57 (1)</b>	178:9	<b>14:56:15 (1)</b>	180:18	<b>14:58:45 (1)</b>
177:4	<b>14:55:00 (1)</b>	179:14	<b>14:57:29 (1)</b>	181:22
<b>14:54:00 (1)</b>	178:10	<b>14:56:16 (1)</b>	180:19	<b>14:58:48 (1)</b>
177:5	<b>14:55:01 (1)</b>	179:15	<b>14:57:30 (1)</b>	181:23
<b>14:54:03 (1)</b>	178:11	<b>14:56:19 (1)</b>	180:20	<b>14:58:53 (1)</b>
177:6	<b>14:55:03 (1)</b>	179:16	<b>14:57:33 (1)</b>	181:24
<b>14:54:05 (1)</b>	178:12	<b>14:56:22 (1)</b>	180:21	<b>14:58:56 (1)</b>
177:7	<b>14:55:05 (1)</b>	179:17	<b>14:57:34 (1)</b>	181:25
<b>14:54:06 (2)</b>	178:13	<b>14:56:26 (1)</b>	180:22	<b>14:58:59 (1)</b>
177:8,9	<b>14:55:07 (1)</b>	179:18	<b>14:57:36 (2)</b>	182:2
<b>14:54:10 (1)</b>	178:14	<b>14:56:29 (1)</b>	180:23,24	<b>14:59:07 (1)</b>
177:10	<b>14:55:11 (1)</b>	179:19	<b>14:57:41 (1)</b>	182:3
<b>14:54:12 (1)</b>	178:15	<b>14:56:31 (1)</b>	180:25	<b>14:59:11 (1)</b>
177:11	<b>14:55:12 (1)</b>	179:20	<b>14:57:44 (1)</b>	182:4
<b>14:54:13 (1)</b>	178:16	<b>14:56:34 (1)</b>	181:2	<b>14:59:12 (1)</b>
177:12	<b>14:55:14 (1)</b>	179:21	<b>14:57:47 (1)</b>	182:5
<b>14:54:14 (1)</b>	178:17	<b>14:56:37 (1)</b>	181:3	<b>14:59:15 (1)</b>
177:13	<b>14:55:17 (1)</b>	179:22	<b>14:57:49 (1)</b>	182:6
<b>14:54:16 (1)</b>	178:18	<b>14:56:38 (1)</b>	181:4	<b>14:59:22 (1)</b>
177:14	<b>14:55:19 (1)</b>	179:23	<b>14:57:51 (1)</b>	182:7
<b>14:54:19 (1)</b>	178:19	<b>14:56:39 (1)</b>	181:5	<b>14:59:27 (1)</b>
177:15	<b>14:55:26 (2)</b>	179:24	<b>14:57:54 (2)</b>	182:8
<b>14:54:21 (1)</b>	178:21,22	<b>14:56:43 (1)</b>	181:6,7	<b>14:59:32 (1)</b>

182:9	183:8	<b>15:02:18 (1)</b>	185:17	<b>15:04:46 (1)</b>
<b>14:59:34 (1)</b>	<b>15:01:20 (1)</b>	184:12	<b>15:03:28 (1)</b>	186:15
182:10	183:9	<b>15:02:19 (1)</b>	185:18	<b>15:05:08 (1)</b>
<b>14:59:38 (1)</b>	<b>15:01:25 (1)</b>	184:13	<b>15:03:30 (1)</b>	186:21
182:11	183:10	<b>15:02:20 (1)</b>	185:19	<b>15:05:09 (1)</b>
<b>14:59:43 (1)</b>	<b>15:01:29 (1)</b>	184:14	<b>15:03:31 (1)</b>	186:22
182:12	183:11	<b>15:02:25 (1)</b>	185:20	<b>15:05:13 (1)</b>
<b>14:59:44 (1)</b>	<b>15:01:30 (1)</b>	184:15	<b>15:03:33 (1)</b>	186:23
182:13	183:12	<b>15:02:27 (1)</b>	185:21	<b>15:05:15 (1)</b>
<b>14:59:50 (1)</b>	<b>15:01:35 (1)</b>	184:16	<b>15:03:36 (1)</b>	186:24
182:14	183:13	<b>15:02:28 (1)</b>	185:22	<b>15:05:16 (1)</b>
<b>14:59:51 (1)</b>	<b>15:01:37 (2)</b>	184:17	<b>15:03:45 (1)</b>	186:25
182:15	183:14,15	<b>15:02:30 (1)</b>	185:23	<b>15:05:21 (1)</b>
<b>14:59:52 (1)</b>	<b>15:01:39 (1)</b>	184:18	<b>15:03:47 (1)</b>	187:2
182:16	183:16	<b>15:02:31 (1)</b>	185:24	<b>15:05:24 (1)</b>
<b>15 (11)</b>	<b>15:01:42 (1)</b>	184:19	<b>15:03:51 (1)</b>	187:3
13:14,16 210:20,22	183:17	<b>15:02:32 (1)</b>	185:25	<b>15:05:25 (1)</b>
212:12,14 213:18	<b>15:01:44 (1)</b>	184:20	<b>15:03:53 (1)</b>	187:4
213:21 214:5,6	183:18	<b>15:02:34 (1)</b>	186:2	<b>15:05:37 (1)</b>
268:24	<b>15:01:46 (1)</b>	184:21	<b>15:03:55 (1)</b>	187:5
<b>15,000 (1)</b>	183:19	<b>15:02:35 (1)</b>	186:3	<b>15:05:38 (1)</b>
171:15	<b>15:01:48 (1)</b>	184:22	<b>15:03:58 (1)</b>	187:6
<b>15:00:00 (1)</b>	183:20	<b>15:02:37 (1)</b>	186:4	<b>15:05:40 (1)</b>
182:17	<b>15:01:51 (1)</b>	184:23	<b>15:04:00 (1)</b>	187:7
<b>15:00:20 (2)</b>	183:21	<b>15:02:40 (1)</b>	186:5	<b>15:05:48 (1)</b>
182:18,19	<b>15:01:54 (1)</b>	184:24	<b>15:04:03 (1)</b>	187:8
<b>15:00:21 (1)</b>	183:22	<b>15:02:42 (1)</b>	186:6	<b>15:06:51 (1)</b>
182:20	<b>15:01:55 (1)</b>	184:25	<b>15:04:10 (1)</b>	187:9
<b>15:00:23 (1)</b>	183:23	<b>15:02:48 (1)</b>	186:7	<b>15:07:00 (2)</b>
182:21	<b>15:01:56 (1)</b>	185:2	<b>15:04:12 (1)</b>	187:12,13
<b>15:00:25 (1)</b>	183:24	<b>15:02:50 (1)</b>	186:8	<b>15:07:04 (2)</b>
182:22	<b>15:01:59 (1)</b>	185:3	<b>15:04:19 (1)</b>	187:14,15
<b>15:00:28 (1)</b>	183:25	<b>15:02:52 (2)</b>	186:17	<b>15:07:09 (1)</b>
182:23	<b>15:02:02 (1)</b>	185:4,5	<b>15:04:21 (1)</b>	187:16
<b>15:00:30 (1)</b>	184:2	<b>15:02:54 (1)</b>	186:18	<b>15:07:11 (1)</b>
182:24	<b>15:02:04 (1)</b>	185:6	<b>15:04:22 (1)</b>	187:17
<b>15:00:31 (1)</b>	184:3	<b>15:03:05 (1)</b>	186:9	<b>15:07:12 (1)</b>
182:25	<b>15:02:05 (1)</b>	185:7	<b>15:04:25 (1)</b>	187:18
<b>15:00:32 (1)</b>	184:4	<b>15:03:08 (1)</b>	186:19	<b>15:07:13 (1)</b>
183:2	<b>15:02:06 (1)</b>	185:8	<b>15:04:27 (1)</b>	187:19
<b>15:00:35 (1)</b>	184:5	<b>15:03:10 (1)</b>	186:10	<b>15:07:14 (1)</b>
183:3	<b>15:02:08 (1)</b>	185:9	<b>15:04:29 (1)</b>	187:20
<b>15:00:39 (1)</b>	184:6	<b>15:03:20 (4)</b>	186:20	<b>15:07:16 (1)</b>
183:4	<b>15:02:11 (1)</b>	185:10,11,12,13	<b>15:04:30 (1)</b>	187:21
<b>15:00:48 (1)</b>	184:8	<b>15:03:22 (1)</b>	186:11	<b>15:07:17 (1)</b>
183:5	<b>15:02:13 (1)</b>	185:14	<b>15:04:39 (1)</b>	187:22
<b>15:00:50 (1)</b>	184:9	<b>15:03:24 (1)</b>	186:12	<b>15:07:19 (1)</b>
183:6	<b>15:02:14 (1)</b>	185:15	<b>15:04:41 (1)</b>	187:23
<b>15:01:10 (1)</b>	184:10	<b>15:03:25 (1)</b>	186:13	<b>15:07:21 (1)</b>
183:7	<b>15:02:16 (1)</b>	185:16	<b>15:04:45 (1)</b>	187:24
<b>15:01:16 (1)</b>	184:11	<b>15:03:26 (1)</b>	186:14	<b>15:07:22 (1)</b>

187:25	<b>15:08:56 (1)</b>	190:8	<b>15:11:06 (2)</b>	192:25
<b>15:07:24 (1)</b>	189:10	<b>15:10:14 (1)</b>	191:14,15	<b>15:13:04 (1)</b>
188:2	<b>15:08:58 (1)</b>	190:9	<b>15:11:09 (1)</b>	193:2
<b>15:07:26 (1)</b>	189:11	<b>15:10:17 (1)</b>	191:16	<b>15:13:08 (1)</b>
188:3	<b>15:08:59 (1)</b>	190:10	<b>15:11:10 (1)</b>	193:3
<b>15:07:29 (1)</b>	189:12	<b>15:10:19 (1)</b>	191:17	<b>15:13:10 (1)</b>
188:4	<b>15:09:04 (1)</b>	190:11	<b>15:11:12 (1)</b>	193:4
<b>15:07:32 (1)</b>	189:13	<b>15:10:23 (1)</b>	191:18	<b>15:13:12 (1)</b>
188:5	<b>15:09:05 (2)</b>	190:12	<b>15:11:15 (1)</b>	193:5
<b>15:07:42 (1)</b>	189:14,15	<b>15:10:29 (1)</b>	191:19	<b>15:13:15 (1)</b>
188:6	<b>15:09:06 (1)</b>	190:13	<b>15:11:16 (1)</b>	193:6
<b>15:07:49 (1)</b>	189:16	<b>15:10:31 (1)</b>	191:20	<b>15:13:18 (1)</b>
188:8	<b>15:09:10 (1)</b>	190:14	<b>15:12:08 (1)</b>	193:7
<b>15:07:51 (1)</b>	189:17	<b>15:10:32 (1)</b>	192:6	<b>15:13:21 (1)</b>
188:9	<b>15:09:17 (1)</b>	190:15	<b>15:12:09 (1)</b>	193:8
<b>15:07:53 (2)</b>	189:18	<b>15:10:34 (1)</b>	192:7	<b>15:13:23 (1)</b>
188:10,11	<b>15:09:19 (1)</b>	190:16	<b>15:12:11 (1)</b>	193:9
<b>15:07:56 (1)</b>	191:22	<b>15:10:35 (1)</b>	192:8	<b>15:13:27 (1)</b>
188:12	<b>15:09:20 (1)</b>	190:17	<b>15:12:13 (1)</b>	193:10
<b>15:07:59 (1)</b>	191:23	<b>15:10:38 (1)</b>	192:9	<b>15:13:28 (1)</b>
188:13	<b>15:09:21 (2)</b>	190:18	<b>15:12:14 (1)</b>	193:11
<b>15:08:01 (1)</b>	189:19,20	<b>15:10:40 (1)</b>	192:10	<b>15:13:30 (1)</b>
188:14	<b>15:09:22 (1)</b>	190:19	<b>15:12:17 (1)</b>	193:12
<b>15:08:02 (1)</b>	191:24	<b>15:10:41 (1)</b>	192:11	<b>15:13:34 (1)</b>
188:15	<b>15:09:26 (2)</b>	190:20	<b>15:12:21 (1)</b>	193:13
<b>15:08:05 (1)</b>	189:21 191:25	<b>15:10:44 (1)</b>	192:12	<b>15:13:38 (1)</b>
188:16	<b>15:09:29 (1)</b>	190:21	<b>15:12:22 (1)</b>	193:14
<b>15:08:08 (2)</b>	189:22	<b>15:10:46 (1)</b>	192:13	<b>15:13:44 (1)</b>
188:17,18	<b>15:09:30 (1)</b>	190:22	<b>15:12:27 (1)</b>	193:15
<b>15:08:23 (2)</b>	192:2	<b>15:10:47 (1)</b>	192:14	<b>15:13:49 (1)</b>
188:23,24	<b>15:09:31 (1)</b>	190:23	<b>15:12:28 (1)</b>	193:16
<b>15:08:26 (1)</b>	192:3	<b>15:10:48 (1)</b>	192:15	<b>15:13:56 (1)</b>
188:25	<b>15:09:32 (1)</b>	190:24	<b>15:12:31 (1)</b>	193:17
<b>15:08:29 (1)</b>	189:23	<b>15:10:51 (1)</b>	192:16	<b>15:13:59 (1)</b>
189:2	<b>15:09:36 (2)</b>	190:25	<b>15:12:35 (1)</b>	193:18
<b>15:08:33 (1)</b>	189:24 192:4	<b>15:10:52 (1)</b>	192:17	<b>15:14:01 (1)</b>
189:3	<b>15:09:39 (2)</b>	191:2	<b>15:12:38 (1)</b>	193:19
<b>15:08:36 (1)</b>	189:25 192:5	<b>15:10:53 (1)</b>	192:18	<b>15:14:04 (1)</b>
189:4	<b>15:09:41 (1)</b>	191:3	<b>15:12:42 (1)</b>	193:20
<b>15:08:43 (1)</b>	190:2	<b>15:10:56 (1)</b>	192:19	<b>15:14:08 (1)</b>
189:5	<b>15:09:54 (1)</b>	191:4	<b>15:12:46 (1)</b>	193:21
<b>15:08:44 (1)</b>	190:3	<b>15:10:57 (1)</b>	192:20	<b>15:14:11 (1)</b>
189:6	<b>15:09:55 (1)</b>	191:5	<b>15:12:50 (1)</b>	193:22
<b>15:08:46 (1)</b>	190:4	<b>15:10:58 (1)</b>	192:21	<b>15:14:13 (1)</b>
189:7	<b>15:09:59 (1)</b>	191:7	<b>15:12:54 (1)</b>	193:23
<b>15:08:48 (1)</b>	190:5	<b>15:11:00 (2)</b>	192:22	<b>15:14:15 (1)</b>
189:8	<b>15:10:02 (1)</b>	191:8,9	<b>15:12:56 (1)</b>	193:24
<b>15:08:51 (1)</b>	190:6	<b>15:11:02 (2)</b>	192:23	<b>15:14:16 (1)</b>
188:20	<b>15:10:08 (1)</b>	191:11,12	<b>15:12:59 (1)</b>	193:25
<b>15:08:53 (1)</b>	190:7	<b>15:11:03 (1)</b>	192:24	<b>15:14:17 (1)</b>
189:9	<b>15:10:13 (1)</b>	191:13	<b>15:13:02 (1)</b>	194:2

<b>15:14:20 (1)</b>	195:5	<b>15:16:51 (1)</b>	197:12	<b>15:36:54 (1)</b>
194:3	<b>15:15:34 (1)</b>	196:9	<b>15:35:28 (2)</b>	198:21
<b>15:14:21 (1)</b>	195:6	<b>15:16:52 (1)</b>	197:13,14	<b>15:36:56 (1)</b>
194:4	<b>15:15:35 (1)</b>	196:10	<b>15:35:30 (1)</b>	198:22
<b>15:14:22 (1)</b>	195:7	<b>15:16:54 (1)</b>	197:15	<b>15:36:58 (1)</b>
194:6	<b>15:15:41 (1)</b>	196:11	<b>15:35:41 (1)</b>	198:23
<b>15:14:25 (1)</b>	195:8	<b>15:16:56 (1)</b>	197:19	<b>15:37:03 (1)</b>
194:7	<b>15:15:43 (1)</b>	196:12	<b>15:35:42 (1)</b>	198:24
<b>15:14:26 (1)</b>	195:9	<b>15:16:59 (1)</b>	197:20	<b>15:37:05 (1)</b>
194:8	<b>15:15:48 (1)</b>	196:13	<b>15:35:44 (1)</b>	198:25
<b>15:14:29 (1)</b>	195:10	<b>15:17:00 (1)</b>	197:21	<b>15:37:06 (1)</b>
194:9	<b>15:15:50 (1)</b>	196:14	<b>15:35:47 (2)</b>	199:2
<b>15:14:34 (1)</b>	195:11	<b>15:17:02 (1)</b>	197:22,23	<b>15:37:08 (1)</b>
194:10	<b>15:15:52 (2)</b>	196:15	<b>15:35:49 (1)</b>	199:3
<b>15:14:38 (1)</b>	195:12,13	<b>15:17:04 (2)</b>	197:24	<b>15:37:10 (1)</b>
194:11	<b>15:15:55 (1)</b>	196:16,17	<b>15:35:54 (2)</b>	199:4
<b>15:14:43 (1)</b>	195:14	<b>15:17:05 (1)</b>	197:25 198:2	<b>15:37:13 (2)</b>
194:12	<b>15:15:57 (1)</b>	196:18	<b>15:35:57 (1)</b>	199:5,6
<b>15:14:47 (1)</b>	195:15	<b>15:17:06 (2)</b>	198:3	<b>15:37:28 (1)</b>
194:13	<b>15:16:00 (2)</b>	196:19,20	<b>15:36:06 (1)</b>	199:7
<b>15:14:50 (1)</b>	195:16,17	<b>15:17:08 (1)</b>	198:4	<b>15:37:32 (1)</b>
194:14	<b>15:16:04 (1)</b>	196:21	<b>15:36:07 (2)</b>	199:8
<b>15:14:54 (1)</b>	195:18	<b>15:17:09 (2)</b>	198:5,6	<b>15:37:36 (1)</b>
194:15	<b>15:16:10 (1)</b>	196:22,23	<b>15:36:09 (1)</b>	199:9
<b>15:14:56 (1)</b>	195:19	<b>15:17:14 (1)</b>	198:7	<b>15:37:38 (1)</b>
194:16	<b>15:16:16 (1)</b>	196:24	<b>15:36:15 (1)</b>	199:10
<b>15:14:58 (1)</b>	195:20	<b>15:17:22 (1)</b>	198:8	<b>15:37:41 (1)</b>
194:17	<b>15:16:24 (1)</b>	197:17	<b>15:36:17 (1)</b>	199:11
<b>15:15:05 (1)</b>	195:21	<b>15:17:23 (1)</b>	198:9	<b>15:37:43 (1)</b>
194:18	<b>15:16:25 (1)</b>	197:18	<b>15:36:18 (1)</b>	199:12
<b>15:15:07 (1)</b>	195:22	<b>15:17:24 (1)</b>	198:10	<b>15:37:45 (1)</b>
194:19	<b>15:16:27 (1)</b>	196:25	<b>15:36:21 (1)</b>	199:13
<b>15:15:09 (1)</b>	195:23	<b>15:17:26 (1)</b>	198:11	<b>15:37:46 (1)</b>
194:20	<b>15:16:28 (1)</b>	197:2	<b>15:36:23 (1)</b>	199:14
<b>15:15:10 (1)</b>	195:24	<b>15:17:37 (1)</b>	198:12	<b>15:37:48 (1)</b>
194:21	<b>15:16:30 (1)</b>	197:3	<b>15:36:26 (1)</b>	199:15
<b>15:15:12 (1)</b>	195:25	<b>15:17:39 (1)</b>	198:13	<b>15:37:50 (1)</b>
194:22	<b>15:16:34 (1)</b>	197:4	<b>15:36:28 (1)</b>	199:16
<b>15:15:16 (1)</b>	196:2	<b>15:17:41 (2)</b>	198:14	<b>15:37:53 (1)</b>
194:23	<b>15:16:37 (1)</b>	197:5,6	<b>15:36:34 (1)</b>	199:17
<b>15:15:19 (1)</b>	196:3	<b>15:17:42 (1)</b>	198:15	<b>15:37:58 (1)</b>
194:24	<b>15:16:39 (1)</b>	197:7	<b>15:36:36 (1)</b>	199:18
<b>15:15:22 (1)</b>	196:4	<b>15:17:43 (1)</b>	198:16	<b>15:38:06 (1)</b>
194:25	<b>15:16:41 (1)</b>	197:8	<b>15:36:40 (1)</b>	199:19
<b>15:15:25 (1)</b>	196:5	<b>15:17:44 (1)</b>	198:17	<b>15:38:09 (1)</b>
195:2	<b>15:16:45 (1)</b>	197:9	<b>15:36:43 (1)</b>	199:20
<b>15:15:29 (1)</b>	196:6	<b>15:17:46 (1)</b>	198:18	<b>15:38:10 (1)</b>
195:3	<b>15:16:47 (1)</b>	197:10	<b>15:36:50 (1)</b>	199:21
<b>15:15:30 (1)</b>	196:7	<b>15:18:03 (1)</b>	198:19	<b>15:38:14 (1)</b>
195:4	<b>15:16:49 (1)</b>	197:11	<b>15:36:52 (1)</b>	199:22
<b>15:15:33 (1)</b>	196:8	<b>15:34:39 (1)</b>	198:20	<b>15:38:15 (1)</b>

199:23	<b>15:39:46 (1)</b>	202:8	<b>15:42:36 (1)</b>	204:17
<b>15:38:21 (1)</b>	201:5	<b>15:40:59 (1)</b>	203:14	<b>15:43:53 (1)</b>
199:25	<b>15:39:49 (1)</b>	202:9	<b>15:42:39 (1)</b>	204:18
<b>15:38:22 (1)</b>	201:6	<b>15:41:02 (1)</b>	203:15	<b>15:43:55 (1)</b>
200:2	<b>15:39:51 (1)</b>	202:10	<b>15:42:42 (1)</b>	204:19
<b>15:38:25 (1)</b>	201:7	<b>15:41:04 (1)</b>	203:16	<b>15:43:57 (1)</b>
200:3	<b>15:39:53 (1)</b>	202:11	<b>15:42:46 (1)</b>	204:20
<b>15:38:28 (1)</b>	201:8	<b>15:41:07 (1)</b>	203:17	<b>15:43:58 (2)</b>
200:4	<b>15:39:57 (2)</b>	202:12	<b>15:42:48 (1)</b>	204:21,22
<b>15:38:38 (1)</b>	201:9,10	<b>15:41:08 (2)</b>	203:18	<b>15:44:11 (1)</b>
200:5	<b>15:39:58 (2)</b>	202:13,14	<b>15:42:51 (1)</b>	204:23
<b>15:38:39 (1)</b>	201:11,12	<b>15:41:09 (3)</b>	203:19	<b>15:44:12 (1)</b>
200:6	<b>15:40:01 (1)</b>	202:15,16,17	<b>15:42:52 (1)</b>	204:24
<b>15:38:45 (1)</b>	201:13	<b>15:41:11 (1)</b>	203:20	<b>15:44:16 (1)</b>
200:7	<b>15:40:03 (1)</b>	202:18	<b>15:42:54 (1)</b>	204:25
<b>15:38:52 (1)</b>	201:14	<b>15:41:14 (1)</b>	203:21	<b>15:44:18 (1)</b>
200:8	<b>15:40:06 (1)</b>	202:19	<b>15:42:56 (2)</b>	205:2
<b>15:38:53 (1)</b>	201:15	<b>15:41:19 (1)</b>	203:22,23	<b>15:44:21 (1)</b>
200:9	<b>15:40:10 (1)</b>	202:20	<b>15:43:10 (1)</b>	205:3
<b>15:38:55 (1)</b>	201:16	<b>15:41:21 (1)</b>	203:24	<b>15:44:27 (2)</b>
200:10	<b>15:40:11 (1)</b>	202:21	<b>15:43:14 (1)</b>	205:4,5
<b>15:38:57 (2)</b>	201:17	<b>15:41:40 (1)</b>	203:25	<b>15:44:28 (1)</b>
200:11,12	<b>15:40:12 (1)</b>	202:22	<b>15:43:16 (1)</b>	205:6
<b>15:38:59 (1)</b>	201:18	<b>15:41:42 (1)</b>	204:2	<b>15:44:30 (1)</b>
200:13	<b>15:40:15 (1)</b>	202:23	<b>15:43:18 (1)</b>	205:7
<b>15:39:01 (1)</b>	201:19	<b>15:41:46 (1)</b>	204:3	<b>15:44:33 (1)</b>
200:14	<b>15:40:18 (1)</b>	202:24	<b>15:43:22 (2)</b>	205:8
<b>15:39:02 (1)</b>	201:20	<b>15:41:51 (1)</b>	204:4,5	<b>15:44:35 (1)</b>
200:15	<b>15:40:21 (1)</b>	202:25	<b>15:43:23 (1)</b>	205:9
<b>15:39:03 (1)</b>	201:21	<b>15:41:54 (1)</b>	204:6	<b>15:44:37 (1)</b>
200:16	<b>15:40:24 (1)</b>	203:2	<b>15:43:26 (1)</b>	205:10
<b>15:39:06 (2)</b>	201:22	<b>15:42:00 (1)</b>	204:7	<b>15:44:38 (1)</b>
200:17,18	<b>15:40:26 (1)</b>	203:3	<b>15:43:27 (1)</b>	205:11
<b>15:39:10 (1)</b>	201:23	<b>15:42:05 (1)</b>	204:8	<b>15:44:41 (2)</b>
200:19	<b>15:40:29 (1)</b>	203:4	<b>15:43:31 (1)</b>	205:12,13
<b>15:39:11 (1)</b>	201:24	<b>15:42:10 (1)</b>	204:9	<b>15:44:44 (1)</b>
200:20	<b>15:40:31 (1)</b>	203:5	<b>15:43:34 (1)</b>	205:14
<b>15:39:14 (1)</b>	201:25	<b>15:42:13 (1)</b>	204:10	<b>15:44:46 (1)</b>
200:21	<b>15:40:35 (1)</b>	203:6	<b>15:43:37 (1)</b>	205:15
<b>15:39:17 (2)</b>	202:2	<b>15:42:15 (1)</b>	204:11	<b>15:44:49 (1)</b>
200:22,23	<b>15:40:36 (1)</b>	203:7	<b>15:43:39 (1)</b>	205:16
<b>15:39:25 (1)</b>	202:3	<b>15:42:20 (1)</b>	204:12	<b>15:44:50 (1)</b>
200:24	<b>15:40:39 (1)</b>	203:8	<b>15:43:40 (1)</b>	205:17
<b>15:39:29 (1)</b>	202:4	<b>15:42:24 (1)</b>	204:13	<b>15:44:51 (1)</b>
200:25	<b>15:40:41 (1)</b>	203:9	<b>15:43:42 (1)</b>	205:18
<b>15:39:31 (1)</b>	202:5	<b>15:42:26 (1)</b>	204:14	<b>15:44:54 (1)</b>
201:2	<b>15:40:46 (1)</b>	203:11	<b>15:43:46 (1)</b>	205:19
<b>15:39:36 (1)</b>	202:6	<b>15:42:27 (1)</b>	204:15	<b>15:44:56 (1)</b>
201:3	<b>15:40:50 (1)</b>	203:12	<b>15:43:49 (1)</b>	205:20
<b>15:39:42 (1)</b>	202:7	<b>15:42:32 (1)</b>	204:16	<b>15:44:57 (1)</b>
201:4	<b>15:40:56 (1)</b>	203:13	<b>15:43:50 (1)</b>	205:21

<b>15:45:08 (1)</b>	207:3	<b>15:47:11 (1)</b>	209:10,11	<b>15:49:43 (1)</b>
205:22	<b>15:46:16 (1)</b>	208:7	<b>15:48:32 (1)</b>	210:17
<b>15:45:14 (1)</b>	207:4	<b>15:47:15 (1)</b>	209:12	<b>15:49:44 (1)</b>
205:23	<b>15:46:18 (1)</b>	208:8	<b>15:48:35 (1)</b>	210:18
<b>15:45:15 (1)</b>	207:5	<b>15:47:16 (1)</b>	209:13	<b>15:49:46 (2)</b>
205:24	<b>15:46:20 (2)</b>	208:9	<b>15:48:37 (1)</b>	210:19,20
<b>15:45:19 (1)</b>	207:6,7	<b>15:47:18 (1)</b>	209:14	<b>15:49:48 (1)</b>
205:25	<b>15:46:21 (1)</b>	208:10	<b>15:48:39 (1)</b>	210:21
<b>15:45:22 (1)</b>	207:8	<b>15:47:21 (1)</b>	209:15	<b>15:49:51 (1)</b>
206:2	<b>15:46:22 (1)</b>	208:11	<b>15:48:40 (1)</b>	210:22
<b>15:45:23 (1)</b>	207:9	<b>15:47:22 (2)</b>	209:16	<b>15:49:53 (1)</b>
206:3	<b>15:46:25 (1)</b>	208:12,13	<b>15:48:42 (1)</b>	210:23
<b>15:45:29 (1)</b>	207:10	<b>15:47:27 (1)</b>	209:17	<b>15:49:55 (1)</b>
206:4	<b>15:46:28 (1)</b>	208:14	<b>15:48:43 (1)</b>	210:24
<b>15:45:30 (1)</b>	207:11	<b>15:47:29 (2)</b>	209:18	<b>15:49:56 (1)</b>
206:5	<b>15:46:33 (1)</b>	208:15,16	<b>15:48:45 (1)</b>	210:25
<b>15:45:32 (1)</b>	207:12	<b>15:47:32 (1)</b>	209:19	<b>15:49:58 (1)</b>
206:6	<b>15:46:37 (1)</b>	208:17	<b>15:48:46 (2)</b>	211:2
<b>15:45:35 (1)</b>	207:13	<b>15:47:33 (1)</b>	209:20,21	<b>15:50:00 (1)</b>
206:7	<b>15:46:40 (1)</b>	208:18	<b>15:48:49 (1)</b>	211:3
<b>15:45:42 (1)</b>	207:14	<b>15:47:36 (1)</b>	209:22	<b>15:50:03 (1)</b>
206:8	<b>15:46:42 (1)</b>	208:19	<b>15:48:51 (1)</b>	211:4
<b>15:45:45 (1)</b>	207:16	<b>15:47:39 (1)</b>	209:23	<b>15:50:04 (1)</b>
206:9	<b>15:46:44 (1)</b>	208:20	<b>15:48:53 (1)</b>	211:5
<b>15:45:49 (1)</b>	207:17	<b>15:47:44 (1)</b>	209:24	<b>15:50:06 (1)</b>
206:10	<b>15:46:46 (1)</b>	208:21	<b>15:48:56 (2)</b>	211:6
<b>15:45:52 (1)</b>	207:18	<b>15:47:49 (1)</b>	209:25 210:2	<b>15:50:08 (1)</b>
206:11	<b>15:46:47 (1)</b>	208:22	<b>15:49:01 (1)</b>	211:7
<b>15:45:55 (1)</b>	207:19	<b>15:47:51 (1)</b>	210:3	<b>15:50:10 (1)</b>
206:12	<b>15:46:48 (1)</b>	208:23	<b>15:49:04 (2)</b>	211:8
<b>15:45:57 (1)</b>	207:20	<b>15:47:53 (1)</b>	210:4,5	<b>15:50:11 (1)</b>
206:13	<b>15:46:49 (1)</b>	208:24	<b>15:49:06 (1)</b>	211:9
<b>15:45:59 (1)</b>	207:21	<b>15:48:02 (1)</b>	210:6	<b>15:50:12 (1)</b>
206:14	<b>15:46:50 (1)</b>	208:25	<b>15:49:09 (1)</b>	211:11
<b>15:46:00 (1)</b>	207:22	<b>15:48:05 (1)</b>	210:7	<b>15:50:13 (1)</b>
206:15	<b>15:46:53 (1)</b>	209:2	<b>15:49:13 (2)</b>	211:12
<b>15:46:03 (2)</b>	207:23	<b>15:48:06 (1)</b>	210:8,9	<b>15:50:15 (1)</b>
206:16,17	<b>15:46:55 (1)</b>	209:3	<b>15:49:14 (1)</b>	211:13
<b>15:46:05 (1)</b>	207:24	<b>15:48:08 (1)</b>	210:10	<b>15:50:16 (1)</b>
206:18	<b>15:46:57 (1)</b>	209:4	<b>15:49:16 (1)</b>	211:14
<b>15:46:07 (1)</b>	207:25	<b>15:48:11 (1)</b>	210:11	<b>15:50:18 (1)</b>
206:19	<b>15:47:00 (1)</b>	209:5	<b>15:49:19 (1)</b>	211:15
<b>15:46:10 (2)</b>	208:2	<b>15:48:13 (1)</b>	210:12	<b>15:50:26 (1)</b>
206:20,21	<b>15:47:01 (1)</b>	209:6	<b>15:49:24 (1)</b>	211:16
<b>15:46:11 (1)</b>	208:3	<b>15:48:17 (1)</b>	210:13	<b>15:50:28 (1)</b>
206:22	<b>15:47:03 (1)</b>	209:7	<b>15:49:30 (1)</b>	211:17
<b>15:46:12 (2)</b>	208:4	<b>15:48:20 (1)</b>	210:14	<b>15:50:30 (1)</b>
206:23,24	<b>15:47:05 (1)</b>	209:8	<b>15:49:36 (1)</b>	211:18
<b>15:46:14 (2)</b>	208:5	<b>15:48:23 (1)</b>	210:15	<b>15:50:32 (1)</b>
206:25 207:2	<b>15:47:08 (1)</b>	209:9	<b>15:49:41 (1)</b>	211:19
<b>15:46:15 (1)</b>	208:6	<b>15:48:26 (2)</b>	210:16	<b>15:50:35 (1)</b>

211:20	<b>15:51:51 (1)</b>	213:24	<b>15:54:56 (1)</b>	216:5
<b>15:50:38 (1)</b>	212:22	<b>15:53:10 (1)</b>	215:3	<b>15:56:15 (1)</b>
211:21	<b>15:51:53 (1)</b>	213:25	<b>15:55:00 (1)</b>	216:6
<b>15:50:40 (1)</b>	212:23	<b>15:53:14 (1)</b>	215:4	<b>15:56:22 (1)</b>
211:22	<b>15:51:56 (1)</b>	214:2	<b>15:55:02 (1)</b>	216:7
<b>15:50:41 (1)</b>	212:24	<b>15:53:16 (1)</b>	215:5	<b>15:56:24 (1)</b>
211:23	<b>15:52:00 (1)</b>	214:3	<b>15:55:05 (1)</b>	216:8
<b>15:50:42 (1)</b>	212:25	<b>15:53:18 (2)</b>	215:6	<b>15:56:27 (1)</b>
211:24	<b>15:52:04 (1)</b>	214:4,5	<b>15:55:08 (1)</b>	216:9
<b>15:50:43 (1)</b>	213:2	<b>15:53:24 (1)</b>	215:7	<b>15:56:28 (1)</b>
211:25	<b>15:52:08 (1)</b>	214:6	<b>15:55:12 (1)</b>	216:10
<b>15:50:44 (1)</b>	213:3	<b>15:53:29 (1)</b>	215:8	<b>15:56:30 (1)</b>
212:2	<b>15:52:13 (1)</b>	214:7	<b>15:55:15 (1)</b>	216:11
<b>15:50:55 (1)</b>	213:4	<b>15:53:47 (1)</b>	215:9	<b>15:56:32 (1)</b>
212:3	<b>15:52:15 (1)</b>	214:8	<b>15:55:21 (1)</b>	216:12
<b>15:50:58 (1)</b>	213:5	<b>15:53:49 (1)</b>	215:10	<b>15:56:33 (1)</b>
212:4	<b>15:52:18 (1)</b>	214:9	<b>15:55:23 (1)</b>	216:13
<b>15:50:59 (1)</b>	213:6	<b>15:53:52 (1)</b>	215:11	<b>15:56:35 (1)</b>
212:5	<b>15:52:20 (1)</b>	214:10	<b>15:55:29 (1)</b>	216:14
<b>15:51:02 (1)</b>	213:7	<b>15:53:53 (1)</b>	215:12	<b>15:56:37 (1)</b>
212:6	<b>15:52:23 (1)</b>	214:11	<b>15:55:31 (1)</b>	216:15
<b>15:51:03 (1)</b>	213:8	<b>15:53:55 (1)</b>	215:13	<b>15:56:40 (1)</b>
212:7	<b>15:52:24 (2)</b>	214:12	<b>15:55:34 (1)</b>	216:16
<b>15:51:06 (1)</b>	213:9,10	<b>15:54:00 (1)</b>	215:14	<b>15:56:41 (2)</b>
212:8	<b>15:52:29 (1)</b>	214:13	<b>15:55:35 (1)</b>	216:17,18
<b>15:51:11 (1)</b>	213:11	<b>15:54:03 (1)</b>	215:15	<b>15:56:45 (1)</b>
212:9	<b>15:52:30 (1)</b>	214:14	<b>15:55:44 (1)</b>	216:19
<b>15:51:16 (1)</b>	213:12	<b>15:54:10 (1)</b>	215:16	<b>15:56:47 (1)</b>
212:10	<b>15:52:31 (1)</b>	214:15	<b>15:55:46 (1)</b>	216:20
<b>15:51:19 (1)</b>	213:13	<b>15:54:14 (1)</b>	215:17	<b>15:56:48 (2)</b>
212:11	<b>15:52:32 (1)</b>	214:16	<b>15:55:49 (1)</b>	216:21,22
<b>15:51:24 (1)</b>	213:14	<b>15:54:18 (1)</b>	215:18	<b>15:56:52 (1)</b>
212:12	<b>15:52:33 (1)</b>	214:17	<b>15:55:54 (1)</b>	216:23
<b>15:51:26 (1)</b>	213:15	<b>15:54:24 (1)</b>	215:19	<b>15:56:58 (1)</b>
212:13	<b>15:52:34 (1)</b>	214:18	<b>15:55:55 (1)</b>	216:24
<b>15:51:30 (1)</b>	213:16	<b>15:54:28 (1)</b>	215:20	<b>15:57:01 (1)</b>
212:14	<b>15:52:35 (1)</b>	214:19	<b>15:55:57 (1)</b>	216:25
<b>15:51:34 (1)</b>	213:17	<b>15:54:31 (1)</b>	215:21	<b>15:57:05 (1)</b>
212:15	<b>15:52:37 (1)</b>	214:20	<b>15:55:58 (1)</b>	217:2
<b>15:51:35 (1)</b>	213:18	<b>15:54:33 (1)</b>	215:22	<b>15:57:07 (1)</b>
212:16	<b>15:52:39 (1)</b>	214:21	<b>15:56:00 (1)</b>	217:3
<b>15:51:37 (1)</b>	213:19	<b>15:54:36 (1)</b>	215:23	<b>15:57:08 (1)</b>
212:17	<b>15:52:47 (1)</b>	214:22	<b>15:56:03 (2)</b>	217:4
<b>15:51:41 (1)</b>	213:20	<b>15:54:40 (1)</b>	215:24,25	<b>15:57:10 (1)</b>
212:18	<b>15:52:50 (1)</b>	214:23	<b>15:56:06 (1)</b>	217:5
<b>15:51:45 (1)</b>	213:21	<b>15:54:42 (1)</b>	216:2	<b>15:57:15 (1)</b>
212:19	<b>15:53:01 (1)</b>	214:24	<b>15:56:10 (1)</b>	217:6
<b>15:51:47 (1)</b>	213:22	<b>15:54:45 (1)</b>	216:3	<b>15:57:16 (1)</b>
212:20	<b>15:53:04 (1)</b>	214:25	<b>15:56:12 (1)</b>	217:7
<b>15:51:50 (1)</b>	213:23	<b>15:54:50 (1)</b>	216:4	<b>15:57:17 (1)</b>
212:21	<b>15:53:08 (1)</b>	215:2	<b>15:56:14 (1)</b>	217:8

<b>15:57:19 (1)</b>	218:10	<b>15:59:31 (1)</b>	220:17	<b>16:01:51 (2)</b>
217:9	<b>15:58:23 (1)</b>	219:15	<b>16:00:35 (1)</b>	221:21,22
<b>15:57:20 (1)</b>	218:11	<b>15:59:34 (1)</b>	220:18	<b>16:01:57 (1)</b>
217:10	<b>15:58:27 (1)</b>	219:16	<b>16:00:38 (1)</b>	221:23
<b>15:57:22 (1)</b>	218:12	<b>15:59:36 (1)</b>	220:19	<b>16:02:00 (1)</b>
217:11	<b>15:58:29 (1)</b>	219:17	<b>16:00:40 (1)</b>	221:24
<b>15:57:24 (1)</b>	218:13	<b>15:59:37 (1)</b>	220:20	<b>16:02:02 (1)</b>
217:12	<b>15:58:34 (1)</b>	219:18	<b>16:00:41 (1)</b>	221:25
<b>15:57:26 (1)</b>	218:14	<b>15:59:39 (1)</b>	220:21	<b>16:02:03 (1)</b>
217:13	<b>15:58:35 (1)</b>	219:19	<b>16:00:45 (1)</b>	222:2
<b>15:57:27 (1)</b>	218:15	<b>15:59:40 (1)</b>	220:22	<b>16:02:04 (1)</b>
217:14	<b>15:58:38 (1)</b>	219:20	<b>16:00:49 (1)</b>	222:3
<b>15:57:31 (1)</b>	218:16	<b>15:59:41 (1)</b>	220:23	<b>16:02:08 (1)</b>
217:15	<b>15:58:39 (1)</b>	219:21	<b>16:00:53 (1)</b>	222:4
<b>15:57:34 (1)</b>	218:17	<b>15:59:43 (1)</b>	220:24	<b>16:02:11 (1)</b>
217:16	<b>15:58:41 (1)</b>	219:22	<b>16:00:54 (1)</b>	222:5
<b>15:57:36 (1)</b>	218:18	<b>15:59:45 (1)</b>	220:25	<b>16:02:14 (1)</b>
217:17	<b>15:58:44 (1)</b>	219:23	<b>16:00:59 (1)</b>	222:6
<b>15:57:38 (1)</b>	218:19	<b>15:59:47 (1)</b>	221:2	<b>16:02:16 (1)</b>
217:18	<b>15:58:46 (1)</b>	219:25	<b>16:01:01 (1)</b>	222:7
<b>15:57:40 (1)</b>	218:20	<b>15:59:48 (1)</b>	221:3	<b>16:02:22 (1)</b>
217:19	<b>15:58:48 (1)</b>	220:2	<b>16:01:03 (1)</b>	222:8
<b>15:57:41 (1)</b>	218:21	<b>15:59:52 (1)</b>	221:4	<b>16:02:23 (1)</b>
217:20	<b>15:58:51 (2)</b>	220:3	<b>16:01:07 (1)</b>	222:9
<b>15:57:44 (1)</b>	218:22,23	<b>15:59:54 (1)</b>	221:5	<b>16:02:25 (1)</b>
217:21	<b>15:58:55 (1)</b>	220:4	<b>16:01:11 (1)</b>	222:10
<b>15:57:48 (1)</b>	218:24	<b>15:59:59 (1)</b>	221:7	<b>16:02:28 (2)</b>
217:22	<b>15:58:56 (1)</b>	220:5	<b>16:01:13 (1)</b>	222:11,12
<b>15:57:50 (1)</b>	218:25	<b>16 (1)</b>	221:8	<b>16:02:35 (1)</b>
217:23	<b>15:58:58 (1)</b>	287:11	<b>16:01:14 (1)</b>	222:13
<b>15:57:55 (1)</b>	219:2	<b>16:00:01 (1)</b>	221:9	<b>16:02:42 (1)</b>
217:24	<b>15:58:59 (1)</b>	220:6	<b>16:01:20 (1)</b>	222:14
<b>15:57:57 (1)</b>	219:3	<b>16:00:06 (1)</b>	221:17	<b>16:02:44 (1)</b>
217:25	<b>15:59:00 (1)</b>	220:7	<b>16:01:22 (1)</b>	222:15
<b>15:57:58 (1)</b>	219:4	<b>16:00:10 (1)</b>	221:18	<b>16:02:46 (1)</b>
218:2	<b>15:59:06 (1)</b>	220:8	<b>16:01:23 (1)</b>	222:16
<b>15:58:01 (1)</b>	219:5	<b>16:00:12 (1)</b>	221:10	<b>16:02:50 (1)</b>
218:3	<b>15:59:08 (1)</b>	220:9	<b>16:01:25 (1)</b>	222:17
<b>15:58:04 (1)</b>	219:6	<b>16:00:14 (2)</b>	221:19	<b>16:02:54 (1)</b>
218:4	<b>15:59:10 (2)</b>	220:10,11	<b>16:01:26 (1)</b>	222:18
<b>15:58:06 (1)</b>	219:8,9	<b>16:00:17 (1)</b>	221:11	<b>16:02:59 (1)</b>
218:5	<b>15:59:13 (1)</b>	220:12	<b>16:01:28 (1)</b>	222:19
<b>15:58:09 (1)</b>	219:10	<b>16:00:19 (1)</b>	221:20	<b>16:03:01 (1)</b>
218:6	<b>15:59:17 (1)</b>	220:13	<b>16:01:29 (1)</b>	222:20
<b>15:58:12 (1)</b>	219:11	<b>16:00:20 (1)</b>	221:12	<b>16:03:04 (1)</b>
218:7	<b>15:59:21 (1)</b>	220:14	<b>16:01:31 (1)</b>	222:21
<b>15:58:15 (1)</b>	219:12	<b>16:00:24 (1)</b>	221:13	<b>16:03:06 (1)</b>
218:8	<b>15:59:25 (1)</b>	220:15	<b>16:01:34 (1)</b>	222:22
<b>15:58:17 (1)</b>	219:13	<b>16:00:28 (1)</b>	221:14	<b>16:03:08 (1)</b>
218:9	<b>15:59:28 (1)</b>	220:16	<b>16:01:35 (1)</b>	222:23
<b>15:58:20 (1)</b>	219:14	<b>16:00:33 (1)</b>	221:15	<b>16:03:20 (1)</b>

222:24	<b>16:04:43 (1)</b>	225:12	<b>16:07:20 (1)</b>	227:15
<b>16:03:22 (1)</b>	224:7	<b>16:05:56 (1)</b>	226:14	<b>16:09:01 (1)</b>
222:25	<b>16:04:47 (1)</b>	225:13	<b>16:07:24 (1)</b>	227:16
<b>16:03:26 (3)</b>	224:8	<b>16:06:01 (1)</b>	226:15	<b>16:09:07 (1)</b>
223:2,3,4	<b>16:04:52 (1)</b>	225:14	<b>16:07:36 (1)</b>	227:17
<b>16:03:28 (1)</b>	224:9	<b>16:06:04 (1)</b>	226:16	<b>16:09:10 (1)</b>
223:5	<b>16:04:55 (1)</b>	225:15	<b>16:07:40 (1)</b>	227:18
<b>16:03:36 (1)</b>	224:10	<b>16:06:08 (1)</b>	226:17	<b>16:09:11 (1)</b>
223:6	<b>16:05:00 (1)</b>	225:16	<b>16:07:45 (1)</b>	227:19
<b>16:03:39 (1)</b>	224:11	<b>16:06:11 (1)</b>	226:18	<b>16:09:13 (1)</b>
223:7	<b>16:05:03 (1)</b>	225:17	<b>16:07:46 (1)</b>	227:20
<b>16:03:42 (1)</b>	224:12	<b>16:06:16 (1)</b>	226:19	<b>16:09:16 (1)</b>
223:8	<b>16:05:04 (1)</b>	225:18	<b>16:07:49 (1)</b>	227:21
<b>16:03:44 (1)</b>	224:13	<b>16:06:19 (1)</b>	226:20	<b>16:09:31 (1)</b>
223:9	<b>16:05:07 (1)</b>	225:19	<b>16:07:55 (1)</b>	227:22
<b>16:03:48 (1)</b>	224:14	<b>16:06:21 (1)</b>	226:21	<b>16:09:33 (1)</b>
223:10	<b>16:05:09 (2)</b>	225:20	<b>16:08:03 (1)</b>	227:23
<b>16:03:52 (1)</b>	224:15,16	<b>16:06:23 (1)</b>	226:22	<b>16:09:35 (1)</b>
223:11	<b>16:05:12 (1)</b>	225:21	<b>16:08:07 (1)</b>	227:24
<b>16:03:53 (1)</b>	224:19	<b>16:06:27 (1)</b>	226:23	<b>16:09:37 (1)</b>
223:12	<b>16:05:14 (1)</b>	225:22	<b>16:08:09 (1)</b>	227:25
<b>16:03:57 (2)</b>	224:20	<b>16:06:32 (1)</b>	226:24	<b>16:09:41 (1)</b>
223:13,14	<b>16:05:17 (1)</b>	225:23	<b>16:08:13 (1)</b>	228:2
<b>16:04:01 (1)</b>	224:21	<b>16:06:36 (1)</b>	226:25	<b>16:09:42 (1)</b>
223:15	<b>16:05:19 (1)</b>	225:24	<b>16:08:19 (1)</b>	228:3
<b>16:04:03 (1)</b>	224:22	<b>16:06:39 (1)</b>	227:2	<b>16:09:46 (1)</b>
223:16	<b>16:05:22 (1)</b>	225:25	<b>16:08:23 (1)</b>	228:4
<b>16:04:06 (2)</b>	224:23	<b>16:06:42 (1)</b>	227:3	<b>16:09:51 (1)</b>
223:17,18	<b>16:05:23 (1)</b>	226:2	<b>16:08:25 (1)</b>	228:5
<b>16:04:07 (1)</b>	224:24	<b>16:06:44 (1)</b>	227:4	<b>16:09:53 (1)</b>
223:19	<b>16:05:26 (1)</b>	226:3	<b>16:08:27 (1)</b>	228:6
<b>16:04:10 (1)</b>	224:25	<b>16:06:47 (1)</b>	227:5	<b>16:09:58 (1)</b>
223:20	<b>16:05:27 (1)</b>	226:4	<b>16:08:29 (1)</b>	228:7
<b>16:04:11 (2)</b>	225:2	<b>16:06:50 (1)</b>	227:6	<b>16:10:00 (1)</b>
223:21,22	<b>16:05:30 (1)</b>	226:5	<b>16:08:30 (1)</b>	228:8
<b>16:04:23 (1)</b>	225:3	<b>16:06:52 (1)</b>	227:7	<b>16:10:01 (1)</b>
223:23	<b>16:05:33 (1)</b>	226:6	<b>16:08:31 (1)</b>	228:9
<b>16:04:26 (1)</b>	225:4	<b>16:06:56 (1)</b>	227:8	<b>16:10:09 (1)</b>
223:24	<b>16:05:34 (1)</b>	226:7	<b>16:08:36 (1)</b>	228:10
<b>16:04:31 (1)</b>	225:5	<b>16:07:01 (1)</b>	227:9	<b>16:10:12 (1)</b>
223:25	<b>16:05:37 (1)</b>	226:8	<b>16:08:39 (1)</b>	228:11
<b>16:04:32 (1)</b>	225:6	<b>16:07:06 (1)</b>	227:10	<b>16:10:14 (1)</b>
224:2	<b>16:05:41 (1)</b>	226:9	<b>16:08:40 (1)</b>	228:12
<b>16:04:33 (1)</b>	225:7	<b>16:07:09 (1)</b>	227:11	<b>16:10:18 (3)</b>
224:3	<b>16:05:46 (1)</b>	226:10	<b>16:08:45 (1)</b>	228:13,14,15
<b>16:04:35 (1)</b>	225:8	<b>16:07:13 (1)</b>	227:12	<b>16:10:22 (1)</b>
224:4	<b>16:05:48 (1)</b>	226:11	<b>16:08:50 (1)</b>	228:16
<b>16:04:39 (1)</b>	225:10	<b>16:07:15 (1)</b>	227:13	<b>16:10:25 (1)</b>
224:5	<b>16:05:51 (1)</b>	226:12	<b>16:08:53 (1)</b>	228:17
<b>16:04:41 (1)</b>	225:11	<b>16:07:18 (1)</b>	227:14	<b>16:10:29 (1)</b>
224:6	<b>16:05:53 (1)</b>	226:13	<b>16:08:57 (1)</b>	228:18

<b>16:10:31 (1)</b>	229:20	<b>16:13:20 (1)</b>	232:3	<b>16:16:11 (1)</b>
228:19	<b>16:11:57 (1)</b>	230:23	<b>16:14:43 (1)</b>	233:5
<b>16:10:32 (1)</b>	229:21	<b>16:13:25 (1)</b>	232:4	<b>16:16:14 (1)</b>
228:20	<b>16:12:02 (1)</b>	230:24	<b>16:14:44 (1)</b>	233:6
<b>16:10:33 (1)</b>	229:22	<b>16:13:28 (1)</b>	232:5	<b>16:16:16 (1)</b>
228:21	<b>16:12:09 (1)</b>	230:25	<b>16:14:50 (1)</b>	233:7
<b>16:10:36 (1)</b>	229:23	<b>16:13:33 (2)</b>	232:6	<b>16:16:18 (1)</b>
228:22	<b>16:12:11 (1)</b>	231:2,3	<b>16:14:53 (1)</b>	233:8
<b>16:10:39 (1)</b>	229:24	<b>16:13:37 (1)</b>	232:7	<b>16:16:19 (1)</b>
228:23	<b>16:12:13 (1)</b>	231:4	<b>16:14:54 (1)</b>	233:9
<b>16:10:43 (1)</b>	229:25	<b>16:13:38 (1)</b>	232:8	<b>16:16:20 (1)</b>
228:24	<b>16:12:15 (1)</b>	231:5	<b>16:14:57 (1)</b>	233:10
<b>16:10:45 (1)</b>	230:2	<b>16:13:40 (1)</b>	232:9	<b>16:16:26 (1)</b>
228:25	<b>16:12:20 (1)</b>	231:6	<b>16:15:04 (1)</b>	233:11
<b>16:10:48 (1)</b>	230:3	<b>16:13:42 (1)</b>	232:10	<b>16:16:30 (1)</b>
229:2	<b>16:12:23 (1)</b>	231:7	<b>16:15:06 (1)</b>	233:12
<b>16:10:51 (1)</b>	230:4	<b>16:13:48 (1)</b>	232:11	<b>16:16:32 (1)</b>
229:3	<b>16:12:25 (1)</b>	231:8	<b>16:15:09 (1)</b>	233:13
<b>16:10:55 (1)</b>	230:5	<b>16:13:51 (1)</b>	232:12	<b>16:16:34 (1)</b>
229:4	<b>16:12:31 (1)</b>	231:9	<b>16:15:11 (1)</b>	233:14
<b>16:10:57 (1)</b>	230:6	<b>16:13:54 (1)</b>	232:13	<b>16:16:38 (1)</b>
229:5	<b>16:12:33 (1)</b>	231:10	<b>16:15:13 (1)</b>	233:15
<b>16:10:59 (1)</b>	230:7	<b>16:13:56 (1)</b>	232:14	<b>16:16:42 (1)</b>
229:6	<b>16:12:35 (1)</b>	231:11	<b>16:15:14 (1)</b>	233:16
<b>16:11:02 (1)</b>	230:8	<b>16:13:57 (1)</b>	232:15	<b>16:16:45 (1)</b>
229:7	<b>16:12:37 (1)</b>	231:12	<b>16:15:15 (1)</b>	233:17
<b>16:11:03 (1)</b>	230:9	<b>16:14:02 (1)</b>	232:16	<b>16:16:55 (1)</b>
229:8	<b>16:12:38 (1)</b>	231:13	<b>16:15:24 (1)</b>	233:18
<b>16:11:05 (1)</b>	230:10	<b>16:14:03 (1)</b>	232:17	<b>16:17:01 (1)</b>
229:9	<b>16:12:40 (1)</b>	231:14	<b>16:15:27 (1)</b>	233:19
<b>16:11:08 (1)</b>	230:11	<b>16:14:06 (1)</b>	232:18	<b>16:17:03 (1)</b>
229:10	<b>16:12:43 (2)</b>	231:15	<b>16:15:30 (1)</b>	233:20
<b>16:11:11 (1)</b>	230:12,13	<b>16:14:10 (1)</b>	232:19	<b>16:17:06 (1)</b>
229:11	<b>16:12:57 (1)</b>	231:16	<b>16:15:33 (1)</b>	233:21
<b>16:11:16 (1)</b>	230:14	<b>16:14:13 (1)</b>	232:20	<b>16:17:08 (2)</b>
229:12	<b>16:13:01 (1)</b>	231:17	<b>16:15:35 (1)</b>	233:22,23
<b>16:11:19 (1)</b>	230:15	<b>16:14:14 (1)</b>	232:21	<b>16:17:12 (1)</b>
229:13	<b>16:13:02 (1)</b>	231:18	<b>16:15:43 (1)</b>	233:24
<b>16:11:20 (1)</b>	230:16	<b>16:14:18 (2)</b>	232:22	<b>16:17:15 (1)</b>
229:14	<b>16:13:05 (1)</b>	231:19,20	<b>16:15:46 (1)</b>	233:25
<b>16:11:37 (1)</b>	230:17	<b>16:14:21 (1)</b>	232:23	<b>16:17:16 (1)</b>
229:15	<b>16:13:06 (1)</b>	231:21	<b>16:15:49 (1)</b>	234:2
<b>16:11:40 (1)</b>	230:18	<b>16:14:29 (1)</b>	232:24	<b>16:17:19 (1)</b>
229:16	<b>16:13:09 (1)</b>	231:22	<b>16:16:00 (1)</b>	234:3
<b>16:11:42 (1)</b>	230:19	<b>16:14:32 (2)</b>	232:25	<b>16:17:23 (1)</b>
229:17	<b>16:13:12 (1)</b>	231:23,24	<b>16:16:06 (1)</b>	234:4
<b>16:11:44 (1)</b>	230:20	<b>16:14:33 (1)</b>	233:2	<b>16:17:28 (1)</b>
229:18	<b>16:13:13 (1)</b>	231:25	<b>16:16:09 (1)</b>	234:5
<b>16:11:50 (1)</b>	230:21	<b>16:14:37 (1)</b>	233:3	<b>16:17:31 (1)</b>
229:19	<b>16:13:18 (1)</b>	232:2	<b>16:16:10 (1)</b>	234:6
<b>16:11:54 (1)</b>	230:22	<b>16:14:42 (1)</b>	233:4	<b>16:17:36 (1)</b>

234:7	<b>16:18:44 (1)</b>	236:21	<b>16:21:57 (1)</b>	239:14
<b>16:17:38 (1)</b>	235:16	<b>16:20:10 (1)</b>	238:11	<b>16:23:18 (1)</b>
234:8	<b>16:18:46 (1)</b>	236:22	<b>16:22:02 (1)</b>	239:15
<b>16:17:39 (1)</b>	235:17	<b>16:20:11 (1)</b>	238:12	<b>16:23:22 (1)</b>
234:9	<b>16:18:48 (1)</b>	236:23	<b>16:22:05 (1)</b>	239:16
<b>16:17:41 (1)</b>	235:18	<b>16:20:17 (1)</b>	238:13	<b>16:23:24 (1)</b>
234:11	<b>16:18:49 (1)</b>	236:24	<b>16:22:07 (1)</b>	239:17
<b>16:17:43 (1)</b>	235:19	<b>16:20:19 (1)</b>	238:14	<b>16:23:28 (1)</b>
234:12	<b>16:18:50 (1)</b>	236:25	<b>16:22:08 (1)</b>	239:18
<b>16:17:46 (1)</b>	235:20	<b>16:20:20 (1)</b>	238:15	<b>16:23:35 (1)</b>
234:13	<b>16:18:52 (1)</b>	237:2	<b>16:22:09 (1)</b>	239:19
<b>16:17:49 (1)</b>	235:21	<b>16:20:23 (1)</b>	238:16	<b>16:23:39 (1)</b>
234:14	<b>16:18:54 (1)</b>	237:3	<b>16:22:10 (1)</b>	239:20
<b>16:17:53 (1)</b>	235:22	<b>16:20:25 (1)</b>	238:17	<b>16:23:43 (1)</b>
234:15	<b>16:18:55 (1)</b>	237:4	<b>16:22:12 (1)</b>	239:21
<b>16:17:54 (2)</b>	235:23	<b>16:20:26 (1)</b>	238:18	<b>16:23:44 (1)</b>
234:16,18	<b>16:18:56 (1)</b>	237:5	<b>16:22:16 (2)</b>	239:22
<b>16:17:55 (1)</b>	235:24	<b>16:20:28 (1)</b>	238:19,20	<b>16:23:46 (1)</b>
234:19	<b>16:19:02 (1)</b>	237:6	<b>16:22:21 (1)</b>	239:23
<b>16:17:58 (1)</b>	235:25	<b>16:20:29 (1)</b>	238:21	<b>16:23:49 (1)</b>
234:20	<b>16:19:08 (1)</b>	237:7	<b>16:22:25 (1)</b>	239:24
<b>16:18:00 (1)</b>	236:2	<b>16:20:46 (2)</b>	238:22	<b>16:23:52 (1)</b>
234:21	<b>16:19:10 (1)</b>	237:12,13	<b>16:22:30 (1)</b>	239:25
<b>16:18:02 (3)</b>	236:3	<b>16:20:50 (1)</b>	238:23	<b>16:23:57 (1)</b>
234:22,23,24	<b>16:19:13 (2)</b>	237:14	<b>16:22:32 (1)</b>	240:2
<b>16:18:08 (1)</b>	236:4,5	<b>16:20:52 (1)</b>	238:24	<b>16:24:01 (1)</b>
234:25	<b>16:19:16 (1)</b>	237:15	<b>16:22:36 (1)</b>	240:3
<b>16:18:11 (1)</b>	236:6	<b>16:20:54 (2)</b>	238:25	<b>16:24:03 (1)</b>
235:2	<b>16:19:18 (3)</b>	237:16,17	<b>16:22:37 (1)</b>	240:4
<b>16:18:15 (1)</b>	236:7,8,9	<b>16:20:57 (2)</b>	239:2	<b>16:24:05 (1)</b>
235:3	<b>16:19:20 (1)</b>	237:18,19	<b>16:22:39 (1)</b>	240:5
<b>16:18:17 (1)</b>	236:10	<b>16:21:02 (1)</b>	239:3	<b>16:24:08 (2)</b>
235:4	<b>16:19:21 (1)</b>	237:20	<b>16:22:49 (1)</b>	240:6,7
<b>16:18:18 (1)</b>	236:11	<b>16:21:07 (1)</b>	239:4	<b>16:24:11 (1)</b>
235:5	<b>16:19:22 (1)</b>	237:21	<b>16:22:51 (1)</b>	240:8
<b>16:18:24 (1)</b>	236:12	<b>16:21:39 (2)</b>	239:5	<b>16:24:13 (1)</b>
235:6	<b>16:19:41 (1)</b>	237:22,23	<b>16:22:52 (1)</b>	240:9
<b>16:18:26 (1)</b>	236:17	<b>16:21:40 (1)</b>	239:7	<b>16:24:19 (1)</b>
235:7	<b>16:19:42 (1)</b>	237:24	<b>16:22:55 (1)</b>	240:10
<b>16:18:27 (1)</b>	236:18	<b>16:21:42 (2)</b>	239:8	<b>16:24:24 (1)</b>
235:8	<b>16:19:43 (1)</b>	237:25 238:2	<b>16:22:57 (1)</b>	240:11
<b>16:18:29 (1)</b>	236:13	<b>16:21:44 (1)</b>	239:9	<b>16:24:28 (1)</b>
235:9	<b>16:19:46 (1)</b>	238:3	<b>16:22:59 (1)</b>	240:12
<b>16:18:34 (3)</b>	236:19	<b>16:21:46 (2)</b>	239:10	<b>16:24:29 (1)</b>
235:10,11,12	<b>16:19:47 (1)</b>	238:4,5	<b>16:23:02 (1)</b>	240:13
<b>16:18:36 (1)</b>	236:14	<b>16:21:48 (2)</b>	239:11	<b>16:24:32 (1)</b>
235:13	<b>16:19:48 (1)</b>	238:6,7	<b>16:23:06 (1)</b>	240:14
<b>16:18:38 (1)</b>	236:20	<b>16:21:50 (2)</b>	239:12	<b>16:24:35 (1)</b>
235:14	<b>16:19:51 (1)</b>	238:8,9	<b>16:23:10 (1)</b>	240:15
<b>16:18:41 (1)</b>	236:15	<b>16:21:51 (1)</b>	239:13	<b>16:24:37 (1)</b>
235:15	<b>16:20:05 (1)</b>	238:10	<b>16:23:13 (1)</b>	240:16

<b>16:24:41 (1)</b>	241:18	<b>16:27:24 (1)</b>	244:5	<b>16:30:01 (1)</b>
240:17	<b>16:25:53 (1)</b>	242:22	<b>16:28:49 (1)</b>	245:8
<b>16:24:46 (1)</b>	241:19	<b>16:27:26 (1)</b>	244:6	<b>16:30:03 (1)</b>
240:18	<b>16:25:58 (1)</b>	242:23	<b>16:28:50 (1)</b>	245:9
<b>16:24:48 (1)</b>	241:20	<b>16:27:27 (3)</b>	244:7	<b>16:30:06 (1)</b>
240:19	<b>16:26:01 (2)</b>	242:24,25 243:2	<b>16:28:51 (1)</b>	245:10
<b>16:24:49 (1)</b>	241:21,22	<b>16:27:34 (1)</b>	244:8	<b>16:30:08 (1)</b>
240:20	<b>16:26:04 (1)</b>	243:13	<b>16:28:56 (1)</b>	245:11
<b>16:24:57 (1)</b>	241:23	<b>16:27:35 (1)</b>	244:9	<b>16:30:12 (1)</b>
240:21	<b>16:26:06 (1)</b>	243:14	<b>16:29:07 (1)</b>	245:12
<b>16:24:59 (1)</b>	241:24	<b>16:27:36 (1)</b>	244:10	<b>16:30:14 (1)</b>
240:22	<b>16:26:08 (1)</b>	243:3	<b>16:29:11 (1)</b>	245:14
<b>16:25:05 (1)</b>	241:25	<b>16:27:39 (1)</b>	244:11	<b>16:30:17 (1)</b>
240:23	<b>16:26:11 (1)</b>	243:15	<b>16:29:14 (1)</b>	245:15
<b>16:25:08 (1)</b>	242:2	<b>16:27:40 (1)</b>	244:12	<b>16:30:18 (1)</b>
240:24	<b>16:26:14 (1)</b>	243:4	<b>16:29:16 (1)</b>	245:16
<b>16:25:09 (1)</b>	242:3	<b>16:27:42 (1)</b>	244:13	<b>16:30:20 (1)</b>
240:25	<b>16:26:17 (1)</b>	243:16	<b>16:29:20 (1)</b>	245:17
<b>16:25:10 (1)</b>	242:4	<b>16:27:44 (1)</b>	244:14	<b>16:30:24 (1)</b>
241:2	<b>16:26:18 (1)</b>	243:5	<b>16:29:24 (1)</b>	245:18
<b>16:25:13 (1)</b>	242:5	<b>16:27:46 (3)</b>	244:15	<b>16:30:27 (1)</b>
241:3	<b>16:26:25 (1)</b>	243:6,7,17	<b>16:29:26 (1)</b>	245:19
<b>16:25:14 (1)</b>	242:6	<b>16:27:49 (1)</b>	244:16	<b>16:30:30 (1)</b>
241:4	<b>16:26:32 (1)</b>	243:8	<b>16:29:27 (1)</b>	245:20
<b>16:25:18 (1)</b>	242:7	<b>16:27:57 (1)</b>	244:17	<b>16:30:32 (1)</b>
241:5	<b>16:26:34 (1)</b>	243:9	<b>16:29:31 (1)</b>	245:21
<b>16:25:21 (1)</b>	242:8	<b>16:27:58 (1)</b>	244:18	<b>16:30:35 (1)</b>
241:6	<b>16:26:39 (1)</b>	243:10	<b>16:29:32 (1)</b>	245:22
<b>16:25:22 (1)</b>	242:9	<b>16:27:59 (1)</b>	244:19	<b>16:30:37 (1)</b>
241:7	<b>16:26:45 (1)</b>	243:11	<b>16:29:34 (1)</b>	245:23
<b>16:25:24 (1)</b>	242:10	<b>16:28:21 (1)</b>	244:20	<b>16:30:41 (1)</b>
241:8	<b>16:26:54 (1)</b>	243:18	<b>16:29:36 (1)</b>	245:24
<b>16:25:26 (1)</b>	242:11	<b>16:28:22 (1)</b>	244:21	<b>16:30:42 (1)</b>
241:9	<b>16:27:00 (1)</b>	243:19	<b>16:29:38 (1)</b>	245:25
<b>16:25:27 (1)</b>	242:12	<b>16:28:26 (1)</b>	244:22	<b>16:30:45 (1)</b>
241:10	<b>16:27:03 (1)</b>	243:20	<b>16:29:39 (1)</b>	246:2
<b>16:25:31 (1)</b>	242:13	<b>16:28:28 (1)</b>	244:23	<b>16:30:46 (1)</b>
241:11	<b>16:27:04 (1)</b>	243:21	<b>16:29:42 (1)</b>	246:3
<b>16:25:34 (1)</b>	242:14	<b>16:28:30 (1)</b>	244:24	<b>16:30:49 (1)</b>
241:12	<b>16:27:05 (1)</b>	243:22	<b>16:29:44 (1)</b>	246:4
<b>16:25:36 (1)</b>	242:15	<b>16:28:35 (1)</b>	244:25	<b>16:30:54 (2)</b>
241:13	<b>16:27:13 (1)</b>	243:23	<b>16:29:47 (2)</b>	246:5,6
<b>16:25:40 (1)</b>	242:16	<b>16:28:38 (1)</b>	245:2,3	<b>16:30:56 (1)</b>
241:14	<b>16:27:17 (1)</b>	243:24	<b>16:29:49 (1)</b>	246:7
<b>16:25:42 (1)</b>	242:17	<b>16:28:40 (1)</b>	245:4	<b>16:30:58 (1)</b>
241:15	<b>16:27:21 (2)</b>	243:25	<b>16:29:53 (1)</b>	246:8
<b>16:25:43 (1)</b>	242:18,19	<b>16:28:42 (1)</b>	245:5	<b>16:31:00 (1)</b>
241:16	<b>16:27:22 (1)</b>	244:2	<b>16:29:56 (1)</b>	246:9
<b>16:25:45 (1)</b>	242:20	<b>16:28:46 (1)</b>	245:6	<b>16:31:01 (1)</b>
241:17	<b>16:27:23 (1)</b>	244:3	<b>16:29:58 (1)</b>	246:10
<b>16:25:49 (1)</b>	242:21	<b>16:28:48 (1)</b>	245:7	<b>16:31:02 (1)</b>

246:11	<b>16:32:29 (1)</b>	248:19	<b>16:35:15 (1)</b>	251:4
<b>16:31:05 (1)</b>	247:14	<b>16:34:05 (1)</b>	249:21	<b>16:36:34 (1)</b>
246:12	<b>16:32:30 (1)</b>	248:20	<b>16:35:16 (1)</b>	251:5
<b>16:31:06 (1)</b>	247:15	<b>16:34:09 (1)</b>	249:23	<b>16:36:35 (1)</b>
246:13	<b>16:32:35 (1)</b>	248:21	<b>16:35:18 (1)</b>	251:6
<b>16:31:21 (1)</b>	247:16	<b>16:34:12 (1)</b>	249:24	<b>16:36:37 (1)</b>
246:14	<b>16:32:41 (1)</b>	248:22	<b>16:35:29 (1)</b>	251:7
<b>16:31:23 (1)</b>	247:17	<b>16:34:17 (1)</b>	249:25	<b>16:36:38 (1)</b>
246:15	<b>16:32:44 (1)</b>	248:23	<b>16:35:32 (1)</b>	251:8
<b>16:31:27 (1)</b>	247:18	<b>16:34:18 (1)</b>	250:2	<b>16:36:39 (1)</b>
246:16	<b>16:32:45 (1)</b>	248:24	<b>16:35:37 (2)</b>	251:9
<b>16:31:36 (1)</b>	247:19	<b>16:34:19 (1)</b>	250:4,5	<b>16:36:50 (1)</b>
246:17	<b>16:32:46 (1)</b>	248:25	<b>16:35:38 (2)</b>	251:10
<b>16:31:41 (1)</b>	247:20	<b>16:34:20 (1)</b>	250:6,7	<b>16:36:53 (1)</b>
246:18	<b>16:32:53 (1)</b>	249:2	<b>16:35:39 (1)</b>	251:11
<b>16:31:43 (1)</b>	247:21	<b>16:34:21 (1)</b>	250:8	<b>16:36:54 (1)</b>
246:19	<b>16:32:55 (1)</b>	249:3	<b>16:35:42 (1)</b>	251:12
<b>16:31:49 (1)</b>	247:22	<b>16:34:23 (1)</b>	250:9	<b>16:36:59 (2)</b>
246:21	<b>16:32:58 (1)</b>	249:4	<b>16:35:46 (1)</b>	251:13,14
<b>16:31:50 (1)</b>	247:23	<b>16:34:26 (1)</b>	250:11	<b>16:37:00 (1)</b>
246:22	<b>16:33:03 (1)</b>	249:5	<b>16:35:47 (1)</b>	251:15
<b>16:31:52 (1)</b>	247:25	<b>16:34:29 (1)</b>	250:12	<b>16:37:03 (1)</b>
246:23	<b>16:33:05 (2)</b>	249:6	<b>16:35:48 (1)</b>	251:16
<b>16:31:55 (1)</b>	248:2,3	<b>16:34:32 (1)</b>	250:13	<b>16:37:05 (1)</b>
246:24	<b>16:33:12 (1)</b>	249:7	<b>16:35:51 (1)</b>	251:17
<b>16:31:59 (1)</b>	248:4	<b>16:34:35 (1)</b>	250:14	<b>16:37:09 (1)</b>
246:25	<b>16:33:15 (1)</b>	249:8	<b>16:35:53 (1)</b>	251:18
<b>16:32:01 (1)</b>	248:5	<b>16:34:38 (1)</b>	250:15	<b>16:37:10 (3)</b>
247:2	<b>16:33:17 (1)</b>	249:9	<b>16:35:56 (1)</b>	251:19,20,21
<b>16:32:03 (1)</b>	248:6	<b>16:34:41 (1)</b>	250:16	<b>16:37:12 (1)</b>
247:3	<b>16:33:19 (1)</b>	249:10	<b>16:35:58 (1)</b>	251:22
<b>16:32:05 (1)</b>	248:7	<b>16:34:44 (1)</b>	250:17	<b>16:37:15 (1)</b>
247:4	<b>16:33:21 (2)</b>	249:11	<b>16:36:00 (1)</b>	251:23
<b>16:32:06 (1)</b>	248:8,9	<b>16:34:46 (1)</b>	250:18	<b>16:37:16 (1)</b>
247:5	<b>16:33:26 (1)</b>	249:12	<b>16:36:07 (1)</b>	251:24
<b>16:32:12 (1)</b>	248:10	<b>16:34:48 (1)</b>	250:19	<b>16:37:18 (1)</b>
247:6	<b>16:33:30 (1)</b>	249:13	<b>16:36:09 (1)</b>	251:25
<b>16:32:14 (1)</b>	248:11	<b>16:34:51 (1)</b>	250:20	<b>16:37:20 (1)</b>
247:7	<b>16:33:37 (1)</b>	249:14	<b>16:36:12 (1)</b>	252:2
<b>16:32:17 (1)</b>	248:12	<b>16:34:56 (1)</b>	250:21	<b>16:37:24 (1)</b>
247:8	<b>16:33:49 (1)</b>	249:15	<b>16:36:14 (1)</b>	252:3
<b>16:32:19 (1)</b>	248:13	<b>16:34:58 (1)</b>	250:22	<b>16:37:27 (1)</b>
247:9	<b>16:33:53 (1)</b>	249:16	<b>16:36:16 (1)</b>	252:4
<b>16:32:20 (1)</b>	248:14	<b>16:35:00 (1)</b>	250:23	<b>16:37:34 (1)</b>
247:10	<b>16:33:56 (1)</b>	249:17	<b>16:36:17 (1)</b>	252:5
<b>16:32:22 (1)</b>	248:15	<b>16:35:05 (1)</b>	250:24	<b>16:37:36 (1)</b>
247:11	<b>16:33:59 (1)</b>	249:18	<b>16:36:19 (2)</b>	252:6
<b>16:32:26 (1)</b>	248:16	<b>16:35:07 (1)</b>	250:25 251:2	<b>16:37:40 (1)</b>
247:12	<b>16:34:02 (1)</b>	249:19	<b>16:36:27 (1)</b>	252:7
<b>16:32:27 (1)</b>	248:18	<b>16:35:11 (1)</b>	251:3	<b>16:37:43 (1)</b>
247:13	<b>16:34:03 (1)</b>	249:20	<b>16:36:30 (1)</b>	252:8

<b>16:37:45 (1)</b>	253:12	<b>16:40:35 (1)</b>	255:20	<b>16:43:18 (1)</b>
252:9	<b>16:39:03 (1)</b>	254:17	<b>16:42:09 (2)</b>	257:7
<b>16:37:46 (1)</b>	253:13	<b>16:40:38 (1)</b>	255:22,23	<b>16:43:19 (2)</b>
252:10	<b>16:39:08 (1)</b>	254:18	<b>16:42:14 (1)</b>	257:8,9
<b>16:37:48 (1)</b>	253:14	<b>16:40:40 (1)</b>	255:24	<b>16:43:23 (1)</b>
252:11	<b>16:39:09 (1)</b>	254:19	<b>16:42:18 (1)</b>	257:10
<b>16:37:51 (1)</b>	253:15	<b>16:40:44 (1)</b>	255:25	<b>16:43:28 (1)</b>
252:12	<b>16:39:13 (1)</b>	254:20	<b>16:42:21 (3)</b>	257:11
<b>16:37:57 (1)</b>	253:16	<b>16:40:48 (1)</b>	256:2,3,4	<b>16:43:44 (1)</b>
252:13	<b>16:39:17 (1)</b>	254:21	<b>16:42:22 (1)</b>	257:12
<b>16:38:00 (1)</b>	253:17	<b>16:40:50 (1)</b>	256:5	<b>16:43:49 (1)</b>
252:14	<b>16:39:22 (1)</b>	254:22	<b>16:42:23 (1)</b>	257:13
<b>16:38:01 (1)</b>	253:18	<b>16:40:53 (2)</b>	256:6	<b>16:43:50 (1)</b>
252:15	<b>16:39:27 (1)</b>	254:23,24	<b>16:42:26 (1)</b>	257:14
<b>16:38:02 (1)</b>	253:19	<b>16:40:54 (2)</b>	256:7	<b>16:43:53 (1)</b>
252:16	<b>16:39:32 (1)</b>	254:25 255:2	<b>16:42:28 (1)</b>	257:15
<b>16:38:06 (1)</b>	253:20	<b>16:40:58 (1)</b>	256:8	<b>16:43:54 (1)</b>
252:17	<b>16:39:33 (1)</b>	255:3	<b>16:42:30 (1)</b>	257:16
<b>16:38:07 (1)</b>	253:21	<b>16:41:05 (1)</b>	256:9	<b>16:43:58 (1)</b>
252:18	<b>16:39:34 (1)</b>	255:4	<b>16:42:31 (2)</b>	257:21
<b>16:38:08 (2)</b>	253:22	<b>16:41:06 (1)</b>	256:10,11	<b>16:43:59 (1)</b>
252:19,20	<b>16:39:37 (1)</b>	255:5	<b>16:42:34 (1)</b>	257:22
<b>16:38:15 (1)</b>	253:23	<b>16:41:10 (1)</b>	256:12	<b>16:44:00 (1)</b>
252:21	<b>16:39:40 (2)</b>	255:6	<b>16:42:42 (2)</b>	257:23
<b>16:38:18 (1)</b>	253:24,25	<b>16:41:14 (1)</b>	256:13,14	<b>16:44:01 (1)</b>
252:22	<b>16:39:44 (1)</b>	255:7	<b>16:42:44 (1)</b>	257:24
<b>16:38:20 (1)</b>	254:2	<b>16:41:19 (1)</b>	256:15	<b>16:44:02 (2)</b>
252:23	<b>16:39:50 (1)</b>	255:8	<b>16:42:46 (1)</b>	257:25 258:2
<b>16:38:22 (1)</b>	254:3	<b>16:41:23 (1)</b>	256:16	<b>16:44:09 (1)</b>
252:24	<b>16:39:53 (1)</b>	255:9	<b>16:42:51 (2)</b>	258:3
<b>16:38:25 (1)</b>	254:4	<b>16:41:29 (1)</b>	256:17,18	<b>16:44:10 (1)</b>
252:25	<b>16:39:55 (1)</b>	255:10	<b>16:42:55 (1)</b>	258:4
<b>16:38:26 (1)</b>	254:6	<b>16:41:32 (1)</b>	256:19	<b>16:56:26 (1)</b>
253:2	<b>16:39:56 (1)</b>	255:11	<b>16:43:00 (1)</b>	258:5
<b>16:38:28 (1)</b>	254:7	<b>16:41:35 (1)</b>	256:21	<b>16:57:09 (1)</b>
253:3	<b>16:39:58 (1)</b>	255:12	<b>16:43:02 (1)</b>	258:6
<b>16:38:30 (1)</b>	254:8	<b>16:41:37 (1)</b>	256:22	<b>16:57:10 (1)</b>
253:4	<b>16:40:02 (1)</b>	255:13	<b>16:43:05 (1)</b>	258:7
<b>16:38:33 (1)</b>	254:9	<b>16:41:40 (1)</b>	256:23	<b>16:57:11 (1)</b>
253:5	<b>16:40:04 (1)</b>	255:14	<b>16:43:06 (1)</b>	258:8
<b>16:38:34 (1)</b>	254:10	<b>16:41:47 (1)</b>	256:24	<b>16:57:13 (1)</b>
253:6	<b>16:40:07 (2)</b>	255:15	<b>16:43:08 (1)</b>	258:9
<b>16:38:37 (1)</b>	254:11,12	<b>16:41:48 (1)</b>	256:25	<b>16:57:17 (1)</b>
253:7	<b>16:40:16 (1)</b>	255:16	<b>16:43:09 (2)</b>	258:10
<b>16:38:39 (1)</b>	254:13	<b>16:41:51 (1)</b>	257:2,3	<b>16:57:21 (1)</b>
253:8	<b>16:40:29 (1)</b>	255:17	<b>16:43:12 (1)</b>	258:11
<b>16:38:48 (1)</b>	254:14	<b>16:41:58 (1)</b>	257:4	<b>16:57:24 (1)</b>
253:9	<b>16:40:31 (1)</b>	255:18	<b>16:43:13 (1)</b>	258:12
<b>16:38:54 (1)</b>	254:15	<b>16:42:02 (1)</b>	257:5	<b>16:57:25 (1)</b>
253:11	<b>16:40:33 (1)</b>	255:19	<b>16:43:14 (1)</b>	257:18
<b>16:39:01 (1)</b>	254:16	<b>16:42:03 (1)</b>	257:6	<b>16:57:26 (1)</b>

257:19	<b>17:01:21 (1)</b>	260:23	<b>17:03:57 (1)</b>	263:11
<b>16:57:43 (2)</b>	259:17	<b>17:02:37 (1)</b>	262:8	<b>17:05:06 (1)</b>
258:13,14	<b>17:01:24 (1)</b>	260:24	<b>17:04:05 (1)</b>	263:12
<b>16:57:45 (3)</b>	259:18	<b>17:02:42 (1)</b>	262:9	<b>17:05:09 (1)</b>
258:15,16,17	<b>17:01:27 (1)</b>	260:25	<b>17:04:06 (1)</b>	263:13
<b>16:57:49 (2)</b>	259:19	<b>17:02:46 (1)</b>	262:10	<b>17:05:10 (1)</b>
258:18,19	<b>17:01:28 (1)</b>	261:2	<b>17:04:07 (1)</b>	263:14
<b>16:57:52 (1)</b>	259:20	<b>17:02:49 (1)</b>	262:11	<b>17:05:13 (1)</b>
258:20	<b>17:01:30 (1)</b>	261:3	<b>17:04:08 (1)</b>	263:15
<b>16:57:54 (1)</b>	259:21	<b>17:02:50 (1)</b>	262:12	<b>17:05:15 (2)</b>
258:22	<b>17:01:33 (1)</b>	261:4	<b>17:04:11 (1)</b>	263:17,18
<b>16:57:55 (1)</b>	259:22	<b>17:02:51 (1)</b>	262:13	<b>17:05:17 (1)</b>
258:21	<b>17:01:37 (2)</b>	261:5	<b>17:04:12 (1)</b>	263:19
<b>16:57:56 (1)</b>	259:23,24	<b>17:02:54 (2)</b>	262:14	<b>17:05:21 (1)</b>
258:23	<b>17:01:43 (1)</b>	261:6,7	<b>17:04:13 (1)</b>	263:20
<b>167 (2)</b>	259:25	<b>17:02:57 (1)</b>	262:15	<b>17:05:24 (1)</b>
259:8,11	<b>17:01:47 (1)</b>	261:8	<b>17:04:17 (2)</b>	263:21
<b>17:00:43 (1)</b>	260:2	<b>17:02:58 (1)</b>	262:16,17	<b>17:05:30 (2)</b>
258:24	<b>17:01:48 (1)</b>	261:9	<b>17:04:20 (1)</b>	263:22,23
<b>17:00:47 (1)</b>	260:4	<b>17:03:05 (1)</b>	262:18	<b>17:05:31 (1)</b>
258:25	<b>17:01:50 (1)</b>	261:10	<b>17:04:22 (1)</b>	263:24
<b>17:00:49 (1)</b>	260:5	<b>17:03:07 (1)</b>	262:19	<b>17:05:32 (1)</b>
259:2	<b>17:01:56 (1)</b>	261:11	<b>17:04:28 (1)</b>	263:25
<b>17:00:52 (1)</b>	260:6	<b>17:03:09 (1)</b>	262:20	<b>17:05:43 (1)</b>
259:3	<b>17:01:58 (1)</b>	261:12	<b>17:04:29 (1)</b>	264:2
<b>17:00:56 (1)</b>	260:7	<b>17:03:12 (1)</b>	262:21	<b>17:05:44 (1)</b>
259:4	<b>17:02:03 (1)</b>	261:13	<b>17:04:30 (1)</b>	264:3
<b>17:00:57 (1)</b>	260:9	<b>17:03:21 (2)</b>	262:22	<b>17:05:45 (1)</b>
259:5	<b>17:02:05 (1)</b>	261:14,15	<b>17:04:32 (1)</b>	264:4
<b>17:00:58 (1)</b>	260:10	<b>17:03:22 (1)</b>	262:23	<b>17:05:51 (1)</b>
259:6	<b>17:02:08 (2)</b>	261:16	<b>17:04:36 (1)</b>	264:5
<b>17:00:59 (1)</b>	260:11,12	<b>17:03:25 (1)</b>	262:24	<b>17:05:54 (1)</b>
259:7	<b>17:02:11 (1)</b>	261:17	<b>17:04:37 (1)</b>	264:6
<b>17:01:03 (1)</b>	260:13	<b>17:03:26 (2)</b>	262:25	<b>17:06:04 (1)</b>
259:8	<b>17:02:14 (2)</b>	261:19,20	<b>17:04:39 (1)</b>	264:7
<b>17:01:07 (1)</b>	260:14,15	<b>17:03:36 (1)</b>	263:2	<b>17:06:07 (1)</b>
259:9	<b>17:02:16 (1)</b>	261:22	<b>17:04:49 (1)</b>	264:8
<b>17:01:10 (1)</b>	260:16	<b>17:03:37 (1)</b>	263:3	<b>17:06:10 (1)</b>
259:10	<b>17:02:18 (1)</b>	261:23	<b>17:04:50 (1)</b>	264:9
<b>17:01:11 (1)</b>	260:17	<b>17:03:38 (2)</b>	263:4	<b>17:06:12 (1)</b>
259:11	<b>17:02:21 (1)</b>	261:24,25	<b>17:04:52 (1)</b>	264:10
<b>17:01:12 (1)</b>	260:18	<b>17:03:42 (1)</b>	263:5	<b>17:06:14 (1)</b>
259:12	<b>17:02:25 (1)</b>	262:2	<b>17:04:53 (2)</b>	264:11
<b>17:01:15 (1)</b>	260:19	<b>17:03:46 (1)</b>	263:6,7	<b>17:06:19 (1)</b>
259:13	<b>17:02:28 (1)</b>	262:3	<b>17:04:54 (1)</b>	264:12
<b>17:01:18 (1)</b>	260:20	<b>17:03:47 (1)</b>	263:8	<b>17:06:23 (1)</b>
259:14	<b>17:02:29 (1)</b>	262:4	<b>17:04:57 (1)</b>	264:13
<b>17:01:19 (1)</b>	260:21	<b>17:03:53 (2)</b>	263:9	<b>17:06:25 (1)</b>
259:15	<b>17:02:33 (1)</b>	262:5,6	<b>17:04:59 (1)</b>	264:14
<b>17:01:20 (1)</b>	260:22	<b>17:03:54 (1)</b>	263:10	<b>17:06:28 (1)</b>
259:16	<b>17:02:35 (1)</b>	262:7	<b>17:05:02 (1)</b>	264:15

<b>17:06:31 (1)</b>	265:23	<b>17:09:54 (1)</b>	268:7	<b>17:12:49 (1)</b>
264:16	<b>17:08:17 (1)</b>	267:4	<b>17:11:39 (2)</b>	269:10
<b>17:06:34 (1)</b>	265:24	<b>17:09:56 (1)</b>	268:8,9	<b>17:12:52 (1)</b>
264:17	<b>17:08:26 (1)</b>	267:5	<b>17:11:44 (1)</b>	269:11
<b>17:06:36 (1)</b>	265:25	<b>17:10:00 (1)</b>	268:10	<b>17:12:55 (1)</b>
264:18	<b>17:08:29 (1)</b>	267:6	<b>17:11:46 (1)</b>	269:12
<b>17:06:42 (1)</b>	266:2	<b>17:10:06 (1)</b>	268:11	<b>17:12:57 (2)</b>
264:19	<b>17:08:30 (1)</b>	267:7	<b>17:11:48 (1)</b>	269:13,14
<b>17:06:47 (1)</b>	266:3	<b>17:10:11 (1)</b>	268:12	<b>17:13:00 (1)</b>
264:20	<b>17:08:34 (1)</b>	267:8	<b>17:11:50 (1)</b>	269:15
<b>17:06:48 (1)</b>	266:4	<b>17:10:18 (1)</b>	268:13	<b>17:13:02 (1)</b>
264:21	<b>17:08:36 (1)</b>	267:9	<b>17:11:52 (1)</b>	269:16
<b>17:06:49 (1)</b>	266:5	<b>17:10:20 (1)</b>	268:14	<b>17:13:05 (1)</b>
264:22	<b>17:08:39 (1)</b>	267:10	<b>17:11:53 (1)</b>	269:17
<b>17:06:50 (1)</b>	266:6	<b>17:10:26 (1)</b>	268:15	<b>17:13:08 (1)</b>
264:23	<b>17:08:41 (1)</b>	267:11	<b>17:11:58 (1)</b>	269:18
<b>17:06:55 (1)</b>	266:7	<b>17:10:30 (2)</b>	268:16	<b>17:13:09 (1)</b>
264:24	<b>17:08:43 (2)</b>	267:12,13	<b>17:12:00 (1)</b>	269:19
<b>17:06:56 (1)</b>	266:8,9	<b>17:10:31 (1)</b>	268:17	<b>17:13:19 (1)</b>
264:25	<b>17:08:46 (2)</b>	267:14	<b>17:12:03 (1)</b>	269:20
<b>17:06:57 (3)</b>	266:10,11	<b>17:10:38 (1)</b>	268:18	<b>17:13:22 (1)</b>
265:2,3,4	<b>17:08:48 (1)</b>	267:15	<b>17:12:06 (1)</b>	269:21
<b>17:07:01 (1)</b>	266:12	<b>17:10:41 (1)</b>	268:19	<b>17:13:26 (1)</b>
265:5	<b>17:08:54 (1)</b>	267:16	<b>17:12:08 (1)</b>	269:22
<b>17:07:03 (1)</b>	266:13	<b>17:10:44 (1)</b>	268:20	<b>17:13:32 (1)</b>
265:6	<b>17:08:56 (1)</b>	267:17	<b>17:12:10 (1)</b>	269:23
<b>17:07:05 (1)</b>	266:14	<b>17:10:48 (1)</b>	268:21	<b>17:13:37 (1)</b>
265:7	<b>17:08:59 (1)</b>	267:18	<b>17:12:12 (1)</b>	269:24
<b>17:07:06 (1)</b>	266:15	<b>17:10:53 (1)</b>	268:22	<b>17:13:43 (1)</b>
265:8	<b>17:09:02 (1)</b>	267:19	<b>17:12:13 (1)</b>	269:25
<b>17:07:08 (1)</b>	266:16	<b>17:10:55 (1)</b>	268:23	<b>17:13:47 (1)</b>
265:9	<b>17:09:07 (1)</b>	267:20	<b>17:12:17 (1)</b>	270:2
<b>17:07:32 (1)</b>	266:17	<b>17:10:58 (1)</b>	268:24	<b>17:13:51 (1)</b>
265:10	<b>17:09:13 (1)</b>	267:21	<b>17:12:20 (1)</b>	270:3
<b>17:07:33 (1)</b>	266:18	<b>17:11:06 (1)</b>	268:25	<b>17:13:53 (1)</b>
265:11	<b>17:09:19 (1)</b>	267:22	<b>17:12:22 (1)</b>	270:4
<b>17:07:35 (1)</b>	266:19	<b>17:11:09 (1)</b>	269:2	<b>17:13:57 (1)</b>
265:12	<b>17:09:22 (1)</b>	267:23	<b>17:12:25 (1)</b>	270:5
<b>17:07:37 (1)</b>	266:20	<b>17:11:14 (1)</b>	269:3	<b>17:13:58 (2)</b>
265:13	<b>17:09:24 (1)</b>	267:24	<b>17:12:29 (1)</b>	270:6,7
<b>17:07:39 (1)</b>	266:21	<b>17:11:16 (2)</b>	269:4	<b>17:14:10 (1)</b>
265:14	<b>17:09:27 (2)</b>	267:25 268:2	<b>17:12:33 (1)</b>	270:8
<b>17:07:54 (1)</b>	266:22,23	<b>17:11:20 (1)</b>	269:5	<b>17:14:13 (1)</b>
265:15	<b>17:09:32 (1)</b>	268:3	<b>17:12:34 (1)</b>	270:9
<b>17:07:55 (2)</b>	266:24	<b>17:11:25 (1)</b>	269:6	<b>17:14:16 (1)</b>
265:19,20	<b>17:09:33 (1)</b>	268:4	<b>17:12:37 (1)</b>	270:10
<b>17:08:00 (1)</b>	266:25	<b>17:11:32 (1)</b>	269:7	<b>17:14:26 (1)</b>
265:21	<b>17:09:37 (1)</b>	268:5	<b>17:12:42 (1)</b>	270:11
<b>17:08:02 (1)</b>	267:2	<b>17:11:34 (1)</b>	269:8	<b>17:14:28 (1)</b>
265:22	<b>17:09:50 (1)</b>	268:6	<b>17:12:46 (1)</b>	270:12
<b>17:08:11 (1)</b>	267:3	<b>17:11:36 (1)</b>	269:9	<b>17:14:30 (1)</b>

270:13	<b>17:15:46 (1)</b>	272:23	<b>17:18:25 (1)</b>	275:10
<b>17:14:31 (1)</b>	271:20	<b>17:17:11 (1)</b>	274:2	<b>17:19:45 (1)</b>
270:14	<b>17:15:49 (1)</b>	272:24	<b>17:18:28 (1)</b>	275:11
<b>17:14:32 (1)</b>	271:21	<b>17:17:12 (1)</b>	274:3	<b>17:19:48 (1)</b>
270:15	<b>17:15:50 (2)</b>	272:25	<b>17:18:30 (1)</b>	275:12
<b>17:14:39 (1)</b>	271:22,23	<b>17:17:13 (1)</b>	274:11	<b>17:19:50 (1)</b>
270:16	<b>17:15:58 (1)</b>	273:2	<b>17:18:31 (1)</b>	275:13
<b>17:14:44 (1)</b>	271:24	<b>17:17:15 (1)</b>	274:12	<b>17:19:52 (1)</b>
270:17	<b>17:15:59 (1)</b>	273:3	<b>17:18:32 (1)</b>	275:14
<b>17:14:47 (1)</b>	271:25	<b>17:17:18 (1)</b>	274:4	<b>17:19:54 (1)</b>
270:18	<b>17:16:01 (1)</b>	273:4	<b>17:18:33 (1)</b>	275:15
<b>17:14:48 (1)</b>	272:2	<b>17:17:19 (1)</b>	274:13	<b>17:19:56 (1)</b>
270:19	<b>17:16:02 (1)</b>	273:5	<b>17:18:34 (1)</b>	275:16
<b>17:14:51 (1)</b>	272:3	<b>17:17:27 (1)</b>	274:5	<b>17:19:59 (1)</b>
270:20	<b>17:16:04 (2)</b>	273:6	<b>17:18:35 (1)</b>	275:17
<b>17:14:52 (1)</b>	272:4,5	<b>17:17:28 (1)</b>	274:6	<b>17:20:02 (1)</b>
270:21	<b>17:16:07 (1)</b>	273:7	<b>17:18:39 (1)</b>	275:18
<b>17:14:55 (2)</b>	272:6	<b>17:17:29 (1)</b>	274:7	<b>17:20:04 (1)</b>
270:22,23	<b>17:16:15 (1)</b>	273:8	<b>17:18:42 (1)</b>	275:19
<b>17:14:58 (1)</b>	272:7	<b>17:17:34 (1)</b>	274:8	<b>17:20:09 (1)</b>
270:24	<b>17:16:19 (1)</b>	273:9	<b>17:18:55 (1)</b>	275:20
<b>17:15:00 (1)</b>	272:8	<b>17:17:38 (1)</b>	274:14	<b>17:20:10 (1)</b>
270:25	<b>17:16:23 (1)</b>	273:10	<b>17:18:56 (1)</b>	275:21
<b>17:15:03 (1)</b>	272:9	<b>17:17:41 (1)</b>	274:15	<b>17:20:13 (1)</b>
271:2	<b>17:16:25 (1)</b>	273:11	<b>17:18:59 (1)</b>	275:22
<b>17:15:07 (1)</b>	272:10	<b>17:17:47 (1)</b>	275:3	<b>17:20:15 (1)</b>
271:3	<b>17:16:28 (1)</b>	273:12	<b>17:19:00 (2)</b>	275:23
<b>17:15:11 (2)</b>	272:11	<b>17:17:49 (1)</b>	274:16 275:4	<b>17:20:17 (1)</b>
271:4,5	<b>17:16:34 (1)</b>	273:13	<b>17:19:03 (2)</b>	275:24
<b>17:15:12 (1)</b>	272:12	<b>17:17:50 (2)</b>	274:17 275:5	<b>17:20:19 (1)</b>
271:6	<b>17:16:42 (1)</b>	273:14,15	<b>17:19:08 (1)</b>	275:25
<b>17:15:15 (1)</b>	272:13	<b>17:17:52 (1)</b>	274:18	<b>17:20:21 (1)</b>
271:7	<b>17:16:44 (1)</b>	273:16	<b>17:19:09 (1)</b>	276:2
<b>17:15:18 (2)</b>	272:14	<b>17:17:54 (1)</b>	274:19	<b>17:20:22 (1)</b>
271:8,9	<b>17:16:46 (1)</b>	273:17	<b>17:19:11 (1)</b>	276:3
<b>17:15:21 (1)</b>	272:15	<b>17:17:57 (1)</b>	274:20	<b>17:20:25 (1)</b>
271:10	<b>17:16:48 (1)</b>	273:18	<b>17:19:14 (1)</b>	276:4
<b>17:15:24 (1)</b>	272:16	<b>17:18:00 (1)</b>	274:21	<b>17:20:27 (1)</b>
271:11	<b>17:16:51 (1)</b>	273:19	<b>17:19:15 (1)</b>	276:5
<b>17:15:26 (1)</b>	272:17	<b>17:18:06 (1)</b>	274:22	<b>17:20:29 (1)</b>
271:12	<b>17:16:54 (1)</b>	273:20	<b>17:19:16 (1)</b>	276:6
<b>17:15:27 (1)</b>	272:18	<b>17:18:08 (1)</b>	274:23	<b>17:20:31 (1)</b>
271:13	<b>17:16:56 (1)</b>	273:21	<b>17:19:19 (1)</b>	276:7
<b>17:15:29 (2)</b>	272:19	<b>17:18:13 (1)</b>	274:24	<b>17:20:33 (1)</b>
271:14,15	<b>17:16:58 (1)</b>	273:22	<b>17:19:23 (1)</b>	276:8
<b>17:15:34 (1)</b>	272:20	<b>17:18:15 (1)</b>	274:25	<b>17:20:35 (1)</b>
271:16	<b>17:17:01 (1)</b>	273:23	<b>17:19:35 (1)</b>	276:9
<b>17:15:40 (2)</b>	272:21	<b>17:18:17 (1)</b>	275:6	<b>17:20:41 (1)</b>
271:17,18	<b>17:17:03 (1)</b>	273:24	<b>17:19:40 (2)</b>	276:10
<b>17:15:43 (1)</b>	272:22	<b>17:18:21 (1)</b>	275:8,9	<b>17:20:52 (1)</b>
271:19	<b>17:17:06 (1)</b>	273:25	<b>17:19:44 (1)</b>	276:11

<b>17:20:56 (1)</b>	277:13	<b>17:23:49 (1)</b>	279:19	<b>17:30:05 (1)</b>
276:12	<b>17:22:34 (1)</b>	278:16	<b>17:25:18 (1)</b>	280:24
<b>17:21:00 (1)</b>	277:14	<b>17:23:53 (1)</b>	279:20	<b>17:30:25 (1)</b>
276:13	<b>17:22:37 (1)</b>	278:17	<b>17:25:19 (2)</b>	280:25
<b>17:21:04 (1)</b>	277:15	<b>17:23:55 (1)</b>	279:21,22	<b>17:30:26 (2)</b>
276:14	<b>17:22:39 (1)</b>	278:18	<b>17:25:22 (1)</b>	281:2,3
<b>17:21:05 (1)</b>	277:16	<b>17:23:58 (1)</b>	279:23	<b>17:30:28 (1)</b>
276:15	<b>17:22:41 (2)</b>	278:19	<b>17:25:26 (1)</b>	281:4
<b>17:21:08 (1)</b>	277:17,18	<b>17:24:00 (1)</b>	279:24	<b>17:30:31 (1)</b>
276:16	<b>17:22:45 (1)</b>	278:20	<b>17:25:31 (1)</b>	281:5
<b>17:21:12 (1)</b>	277:19	<b>17:24:06 (1)</b>	279:25	<b>17:30:43 (1)</b>
276:17	<b>17:22:47 (1)</b>	278:21	<b>17:25:34 (2)</b>	281:6
<b>17:21:14 (1)</b>	277:20	<b>17:24:09 (2)</b>	280:2,3	<b>17:30:47 (1)</b>
276:18	<b>17:22:54 (1)</b>	278:22,23	<b>17:25:37 (1)</b>	281:7
<b>17:21:15 (1)</b>	277:21	<b>17:24:13 (1)</b>	280:4	<b>17:30:50 (1)</b>
276:19	<b>17:22:56 (1)</b>	278:24	<b>17:25:42 (1)</b>	281:8
<b>17:21:17 (1)</b>	277:22	<b>17:24:16 (1)</b>	280:5	<b>17:30:52 (1)</b>
276:20	<b>17:23:00 (1)</b>	278:25	<b>17:25:46 (1)</b>	281:9
<b>17:21:19 (1)</b>	277:23	<b>17:24:17 (1)</b>	280:6	<b>17:30:56 (1)</b>
276:21	<b>17:23:04 (1)</b>	279:2	<b>17:25:51 (1)</b>	281:10
<b>17:21:20 (1)</b>	277:24	<b>17:24:18 (1)</b>	280:7	<b>17:30:59 (2)</b>
276:22	<b>17:23:06 (1)</b>	279:3	<b>17:25:57 (1)</b>	281:11,12
<b>17:21:24 (1)</b>	277:25	<b>17:24:22 (1)</b>	280:8	<b>17:31:00 (1)</b>
276:23	<b>17:23:09 (1)</b>	279:4	<b>17:25:59 (1)</b>	281:13
<b>17:21:26 (1)</b>	278:2	<b>17:24:23 (1)</b>	280:9	<b>17:31:02 (1)</b>
276:24	<b>17:23:16 (1)</b>	279:6	<b>17:26:04 (1)</b>	281:15
<b>17:21:27 (1)</b>	278:3	<b>17:24:24 (1)</b>	280:10	<b>17:31:05 (1)</b>
276:25	<b>17:23:18 (1)</b>	279:7	<b>17:26:07 (1)</b>	281:16
<b>17:21:30 (1)</b>	278:4	<b>17:24:26 (1)</b>	280:11	<b>17:31:11 (1)</b>
277:2	<b>17:23:19 (1)</b>	279:8	<b>17:26:10 (1)</b>	281:17
<b>17:21:34 (1)</b>	278:5	<b>17:24:29 (1)</b>	280:12	<b>17:31:12 (1)</b>
277:3	<b>17:23:21 (1)</b>	279:9	<b>17:26:13 (1)</b>	281:18
<b>17:21:38 (1)</b>	278:6	<b>17:24:30 (1)</b>	280:13	<b>17:31:16 (1)</b>
277:4	<b>17:23:23 (1)</b>	279:10	<b>17:26:17 (1)</b>	281:19
<b>17:21:40 (1)</b>	278:7	<b>17:24:31 (1)</b>	280:14	<b>17:31:18 (1)</b>
277:5	<b>17:23:28 (1)</b>	279:11	<b>17:26:19 (1)</b>	281:20
<b>17:21:42 (1)</b>	278:8	<b>17:24:32 (1)</b>	280:15	<b>17:31:20 (1)</b>
277:6	<b>17:23:30 (1)</b>	279:12	<b>17:26:20 (1)</b>	281:21
<b>17:21:49 (1)</b>	278:9	<b>17:24:34 (1)</b>	280:16	<b>17:31:22 (1)</b>
277:7	<b>17:23:32 (1)</b>	279:13	<b>17:26:21 (1)</b>	281:22
<b>17:21:53 (1)</b>	278:10	<b>17:24:37 (1)</b>	280:17	<b>17:31:26 (1)</b>
277:8	<b>17:23:35 (1)</b>	279:14	<b>17:26:22 (1)</b>	281:23
<b>17:21:55 (1)</b>	278:11	<b>17:24:38 (1)</b>	280:18	<b>17:31:27 (1)</b>
277:9	<b>17:23:38 (1)</b>	279:15	<b>17:26:23 (1)</b>	281:24
<b>17:21:56 (1)</b>	278:12	<b>17:24:41 (1)</b>	280:19	<b>17:31:28 (1)</b>
277:10	<b>17:23:42 (1)</b>	279:16	<b>17:26:24 (2)</b>	281:25
<b>17:22:27 (1)</b>	278:13	<b>17:24:42 (1)</b>	280:20,21	<b>17:31:30 (1)</b>
277:11	<b>17:23:44 (1)</b>	279:17	<b>17:26:26 (1)</b>	282:2
<b>17:22:30 (1)</b>	278:14	<b>17:25:11 (1)</b>	280:22	<b>17:31:34 (1)</b>
277:12	<b>17:23:48 (1)</b>	279:18	<b>17:30:03 (1)</b>	282:3
<b>17:22:33 (1)</b>	278:15	<b>17:25:15 (1)</b>	280:23	<b>17:31:35 (1)</b>

282:4	<b>17:34:27 (1)</b>	284:15	<b>1993 (1)</b>	232:16 233:16
<b>17:31:38 (1)</b>	283:13	<b>17:36:31 (1)</b>	141:14	236:14,20 238:10
282:5	<b>17:34:29 (1)</b>	284:16		238:12,16 241:13
<b>17:31:45 (1)</b>	283:14	<b>17:36:33 (1)</b>	<b>2</b>	242:12,16 243:5,16
282:6	<b>17:34:30 (1)</b>	284:18	<b>2 (6)</b>	246:15,17 247:7,16
<b>17:31:49 (1)</b>	283:15	<b>17:36:35 (1)</b>	53:17,20 92:14	249:17 250:2,8
282:7	<b>17:34:32 (1)</b>	284:19	157:11 163:3 288:7	253:20 277:12
<b>17:31:52 (1)</b>	283:16	<b>17:36:38 (1)</b>	<b>2,000 (2)</b>	<b>2005 (3)</b>
282:8	<b>17:34:35 (1)</b>	284:20	171:7,11	177:24 181:14 259:2
<b>17:31:55 (1)</b>	283:17	<b>17:36:40 (1)</b>	<b>2:05 (1)</b>	<b>2006 (1)</b>
282:9	<b>17:34:36 (1)</b>	284:21	136:20	140:16
<b>17:32:02 (1)</b>	283:18	<b>17:36:43 (1)</b>	<b>20 (4)</b>	<b>2007 (4)</b>
282:10	<b>17:34:39 (1)</b>	284:22	13:16 37:19 214:2,19	277:3,8 281:13,18
<b>17:32:25 (2)</b>	283:19	<b>17:36:47 (1)</b>	<b>20,000 (2)</b>	<b>2008 (2)</b>
282:11,12	<b>17:34:41 (1)</b>	284:23	216:23 248:10	5:9 198:12
<b>17:32:27 (1)</b>	283:20	<b>17:36:57 (1)</b>	<b>200 (5)</b>	<b>2009 (7)</b>
282:13	<b>17:34:45 (1)</b>	284:25	113:17 118:19 153:21	1:22 2:5 5:10 285:16
<b>17:32:29 (1)</b>	283:21	<b>17:36:58 (1)</b>	234:25,25	286:22 289:4,21
282:14	<b>17:34:48 (1)</b>	285:2	<b>2002 (7)</b>	<b>20631 (1)</b>
<b>17:32:31 (1)</b>	283:22	<b>17:36:59 (1)</b>	23:16 27:17 29:15,21	1:25
282:15	<b>17:34:49 (1)</b>	285:3	29:22 68:14,16	<b>2168 (1)</b>
<b>17:32:36 (1)</b>	283:23	<b>17:37:03 (1)</b>	<b>2003 (8)</b>	258:12
282:16	<b>17:34:50 (1)</b>	285:4	159:7 160:2,3,17,22	<b>2169 (1)</b>
<b>17:32:39 (2)</b>	283:24	<b>17:37:04 (1)</b>	160:23 161:3,18	258:12
282:17,18	<b>17:34:53 (1)</b>	285:5	<b>2004 (106)</b>	<b>2170 (1)</b>
<b>17:32:41 (1)</b>	283:25	<b>17:37:05 (2)</b>	10:19 13:4 23:8 98:25	258:12
282:19	<b>17:34:56 (1)</b>	285:6,7	101:13,14,17,22	<b>2171 (3)</b>
<b>17:32:43 (1)</b>	284:2	<b>17:37:07 (1)</b>	103:2,12,15,23	257:19 258:12 288:18
282:20	<b>17:34:58 (1)</b>	285:8	109:6,9,21 116:17	<b>22 (3)</b>
<b>17:32:46 (1)</b>	284:3	<b>17:37:10 (1)</b>	116:24 118:24	1:22 2:5 289:4
282:21	<b>17:35:00 (1)</b>	285:9	119:4 122:6,10,15	<b>22nd (2)</b>
<b>17:32:47 (1)</b>	284:4	<b>176.1 (3)</b>	125:2,6,25 126:13	5:9 263:20
282:22	<b>17:35:03 (1)</b>	265:16,22 288:20	130:7 131:17,21	<b>23 (4)</b>
<b>17:32:49 (2)</b>	284:5	<b>1761B (1)</b>	143:9 144:23 145:9	162:24 227:15 249:16
282:23,24	<b>17:35:05 (1)</b>	265:24	146:3,15 147:14,21	250:8
<b>17:32:51 (1)</b>	284:6	<b>177 (1)</b>	150:7 151:22,23	<b>23rd (3)</b>
282:25	<b>17:35:07 (1)</b>	177:12	157:15 158:21	189:17 220:25 250:23
<b>17:32:55 (2)</b>	284:7	<b>178 (2)</b>	159:14 160:18,23	<b>2361 (3)</b>
283:2,3	<b>17:35:09 (1)</b>	287:13,14	162:6,14 163:16	257:19 258:13 288:18
<b>17:32:56 (3)</b>	284:9	<b>18 (1)</b>	166:4,11 167:16,24	<b>237 (1)</b>
283:4,5,6	<b>17:35:11 (2)</b>	167:12	170:17 173:14,21	288:14
<b>17:32:59 (1)</b>	284:8,10	<b>187 (1)</b>	174:5,10,14,19,23	<b>24 (6)</b>
283:7	<b>17:35:12 (1)</b>	288:9	175:5 179:10	59:25 61:11 142:19
<b>17:33:04 (1)</b>	284:11	<b>188 (1)</b>	181:15 183:9 186:9	142:20 241:13
283:8	<b>17:35:16 (1)</b>	288:12	186:12,19 189:17	250:2
<b>17:34:19 (2)</b>	284:12	<b>19 (4)</b>	197:24 203:9	<b>24th (1)</b>
283:9,10	<b>17:35:17 (1)</b>	265:16,22,23 288:20	215:10,13 220:23	250:9
<b>17:34:22 (1)</b>	284:13	<b>19.1761B (2)</b>	221:2,9,11,18,20	<b>25 (1)</b>
283:11	<b>17:35:22 (1)</b>	264:11,18	222:16,25 223:6,8	163:15
<b>17:34:26 (1)</b>	284:14	<b>1970 (1)</b>	223:23 227:15	<b>250 (1)</b>
283:12	<b>17:36:30 (1)</b>	26:16	228:17 231:21	118:20

<b>257 (1)</b> 288:17	262:8	<b>5:30 (1)</b> 280:24	264:8
<b>26 (1)</b> 167:10	<hr/> <b>4</b> <hr/>	<b>5:37 (1)</b> 285:7	<b>81 (1)</b> 36:20
<b>26,000 (1)</b> 171:16	<b>4 (4)</b> 188:18 282:9 287:13	<b>50 (3)</b> 146:20,24 207:12	<b>88 (1)</b> 162:23
<b>265 (1)</b> 288:19	<b>4,000 (1)</b> 171:4	<b>50th (1)</b> 164:7	<b>89 (1)</b> 163:2
<b>27 (2)</b> 221:11,20	<b>4-12 (4)</b> 43:11 44:7,14 288:5	<b>500 (1)</b> 269:7	<hr/> <b>9</b> <hr/>
<b>28 (2)</b> 263:4 281:18	<b>4:10 (1)</b> 284:16	<b>51 (2)</b> 44:12 150:9	<b>9 (2)</b> 146:24 287:12
<b>29 (1)</b> 259:2	<b>4:44 (1)</b> 258:2	<b>52 (1)</b> 44:12	<b>9/23/04 (2)</b> 237:8 288:15
<hr/> <b>3</b> <hr/>	<b>4:57 (1)</b> 258:5	<b>53 (2)</b> 44:12 157:10	<b>9:00 (1)</b> 261:15
<b>3 (5)</b> 44:7,15,16 187:9	<b>40 (8)</b> 33:7 41:3,12 44:22	<b>54 (3)</b> 44:12,16 159:11	<b>9:10 (1)</b> 261:15
288:9	45:23 47:9 207:12	<b>55th (1)</b> 203:3	<b>9:49 (2)</b> 2:6 5:10
<b>3rd (1)</b> 286:22	<b>40-foot (1)</b> 44:19	<b>57 (1)</b> 44:13	<b>9:59 (1)</b> 16:22
<b>3:00 (1)</b> 209:7	<b>43 (1)</b> 288:4	<hr/> <b>6</b> <hr/>	<b>911 (1)</b> 35:9
<b>3:17 (1)</b> 197:9	<b>43rd (1)</b> 164:9	<b>6 (4)</b> 147:10 257:17 287:7	<b>919 (3)</b> 2:10 3:6 5:8
<b>3:35 (1)</b> 197:12	<b>44 (2)</b> 144:8 268:4	288:17	<b>92 (1)</b> 288:7
<b>30 (17)</b> 52:20 53:16,21,22	<b>45 (4)</b> 144:15,19 225:7,19	<b>60s (1)</b> 26:12	<b>95 (2)</b> 29:12 31:11
54:2,20 57:8,20	<b>47th (1)</b> 164:10	<hr/> <b>7</b> <hr/>	<b>97 (1)</b> 31:20
147:14 149:3	<b>488 (1)</b> 1:7	<b>7 (4)</b> 150:20 248:10 265:15	<b>98 (1)</b> 31:20
157:15 159:14	<b>492 (1)</b> 269:7	288:19	
160:17,23 167:15	<hr/> <b>5</b> <hr/>	<b>7,000 (10)</b> 147:10 152:4,20	
167:24 174:23	<b>5 (4)</b> 44:14 144:13 237:7	153:8 154:9,15,21	
<b>30th (4)</b> 143:9 168:2,3 174:14	288:14	156:11 170:24	
<b>30-second (1)</b> 65:10	<b>5A (4)</b> 260:6,7 262:2,23	171:16	
<b>300 (3)</b> 153:21 217:5,10	<b>5BBCVID0000014 ...</b> 281:5	<b>76 (1)</b> 71:24	
<b>31 (2)</b> 160:2,23	<b>5BBC00007862 (3)</b> 237:9,21 288:15	<b>77 (4)</b> 27:2 36:20 263:11,20	
<b>31st (1)</b> 159:22	<b>5BBC00007863 (3)</b> 187:11 188:5 288:10	<hr/> <b>8</b> <hr/>	
<b>34 (6)</b> 142:4,9,16,22 144:5,8	<b>5:26 (1)</b> 280:21	<b>8/23/04 (4)</b> 187:10 188:19 288:10	
<b>348 (2)</b> 92:17 288:8		288:12	
<b>35 (3)</b> 142:19,22 143:3		<b>8:00 (1)</b> 259:3	
<b>39 (1)</b>		<b>8:55 (1)</b>	