

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3
4 FIVE BOROUGH BICYCLE CLUB,)
5 SHARON BLYTHE, JOSH GOSCIAK,)
6 KENNETH T. JACKSON, MADELINE)
7 NELSON, ELIZABETH SHURA and)
8 LUKE SON,)
9 Plaintiffs,)
10 vs.) 07 Civ. 2488
11) (LAK)
12 THE CITY OF NEW YORK; RAYMOND)
13 KELLY, Police Commissioner of)
14 The New York City Police)
15 Department; JAMES TULLER,)
16 Commanding Officer, Patrol)
17 Borough Manhattan South, THOMAS)
18 GRAHAM, New York City Police)
19 Department Disorder Control)
20 Unit Commander, DANIEL ALBANO,)
21 Lieutenant, New York City)
22 Police Department Legal Bureau,)
23 STEPHEN PARAGALLO, Deputy)
24 Chief, New York City Police)
25 Department Patrol Borough)
Manhattan South, and LT. JOHN)
DOE and CAPTAIN JANE DOE, New)
York City Police Department,)
Defendants.)
----->)
CONTAINS CONFIDENTIAL PORTIONS - BOUND UNDER SEPARATE CC
VIDEOTAPED DEPOSITION OF KENNETH WAGNER
New York, New York
Tuesday, October 7, 2008
Reported by:
Philip Rizzuti
JOB NO. 19096

1
2 A P P E A R A N C E S:
3
4 DEBEVOISE & PLIMPTON, LLP
5 Attorneys for Plaintiffs
6 919 Third Avenue
7 New York, New York 10022
8 BY: STEVE VACCARO, ESQ.
9 SHANYA DINGLE, ESQ.
10
11 NEW YORK CITY LAW DEPARTMENT
12 OFFICE OF THE CORPORATION COUNSEL
13 Attorneys for Defendants
14 100 Church Street
15 New York, New York 10007-2601
16 BY: MARK MUSCHENHEIM, ESQ.
17 NICHOLAS CIAPPETTA, ESQ.
18
19 ALSO PRESENT: JORDAN MUMMERT, Videographer

1
2
3
4 October 7, 2008
5 9:53 a.m.
6
7 Videotaped deposition of KENNETH
8 WAGNER, held at the offices of
9 Debevoise & Plimpton, LLP, 919 Third
10 Avenue, New York, New York, pursuant to
11 Subpoena, before Philip Rizzuti, a
12 Notary Public of the State of New York
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2 IT IS HEREBY STIPULATED AND AGREED
3 by and between counsel for the respective
4 parties hereto, that the filing, sealing and
5 certification of the within deposition shall
6 be and the same are hereby waived;
7 IT IS FURTHER STIPULATED AND AGREED
8 that all objections, except as to the form
9 of the question, shall be reserved to the
10 time of the trial;
11 IT IS FURTHER STIPULATED AND AGREED
12 that the within deposition may be signed
13 before any Notary Public with the same force
14 and effect as if signed and sworn to before
15 the Court.
16
17
18
19
20
21
22
23
24
25

1 Wagner
2 THE VIDEOGRAPHER: This is the
3 start of the tape labelled number 1 of
4 the videotape deposition of Officer
5 Kenneth Wagner in the matter of Five
6 Borough Bicycle Club versus The City of
7 New York. This deposition is being held
8 at Debevoise & Plimpton, 919 Third
9 Avenue, New York, New York, on October 7,
10 2008, at approximately 9:53 a.m.
11 My name is Jordan Mummert from TSG
12 Reporting Inc. and I am the legal video
13 specialist. The court reporter is Phil
14 Rizzuti in association with TSG
15 Reporting.
16 Will the counsel please introduce
17 yourselves.
18 MR. VACCARO: Steve Vaccaro,
19 Debevoise & Plimpton, LLP, representing
20 plaintiffs.
21 MR. CIAPPETTA: Nicholas Ciappetta
22 for the defendants, Corporation Counsel,
23 Michael A. Cardozo.
24 MR. DINGLE: Shanya Dingle from
25 Debevoise & Plimpton, LLP, for

1 Wagner
2 A. Kenneth Wagner. Business address
3 is One Police Plaza, New York, New York 10006.
4 Q. Just to summarize the process, the
5 court reporter has sworn you to tell the truth
6 and he will take down everything that you and
7 I say. If you answer my questions then that
8 means that you believe you understand them.
9 If you don't think that you understand my
10 question you can ask the reporter for a read
11 back of the question or you can ask for a
12 clarification.
13 Your attorney may object to
14 questions that I ask, but you still have to
15 answer the questions unless your attorney
16 directs you not to answer.
17 A. Yes.
18 Q. Have you ever given sworn
19 testimony before as a -- let me take a step
20 back. You are currently an employee of the
21 New York Police Department?
22 A. Yes, I am.
23 Q. What is your exact position with
24 the NYPD?
25 A. I am currently assigned to the

1 Wagner
2 plaintiffs.
3 MR. MUSCHENHEIM: Mark Muschenheim
4 with Corporation Counsel, Michael
5 Cardozo, for the City of New York, for
6 the defendants.
7 THE VIDEOGRAPHER: Will the court
8 reporter please we are in the witness.
9 K E N N E T H W A G N E R, called as a
10 witness, having been duly sworn by a
11 Notary Public, was examined and
12 testified as follows:
13 EXAMINATION BY
14 MR. VACCARO:
15 MR. CIAPPETTA: Note the official
16 start time now.
17 MR. VACCARO: Will the reporter
18 provide that.
19 THE COURT REPORTER: I have 9:55.
20 Q. Good morning, Officer Wagner, I am
21 Steve Vaccaro, I will be taking your
22 deposition today.
23 A. Good morning.
24 Q. Could you please state your name
25 and business address for the record.

1 Wagner
2 First Precinct Scooter Task Force.
3 Q. And what is your rank with the
4 NYPD?
5 A. Police officer.
6 Q. For how long have you been with
7 the NYPD?
8 A. I have been with the NYPD for ten
9 years and two months.
10 Q. Have you ever given sworn
11 testimony before in your role as a police
12 officer?
13 A. Yes, I have.
14 Q. Can you summarize the context in
15 which you have given such testimony?
16 A. I have had --
17 MR. CIAPPETTA: Objection as to
18 form.
19 A. I have had one appearance at the
20 Grand Jury for an assault case. Then I had a
21 second case of a civil suit that I gave
22 testimony in.
23 Q. Is that the full extent of the
24 sworn testimony that you have given in your
25 role as an employee of the NYPD?

1 Wagner
 2 A. Outside of traffic court, yes.
 3 Q. Have you also given sworn
 4 testimony in traffic court?
 5 A. Yes, many times.
 6 Q. The Grand Jury testimony involving
 7 the assault, do you recall whether in that
 8 case there was an issue of bicycling or a bike
 9 involved?
 10 A. There was no issue of bicycling
 11 involved with that case.
 12 Q. With respect to the civil suit you
 13 mentioned providing testimony in connection
 14 with, can you summarize the subject matter of
 15 that civil suit?
 16 A. Yes.
 17 Q. Please do?
 18 A. A woman sued the city for
 19 excessive force and I was given -- I gave
 20 testimony in that particular case as my name
 21 was on the aided card. Specifically the woman
 22 was an emotionally disturbed person, a radio
 23 run who barricade herself in her apartment, a
 24 911 radio call. During the procedure to try
 25 to negotiate to get her to open up the door,

1 Wagner
 2 Q. As a private individual have you
 3 ever given sworn testimony, apart from your
 4 capacity as an employee of the New York City
 5 Police Department?
 6 A. Yes, I have.
 7 Q. Can you summarize the context in
 8 which you have given such testimony?
 9 A. Yes. Before I was a member of the
 10 department I received a few traffic tickets
 11 and I had to give sworn testimony in my
 12 defense.
 13 Q. Is that the full extent of your
 14 sworn testimony outside of your capacity as an
 15 employee of the New York City Police
 16 Department?
 17 A. Yes.
 18 Q. Outside of your capacity as a
 19 police officer have you ever been a plaintiff
 20 or a defendant in a civil suit?
 21 A. No, I have not.
 22 Q. You mentioned that you testified
 23 in traffic court or given sworn testimony in
 24 traffic court?
 25 A. Yes, I did.

1 Wagner
 2 her son confirmed, which was his mother, had
 3 been mixing prescription drugs with alcohol
 4 and he believed she was a danger to herself.
 5 Under the exigent circumstance
 6 clause she was holding the door and two
 7 officers forced the door striking her in the
 8 face and she used the injury she sustained
 9 from that as justification for the lawsuit.
 10 Q. Were you a defendant in that
 11 lawsuit?
 12 A. Yes.
 13 Q. Do you know the disposition of
 14 that lawsuit?
 15 A. Yes, I do.
 16 Q. What was that?
 17 A. The City won the case. It was
 18 dismissed without prejudice to the City.
 19 Q. Do you know whether the dismissal
 20 was with or without prejudice as to the claims
 21 of the plaintiff in that case?
 22 MR. CIAPPETTA: Objection. It
 23 might call for a legal conclusion.
 24 Q. If he knows he can tell us.
 25 A. I don't know about that detail.

1 Wagner
 2 Q. Many times?
 3 A. Two or three times.
 4 Q. Do you recall whether any of those
 5 occasions involved testimony regarding group
 6 bicycling?
 7 A. None of the prior cases had
 8 anything to do with bicycles whatsoever.
 9 Q. So you have never given sworn
 10 testimony with respect to events concerning
 11 group bicycling?
 12 A. Prior to today; no, I have not.
 13 Q. Did you discuss your testimony
 14 here today with anyone prior to the
 15 deposition?
 16 A. No, I have not.
 17 Q. Does that include -- does your
 18 response mean that you did not discuss your
 19 testimony with your lawyers prior to today?
 20 A. Yes. I am sorry, I did discuss
 21 with my attorneys.
 22 Q. When did that discussion or those
 23 discussions take place?
 24 A. Last week.
 25 Q. How many discussions were there?

1 Wagner
 2 MR. CIAPPETTA: Objection to the
 3 form.
 4 A. One session.
 5 Q. How long did that session last?
 6 A. Approximately three hours.
 7 Q. Did your lawyers show you any
 8 documents during that session?
 9 A. Yes, he did.
 10 Q. Did they show you any videotape
 11 during that session?
 12 A. No, they did not.
 13 Q. Do you know a Lieutenant Daniel
 14 Albano?
 15 A. Yes, I know Lieutenant Albano.
 16 Q. Have you discussed your testimony
 17 in this case with Lieutenant Daniel Albano?
 18 A. No, I have not.
 19 Q. I believe you mentioned you have
 20 been with the NYPD for approximately ten
 21 years. Can you do the math for me and tell me
 22 in what year you started?
 23 A. Certainly. I entered the Police
 24 Academy in August of 1998. I graduated the
 25 Academy in April of 1999 at which time I was

1 Wagner
 2 another company called Altana Incorporated,
 3 which manufactured pharmaceuticals, until I
 4 was 25, at which time I entered the U.S. Air
 5 Force, and I was in the U.S. Air Force from
 6 1989 through 1996.
 7 I worked for another electronics
 8 manufacturing firm called Diversified
 9 Electrical Products, which also does robotic
 10 controllers and things of that nature, and I
 11 worked from that from 1996 through my entrance
 12 to the Police Department in August of 1998.
 13 Q. Have you ever been disciplined as
 14 a police officer?
 15 A. Yes, I have.
 16 Q. Can you summarize the
 17 circumstances of that discipline?
 18 A. Yes. I missed a traffic court
 19 appearance and I was issued a command
 20 discipline as punishment.
 21 Q. Apart from that incident have you
 22 ever been considered for possible disciplinary
 23 action as a police officer?
 24 MR. CIAPPETTA: Objection as to
 25 the form.

1 Wagner
 2 assigned to the First Precinct. I worked foot
 3 patrol in the First Precinct for five years
 4 until September of 1993, at which time I was
 5 reassigned to the Scooter Task Force where I
 6 am still assigned.
 7 Q. Aside from being assigned to
 8 patrol for the first five years as police
 9 officer and then your assignment to the
 10 Scooter Task Force have you ever been assigned
 11 to a unit or precinct other than the First
 12 Precinct and the Scooter Task Force of the
 13 First Precinct?
 14 A. No.
 15 Q. Can you summarize any employment
 16 history you had prior to entering the Police
 17 Academy?
 18 A. Yes. Upon graduating high school
 19 in 1991 I worked for a father/son small
 20 business firm involving small government
 21 contracts for military parts. I worked there
 22 for approximately two years, at which time I
 23 worked for -- as a salesman for general
 24 electronics for three months.
 25 Following that I worked for

1 Wagner
 2 A. I need a bit of a clarification.
 3 There are various things that one would get
 4 disciplined for. The traffic court CD was for
 5 specifically missing a traffic court
 6 appearance, but as far as that goes, you mean
 7 to include any investigation like a CCRB or
 8 anything like that?
 9 Q. Well, I actually was going to get
 10 to that specifically. So putting aside the
 11 Civilian Complaint Review Board or the CCRB,
 12 did you at any time during your tenure as a
 13 New York City police officer become aware that
 14 potential disciplinary action was being
 15 considered with respect to you, other than the
 16 circumstance you just mentioned in which
 17 you -- concerning appearance at the hearing?
 18 A. No. I have not been.
 19 Q. With respect to the CCRB, you know
 20 what that is; right?
 21 A. Yes.
 22 Q. Have you ever been the subject of
 23 a complaint brought to the CCRB?
 24 A. Yes.
 25 Q. Can you summarize the

1 Wagner
 2 circumstances in connection with that or those
 3 complaints?
 4 MR. CIAPPETTA: I am going to
 5 object. I think we would like to find
 6 out whether it was sustained or the
 7 result of it first, because if it was
 8 considered unfounded, then that would be
 9 irrelevant to our business today.
 10 MR. VACCARO: Relevance objections
 11 really don't work in a deposition
 12 context. We can explore either in my
 13 examination or on a direct if you care to
 14 conduct one the ultimate disposition of
 15 any CCRB charges. But I think that we
 16 need as a foundation to understand the
 17 nature of the charges. If you really
 18 want to get to the relevance issue, let's
 19 find out the subject matter of the case
 20 which is what my question is directed to.
 21 Q. Officer Wagner, can you summarize
 22 the circumstances --
 23 MR. MUSCHENHEIM: Can we take a
 24 break, we need to take a break.
 25 MR. VACCARO: Off the record.

1 Wagner
 2 A. Could you say that again.
 3 Q. Aside from the --
 4 MR. CIAPPETTA: Asked and
 5 answered.
 6 Q. Aside from the testimony that you
 7 have given thus far this morning are there any
 8 other instances in which you are aware, of
 9 which you are aware in which you have been
 10 considered for discipline as an NYPD officer?
 11 A. No.
 12 MR. CIAPPETTA: Objection as to
 13 the form.
 14 Q. Officer Wagner, can you ride a
 15 bicycle?
 16 A. Yes.
 17 Q. Do you own a bicycle?
 18 A. Not currently.
 19 Q. You have in the past?
 20 A. Yes.
 21 Q. Have you ever bicycled in New York
 22 City?
 23 A. No.
 24 Q. Have you ever bicycled outside of
 25 New York City?

1 Wagner
 2 THE VIDEOGRAPHER: The time is
 3 10:08, we are off the record.
 4 (Recess taken.)
 5 THE VIDEOGRAPHER: The time is
 6 10:14, we are on the record.
 7 Q. Officer Wagner --
 8 MR. MUSCHENHEIM: Off the record.
 9 Q. Officer Wagner, have you ever been
 10 the subject of a complaint brought to the
 11 CCRB?
 12 A. Yes, I have.
 13 Q. Were any of those complaints of
 14 which you were a subject sustained?
 15 A. No.
 16 Q. Did any of those complaints arise
 17 from group bicycling activity?
 18 A. No.
 19 Q. Did any of those complaints arise
 20 from the policing of demonstrations?
 21 A. No.
 22 Q. Aside from the testimony you have
 23 given so far have you ever been disciplined or
 24 considered for discipline in your role as an
 25 NYPD officer?

1 Wagner
 2 A. Yes.
 3 Q. Have you ever bicycled in road --
 4 in public roadways amongst motor vehicles
 5 outside of New York City?
 6 MR. CIAPPETTA: Objection as to
 7 the form.
 8 A. Yes, I have.
 9 Q. Can you tell me during what
 10 timeframe you engaged in that bicycling
 11 activity?
 12 MR. CIAPPETTA: Objection as to
 13 form. What do you mean by timeframe?
 14 Q. When?
 15 A. That would be in the late 70s when
 16 I was in junior high school and high school.
 17 Q. Have you ever been injured on a
 18 bicycle?
 19 A. Yes.
 20 Q. What were the circumstances of
 21 that injury?
 22 A. Riding during the wintertime, spot
 23 a snow and ice patch on the road, hit the ice
 24 patch, wiped out, sprained an ankle, twisted a
 25 knee.

1 Wagner

2 Q. And that was in junior high

3 school?

4 A. High school.

5 Q. Are there any other injuries that

6 you can recall sustaining while using a

7 bicycle?

8 A. Nothing that I can specifically

9 recall, but I am sure there were other

10 instances.

11 Q. Any serious injuries that you can

12 recall?

13 A. No.

14 Q. Prior to your assignment to the

15 Scooter Task Force of the First Precinct did

16 you know how to ride a motor scooter?

17 A. No.

18 Q. So were you trained to use a motor

19 scooter for the first time in connection with

20 that assignment?

21 A. Yes.

22 Q. Maybe motor scooter is too

23 specific a term. Did you know how to operate

24 a motorcycle prior to that assignment to the

25 Scooter Task Force?

1 Wagner

2 Q. Officer Wagner, if you could take

3 a look at that, at the document that has been

4 marked as Exhibit Wagner 1, not only the first

5 page, but the subsequent pages, I will have

6 specific questions for you about the different

7 entries. But my first question for you just

8 so you know will be if you recognize this

9 document?

10 A. Yes, I do.

11 MR. CIAPPETTA: Look at it, take

12 some time to go through the pages.

13 A. Yes, I recognize this document.

14 Q. And what is it?

15 A. A photocopy of a memo book that

16 you use on patrol.

17 Q. This is a photocopy of the memo

18 book that you actually did use on patrol and

19 make entries in; is that correct?

20 A. Yes.

21 Q. More specifically it appears to be

22 excerpts from that memo book?

23 A. Yes, specifically excerpts.

24 Q. Do you see from the second page of

25 the exhibit Bates stamped with the last two

1 Wagner

2 A. No.

3 Q. Have you ever sustained an injury

4 while operating a motor scooter?

5 A. No, I have not.

6 Q. I will mark as exhibit Wagner 1, a

7 ten-page document Bates stamped for

8 identification NYC 026886 through NYC 026895.

9 (Wagner Exhibit 1, ten-page

10 document Bates stamped NYC 026886

11 through NYC 026895, marked for

12 identification, as of this date.)

13 MR. CIAPPETTA: Do we know what

14 notebook entry this is; the cover page is

15 not clear.

16 MR. VACCARO: Well, to my eyes it

17 states date opened 10/16/03, and date

18 closed 1/25/05, but perhaps the witness

19 will interpret the first page

20 differently, let's see.

21 MS. DINGLE: We can switch the

22 page, its not clear.

23 MR. MUSCHENHEIM: Can we just see

24 the cover page?

25 MR. VACCARO: Sure.

1 Wagner

2 digits 87 that the earliest entry in this

3 collection of excerpts is for January 30,

4 2004, am I reading that correctly?

5 A. Yes.

6 Q. If you go to the last page of

7 Exhibit Wagner 1, Bates reference the last two

8 digits 95, that appears to be your entry for a

9 date December 31, 2004; is that correct?

10 A. Yes, that is correct.

11 Q. And is it true that memo books are

12 also referred to within NYPD as activity logs?

13 A. Yes, they are.

14 Q. What generally speaking is a memo

15 book used for?

16 MR. CIAPPETTA: Objection as to

17 the form.

18 A. The memo book or activity log is

19 used to document assignment based on date with

20 time references indexed to any work that you

21 performed during the course of your tour.

22 Q. Is it for recording activity that

23 you undertake while on duty?

24 MR. CIAPPETTA: Objection as to

25 the form.

1 Wagner
 2 A. Yes, it is.
 3 Q. Is it generally speaking required
 4 for NYPD officers to carry a memo book with
 5 them when they are on patrol?
 6 A. Yes. Police officers are required
 7 to carry a memo book while on patrol.
 8 Q. Do you receive training in the use
 9 of memo books?
 10 MR. CIAPPETTA: Objection as to
 11 the form.
 12 MR. VACCARO: I withdraw the
 13 question.
 14 Q. Have you received training or
 15 instructions with respect to the use of memo
 16 books?
 17 A. Yes, I have.
 18 Q. Where and when -- where did you
 19 receive that training?
 20 A. That was in the Police Academy.
 21 Q. Has there been any inservice
 22 training so to speak after you graduated from
 23 the Academy in the use of memo books?
 24 MR. CIAPPETTA: Objection as to
 25 the form.

1 Wagner
 2 Q. Are there any other types of
 3 events that you can recall now that are
 4 required to be entered in a memo book?
 5 A. Yes. Any radio runs you might
 6 answer, calls for assistance, or any policing
 7 that is activity based goes in the activity
 8 log, any policing activity performed during
 9 the course of the shift.
 10 Q. And what is your understanding of
 11 the purpose for recording these activities in
 12 the memo book?
 13 MR. CIAPPETTA: Objection as to
 14 form.
 15 A. The memo book is considered
 16 Rosario material for trial in the prosecution
 17 of crimes or any other illegal activity
 18 regarding your actions during the course of
 19 the tour.
 20 Q. Turning to the second page of
 21 Exhibit Wagner 1, the entry reads: Friday,
 22 1/30/04, 1600 by 0035.
 23 Did I read that correctly?
 24 A. Yes.
 25 Q. What does that mean?

1 Wagner
 2 A. No.
 3 Q. What was the content of the
 4 instruction that you received at the Academy
 5 regarding the use of memo books?
 6 A. As I recall you write the day of
 7 the week, followed by the date, the tour you
 8 are assigned to work that particular day.
 9 Underneath there you include your assignment
 10 which is usually given at roll call. Your
 11 vehicle, RMP number or foot post number, or
 12 other detail assignment you might be
 13 receiving, and if given a meal time.
 14 Q. Do you recall being instructed at
 15 the Academy as to whether arrests that you
 16 make are required to be recorded in your memo
 17 book?
 18 A. Yes, they are.
 19 Q. Do you recall being instructed at
 20 the Academy that summonses that you issue are
 21 required to be entered in the memo book?
 22 A. Yes.
 23 Q. And so they are required to be
 24 entered?
 25 A. Yes.

1 Wagner
 2 A. The date was Friday. The calendar
 3 date was January 30, 2004. The shift that I
 4 was assigned to work was 1600 military time by
 5 0035.
 6 Q. And from reading this entry can
 7 you tell what your assignment -- what
 8 assignment is memorialized in this entry?
 9 A. Second line states assignment was
 10 a detail. My vehicle assignment was 3685, a
 11 three wheel scooter, and the radio number was
 12 number 60 that I pulled from the radio rack.
 13 Q. Can you tell from this entry the
 14 nature of the detail or the type of duty that
 15 you were performing on this detail?
 16 A. As specifically written I could
 17 not tell you exactly what the detail was.
 18 Q. Do you have any recollection as to
 19 what the detail was?
 20 A. Yes.
 21 Q. What was it?
 22 A. That was a Critical Mass bicycle
 23 ride.
 24 Q. Is that recollection based on any
 25 documents that you looked at other than this

1 Wagner
 2 one?
 3 MR. CIAPPETTA: Objection as to
 4 the form.
 5 A. No.
 6 Q. Is it based on any discussions
 7 that you have had recently?
 8 A. No.
 9 Q. What do you recall about the
 10 Critical Mass detail to which you were
 11 assigned on January 30, 2004?
 12 A. As I recall my shift started at 4
 13 p.m., we proceeded up to Union Square at
 14 approximately 6 p.m. Critical Mass formed
 15 between 6:45 and 7:30. They left Union
 16 Square, road random path through lower
 17 Manhattan, and eventually dispersed
 18 peacefully.
 19 Q. Do you recall the size of -- I
 20 should -- withdrawn.
 21 Do you recall the number of
 22 bicyclist participants in that Critical Mass
 23 ride?
 24 A. Any number I give would just be an
 25 estimation.

1 Wagner
 2 motor vehicles do you recall?
 3 A. Not to my recollection.
 4 Q. Do you recall there being officers
 5 assigned to this detail to work on foot?
 6 A. No.
 7 Q. You testified that at this, on
 8 this particular detail Critical Mass formed
 9 between 6:45 and 7:30; is that correct?
 10 A. Yes.
 11 Q. Is that recollection based on any
 12 documents that you have seen?
 13 A. No.
 14 Q. Is it based on any discussions
 15 that you have had?
 16 A. No.
 17 Q. It is your independent
 18 recollection now thinking back to January 2004
 19 of when Critical Mass formed; is that correct?
 20 MR. CIAPPETTA: Objection as to
 21 the form.
 22 A. Yes.
 23 Q. Do you recall whether there were
 24 any helicopters available to the detail or
 25 assigned as part of the detail on January 30,

1 Wagner
 2 Q. Can you estimate the number of
 3 bicyclist participants in that Critical Mass
 4 right?
 5 A. Yes.
 6 Q. What is your best estimate?
 7 A. Approximately 2,000 to 3,000
 8 cyclists.
 9 Q. Do you recall how many NYPD
 10 officers were assigned to this detail?
 11 A. I don't have a specific
 12 recollection of how many officers were
 13 assigned.
 14 Q. Can you recall whether there were
 15 any other officers assigned in scooters of
 16 either of the two or three wheel variety on
 17 this detail?
 18 A. Yes, there were.
 19 Q. Can you recall approximately how
 20 many such scooter officers there were in this
 21 detail?
 22 A. Approximately two to six. Between
 23 two and six.
 24 Q. Were there additional officers
 25 assigned to this detail in other types of

1 Wagner
 2 2004?
 3 A. No.
 4 Q. Do you recall the ranks of the
 5 officers assigned to the detail on January 30,
 6 2004?
 7 A. Yes.
 8 Q. What were they?
 9 A. Police officers.
 10 Q. Were there any NYPD officers above
 11 the rank of police officers on that detail if
 12 you recall?
 13 A. Yes, I believe one sergeant.
 14 Q. Do you recall the name of that
 15 sergeant?
 16 A. No.
 17 Q. Do you recall how you came to be
 18 assigned to that detail?
 19 A. Yes.
 20 Q. And what were those circumstances?
 21 A. We were aware of Critical Mass
 22 meeting on the last Friday of every month at
 23 that time where they would then ride and we
 24 were assigned there to monitor the ride.
 25 Q. When you say we were aware, who is

1 Wagner
 2 the "we" in that sentence?
 3 A. The officers that I was responding
 4 with from the Scooter Task Force.
 5 Q. And this is the First Precinct
 6 Scooter Task Force?
 7 A. Yes.
 8 Q. Were you part of the First
 9 Precinct Scooter Task Force at this time?
 10 A. Yes, I was.
 11 Q. Am I correct that Union Square is
 12 not located within the First Precinct?
 13 A. You would be correct.
 14 Q. Is it customary for the First
 15 Precinct Scooter Task Force to have
 16 responsibility with respect to events outside
 17 of the First Precinct?
 18 MR. CIAPPETTA: Objection as to
 19 form.
 20 A. Yes, we are.
 21 Q. Can you explain the circumstances
 22 under which the First Precinct Scooter Task
 23 Force is assigned to events outside of the
 24 First Precinct?
 25 A. Yes.

1 Wagner
 2 was advised of the Critical Mass ride on
 3 January 30, 2004?
 4 MR. CIAPPETTA: Objection as to
 5 the form.
 6 A. I believe it was a phone call from
 7 the borough to the supervisor on duty at the
 8 time.
 9 Q. When you say from the borough, you
 10 mean Patrol Borough Manhattan South?
 11 A. Yes.
 12 Q. Who was the supervisor on duty at
 13 this time?
 14 A. That would be the sergeant of the
 15 Scooter Task Force, again I don't recall which
 16 supervisor was on duty at that given time.
 17 Q. What do you recall being told with
 18 respect to this detail at the time?
 19 MR. CIAPPETTA: Objection as to
 20 the form.
 21 A. As I recall we were going up to
 22 Union Square to monitor the ride, keep the
 23 borough apprised of any situation that was
 24 going on, and inform the borough upon
 25 completion of the ride.

1 Wagner
 2 Q. What are they?
 3 A. The First Precinct Scooter Task
 4 Force is considered a unit attached directly
 5 to the borough for purposes of assignments.
 6 However administrative functions are handled
 7 by the First Precinct, that is why we are
 8 called the First Precinct Scooter Task Force.
 9 When an event becomes known to the
 10 borough commander or the watch commander,
 11 whoever is in charge of the borough at the
 12 time, they will in all likelihood dispatch the
 13 Scooter Task Force to monitor or police any
 14 events that happen within the Borough of
 15 Manhattan South.
 16 Q. How many different scooter task
 17 forces are available to handle such events
 18 within Patrol Borough Manhattan South to your
 19 knowledge?
 20 MR. CIAPPETTA: Objection as to
 21 the form.
 22 A. Just the First Precinct Scooter
 23 Task Force.
 24 Q. Do you know the circumstances by
 25 which the First Precinct Scooter Task Force

1 Wagner
 2 Q. Do you recall whether -- well, I
 3 am going to step back and ask whether you can
 4 say that the detail assigned to the January
 5 30, 2004 ride was likely less than ten
 6 officers?
 7 A. Yes.
 8 Q. Can you give a more precise
 9 estimate of the number of officers assigned to
 10 that detail?
 11 A. No. Again I couldn't give you an
 12 exact number outside of my estimation of two
 13 to six officers.
 14 Q. And were all of those officers
 15 also members of the First Precinct Scooter
 16 Task Force?
 17 A. Yes.
 18 Q. Were there any Community Affairs
 19 officers in that detail that you recall?
 20 A. Not that I recall.
 21 Q. Do you recall any officers from
 22 the Legal Bureau associated with that detail?
 23 A. Not that I recall.
 24 Q. Do you recall any personnel from
 25 the unit known as TARU, T-A-R-U, participating

1 Wagner
 2 in that detail?
 3 A. Not that I recall.
 4 Q. Do you recall any officers from
 5 the Disorder Control Unit being associated
 6 with that detail?
 7 A. Not that I recall.
 8 Q. Do you recall any officers from
 9 the Intelligence Division being associated
 10 with that detail?
 11 A. Not that I recall.
 12 Q. Do you recall speaking with any of
 13 the bicyclists who had assembled for the
 14 Critical Mass ride on the evening of January
 15 30, 2004?
 16 A. I don't recall any specific
 17 conversations with the cyclists.
 18 Q. Do you recall knowing what
 19 Critical Mass was at the time that you were
 20 first informed you would be participating in
 21 this detail?
 22 MR. CIAPPETTA: Objection as to
 23 the form.
 24 A. Yes.
 25 Q. What do you recall knowing about

1 Wagner
 2 displayed on their bicycles. I casually asked
 3 one of the cyclists what is going on and they
 4 said it is Critical Mass.
 5 Q. Aside from that experience on
 6 Halloween 2003 was there any other basis for
 7 your understanding of what Critical Mass was
 8 at the time that you were assigned to the
 9 January 30, 2004 detail?
 10 A. No.
 11 Q. Had you read any media reports as
 12 of that time, January 30, 2004, regarding
 13 Critical Mass?
 14 A. No.
 15 Q. Had you discussed with anyone in
 16 NYPD what Critical Mass was as of that date,
 17 January 30, 2004?
 18 A. Yes.
 19 Q. With whom did you have those
 20 discussions?
 21 A. My fellow members within the
 22 Scooter Task Force.
 23 Q. What do you recall of the
 24 substance of those discussions?
 25 A. Basically after the October ride,

1 Wagner
 2 Critical Mass when you learned of this detail
 3 for January 30, 2004?
 4 A. As of January 30, 2004 my
 5 understanding of Critical Mass was that it was
 6 an advocacy group to promote alternate styles
 7 of transportation, primarily bicycles.
 8 Q. What was the basis of that
 9 understanding?
 10 A. Reading the signs on the
 11 bicyclists as displayed on bicycles as they
 12 road. Basically that is it.
 13 Q. You had seen bicyclists with signs
 14 indicating the purpose of Critical Mass prior
 15 to January 30, 2004?
 16 MR. CIAPPETTA: Objection as to
 17 the form.
 18 A. Yes.
 19 Q. In what context had you seen those
 20 bicyclists with those signs?
 21 A. On Halloween, October 31, 2003, we
 22 were dispatched from the Halloween parade in
 23 Greenwich Village to follow and monitor a
 24 bicycle ride of many hundreds of bicyclists in
 25 costume with the signs I just mentioned

1 Wagner
 2 the Halloween ride I asked what that was all
 3 about, and they gave me a brief synopsis.
 4 Basically the type of thing that I just told
 5 you, being an advocacy group for alternative
 6 means of transportation.
 7 Q. Do you recall concerns being
 8 raised in those discussions regarding the
 9 impact of Critical Mass on traffic?
 10 MR. CIAPPETTA: Objection as to
 11 the form.
 12 A. Yes.
 13 Q. What were those concerns?
 14 A. Concerns expressed by my fellow
 15 officers were that having a large group of
 16 cyclists riding at random throughout Manhattan
 17 created a traffic problem for motor vehicles.
 18 Q. And at that time what did you
 19 understand to be meant by riding at random?
 20 A. At random meaning that whoever was
 21 in the lead of the pack, wherever they decided
 22 to make a turn, that was the street or avenue
 23 that they would ride down without any form of
 24 a set path.
 25 Q. So your understanding at the time

1 Wagner
 2 you were assigned to the January 30, 2004
 3 detail was that Critical Mass was a group
 4 bicycle ride that proceeded in the manner that
 5 you just described?
 6 A. Yes.
 7 Q. Was there any meeting amongst the
 8 officers assigned to the detail that occurred
 9 away from Union Square on January 30, 2004?
 10 MR. CIAPPETTA: Objection as to
 11 the form.
 12 A. I would have to say yes.
 13 Q. Describe the circumstances of that
 14 meeting, please?
 15 A. At the beginning of the shift we
 16 have roll call again where the supervisor
 17 hands out assignments. At that time we were
 18 told we would be going up to Critical Mass
 19 that evening and that we would be monitoring
 20 the ride.
 21 Q. Do you recall who told you that
 22 you would be going up to Critical Mass that
 23 evening?
 24 A. The shift supervisor.
 25 Q. Do you recall who that was?

1 Wagner
 2 Q. Do you recall where you got that
 3 information?
 4 A. Yes, I got that information from
 5 the other officers in the Scooter Task Force.
 6 Q. Do you recall the names of any of
 7 the other officers on the Scooter Task Force
 8 who supplied you with that information?
 9 A. Yes, I do.
 10 Q. What are they?
 11 A. Officer Frank Stapleton, Officer
 12 Tony Susi, Officer William Gross. I would say
 13 pretty much everybody who I was talking to at
 14 the time who was assigned to the Scooter Task
 15 Force in 2003.
 16 Q. Could you please spell Officer
 17 Susi's name for the record, if you know the
 18 spelling for the record?
 19 A. S-U-S-I.
 20 Q. And gross is spelled G-R-O-S-S?
 21 A. Yes.
 22 Q. Stapleton is S-T-A-P-L-E-T-O-N?
 23 A. Yes.
 24 Q. How many officers do you recall
 25 were assigned to the First Precinct Scooter

1 Wagner
 2 A. No, I don't.
 3 Q. Do you recall the shift supervisor
 4 mentioning the extent to which if any there
 5 had been police monitoring of Critical Mass
 6 prior to that evening?
 7 MR. CIAPPETTA: Objection as to
 8 the form.
 9 A. Not that I recall.
 10 Q. Do you recall being told that
 11 there was anything unusual about or --
 12 withdrawn.
 13 As of January 30, 2004 were you
 14 aware that the Critical Mass bicycle ride
 15 occurred monthly?
 16 A. Yes.
 17 Q. What was your understanding as to
 18 the date, time and place at which the Critical
 19 Mass ride originated?
 20 A. It was my understanding that
 21 Critical Mass occurred on the last Friday of
 22 every month, rain or shine or snow, and that
 23 they would meet at Union Square at
 24 approximately 7:30 p.m. and they would depart
 25 from Union Square at that time.

1 Wagner
 2 Task Force back in January of 2004,
 3 approximately?
 4 A. Approximately 30.
 5 Q. Do you recall being told what your
 6 specific objectives would be in connection
 7 with the detail on January 30, 2004?
 8 MR. CIAPPETTA: Objection as to
 9 the form.
 10 A. Yes.
 11 Q. What were those objectives?
 12 A. Our objectives were to follow
 13 along the ride, monitor for safety. Basically
 14 prevent bicyclists from being struck by
 15 vehicles, and again inform the borough, the
 16 borough wheel operator of the termination and
 17 dispersal of the ride.
 18 Q. And it was a shift commander who
 19 explained those objectives to you?
 20 A. Yes.
 21 Q. The wheel operator is an
 22 individual at the Patrol Borough Manhattan
 23 South who receives information regarding
 24 details of this nature?
 25 MR. CIAPPETTA: Objection as to

1 Wagner
2 the form.
3 A. Yes.
4 Q. Do you recall receiving any
5 instruction or directives prior to the
6 assembling at Union Square regarding how to
7 handle traffic violations that might occur by
8 bicyclists participating in the ride?
9 A. Yes.
10 Q. What were those instructions?
11 A. Our instructions were that unless
12 it was absolutely necessary we were just to
13 monitor the ride.
14 Q. Do you recall anything more than
15 that regarding those instructions?
16 A. That was basically all the
17 instructions. Our job was to monitor the
18 ride. If circumstances absolutely dictated
19 that police enforcement be taken, we would.
20 But other than that we were just to monitor
21 the ride.
22 Q. As of that time, January 30, 2004,
23 do you recall being assigned to events in
24 which you were given similar objectives with
25 respect to public processions that you were

1 Wagner
2 Q. To whom?
3 A. One of the officers who was up
4 there with me at the detail.
5 Q. Do you recall the name of that
6 officer?
7 A. No.
8 Q. Do you recall what response the
9 officer gave to your comment?
10 MR. CIAPPETTA: Objection as to
11 the form. Not established that it was a
12 response.
13 Q. What if any response was given to
14 your comment?
15 A. Yes, I recall a response.
16 Q. What was that?
17 A. The response was that while
18 monitoring the ride since we are trying to
19 maintain the safety of the cyclists, if we had
20 stopped to give one person a traffic summons
21 we would lose where the ride was located at,
22 and since one officer would stop, you would
23 have a second officer with you, we would be
24 two officers short. And once we are out of
25 the picture we can't follow the ride, and they

1 Wagner
2 monitoring?
3 MR. CIAPPETTA: Objection as to
4 the form. You can answer it if you
5 understand the question.
6 A. Could you repeat that one, please.
7 Q. I will rephrase it.
8 Prior to January 30, 2004 can you
9 recall being assigned to monitor an event and
10 receiving the same instruction to only use law
11 enforcement of traffic rules if absolutely
12 necessary; that is the question?
13 A. I don't have any recollection of
14 instructions like that.
15 Q. Do you recall thinking that it was
16 unusual to receive such an instruction in
17 connection with this particular detail?
18 MR. CIAPPETTA: Objection as to
19 form.
20 A. Yes.
21 Q. Did you express -- did you express
22 your view that this was an unusual instruction
23 with respect to the ride to anyone at that
24 time?
25 A. Yes.

1 Wagner
2 would be short two bodies on the ride. So it
3 was better to keep all the officers together
4 and follow the ride.
5 Q. At the meeting prior to going to
6 Union Square that you were describing was
7 there any discussion as to whether it was
8 desirable to keep the bicyclists together in a
9 single group?
10 MR. CIAPPETTA: Objection as to
11 the form.
12 A. Yes.
13 Q. What was that discussion?
14 A. In summary the discussion was that
15 the quicker we got the ride to its destination
16 the quicker it would be over and the sooner
17 they would disperse. Keeping the riders
18 together was preferable in that during the
19 course of the ride cyclists would block side
20 streets and they would become stragglers
21 waiting for the entire pack as other cyclists
22 ride slower than others, as other riders
23 straggled behind, everybody rides at a
24 different pace.
25 So it would not be uncommon for

1 Wagner
 2 the ride to stretch out well over a mile. So
 3 the idea was if we blocked the streets and we
 4 were motorized, the pack could then stay
 5 together and not have as much of a problem
 6 with stragglers.
 7 Q. And this manner of accompanying
 8 the ride was laid out in that level of detail
 9 during the meeting prior to the January 30,
 10 2004 detail?
 11 MR. CIAPPETTA: Objection as to
 12 the form.
 13 A. Yes.
 14 Q. And it was all laid out by the
 15 shift commander?
 16 A. Yes.
 17 Q. Were you told at that time the
 18 number of bicyclists that it was estimated
 19 would participate in the ride that evening?
 20 A. No, I was not informed of the
 21 number.
 22 Q. Did you have an expectation before
 23 arriving at Union Square how many bicyclists
 24 would be participating in the event that you
 25 would be monitoring?

1 Wagner
 2 30, 2004?
 3 MR. CIAPPETTA: Objection as to
 4 the form.
 5 A. Yes.
 6 Q. What did they tell you?
 7 A. In substance the ride was very
 8 large, usually occupied the entire street from
 9 curb to curb regardless of the size of the
 10 street, that being one way streets. And that
 11 some of the cyclists would break off and stop
 12 cross town traffic or cross street traffic
 13 from whichever street or avenue they were
 14 crossing perpendicularly to at that time.
 15 Q. And they -- was there any
 16 discussion as to how NYPD officers monitoring
 17 the January 30, 2004 Critical Mass ride would
 18 respond if bicyclists occupied the entire
 19 width of the one-way roadway?
 20 A. Yes, we discussed it.
 21 Q. What was the substance of those
 22 discussions?
 23 A. In substance since we didn't have
 24 an adequate detail to police several thousand
 25 people who were mobile, that we would let them

1 Wagner
 2 A. Yes.
 3 Q. What was that expectation?
 4 A. Several thousand riders.
 5 Q. What was that expectation based
 6 on?
 7 A. Based on prior rides in the prior
 8 calendar months.
 9 Q. What was the source of your
 10 information regarding those prior rides?
 11 A. The shift supervisor and the other
 12 officers in the Scooter Task Force.
 13 Q. What did they tell you about the
 14 size of the prior rides?
 15 A. That they could be quite large.
 16 Numbers ranging between several thousand to
 17 close to 6 or 7,000 riders depending on
 18 weather.
 19 Q. And that is what they told you
 20 about Critical Mass rides that took place
 21 prior to January 30, 2004?
 22 A. Yes.
 23 Q. Did they tell you anything about
 24 the behavior of the cyclists who participated
 25 in such Critical Mass rides prior to January

1 Wagner
 2 do what they were going to do. We had no way
 3 to stop them from taking an entire street or
 4 avenue with two to six cops and a supervisor.
 5 So we were just going to monitor
 6 for safety, follow along, and if something
 7 happened that required additional officers,
 8 that we would let the borough know and let
 9 them make a decision as to whether or not it
 10 was necessary to mobilize additional
 11 resources.
 12 Q. Is it fair to say that going into
 13 the January 30, 2004 ride it was your
 14 understanding that bicyclists occupying the
 15 entire width of a one-way roadway would not be
 16 a circumstance in which you would undertake
 17 law enforcement action?
 18 MR. CIAPPETTA: Objection as to
 19 the form.
 20 A. It was my understanding that
 21 occupying the roadway in that manner by a
 22 group of cyclists that large, whereas it is a
 23 violation, because we had so few officer
 24 resources we had no choice but to let them do
 25 that.

1 Wagner
 2 Q. Was there any discussion as to how
 3 the officers monitoring the ride on January
 4 30, 2004 would respond if a cyclist were to
 5 attempt to block intersecting traffic in the
 6 manner that you described earlier?
 7 A. Yes.
 8 Q. What was that discussion?
 9 A. That discussion was centered
 10 around that we would relieve the cyclist of his
 11 blocking position, and a uniformed officer
 12 assigned with us, one of our officers there
 13 would then block the side street allowing the
 14 cyclist to rejoin the pack again in an effort
 15 to keep all the stragglers to a minimum.
 16 Q. And so it was your understanding
 17 that there would not be law enforcement action
 18 taken in the event that cyclists engaged in
 19 that blocking activity?
 20 MR. CIAPPETTA: Objection as to
 21 the form.
 22 A. Correct.
 23 Q. And is that blocking activity, did
 24 you -- was it called corking at that time?
 25 MR. CIAPPETTA: Objection as to

1 Wagner
 2 Q. This is October 31, 2003?
 3 A. 2003, correct.
 4 Q. Can you recall any other instances
 5 in which you engaged in that activity?
 6 A. Yes.
 7 Q. What are they?
 8 A. Again with regard to that, my
 9 recollection is that it happened every time we
 10 worked the Critical Mass ride at that time
 11 that we would relieve the cyclists of corking
 12 positions, and given the number of cross
 13 streets I couldn't give you the exact number
 14 of times that I did that.
 15 Q. Do you recall how many Critical
 16 Mass details you served on between the
 17 Halloween 2003 ride and January 30, 2004?
 18 A. Yes. I believe as I recall it was
 19 the October ride for Halloween, the ride at
 20 the end of November, and the New Year's ride
 21 in 2003, December 31, 2003 prior to January
 22 30, '04.
 23 Q. Did you serve on any details
 24 monitoring Critical Mass prior to the
 25 Halloween 2003 ride?

1 Wagner
 2 the form.
 3 A. As of January 30, 2004 I was
 4 unfamiliar with the term corking.
 5 Q. You later came to know, to hear
 6 that term?
 7 A. Yes.
 8 Q. You heard it applied to the
 9 activity that you described earlier where
 10 bicyclists positioned themselves to block
 11 intersecting traffic?
 12 A. Yes.
 13 Q. Had you prior to January 30, 2004
 14 ever participated in a detail in which an NYPD
 15 officer relieved a civilian of a blocking
 16 position of the sort we have been talking
 17 about?
 18 A. Yes.
 19 Q. Can you describe the circumstances
 20 of that or those details?
 21 A. Yes. The example I recall most
 22 distinctly would be the October 31st ride as I
 23 personally did relieve several bicyclists of
 24 corking positions along cross streets, the
 25 costume ride of Halloween.

1 Wagner
 2 A. No.
 3 Q. Do you recall any of the officers
 4 on the January '04 Critical Mass detail
 5 engaging in discussions with the bicyclists?
 6 A. No, I don't recall.
 7 Q. Do you recall where with respect
 8 to the ride you personally were positioned,
 9 that is at the front of the ride or the rear
 10 of the ride or somewhere else?
 11 A. Yes, I was positioned two thirds
 12 of the way from the -- towards the back of the
 13 pack, in that general area.
 14 Q. Were any of the officers on that
 15 detail proceeding behind the ride?
 16 A. Yes.
 17 Q. Were any of the officers on that
 18 detail toward the front of that ride?
 19 A. Not as I recall.
 20 Q. Did the officers on that detail
 21 have different responsibilities or roles
 22 depending upon where they were positioned with
 23 respect to the ride?
 24 A. Yes.
 25 Q. What were they?

1 Wagner
2 A. The supervisor, the sergeant in
3 charge would maintain contact with either
4 central dispatch via radio or with Patrol
5 Borough via cell phone. The officers who were
6 assigned generally maintained flanking
7 positions and relieved cross street corking
8 bicyclists.
9 Q. Do you recall during that ride
10 relieving bicyclists of corking positions if
11 you know what I mean by that?
12 A. Yes, I did.
13 Q. Do you recall the bicyclists on
14 that ride proceeding on one-way roadways
15 taking up the entire width of the roadway?
16 A. Yes.
17 Q. Do you recall bicyclists on that
18 ride proceeding through -- withdrawn.
19 Did you communicate to any of the
20 bicyclists either in words or gestures when
21 you were in the corking position that they
22 were to proceed through steady red lights?
23 MR. CIAPPETTA: Objection as to
24 the form.
25 A. Yes.

1 Wagner
2 unable to provide the exact street number of
3 the side street, they did go the wrong way to
4 cut between avenues, and they did occupy the
5 entire street from curb to curb on the cross
6 streets.
7 Q. And did the NYPD officers assigned
8 to the detail attempt to prevent the
9 bicyclists from proceeding the wrong way on
10 those side streets?
11 A. No.
12 Q. Do you recall any confrontations
13 between bicyclists participants in the ride
14 and motorists that they encountered?
15 A. I don't recall any confrontations.
16 Q. Do you recall any such
17 confrontations on any of the Critical Mass
18 rides that you monitored prior to January 30,
19 2004?
20 A. No confrontations that I
21 personally witnessed or heard of.
22 Q. Did you -- was your monitoring
23 activity in connection with the Halloween,
24 November and December 2003 Critical Mass rides
25 similar to that that you described for the

1 Wagner
2 Q. How did you do that?
3 A. Using hand gestures to wave them
4 through.
5 Q. Did the other officers on the
6 detail, did you observe them doing the same
7 thing?
8 A. Yes.
9 Q. Do you recall any bicyclists
10 riding on the sidewalk during that ride?
11 A. I don't recall.
12 Q. Do you recall any bicyclists
13 proceeding the wrong way on a one-way roadway
14 or on the wrong side of a two-way roadway?
15 A. Yes.
16 Q. And what were the circumstances in
17 which that occurred if you recall?
18 A. As I recall cyclists proceeded
19 down 34th Street from Sixth Avenue towards
20 Eighth Avenue, and they overflowed across the
21 double yellow line forcing oncoming traffic to
22 move towards the right to avoid collisions.
23 But they did not occupy the entire width of
24 34th Street.
25 And on several cross streets, I am

1 Wagner
2 January 2004 ride?
3 MR. CIAPPETTA: Objection as to
4 the form.
5 A. Not exactly.
6 Q. Can you explain any differences
7 that you recall about how you monitored those
8 different rides?
9 A. Yes. The Halloween ride was more
10 categorized as a pick up, in that we did not
11 have prior knowledge that there would be a
12 ride on Halloween. As it turns out they road
13 parallel to the Halloween parade in Greenwich
14 Village, we were notified and then we fell in
15 behind the ride and monitored as other
16 Critical Mass rides, as we did in subsequent
17 rides.
18 The same thing for the December
19 31st ride, as we were assigned to Times
20 Square, we were informed of a ride and then we
21 again monitored as we did subsequently.
22 Q. And in the three 2003 Critical
23 Mass details in which you participated did you
24 relieve bicyclists in the corking position as
25 you described?

1 Wagner
 2 A. Yes.
 3 Q. And did you wave bicyclists
 4 through steady red lights at intersections as
 5 you earlier described?
 6 A. Yes.
 7 Q. Do you recall the size of the
 8 Halloween ride, the number of bicyclist
 9 participants approximately?
 10 A. I would not be able to give a
 11 number. I never saw the front of the pack.
 12 So I couldn't count or get an estimate of the
 13 volume of the ride.
 14 Q. Are you able to say whether it was
 15 larger or smaller than the January 2004 ride?
 16 A. I couldn't quantify that.
 17 Q. How about the November 2003 ride,
 18 are you able to estimate its size relative to
 19 the January 2004 ride?
 20 A. No.
 21 Q. How about the December 2003 ride,
 22 can you estimate its size relative to the
 23 January 2004 ride?
 24 A. No, I can't.
 25 Q. Can you estimate the respective

1 Wagner
 2 on a block given where they are at between the
 3 curb lines.
 4 Q. And can you tell me your
 5 understanding of how many Critical Mass
 6 bicyclists can fit in one lane of traffic
 7 along an avenue block that is let's say along
 8 Fifth Avenue between 10th and 11th Street?
 9 MR. CIAPPETTA: Objection as to
 10 the form.
 11 A. No, I couldn't give a specific.
 12 The block sizes vary, so...
 13 Q. Is there any size block for which
 14 you can tell me what your estimate is of the
 15 number of Critical Mass bicyclists would fit
 16 on that block occupying all available traffic
 17 lanes?
 18 A. Yes.
 19 Q. Please give me that example?
 20 A. On Sixth Avenue between Canal
 21 Street and Broome Street, from curb line to
 22 curb line, intersection to intersection, that
 23 street will hold to my estimation between 800
 24 to 1,000 cyclists static.
 25 Q. Can you also provide an estimate

1 Wagner
 2 sizes of the October, November and December
 3 2003 rides with respect to each other, as to
 4 which may have been larger or smaller?
 5 A. I would estimate that the New
 6 Year's ride was the largest of the three in
 7 2003.
 8 Q. How do you go about estimating the
 9 size of the ride?
 10 MR. CIAPPETTA: Objection as to
 11 the form.
 12 A. Normally if I had a position
 13 either at the staging area or as the ride
 14 would go past basically estimating the size of
 15 the ride that way. Its impossible to do an
 16 individual head count of course, but given how
 17 many people could generally fit in a certain
 18 block and picking a point of passage of lead
 19 cyclists, and because it is a corner seeing
 20 where he crosses -- where the lead cyclists
 21 crosses and then gaining a reference point of
 22 the following pack behind, that second
 23 reference point passes the next corner, you
 24 have a second block of people. And generally
 25 you try and estimate how many people would fit

1 Wagner
 2 for the number of moving cyclists that can fit
 3 inside that space?
 4 MR. CIAPPETTA: Objection as to
 5 the form.
 6 A. I would estimate that
 7 approximately 600 cyclists in motion.
 8 Q. In what context did you develop
 9 these estimates of the number of bicycles
 10 static and moving that could fit within that
 11 space?
 12 MR. CIAPPETTA: Objection as to
 13 the form.
 14 A. It is just a rough guess, rough
 15 estimate. There is no quantifiable math that
 16 I could apply to it.
 17 Q. Did you ever receive any
 18 instruction as an NYPD officer in how to
 19 estimate the size of crowds?
 20 A. No.
 21 Q. But that is something that NYPD
 22 officers are called upon to do?
 23 A. Yes.
 24 Q. Were you specifically instructed
 25 to attempt to gauge the size of any of the

1 Wagner
2 Critical Mass rides we have been discussing,
3 that is those occurring from October 2003
4 through January of 2004?
5 A. Not on those rides.
6 Q. Do you recall -- do you recall the
7 reason why you estimated the size of the
8 January 2004 ride?
9 A. Yes.
10 Q. What was that?
11 A. Based on prior experience with
12 other demonstrations and working New Year's
13 Eve at Times Square we generally estimate one
14 corral, holding corral in Times Square holds
15 about 10,000 people, static standing
16 pedestrians. The intersection I described is
17 approximately half of what one corral would
18 be, and then factoring in bicycles would
19 remove two thirds of the people in that same
20 volume.
21 MR. CIAPPETTA: Can we take a five
22 minute break?
23 MR. VACCARO: Can I just ask one
24 more question?
25 MR. CIAPPETTA: Yes.

1 Wagner
2 MR. CIAPPETTA: Objection as to
3 the form.
4 A. As I described, yes. Again
5 variables, speed, weather conditions, people
6 maintaining their own safety parameter all are
7 variables.
8 MR. VACCARO: Let's take a break
9 now if you would like.
10 THE VIDEOGRAPHER: The time is
11 11:16. We are off the record.
12 (Recess taken.)
13 THE VIDEOGRAPHER: The time is
14 11:26. We are on the record.
15 Q. Officer Wagner, were you aware
16 that any other officers serving on Critical
17 Mass details with you would make estimates of
18 the sizes of the rides in the manner that you
19 did?
20 A. Yes.
21 Q. Did they?
22 A. Yes.
23 Q. Which other officers?
24 A. All the officers made their own
25 estimations.

1 Wagner
2 Q. So as a rule of thumb you
3 estimated that a bicyclists would occupy the
4 same amount of space as three pedestrians in a
5 crowd situation?
6 MR. CIAPPETTA: Objection as to
7 the form.
8 A. Yes, that is my personal estimate.
9 Q. Is that a moving or static
10 bicyclists?
11 A. Static.
12 Q. Do you have an estimate as to how
13 much space a moving bicyclist would take up, a
14 rule of thumb for that?
15 A. That becomes a little more
16 arbitrary based on the speed and the flow of
17 the cyclists. As they move slower you can fit
18 more cyclists in, they pack in denser. As you
19 speed up the cyclists tend to leave themselves
20 a bid more of a safety envelope around their
21 personal space.
22 Q. And do you have a rule of thumb
23 that you apply in estimating the number of
24 bicyclists that fit within a given area for
25 these estimation purposes?

1 Wagner
2 Q. Did they discuss -- did the
3 officers discuss their estimations amongst
4 themselves?
5 MR. CIAPPETTA: Objection as to
6 the form.
7 A. Yes.
8 Q. Do you recall discussing your
9 estimates with other officers?
10 A. Yes.
11 Q. Would you attempt to reach a
12 consensus with respect to the number of
13 bicyclists in a ride?
14 A. No.
15 Q. Do you recall estimates made by
16 other officers of the size of the January 30,
17 2004 ride?
18 A. No, I don't recall other
19 estimations.
20 Q. Do you recall sharing your
21 estimate of the size of that ride with other
22 officers?
23 A. Yes.
24 Q. Which other officers did you share
25 it with?

1 Wagner
 2 A. Again with pretty much everybody
 3 that we were working with.
 4 Q. And do you recall any responses
 5 you received from those officers when you
 6 shared with them your estimate of the size of
 7 that ride?
 8 A. Not specifically. In substance I
 9 might have said there is 1,500 and somebody
 10 else might have said nah, it is 1,200. It was
 11 not anything formal. It was just, you know,
 12 pre-talk, pre-work talk.
 13 Q. Do you recall anyone telling you
 14 that your estimate was wildly inaccurate?
 15 MR. CIAPPETTA: Objection as to
 16 the form.
 17 A. No.
 18 Q. Do you recall anyone telling you
 19 that your estimate was merely inaccurate?
 20 A. No.
 21 Q. Can you describe any, the nature
 22 of any interactions between the officers
 23 serving on the January 30, 2004 detail and the
 24 participants in the group ride other than the
 25 waving through the intersections that you

1 Wagner
 2 served up to and including January 30, 2004
 3 being told that Critical Mass required a
 4 permit in order to conduct its monthly ride?
 5 A. No, I was not informed.
 6 Q. Do you recall being aware that
 7 there was anyone at NYPD who had the view on
 8 or before January 30, 2004 that Critical Mass
 9 required a permit in order to conduct its
 10 monthly event?
 11 MR. CIAPPETTA: Objection as to
 12 the form.
 13 A. I am not personally aware of
 14 anybody needing that requirement.
 15 Q. Do you recall at the time having
 16 an understanding as to whether any person or
 17 entities was responsible for the monthly
 18 Critical Mass event?
 19 MR. CIAPPETTA: Objection as to
 20 the form.
 21 A. No.
 22 Q. Was it your understanding that
 23 there was no organizer for Critical Mass back
 24 in January 30, 2004?
 25 A. Yes.

1 Wagner
 2 testified to earlier?
 3 A. Yes.
 4 Q. What sort of interactions do you
 5 recall?
 6 A. I would characterize the
 7 interactions as conversations, mostly cordial,
 8 occasional ribbing, get off the scooter, get a
 9 bike. But nothing inflammatory or
 10 antagonistic.
 11 Q. Do you recall bicyclists chanting
 12 as they road?
 13 A. Yes.
 14 Q. What sort of things did they chant
 15 if you recall?
 16 A. Predominant chant was more bikes,
 17 less cars. Whose streets, our streets.
 18 Q. Do you recall being aware back in
 19 January 2004 that there were laws concerning
 20 processions in public roadways?
 21 MR. CIAPPETTA: Objection as to
 22 the form.
 23 A. No, I was not aware.
 24 Q. Do you recall in the context of
 25 any of the Critical Mass details on which you

1 Wagner
 2 Q. Were you aware that Critical Mass
 3 occurred in cities other than New York City
 4 back on January 30, 2004?
 5 A. No.
 6 Q. Have you ever heard of an
 7 organization called Times Up?
 8 A. Yes.
 9 Q. Do you recall when you first
 10 learned of the existence of that organization?
 11 A. Not specifically.
 12 Q. Do you recall if you first learned
 13 of Times Up after January 30, 2004?
 14 A. Yes.
 15 Q. In fact you did learn of it after
 16 January 30, 2004?
 17 A. Yes.
 18 Q. Do you recall there being any
 19 traffic summonses issued to participants in
 20 Critical Mass bicycle rides that you monitored
 21 on or prior to January 30, 2004?
 22 A. Not to my knowledge.
 23 Q. Do you recall there being any
 24 arrests of participants in Critical Mass rides
 25 that you monitored on or prior to January 30,

1 Wagner
2 2004?
3 A. Not to my knowledge.
4 Q. Do you recall being assigned any
5 special equipment in connection with your
6 service on Critical Mass details on or prior
7 to January 30, 2004?
8 MR. CIAPPETTA: Objection as to
9 the form.
10 A. No.
11 Q. Am I correct that your
12 participation in these Critical Mass details
13 through January 30, 2004, you appeared in your
14 uniform?
15 A. Correct.
16 Q. Did all of the other officers on
17 the detail also serve in the customary
18 uniform?
19 MR. CIAPPETTA: Objection as to
20 the form.
21 A. To my knowledge yes.
22 Q. Is there a name for the uniform
23 that officers wear day in, day out on patrol?
24 A. Yes.
25 Q. What is it?

1 Wagner
2 digits 88, it bears an entry at the bottom for
3 Friday, June 25, 2004. Do you see that?
4 A. Yes, I do.
5 Q. Last two pages reference 88, the
6 third page of the exhibit. Can you read the
7 matter that appears below that date and time
8 entry on this page, please, and tell me what
9 it means?
10 A. Friday, 6/25/04, June 25, 2004,
11 the shift assigned was military time 1600 by
12 0035. Assignment 2/3, which is my post,
13 assigned scooter post, and the confines of the
14 First Precinct. Scooter number was 114.
15 Radio number would be 62. At 11:45 a.m. I
16 arrived for pre-tour overtime for issuing
17 traffic summons, and at 0035 I went end of
18 tour, my signature and shield number.
19 Q. What is pre-tour traffic summons
20 overtime?
21 A. That is an overtime shift or
22 partial overtime shift assigned by the borough
23 to address traffic violations that they want
24 to see additional activity on.
25 Q. Would that activity have concerned

1 Wagner
2 A. It is called uniform of the day.
3 Q. Can you describe the uniform of
4 the day?
5 A. Yes. Consist of black shoes,
6 shined, black socks, department authorized
7 trousers, I believe at the time was polyester
8 with a stripe up the side. Standard issue gun
9 belt consisting of handcuffs, pepper spray,
10 baton, duty side arm, radio clip with a radio
11 holster for the department issued radio. Long
12 sleeve shirt with tie, either patrol duty or
13 all weather -- the P coat type jacket with the
14 shield and name tag affixed to the outermost
15 garment, and command collar brass on the
16 collar, and eight point hat or in our case
17 helmet because we had the scooter duty.
18 Q. Apart from the helmet was there
19 any other aspect of the uniform of the day
20 that was different for officers assigned to
21 the Scooter Task Force as compared to officers
22 assigned to a foot patrol?
23 A. Not to my knowledge.
24 Q. Turning to the second page of
25 Exhibit Wagner 1, Bates reference last two

1 Wagner
2 the Critical Mass ride or any Critical Mass
3 ride?
4 A. No.
5 Q. Does this entry correspond to a
6 Critical Mass detail that you served on?
7 A. Yes, I believe so.
8 Q. So am I correct that you first did
9 overtime with respect to traffic enforcement
10 unrelated to the Critical Mass ride, and that
11 you then served on a Critical Mass detail
12 afterwards?
13 A. Correct.
14 Q. And going back for a moment, do
15 you recall whether there would be a report
16 made of the events on a Critical Mass ride by
17 the detail to, I guess you called it the wheel
18 operator?
19 A. I am unfamiliar with the
20 procedures within the borough, so I couldn't
21 give you a yes or no answer to that.
22 Q. But it was your understanding that
23 Patrol Borough Manhattan South would be
24 notified when the ride was over?
25 A. Yes.

1 Wagner

2 Q. How would you know when the ride

3 was over?

4 A. When all the cyclists would

5 disperse at the termination point, wherever

6 they chose that to be.

7 Q. Do you recall the duration of any

8 of the rides that you monitored, Critical Mass

9 rides, between October 2003 and January 2004?

10 A. Only generally.

11 Q. Would that information be recorded

12 by participants in the detail?

13 A. Possibly.

14 Q. Do you know whether it was any

15 particular officer's responsibility to record

16 that information?

17 A. As far as those of us at the

18 detail, no. Nobody specifically assigned.

19 Q. Are you familiar with the term

20 unusual report?

21 A. Unusual occurrence report, yes, I

22 am familiar with that.

23 Q. What is your understanding of an

24 unusual occurrence report?

25 A. To my knowledge it is a letter

1 Wagner

2 event that you encountered as an NYPD officer

3 on or January 30, 2004?

4 A. No, I do not.

5 Q. Have you prepared any unusual

6 occurrence reports since January 30, 2004?

7 A. No, I have not.

8 Q. Do NYPD regulations specify the

9 ranks of officers who are permitted to prepare

10 unusual occurrence reports?

11 A. Yes.

12 Q. What are the ranks of officers who

13 may prepare such reports?

14 A. Actually any supervisor, sergeant

15 and above, may prepare an unusual occurrence

16 report.

17 Q. Have you ever known a supervising

18 officer to prepare an unusual occurrence

19 report in connection with any Critical Mass

20 ride?

21 A. Yes.

22 Q. Do you recall which rides were the

23 subject of that report or those reports?

24 A. Not specifically.

25 Q. Do you recall the years in which

1 Wagner

2 formatted report internally called a 49 which

3 documents anything unusual that might occur

4 either in a specific precinct or borough which

5 is then forwarded to the higher ranks for

6 their review.

7 Q. Do you recall completing any

8 unusual occurrence reports in connection with

9 any Critical Mass rides that you monitored in

10 January of 2004 or prior?

11 A. No, I did not.

12 Q. Do you know if any officer

13 assigned to the details in connection with

14 those Critical Mass rides prepared unusual

15 occurrence reports?

16 A. No, I don't know.

17 Q. Do you recall anyone discussing

18 during that timeframe whether there should be

19 an unusual occurrence report prepared in

20 connection with any Critical Mass rides?

21 MR. CIAPPETTA: Objection as to

22 the form.

23 A. Not to my knowledge.

24 Q. Do you recall preparing unusual

25 occurrence reports in connection with any mass

1 Wagner

2 those rides would have taken place?

3 A. 2004.

4 Q. Any other years?

5 A. Subsequent years, 2005, 2006,

6 2007, 2008.

7 Q. How did you become aware that

8 unusual occurrence reports were being prepared

9 in connection with Critical Mass rides held in

10 those years?

11 A. I saw the occasional office copy,

12 the originating copy from the supervisor who

13 prepared it within the unit on a desk or in a

14 basket.

15 Q. Did you monitor any Critical Mass

16 ride occurring after January 30, 2004 and

17 prior to June 25, 2004?

18 A. Not to my knowledge.

19 Q. The entry in Exhibit Wagner 1,

20 Bates reference dash 88, does this indicate

21 when you concluded the detail?

22 A. No.

23 Q. Does the time reference on the

24 last line shown on that page indicate when you

25 concluded your tour of duty?

1 Wagner
 2 A. Yes.
 3 Q. Do you recall when the June 25,
 4 2004 Critical Mass ride began?
 5 A. Yes.
 6 Q. When was that?
 7 A. 7:30 p.m.
 8 Q. Is that based on your independent
 9 recollection as you testify here today?
 10 A. Yes.
 11 Q. Was that recollection refreshed by
 12 any documents that you reviewed prior to
 13 today?
 14 A. No.
 15 Q. Or any discussions that you had
 16 prior to today?
 17 A. No.
 18 Q. Do you recall how many -- do you
 19 recall whether in connection with the June 25,
 20 2004 ride there was a meeting beforehand to
 21 discuss the objectives for the detail?
 22 A. Yes.
 23 Q. Was there?
 24 A. Yes.
 25 Q. What do you recall of that

1 Wagner
 2 A. As I stated for the January ride,
 3 the borough would call, notify us that we were
 4 to monitor the Critical Mass ride. The
 5 supervisor would then gather his available
 6 officers who were working the shift at the
 7 time and monitor the ride.
 8 Q. So the detail would be assembled
 9 based upon the officers who were available to
 10 serve, that was --
 11 MR. CIAPPETTA: Objection as to
 12 the form.
 13 Q. That was the basis on which
 14 personnel for the detail were selected?
 15 A. Yes.
 16 Q. Was there any other basis that you
 17 were aware of?
 18 A. Yes.
 19 Q. What?
 20 A. The nature of the unit, of the
 21 Scooter Task Force to respond to any incidents
 22 that required on the spot or mobile policing.
 23 Q. Did members of the Scooter Task
 24 Force ever volunteer for Critical Mass detail?
 25 A. No.

1 Wagner
 2 meeting?
 3 A. That I recall again the supervisor
 4 gathered the shift officers involved that were
 5 going up to the ride to monitor, similar
 6 instructions as prior rides, follow along,
 7 ensure safety, keep the group together until
 8 they disperse.
 9 Q. Do you recall being aware that
 10 there were details assembled in connection
 11 with Critical Mass rides held between January
 12 and June 2004 of which you were not a part?
 13 MR. CIAPPETTA: Objection as to
 14 the form. You may answer if you
 15 understand.
 16 A. I understand that there were, I am
 17 not personally aware of any detail numbers or
 18 how many officers were assigned.
 19 Q. Do you know how it is that a
 20 particular officer from the Scooter Task Force
 21 ended up being assigned to Critical Mass
 22 detail during this timeframe of, you know,
 23 January to June 2004?
 24 A. Yes.
 25 Q. How did that work?

1 Wagner
 2 Q. Members of the Scooter Task Force
 3 ever resist their assignment to the Critical
 4 Mass detail?
 5 MR. CIAPPETTA: Objection as to
 6 the form.
 7 A. No.
 8 Q. Was it considered undesirable to
 9 serve on the Critical Mass detail during this
 10 period of time?
 11 MR. CIAPPETTA: Objection as to
 12 the form.
 13 A. I don't think I would use the word
 14 undesirable, that is a bit strong.
 15 Q. Was it a disfavored assignment
 16 among those to which a Scooter Task Force
 17 member might be assigned?
 18 MR. CIAPPETTA: Objection as to
 19 the form.
 20 A. No.
 21 Q. Did you enjoy serving on the
 22 Critical Mass detail?
 23 MR. CIAPPETTA: Objection as to
 24 the form.
 25 Q. Did you enjoy serving on Critical

1 Wagner
 2 Mass details during this timeframe?
 3 A. I would say yes.
 4 Q. Do you know if other officers
 5 enjoyed serving on Critical Mass detail during
 6 this timeframe?
 7 A. I would say yes.
 8 Q. What do you recall regarding the
 9 size of the Critical Mass ride conducted on
 10 June 25, 2004?
 11 A. My recollection is it was at least
 12 2,000 riders. Beyond that, nothing
 13 remarkable.
 14 Q. Do you recall during the pre-ride
 15 meeting being briefed in any way differently
 16 than in the prior pre-ride briefings you had
 17 had in other rides?
 18 A. Not that I recall.
 19 Q. Going into the June 25, 2004 ride
 20 do you recall having basically the same
 21 objectives for the ride that you had going
 22 into the earlier rides which you monitored?
 23 A. Yes.
 24 Q. Do you recall the size of the
 25 detail officers on the June 25, 2004 ride?

1 Wagner
 2 A. There were more available officers
 3 on the 4 to 12 shift on the Scooter Task
 4 Force.
 5 Q. So the idea was to give those
 6 officers something to do?
 7 MR. CIAPPETTA: Objection as to
 8 the form.
 9 A. I would not say that.
 10 Q. How would you describe it?
 11 A. I would describe it as when the
 12 word came down from the borough we are going
 13 to a detail, everybody who is available is
 14 going to the detail as a unit. This way the
 15 scooter supervisor would have everybody he is
 16 responsible for with him instead of having a
 17 split shift between the First Precinct and the
 18 detail. So basically sergeant take all your
 19 guys and go to the detail.
 20 Q. So it was to avoid a situation in
 21 which the sergeant supervising the detail
 22 would have individuals under his supervision
 23 in various locations, is that a reason for --
 24 is that a reason for having all of the
 25 available officers on that detail?

1 Wagner
 2 A. No, I don't recall the size.
 3 Q. Can you say whether it was larger
 4 than the one assembled for the January 30,
 5 2004 ride?
 6 A. I would say yes.
 7 Q. Can you say whether it was more
 8 than ten officers?
 9 A. I would put the number of officers
 10 as I recall at about ten. We had taken some
 11 more -- we had gained more officers on the
 12 evening shift, the Scooter Task Force, than
 13 were available in January of '04.
 14 Q. Was it your understanding that the
 15 size of the detail in June was larger than
 16 January because more officers were needed in
 17 order to achieve the objectives for the
 18 detail?
 19 A. No.
 20 Q. Did you have any understanding as
 21 to the reason for their being more officers on
 22 the June 25, 2004 detail as compared to the
 23 January 30th detail in 2004?
 24 A. Yes.
 25 Q. And what was that?

1 Wagner
 2 MR. CIAPPETTA: Objection as to
 3 the form.
 4 A. Yes.
 5 Q. Do you recall the June 25, 2004
 6 ride being conducted by the participants in a
 7 manner different from that of the January 2004
 8 ride?
 9 A. I recall no difference from prior
 10 rides.
 11 Q. Do you recall the ride going --
 12 withdrawn.
 13 Speaking generally with respect to
 14 the Critical Mass details on June 25, 2004 and
 15 earlier in which you participated, can you
 16 recall any of those rides proceeding north of
 17 59th Street in Manhattan?
 18 A. Not as I recall.
 19 Q. Can you recall any of those rides
 20 proceeding on the FDR Drive?
 21 A. Not prior to June of 2004.
 22 Q. Can you recall any of those rides
 23 proceeding on the portions of any bridges that
 24 are reserved exclusively for motor vehicles?
 25 A. Not as I recall.

1 Wagner
 2 Q. Can you recall any of those rides
 3 proceeding through the Times Square area?
 4 A. Yes.
 5 Q. Can you recall in connection with
 6 any rides that proceeded through the Times
 7 Square area the bicyclists dismounting in the
 8 roadway and lifting their bicycles?
 9 A. Yes.
 10 Q. And that occurred on Critical Mass
 11 rides on or prior to June 25, 2004?
 12 A. Yes.
 13 Q. Did it occur on all of them?
 14 A. All the ones that I was present
 15 for, yes.
 16 Q. Can you describe exactly how this
 17 took place?
 18 MR. CIAPPETTA: Objection as to
 19 the form.
 20 A. In general the Critical Mass ride
 21 would again go randomly northbound until they
 22 got above the Times Square area, at which
 23 point they would come -- excuse me, come and
 24 merge on to Broadway heading south from above
 25 50th Street. Upon entering Times Square they

1 Wagner
 2 Q. In your mind were you concerned
 3 with the fact that NYPD was allowing Critical
 4 Mass participants to engage in bike lifts at
 5 this time?
 6 MR. CIAPPETTA: Objection as to
 7 the form.
 8 A. Could you repeat the question.
 9 Q. Did the fact that NYPD was
 10 permitting Critical Mass bicyclists who engage
 11 in Times Square bike lifts during this
 12 timeframe give you cause for concern?
 13 MR. CIAPPETTA: Objection as to
 14 the form.
 15 A. Yes.
 16 Q. What were those concerns?
 17 A. The concerns were that having
 18 several thousand bicyclists in probably what
 19 is one of the biggest intersections in
 20 Manhattan bringing all the surrounding traffic
 21 to a standpoint would inhibit the flow of
 22 emergency vehicles, that being police cars,
 23 ambulances and fire trucks.
 24 Q. Did you observe Critical Mass
 25 participants obstructing the flow of emergency

1 Wagner
 2 would stop in the vicinity of between 43rd and
 3 47th Streets, dismount, stopping, dismounting,
 4 lift the bicycles up over their heads, a big
 5 cheer, big roar. They would remain there for
 6 anywhere between 3 to 8 minutes, depending on
 7 the size of the ride, and they would remount
 8 then and depart the Times Square area.
 9 Q. And what were the NYPD officers on
 10 Critical Mass detail doing at the time that
 11 these events would take place in Times Square?
 12 A. That depended on position. If you
 13 were towards the rear of the pack you would
 14 hold southbound traffic on Broadway. If you
 15 were near a side street you would attempt to
 16 hold traffic cross town.
 17 Q. Do you recall any attempts during
 18 this timeframe to direct the participants in
 19 the ride not to engage in this activity?
 20 A. No.
 21 Q. Do you recall any discussion at
 22 any time on or prior to June 25, 2004 with
 23 anyone at NYPD regarding this activity which I
 24 will term a bike lift?
 25 A. No.

1 Wagner
 2 vehicles on any Critical Mass rides conducted
 3 June 25, 2004 or earlier?
 4 A. Not specifically.
 5 Q. Do you recall any other NYPD
 6 officer telling you that a Critical Mass ride
 7 conducted on June 25, 2004 or earlier blocked
 8 emergency vehicles?
 9 A. I had no information from any
 10 other officers that a Critical Mass ride was
 11 directly blocking an emergency vehicle.
 12 Q. Did you have any information that
 13 a Critical Mass ride had the effect of
 14 hindering an emergency vehicle during this
 15 timeframe that I mentioned?
 16 A. Yes.
 17 Q. And what information was that?
 18 A. Personal observation.
 19 Q. What did you personally observe?
 20 A. On the January 2004 ride, January
 21 30, 2004, the ride was proceeding up Sixth
 22 Avenue as I recall. The side streets in the
 23 mid 20s, between 23rd and 30th Street were all
 24 corked, and as I pulled up to my position to
 25 relieve a corking cyclists I observed an

1 Wagner
2 ambulance twenty cars back approximately down
3 the block on the cross street, lights and
4 siren going, and completely at a standpoint.
5 I instructed the cyclists to move.
6 I started pulling traffic through, through the
7 intersection while trying to hold cyclists
8 behind me, which proved virtually impossible
9 task. Until the last cyclists were past, then
10 the traffic flow freeing up the ambulance to
11 proceed to its call.
12 Q. In your ten years as an NYPD
13 officer have you ever observed an ambulance
14 that was -- with the sirens and lights
15 going -- that was stuck in motel vehicle
16 traffic?
17 A. Yes.
18 Q. In those situations have you ever
19 attempted to direct the motor vehicles that
20 were blocking the ambulance to clear a path so
21 that the ambulance could proceed more quickly?
22 A. Yes.
23 Q. Can you describe your actions and
24 their effect with respect to those incidents?
25 A. Yes. I would hold traffic on the

1 Wagner
2 until I started moving vehicles out and they
3 see the car coming. But being I am on foot at
4 that time, dismounted from my scooter, trying
5 to pull the traffic through, they are not
6 seeing me, they are not obeying me. I start
7 pulling the track through. The cyclists have
8 to avoid the vehicle and then they start
9 getting the idea and they started moving off
10 out of the way.
11 Q. And you believe that after you got
12 the attention of the cyclists participating in
13 the January 30, 2004 Critical Mass ride that
14 they followed your directives to clear a path
15 for the emergency vehicle?
16 MR. CIAPPETTA: Objection as to
17 the form.
18 A. Those who observed me or saw me
19 obeyed my commands.
20 Q. Did you observe Critical Mass
21 bicyclists on the June 30th -- I am sorry,
22 June 25, 2004 ride proceeding in all available
23 lanes of traffic on one way roadways?
24 A. Yes.
25 Q. Did you observe participants in

1 Wagner
2 cross street that was obstructing the traffic,
3 pull the vehicles that were impeding the
4 emergency vehicle through, directing them to
5 either turn, whether or not they wanted to, to
6 clear the lane to bring the emergency vehicle
7 through the intersection. And then if
8 necessary proceeding block by block until I
9 got the emergency vehicle through the snarled
10 traffic area.
11 Q. Is the process that you just
12 described of clearing a path through snarled
13 motor vehicle traffic for an emergency vehicle
14 different than the process that you described
15 in connection with the January 2004 ride in
16 which you attempted to clear a path through
17 the Critical Mass bicyclists for the
18 ambulance?
19 A. Yes, it was different.
20 Q. What was the difference?
21 A. The difference would lie in the
22 number of cyclists who are not looking for me
23 because they are part of a recreational
24 bicycle ride. They are not paying attention
25 to my directions or hand gestures to stop

1 Wagner
2 that ride proceeding on sidewalks?
3 A. Not as I recall.
4 Q. Do you recall participants in that
5 Critical Mass ride proceeding on the FDR
6 Drive?
7 A. No.
8 Q. Do you recall hearing that any
9 Critical Mass bicyclists on that June 25, 2004
10 ride in fact did enter the FDR Drive?
11 A. Not that I recall.
12 Q. Are you aware of Critical Mass
13 bicyclists entering the FDR Drive on any
14 Critical Mass ride held prior to June 25,
15 2004?
16 A. Not that I recall.
17 Q. Were all members of the
18 approximately ten person Critical Mass detail
19 assembled for the June 25, 2004 ride members
20 of the First Precinct Scooter Task Force?
21 A. Yes, as I recall they were.
22 Q. And they were under the command of
23 a sergeant?
24 A. Yes.
25 Q. Do you recall any discussions with

1 Wagner
2 the Critical Mass bicyclists that you had in
3 connection with that ride?
4 A. I recall several conversations. I
5 mean not specifically, but in general.
6 Q. Was the interactions between the
7 Critical Mass detail and the Critical Mass
8 participants at the June 25, 2004 ride
9 generally cordial as you have used that term
10 in your prior testimony?
11 A. Yes, I would characterize it in
12 that way.
13 Q. Do you recall when the June 25,
14 2004 ride ended?
15 A. June 25, 2004 ride ended at
16 approximately 9:30 p.m.
17 Q. Do you recall the location at
18 which it ended?
19 A. As I recall it ended at the armory
20 I believe on Third -- no, on Second Avenue.
21 Actually I don't know the exact cross street,
22 it ended in front of an armory that was used
23 as a community center.
24 Q. Do you recall being aware in
25 connection with the June 25, 2004 Critical

1 Wagner
2 Times Up headquarters at Houston and Mulberry.
3 Q. When did you become aware that
4 Times Up had headquarters at Houston and
5 Mulberry?
6 A. I don't recall the exact date when
7 I saw it, became aware of the Times Up
8 headquarters.
9 Q. But would you have become aware of
10 the Times Up headquarters as an after party
11 location by June 25, 2004?
12 A. Possibly.
13 Q. Do you recall hearing or learning
14 that there were illegal activities associated
15 with these after parties during this timeframe
16 up through June 25, 2004?
17 A. Not personally.
18 Q. Did others tell you that it was
19 their understanding that the Critical Mass
20 after parties could involve illegal activity?
21 A. Not that I am aware of.
22 Q. Were all of the officers assigned
23 to the June 2004 Critical Mass detail mounted
24 on scooters?
25 A. Yes, to my recollection they were.

1 Wagner
2 Mass ride or any other Critical Mass ride that
3 there were social gatherings organized to --
4 for the participants to occur after the ride
5 ended?
6 A. Yes.
7 Q. What were the nature of those
8 events based on your understanding as of that
9 time?
10 A. As I understand it was an informal
11 gathering of participants, whoever wanted to
12 stay. I never saw what went on inside, I have
13 no idea what happened within the confines of
14 the party. Normally we didn't stick around to
15 police the after party wherever they had it.
16 Q. These events were sometimes called
17 after parties?
18 A. Yes.
19 Q. How did you become aware that
20 these after parties existed?
21 A. Listening to conversations of the
22 participant cyclists.
23 Q. At what locations were these after
24 parties held?
25 A. Typically by far and large at the

1 Wagner
2 Q. But that could have been either
3 two wheel or three wheel scooters?
4 A. That would be two wheel scooters.
5 Q. Did officers assigned to Critical
6 Mass detail always use two wheel scooters?
7 A. Yes, weather permitting.
8 Q. In inclement weather officers
9 assigned to Critical Mass detail might use
10 three wheel scooters?
11 A. Correct.
12 Q. Were there any summonses issued to
13 your knowledge at the June 25, 2004 Critical
14 Mass ride?
15 A. Not to my knowledge.
16 Q. Were there any arrests of
17 participants in the June 25, 2004 Critical
18 Mass ride?
19 A. Not to my knowledge.
20 Q. Can you recall any unusual events
21 occurring at that ride?
22 MR. CIAPPETTA: Objection as to
23 the form.
24 A. No unusual events as I recall.
25 Q. Do you recall any confrontations

1 Wagner
2 between bicyclists and motorists on that ride?
3 A. Not as I recall.
4 Q. If you could turn to the next page
5 ending in Bates reference 89 within Exhibit
6 Wagner 1, if you could just read for me the
7 brief entry you made for the date Friday, June
8 30, 2004?
9 A. Yes. Friday, 7/30/04, 1600 by
10 0035. Assignment, originally I had lined in,
11 written in 2/3. I lined it out and changed it
12 for detail, Critical Mass. Scooter 114.
13 Radio number 64. 1600 present for duty. 0035
14 end of tour. My shield number and signature.
15 Q. What is 2/3?
16 A. That is my assigned beat in the
17 First Precinct.
18 Q. Do you recall there being a
19 meeting prior -- of the detail prior to going
20 to Union Square in connection with the July
21 30, 2004 ride?
22 A. Yes.
23 Q. Was the meeting similar to that
24 that took place prior to the other prior
25 Critical Mass details that you participated

1 Wagner
2 A. No, I was not informed.
3 Q. Do you recall whether there were
4 any officers from outside of the First
5 Precinct Scooter Task Force who in fact did
6 participate in the monitoring of that ride?
7 A. Not that I am aware of.
8 Q. Do you recall the supervising
9 officer who briefed you prior to the July 30,
10 2004 ride?
11 A. Yes.
12 Q. Who was that?
13 A. Sergeant Maryann Gullotta. She is
14 now a lieutenant.
15 Q. Was then Sergeant Gullotta a
16 participant herself in the July 30, 2004
17 detail?
18 A. Yes. She was the 4 to 12 Scooter
19 Task Force supervisor.
20 Q. Do you recall NYPD bicycle mounted
21 police participating in any Critical Mass
22 detail on or prior to July 30, 2004?
23 A. Not that I recall.
24 Q. Do you recall whether the
25 participants in the -- I keep misstating June.

1 Wagner
2 in?
3 A. Yes, it was.
4 Q. Were the objectives for the June
5 30, 2004 ride discussed at that meeting?
6 A. July 30th?
7 Q. I am sorry, July 30th?
8 A. Yes, they were.
9 Q. What were those objectives?
10 A. As with the prior rides the
11 objectives were to maintain the group together
12 as much as possible. Ensure the safety of
13 cyclists and minimizing the impact to
14 vehicular traffic by keeping the pack
15 together.
16 Q. Do you recall how many officers
17 from the First Precinct Scooter Task Force
18 participated in that detail?
19 A. There were less than ten,
20 approximately eight.
21 Q. Do you recall learning at the
22 meeting prior to going to Union Square that
23 there would be officers from other units or
24 precincts who would participate in the
25 monitoring of the ride?

1 Wagner
2 Do you recall whether participants
3 in the July 30, 2004 Critical Mass ride wore
4 the uniform of the day as you described it?
5 A. To my knowledge yes.
6 Q. Did the members of the July 2004
7 detail engage in the same activity with
8 respect to the ride that you have described
9 with respect to the prior Critical Mass rides
10 you have monitored?
11 MR. CIAPPETTA: Objection as to
12 the form.
13 A. Can you clarify the participants?
14 Q. Sure. Did the members assigned to
15 the July 30, 2004 detail cork intersections
16 for the Critical Mass ride?
17 A. Yes.
18 Q. Did the members of the detail wave
19 bicyclists through the intersections that were
20 corked?
21 A. Yes.
22 Q. Do you recall whether the Critical
23 Mass ride conducted on July 30, 2004 proceeded
24 using all available space on any one-way
25 streets?

1 Wagner
 2 A. Yes, they did.
 3 Q. Do you recall the approximate size
 4 of the July 30, 2004 Critical Mass ride?
 5 A. As I recall it was a rather large
 6 one, approximately 4,000.
 7 Q. Do you recall when the July 30,
 8 2004 ride began?
 9 A. Yes.
 10 Q. When was that?
 11 A. 7:30 p.m.
 12 Q. Do you recall when the July 30,
 13 2004 ride ended?
 14 A. Yes. Approximately 9:30, 9:40
 15 p.m.
 16 Q. Did that ride proceed north of
 17 59th Street in Manhattan?
 18 A. Not as I recall.
 19 Q. Did it exit the borough of
 20 Manhattan?
 21 A. Not as I recall.
 22 Q. Did any participants in that ride
 23 proceed on the FDR Drive?
 24 A. Yes, they did.
 25 Q. How did you learn that

1 Wagner
 2 Q. Do you recall the members of that
 3 detail attempting to prevent the bicyclists
 4 from entering the Battery Park Underpass?
 5 A. To my knowledge no officers
 6 attempted to prevent them from entering the
 7 Battery Park Underpass.
 8 Q. Do you recall any members of that
 9 detail attempting to prevent the bicyclists
 10 from entering the FDR Drive?
 11 A. No.
 12 Q. Did the bicyclists enter the
 13 northbound or the southbound roadway of the
 14 FDR Drive?
 15 A. Northbound.
 16 Q. How far did they proceed on that
 17 roadway?
 18 A. They proceeded north all the way
 19 to East Houston Street where they then
 20 existed.
 21 Q. The members of the Critical
 22 Mass -- the officers assigned to the Critical
 23 Mass detail proceeded with the bicyclists on
 24 the northbound roadway of the FDR Drive at
 25 that time?

1 Wagner
 2 participants in the July 2004 ride proceeded
 3 on the FDR Drive?
 4 A. We followed them.
 5 Q. Was it the entire ride which you
 6 estimated being at several thousand enter the
 7 FDR Drive?
 8 A. To the best of my knowledge it was
 9 the entire ride that road up on to the FDR
 10 Drive.
 11 Q. And what entrance to the FDR Drive
 12 did the group use?
 13 A. They entered the FDR Drive after
 14 exiting the Battery Park Underpass.
 15 Q. From what roadway did they enter
 16 the Battery Park Underpass?
 17 A. The West Side Highway.
 18 Q. Is that also known as West Street?
 19 A. Yes.
 20 Q. Do you recall the members of the
 21 detail assigned to that ride attempting to
 22 prevent the bicyclists from entering West
 23 Street?
 24 A. We did not attempt to prevent them
 25 from entering the West Street.

1 Wagner
 2 A. Yes.
 3 Q. Do you recall what position with
 4 respect to the ride you occupied?
 5 A. Yes.
 6 Q. Where was that?
 7 A. At the very extreme end of the
 8 ride.
 9 Q. At the back of the ride then?
 10 A. Yes. At the very back of the
 11 ride.
 12 Q. Were other officers there with
 13 you?
 14 A. Yes.
 15 Q. Were all of the officers at the
 16 extreme back of the ride at that point?
 17 A. Yes.
 18 Q. What if anything do you recall
 19 regarding that incident?
 20 A. As I recall once we became aware
 21 that the ride was going to proceed on to West
 22 Street, and they had in fact turned south in
 23 the southbound traffic lanes of West Street,
 24 all the officers fell to a position behind the
 25 ride to prevent any vehicles from traveling at

1 Wagner
2 highway speed from slamming into the back of
3 the pack.
4 At that point -- to prevent any
5 speeding vehicles, or southbound vehicles from
6 slamming into the back of the bicycle pack.
7 Their safety was paramount. At that point we
8 had no control whatsoever of where they were
9 going to go. We had hoped that they were
10 going to exit without going anywhere else such
11 as Battery Park Underpass or the FDR Drive,
12 but that is where they wound up going.
13 Q. What do you believe -- do you
14 recall in any of your discussions with
15 Critical Mass participants during or prior to
16 the July 30, 2004 ride whether it was the
17 intention of the participants to disrupt motor
18 vehicle traffic?
19 MR. CIAPPETTA: Objection as to
20 the form.
21 A. Yes.
22 Q. What were the nature of those
23 discussions?
24 A. In substance the discussion
25 revolved around my asking them why are you

1 Wagner
2 Critical Mass to disrupt traffic?
3 MR. CIAPPETTA: You mean July
4 30th?
5 Q. July 30th?
6 A. It was my understanding that to
7 bring attention to their cause, blocking
8 traffic was a desirable side effect of the
9 ride.
10 Q. Not necessarily the purpose of the
11 ride?
12 MR. CIAPPETTA: Objection as to
13 the form.
14 A. As an absolute first priority; no.
15 Q. Did you form a view as to what was
16 the first priority for the ride?
17 A. Yes.
18 Q. During this timeframe?
19 A. Yes.
20 Q. What is that?
21 A. Again advocating alternative means
22 of transportation.
23 Q. Do you recall any discussions
24 regarding the entry of the Critical Mass on to
25 the FDR Drive subsequent to that ride?

1 Wagner
2 blocking traffic, and the response was to
3 bring attention to alternative means of
4 traffic. Specifically if there are fewer cars
5 and more bikes there would be less traffic.
6 So to make the point with emphasis they would
7 create -- they would block traffic as much as
8 they could.
9 Q. And was it your perception that
10 participants in Critical Mass rides held on
11 June 30, 2004 and prior had the objective of
12 blocking as much traffic as they could?
13 MR. CIAPPETTA: You mean July
14 30th?
15 Q. July 30th, thank you.
16 A. Yes.
17 Q. And you based that in part on the
18 conversations that you have had with
19 participants?
20 A. Yes.
21 Q. Do you base it on anything else?
22 A. No.
23 Q. Do you recall any participants in
24 Critical Mass telling you on or prior to June
25 30, 2004 that it was not the objective of

1 Wagner
2 A. Subsequent to the riding on the
3 FDR Drive?
4 Q. I will rephrase it.
5 Did you have discussions with any
6 other -- any other officers at NYPD regarding
7 the fact that the July 2004 ride entered the
8 FDR Drive?
9 A. Yes.
10 Q. What were those discussions?
11 A. We were in agreement, we could not
12 believe they actually road up on to the
13 elevated portion of the FDR Drive, and it was
14 our general consensus that in essence they
15 stepped in it. This is going to be -- further
16 rides would not be the same.
17 Q. And who did you have those
18 discussions with?
19 A. Some of the other officers who I
20 was riding with.
21 Q. Did you have any of those
22 discussions with the sergeant who was the
23 commanding officer for that detail?
24 A. Yes.
25 Q. What was the name of that sergeant

1 Wagner
 2 again?
 3 A. Sergeant Gullotta.
 4 Q. Do you know whether Sergeant
 5 Gullotta discussed this matter with anyone at
 6 NYPD outside of the First Precinct Scooter
 7 Task Force?
 8 A. Yes.
 9 Q. Who did Sergeant Gullotta discuss
 10 this matter with to your knowledge?
 11 A. To my knowledge I do know she
 12 informed the borough, the wheel at the
 13 borough, the borough commander became aware.
 14 And I also believe she did an unusual instance
 15 report on that.
 16 Q. Who was the borough commander at
 17 this time for Patrol Borough Manhattan South?
 18 A. As I recall Chief Bruce Smolka.
 19 Q. Do you recall learning the
 20 substance of the unusual occurrence report
 21 that Sergeant Gullotta prepared?
 22 MR. CIAPPETTA: Objection as to
 23 form.
 24 A. My understanding in substance was
 25 just a summary of what happened.

1 Wagner
 2 FDR Drive portion of the July 30, 2004 ride
 3 with respect to how the ride would be
 4 monitored going forward?
 5 MR. CIAPPETTA: Objection as to
 6 the form.
 7 A. Yes.
 8 Q. And what were those proposals?
 9 A. Our proposals were amongst
 10 ourselves that perhaps we should enforce the
 11 traffic regulations, but nobody was -- had any
 12 certainty or idea how our monitoring of the
 13 ride would change.
 14 Q. Was it your expectation that if
 15 there was to be -- was it your expectation
 16 that any change in your objectives in
 17 monitoring the ride would come from your
 18 supervisor?
 19 MR. CIAPPETTA: Objection as to
 20 the form.
 21 A. Yes.
 22 Q. Did you communicate those
 23 expectations to your supervisor?
 24 A. Yes.
 25 Q. What guidance, if any, did you get

1 Wagner
 2 Q. Do you know to whom that unusual
 3 occurrence report was circulated?
 4 A. As I recall it was circulated to
 5 the standard recipients for an unusual
 6 occurrence report.
 7 Q. Who would those standard
 8 recipients be?
 9 A. The borough commander, chief of
 10 patrol and the commissioner's officer.
 11 Q. Would a copy of that unusual
 12 occurrence report be kept at the First
 13 Precinct?
 14 A. I believe so.
 15 Q. Did you ever see a copy of that
 16 unusual occurrence report?
 17 A. No.
 18 Q. Do you know whether there was a
 19 recommendation made with respect to how the
 20 Critical Mass ride would be monitored in that
 21 report?
 22 A. No.
 23 Q. Do you recall there being any
 24 proposals amongst the officers in the First
 25 Precinct Scooter Task Force who discussed the

1 Wagner
 2 from your supervising officer with respect to
 3 changes in how the ride would be monitored
 4 going forward?
 5 A. After I conversed with Sergeant
 6 Gullotta she told us that we are not in a
 7 position to say this is what we are going to
 8 do, and that we would wait for guidance from
 9 higher command within the department as to how
 10 we are going to adjust what we are doing with
 11 the Critical Mass ride.
 12 Q. At this time did you become aware
 13 that the objectives for the Critical Mass ride
 14 details that had been set previously were set
 15 by a particular individual or individuals?
 16 MR. CIAPPETTA: Objection as to
 17 the form. You may answer if you
 18 understand.
 19 A. I know somebody makes the
 20 decision, I don't know specifically who.
 21 Q. Do you recall learning at that
 22 time that there was any person at NYPD who
 23 held the view that Critical Mass rides -- that
 24 Critical Mass details should be monitored in
 25 the manner in which you monitored the July

1 Wagner
2 2004 and previous rides?
3 A. No.
4 Q. But your understanding was that it
5 would require a directive from a supervising
6 officer for you to change the objectives and
7 manner of the Critical Mass detail going
8 forward?
9 A. Yes.
10 Q. Where did you get that
11 understanding?
12 A. Again from Sergeant Gullotta,
13 our -- up to that point it was safety and
14 security only. After the July 30th ride they
15 changed a few things. Somebody was going to
16 issue a new directive, and we were not sure
17 what exactly at that time it was going to be.
18 It could have been keep it as it is or
19 something more law enforcement oriented.
20 Q. Do you recall being aware on July
21 30, 2004 that the Republican National
22 Convention was going to be held in New York in
23 August 2004?
24 A. Yes.
25 Q. Do you recall being aware in July

1 Wagner
2 connection with the RNC during this timeframe
3 July 2004?
4 A. My unit specifically as far as the
5 Republican Convention goes, we were scheduled
6 to be performing a lot of overtime, a lot of
7 double tours, double shifts. We were told to
8 expect to be at the Republican Convention
9 almost around the clock, again being that we
10 were the quote fire brigade to go wherever
11 trouble erupts, and that we would enforcing at
12 demonstrations and such.
13 Q. Prior to that time had you been
14 assigned to details that monitored mass events
15 other than Critical Mass?
16 A. Yes.
17 Q. Had you been assigned to details
18 monitoring demonstrations?
19 A. Yes.
20 Q. Such as let's say political
21 demonstrations advocating for a particular
22 cause?
23 A. Yes, absolutely.
24 Q. Had you ever been, I don't know if
25 deployed is the right word, deployed at a

1 Wagner
2 of 2004 that the August 2004 Critical Mass
3 ride would coincide with portions of the
4 Republican National Convention?
5 A. Yes, I was aware.
6 Q. Was that a matter of discussion
7 amongst members of the First Precinct Scooter
8 Task Force who served on Critical Mass details
9 at that time?
10 A. Yes.
11 Q. What were those discussions?
12 A. In substance we could not envision
13 just doing the ride as was as far as safety
14 and security only. Beyond that we were
15 waiting for directives as to how we were
16 actually going to enforce, not only Critical
17 Mass, but all protests regarding the RNC.
18 Q. So in advance of the RNC you were
19 aware that there would be NYPD activity to
20 manage protest activity at the RNC?
21 MR. CIAPPETTA: Objection as to
22 the form.
23 A. Yes.
24 Q. What was your understanding of the
25 NYPD activity that would be undertaken in

1 Wagner
2 parade such as the St. Patrick's Day Parade or
3 the Puerto Rico Day period?
4 A. Yes.
5 Q. Did you regularly participate in
6 those events?
7 A. Yes.
8 Q. Did you participate in or have you
9 ever participated, and this is obviously
10 changing the timeframe up through the present,
11 have you ever participated as a member of a
12 detail monitoring a demonstration concerning
13 the Sean Bell shooting, if you know what that
14 is?
15 A. Yes.
16 Q. And what specific demonstrations
17 regarding that shooting do you recall
18 participating in; participating in a detail in
19 connection with?
20 A. I recall a protest march across
21 the Brooklyn Bridge with a following rally at
22 City Hall. There was a separate calendar
23 date, an additional rally at City Hall with
24 Reverend Sharpton. And a Critical Mass
25 bicycle ride where Reverend Sharpton road as

1 Wagner
2 part of the ride as part of the ride after
3 addressing the membership.
4 Q. Do you recall participating in a
5 detail in connection with demonstrations in
6 which demonstrators blocked access to
7 Manhattan or from Manhattan at the East River
8 crossings?
9 MR. CIAPPETTA: Objection as to
10 the form. Are you talking about the Sean
11 Bell shooting?
12 MR. VACCARO: I am saying any
13 political demonstration where the
14 apparent objectives of the demonstrators
15 were to proceed to East River crossings,
16 Brooklyn, Manhattan or Queensborough
17 Bridges for example?
18 A. No, I never participated in one of
19 those.
20 Q. Do you recall in connection with
21 the demonstration that proceeded over the
22 Brooklyn Bridge that you just mentioned, do
23 you recall there being a pre-detail meeting at
24 which detail members were briefed on the
25 objectives for the detail?

1 Wagner
2 A. Yes. The MS Bike Tour, the Five
3 Borough Bike Tour, and informal ride of
4 bicyclists who were going to review some
5 architectural interesting buildings in
6 Manhattan.
7 Q. Do you recall the date of the
8 third of those three types of rides that you
9 just described?
10 A. The architectural ride?
11 Q. Yes.
12 A. I don't recall the specific date.
13 I believe it was in late 2004.
14 Q. Do you recall how you learned
15 about -- withdrawn.
16 Do you recall who was the
17 organizer, if any, of that group bicycle ride?
18 A. Yes.
19 Q. Who was that?
20 A. An organization called
21 Transportation Alternatives.
22 Q. Do you recall if you first heard
23 of Transportation Alternatives in connection
24 with that late 2004 ride?
25 A. Not prior to that.

1 Wagner
2 A. Yes.
3 Q. Is it customary in being assigned
4 to a detail in connection with a mass event to
5 have a pre-event briefing?
6 A. Yes.
7 Q. At the pre-event briefing held in
8 connection with the march across the Brooklyn
9 Bridge do you recall what objectives were
10 described for that event?
11 A. Yes.
12 Q. What were they?
13 A. Monitor the march starting over in
14 Brooklyn, make sure people stay on the bike
15 path or pedestrian walkway. Upon exiting the
16 bridge escort them along the sidewalk to the
17 rally area outside the City Hall.
18 Q. Have you ever been assigned to a
19 detail to accompany a group bicycle ride other
20 than Critical Mass?
21 MR. CIAPPETTA: Objection as to
22 the form.
23 A. Yes.
24 Q. Do you recall what group bicycle
25 rides those were?

1 Wagner
2 Q. So in other words you didn't --
3 you were not aware of Transportation
4 Alternatives prior to that ride?
5 A. Correct.
6 Q. Do you recall there being a
7 pre-event meeting for that detail?
8 A. Yes.
9 Q. Do you recall what the -- what
10 objectives were discussed during that
11 pre-event briefing?
12 A. Yes.
13 Q. What were they?
14 A. Ride along with the ride, maintain
15 safety for the riders. We were expecting
16 approximately 200 cyclists for the event, and
17 they were going to depart from outside the
18 Plaza Hotel on 59th Street. The route was
19 also outlined.
20 Q. Were you given a copy of the route
21 at the pre-event briefing?
22 A. No.
23 Q. Did any member of the detail have
24 a copy of the route?
25 A. Yes.

1 Wagner
 2 Q. Which member?
 3 A. The Sergeant Ranieri at the time.
 4 Don't hold me to the date, but Sergeant
 5 Ranieri had it.
 6 Q. Was -- do you recall that Sergeant
 7 Ranieri was the sergeant with supervisory
 8 responsibility for the First Precinct Scooter
 9 Task Force at the time of this Transportation
 10 Alternatives ride?
 11 A. Yes, at that time.
 12 Q. Do you recall when Sergeant
 13 Ranieri took on that position of authority
 14 within the First Precinct Scooter Task Force?
 15 A. Again I am not 100 percent sure. I
 16 I am trying to ballpark when this ride was. I
 17 know it was in the autumn. I would revise the
 18 date to probably late 2005 because Sergeant
 19 Gullotta was promoted and transferred out,
 20 Sergeant Ranieri came in.
 21 Q. Do you recall whether there was a
 22 permit issued by NYPD to conduct this
 23 Transportation Alternatives ride?
 24 A. Yes, there was.
 25 Q. And how did you know that?

1 Wagner
 2 Task Force had responsibility for issuing
 3 permits for mass events?
 4 A. Yes.
 5 Q. When was that?
 6 A. Towards the end of 2004.
 7 Q. And what do you recall learning at
 8 that time regarding that responsibility?
 9 A. An event organizer would either
 10 fill it out in person or fax an application
 11 for permit to the administrative officer
 12 within the task force, the Scooter Task Force.
 13 That officer is responsible to research and
 14 determine if there is any other conflicting
 15 events for that geographical location, and if
 16 there is any other exigent adverse impacts to
 17 the immediate area.
 18 Barring none they submit it to the
 19 commanding officer of the Scooter Task Force
 20 for review and approval.
 21 Q. And was it your understanding at
 22 this time when you learned this information
 23 that the First Precinct Scooter Task Force
 24 would have responsibility for such a permit
 25 with respect to events of any size?

1 Wagner
 2 A. We issued the permits. The
 3 Scooter Task Force issues the permits for
 4 these events.
 5 Q. Is it your understanding that the
 6 Scooter Task Force has responsibility to issue
 7 permits for all group bicycle rides occurring
 8 within Patrol Borough Manhattan South?
 9 A. We issue permits for most large
 10 events, especially those who have sound
 11 permits, who need sound permits. It is not
 12 necessarily restricted to just bicycle groups.
 13 Q. Did the First Precinct Scooter
 14 Task Force have that responsibility for
 15 issuing permits for such events back in 2003?
 16 A. I don't know.
 17 Q. When did you first become aware
 18 that the First Precinct Scooter Task Force had
 19 responsibility for issuing permits for mass
 20 events?
 21 MR. CIAPPETTA: Objection as to
 22 form. I don't think it correctly
 23 characterizes his testimony.
 24 Q. Did there come a time when you
 25 became aware that the First Precinct Scooter

1 Wagner
 2 MR. CIAPPETTA: Objection as to
 3 the form.
 4 A. Not specifically. Only if it
 5 involved sound amplification.
 6 Q. Do you recall there being a
 7 threshold number of expected participants that
 8 would trigger the role of the First Precinct
 9 Scooter Task Force in reviewing the permit?
 10 A. No.
 11 Q. Do you recall learning at that
 12 time that the First Precinct Scooter Task
 13 Force had the responsibility for reviewing and
 14 approving such permits prior to late 2004?
 15 A. Yes.
 16 Q. In fact did the Scooter Task Force
 17 have that responsibility prior?
 18 A. I would assume so.
 19 Q. Did anyone tell you so?
 20 A. No.
 21 MR. CIAPPETTA: Can we take a five
 22 minute break?
 23 MR. VACCARO: Okay.
 24 THE VIDEOGRAPHER: The time is
 25 12:43. We are off the record.

1 Wagner
2 A. If I could clarify?
3 Q. Sure.
4 A. You basically asked me if I had
5 made an arrest with regards to the Republican
6 National Convention. This arrest, where it is
7 an arrest, it has nothing to do with the
8 Republican National Convention. I was not
9 even assigned to the detail on that day. My
10 assignment was patrol beat 2/3 in the First
11 Precinct.
12 Q. And were you also assigned to
13 patrol beat 2/3 on August 26, 2004?
14 A. Yes, I was.
15 Q. And on Friday, August 27, 2004,
16 what was your assignment?
17 A. My assignment was a 1600 by 0035
18 shift. Detail number R304, which would be for
19 the Republican National Convention.
20 Q. Do you recall observing a Critical
21 Mass bicycle ride on August 27, 2004?
22 A. Yes.
23 Q. Where did you observe it?
24 A. My recollection is we first
25 observed them on 34th Street.

1 Wagner
2 Mass ride, what did you understand that to
3 mean back at that time?
4 A. That we would take proper law
5 enforcement actions as dictated by the
6 situation.
7 Q. Was it your understanding at the
8 pre-event briefing for August 27, 2004 that if
9 you were directed to monitor the Critical Mass
10 ride that you would monitor it in the same
11 manner and with the same objectives as you had
12 prior Critical Mass rides?
13 A. No.
14 Q. What was different to your
15 understanding at that time in the way in which
16 you would monitor the August 27, 2004 Critical
17 Mass ride if you were asked to do so?
18 A. As I recall we were informed at
19 the beginning of the shift that there would be
20 a zero tolerance policy for all
21 demonstrations, not just Critical Mass per se,
22 but any demonstration, and that appropriate
23 police action would be taken up to and
24 including arrests if necessary.
25 Q. What do you mean by zero tolerance

1 Wagner
2 Q. At the time you observed them you
3 were not assigned to what we have been
4 describing as a Critical Mass detail; is that
5 correct?
6 A. Correct.
7 Q. But you coincidentally observed
8 Critical Mass while you were serving on a
9 detail organized in connection with the RNC?
10 MR. CIAPPETTA: Objection as to
11 the form.
12 A. Yes.
13 Q. Did you -- do you recall the
14 pre-event briefing, if any, held in connection
15 with your detail on August 27, 2004?
16 A. Yes.
17 Q. Let me know what you recall
18 regarding that briefing?
19 A. As I recall we were going to be
20 working demonstration areas regarding the
21 National Convention, and if Critical Mass
22 should choose to ride, that if we were told we
23 would respond and then work the Critical Mass
24 ride.
25 Q. When you say work the Critical

1 Wagner
2 policy?
3 A. That meaning if a march or a
4 disorderly group would step out into the
5 street to block traffic in violation of the
6 disorderly conduct statutes, they would be
7 given a chance to disperse and upon failing to
8 do so there would then be arrested.
9 Q. And what was the size of the
10 detail for, that you participated in on August
11 27, 2004?
12 A. It was extremely large.
13 Q. Was it the -- did it include the
14 entire First Precinct Scooter Task Force?
15 A. Yes, it did.
16 Q. Did the pre-event briefing include
17 individuals outside of the First Precinct
18 Scooter Task Force?
19 A. No.
20 Q. Who gave the pre-event briefing?
21 A. Lieutenant Turco.
22 Q. At this time what was Lieutenant
23 Turco's role within the task force?
24 A. He was the commanding officer of
25 the First Precinct Scooter Task Force.

1 Wagner

2 Q. Prior to this time had you ever

3 known Lieutenant Turco to participate in a

4 Critical Mass -- in a detail that would have

5 responsibilities with respect to Critical

6 Mass?

7 A. No.

8 Q. Do you recall Lieutenant Turco

9 mentioning Critical Mass specifically?

10 A. Not as I recall.

11 Q. But it was your understanding that

12 Critical Mass would be monitored and subject

13 to law enforcement on the same terms as any

14 demonstration activity that took place on

15 August 27, 2004?

16 A. Yes.

17 Q. When you first observed Critical

18 Mass on August 27, 2004 do you recall what the

19 bicyclists were doing?

20 A. Yes.

21 Q. What?

22 A. They were riding eastbound on 34th

23 Street.

24 Q. Do you recall whether they were

25 proceeding eastbound on the portion of 34th

1 Wagner

2 of us followed either in a single line or a

3 ride abreast behind the riders.

4 Q. And you proceeded eastbound on

5 34th Street?

6 A. As I recall, yes.

7 Q. Do you recall if the ride turned

8 from 34th Street?

9 A. Yes. I don't recall which avenue

10 though.

11 Q. Was it north or south if you

12 recall?

13 A. I believe they turned north.

14 Q. And as you proceeded along 34th

15 Street and then northbound did the task force

16 cork intersections as members of it had in

17 prior Critical Mass details?

18 A. No.

19 Q. Were there situations in which

20 bicyclists proceeded through red lights?

21 A. Yes. As I recall they did.

22 Q. Do you recall Lieutenant Turco at

23 the head of the ride waving the bicyclists

24 through the red lights?

25 A. No.

1 Wagner

2 Street that is designated for westbound

3 traffic?

4 A. Not to my recollection.

5 Q. In other words you don't recall

6 them proceeding against the flow of traffic on

7 34th Street?

8 A. Correct.

9 Q. Do you recall at that time having

10 learned that the First Precinct Scooter Task

11 Force would monitor Critical Mass at this

12 point going forward?

13 A. Yes.

14 Q. Where did you get that information

15 from?

16 A. Lieutenant Turco ordered the

17 entire task force to mount up and begin to

18 follow the ride.

19 Q. And the entire task force was some

20 30, approximately 30 officers?

21 A. Yes, more or less.

22 Q. And how did you monitor the

23 Critical Mass ride from that point forward?

24 A. Lieutenant Turco and the three

25 sergeants on duty took the lead, and the rest

1 Wagner

2 Q. Do you know if there was any

3 communication between Lieutenant Turco and the

4 participants in the ride with respect to how

5 Critical Mass bicyclists should or should not

6 observe red lights?

7 A. No.

8 Q. Were you in a position to be able

9 to observe Lieutenant Turco with respect to

10 his interactions with individual bicyclists at

11 the head of the ride?

12 A. No, I was not.

13 Q. Do you recall there being any

14 incidents on 34th Street on this date in which

15 motorists collided with bicyclists?

16 MR. CIAPPETTA: Objection as to

17 the form.

18 A. Not that I recall.

19 Q. Do you recall there being any

20 confrontations between motorists and

21 bicyclists during this portion of the ride on

22 34th Street?

23 A. Not that I recall.

24 Q. Do you recall communicating to the

25 bicyclists that, yourself that there was a

1 Wagner
 2 zero tolerance law enforcement policy that you
 3 would be applying?
 4 A. No, I did not.
 5 Q. Do you have any information as to
 6 whether any of the bicyclists were aware of
 7 the zero tolerance policy?
 8 A. I have no information regarding
 9 that.
 10 Q. After you turned northbound do you
 11 recall how far north the ride proceeded?
 12 A. I don't recall how many blocks
 13 they proceeded north.
 14 Q. Do you recall whether there were
 15 any summonses issued to participants to the
 16 ride on 34th Street?
 17 A. To my knowledge there were no
 18 summonses issued.
 19 Q. Do you recall whether there were
 20 any arrests of the participants in the ride on
 21 34th Street?
 22 A. Not to my knowledge.
 23 Q. But the ride did proceed through
 24 steady red signals on 34th Street to your
 25 recollection?

1 Wagner
 2 that followed attempt to stop the bicyclists
 3 from proceeding through red lights?
 4 A. No.
 5 Q. Do you recall what the ride did at
 6 the end of the northern leg of its journey
 7 which followed this stretch on 34th Street?
 8 A. Yes.
 9 Q. What was that?
 10 A. Eventually they departed the
 11 northbound route and proceeded west towards
 12 the Lincoln Tunnel.
 13 Q. At that time do you recall the
 14 specific street on which the ride proceeded
 15 westbound?
 16 A. No.
 17 Q. When you say it was in the
 18 direction of the Lincoln Tunnel, was it in
 19 midtown that the ride was proceeding?
 20 A. Yes.
 21 Q. It was south of 59th Street?
 22 A. Yes, definitely.
 23 Q. Was it north of 34th Street?
 24 A. Yes.
 25 Q. And during this westbound leg of

1 Wagner
 2 A. Yes.
 3 Q. Were there any summonses issued to
 4 the ride during the northbound leg that
 5 followed the stretch on 34th Street?
 6 A. Not to my knowledge.
 7 Q. Do you recall any arrests during
 8 that portion of the ride?
 9 A. I don't recall any arrests.
 10 Q. Did the group proceed taking --
 11 what do you recall the size of the Critical
 12 Mass bicycle ride on August 27th?
 13 A. From my position it was a rather
 14 large ride. At least 1,500 to 2,000 people.
 15 Q. Did the bicyclists take up all
 16 available lanes of traffic in the roadways in
 17 which they used?
 18 A. Yes.
 19 Q. Did you or any of the other
 20 officers monitoring the ride on this date
 21 attempt to stop the bicyclists from doing so?
 22 A. No, not at that time.
 23 Q. Did you or any of the other
 24 officers on the ride during the stretch on
 25 34th Street and then during the northbound leg

1 Wagner
 2 the ride did the bicyclists occupy all
 3 available lanes of traffic?
 4 A. Yes.
 5 Q. And did the bicyclists proceed
 6 through red lights?
 7 A. Yes.
 8 Q. Did the bicyclists engage in
 9 confrontations with motorists?
 10 A. Not to my recollection.
 11 Q. Do you recall the bicyclists
 12 having confrontations with motorists at any
 13 point prior to this western leg during the
 14 portion of the ride that you observed?
 15 A. Not to my recollection.
 16 Q. Do you recall any confrontation
 17 between any participants in the ride and any
 18 police officers during the portion of the ride
 19 that you observed?
 20 A. Not to my recollection.
 21 Q. Do you recall whether the
 22 interactions between the participants in the
 23 ride and the police officers were cordial as
 24 you have used that term to describe such
 25 interactions in other rides?

1 Wagner
2 A. I don't know if I would
3 characterize it as cordial or tense, it was
4 just business like atmosphere.
5 Q. Do you recall at what point the
6 ride stopped proceeding westbound?
7 A. On one of the cross streets near
8 the Lincoln Tunnel, I believe it is either
9 35th or 37th Street, it is -- I believe either
10 35th or 37th Street, one-way street at the
11 mouth of the Lincoln Tunnel.
12 Q. Were the bicyclists in the ride
13 doing or saying anything with reference to the
14 Republican National Convention as you observed
15 them from 34th Street up north and then over
16 west?
17 A. Yes.
18 Q. What were they doing or saying in
19 that regard?
20 A. In substance I can't remember the
21 exact chants, it was pretty chaotic. But in
22 essence they were shouting political slogans
23 that were not complimentary to the
24 Republicans.
25 Q. Did you observe other

1 Wagner
2 A. Again on the cross street I
3 mentioned, as the cyclists entered an area, it
4 was decided by who I don't know, Lieutenant
5 Turco ordered us into a line abreast formation
6 at the base of the pack, the back of the pack.
7 We observed at the far end of the block
8 several NYPD vans pull in front of the
9 intersection essentially corking the block.
10 So the vans sealed off the far end at the head
11 of the pack and we closed in the block at the
12 back of the pack.
13 Q. Can you describe in greater detail
14 what you mean by a line abreast formation?
15 A. Yes. Its a formation that we use
16 specific to scooters in that in order to
17 create a mobile line to prevent people or
18 sometimes animals from going through we would
19 ride side by side, almost handlebar to
20 handlebar, to prevent people from getting
21 through the line of scooters that would be
22 subsequently formed.
23 Q. So as a result of this maneuver
24 the group of Critical Mass bicyclists that you
25 had been monitoring were now contained?

1 Wagner
2 demonstrators in this part of midtown as you
3 were riding along with the Critical Mass
4 participants?
5 A. Not after we left the Madison
6 Square Garden, Herald Square area.
7 Q. But when the ride proceeded back
8 west was it not in that same area?
9 MR. CIAPPETTA: Objection as to
10 the form.
11 A. In generality in that it was in
12 midtown, yes. But the demonstrations were
13 very much concentrated or localized around
14 either the hotels for the delegates or Madison
15 Square Garden. So within the immediate block
16 or two surrounding Madison Square Garden.
17 Q. At any point did -- at any point
18 did the NYPD officers monitoring the ride
19 attempt to stop it from proceeding?
20 A. No. We did not attempt to stop it
21 from proceeding.
22 Q. At any point did NYPD apply the
23 zero tolerance policy you described earlier?
24 A. Yes.
25 Q. When did that point come about?

1 Wagner
2 MR. CIAPPETTA: Objection as to
3 the form.
4 Q. Contained on this block?
5 A. In essence, yes.
6 Q. Do you recall providing, you
7 yourself providing any warning to the
8 bicyclists that they were about to be so
9 contained?
10 A. Not myself, no.
11 Q. Do you recall any NYPD officers
12 warning the bicyclists that this maneuver,
13 this containment maneuver was about to take
14 place?
15 A. I could not say yes or no because
16 of my position was at the back of the
17 formation.
18 Q. Do you recall the reactions of any
19 of the bicyclists to this containment
20 maneuver?
21 A. Yes.
22 Q. What was it?
23 A. As the police vans moved into
24 their blocking positions, the front of the
25 cycle group immediately stopped and wheeled

1 Wagner
 2 about doing a 180 degree turn to try to go
 3 back the way they came. As we closed off the
 4 back of the block the line of cyclists
 5 directly in front of us attempted to break
 6 through our line and flea to avoid being
 7 caught in the closed off block.
 8 And several other cyclists began
 9 to dismount, lock their bicycles to trees or
 10 any other fixed object and attempted to enter
 11 some of the buildings that were there. They
 12 were unable to gain entry into the buildings.
 13 Q. Once the line abreast formation
 14 was in place at one end of the block and the
 15 motor vehicles were in place corking off the
 16 other end of the block, did either the SUVs or
 17 the scooter officers proceed toward the middle
 18 of the block in a manner so as to compress the
 19 amount of space available to the bicyclists?
 20 MR. CIAPPETTA: Objection as to
 21 the form.
 22 A. No vehicles were used in that
 23 regard.
 24 Q. Did NYPD personnel proceed on foot
 25 in a manner so as to compress the space in

1 Wagner
 2 MR. CIAPPETTA: Objection as to
 3 form.
 4 A. I would estimate approximately 75
 5 to 80 officers inclusive.
 6 Q. Do you recall if you received any
 7 orders at this time as to the purpose of this
 8 containment and compression of the bicyclists?
 9 MR. CIAPPETTA: Objection as to
 10 form.
 11 A. As I recall the department was
 12 going to begin affecting arrests of the
 13 contained cyclists. Our job as the Scooter
 14 Task Force at that point was to prevent escape
 15 and await arrival of Manhattan South Task
 16 Force to relieve us of our positions.
 17 Q. And did you have an understanding
 18 as to what would be the charges on which such
 19 arrests would be based at that time?
 20 A. Disorderly conduct. Beyond that,
 21 no.
 22 Q. And what was the basis of that
 23 understanding?
 24 A. The basis of the vehicles -- the
 25 bicycles obstructing vehicular traffic that

1 Wagner
 2 which the cyclists were contained?
 3 A. Yes.
 4 Q. Did those NYPD personnel include
 5 First Precinct Scooter Task Force members who
 6 dismounted from their scooters?
 7 A. Yes.
 8 Q. Did you participate in that
 9 maneuver?
 10 A. Yes.
 11 Q. Did it also -- did that
 12 compression maneuver also involve NYPD
 13 individuals who exited from their vehicles at
 14 the other end of the block and proceeded
 15 towards the center of the block?
 16 A. Yes.
 17 Q. And was there any attempt to
 18 literally encircle the bicyclists with NYPD
 19 officers?
 20 MR. CIAPPETTA: Objection as to
 21 the form.
 22 A. No.
 23 Q. How many officers in total at this
 24 point were participating in this containment
 25 and compression maneuver?

1 Wagner
 2 would otherwise be flowing along or
 3 perpendicular to the ride.
 4 Q. And at the time of the containment
 5 there was no actual obstruction of
 6 intersecting traffic, was there?
 7 MR. CIAPPETTA: Objection as to
 8 the form.
 9 A. Not as I recall.
 10 Q. Such obstruction would have been
 11 impossible inasmuch as the bicyclists would
 12 have been contained within a single block
 13 exclusive of intersections; is that correct?
 14 MR. CIAPPETTA: Objection as to
 15 the form.
 16 A. Yes, but that is apparently why we
 17 chose that block to contain them.
 18 Q. So the arrests were to be effected
 19 on the basis of disorderly conduct of the ride
 20 prior to that point?
 21 A. To my understanding, yes.
 22 Q. Do you recall any officers stating
 23 to any of the bicyclists that they were under
 24 arrest?
 25 A. No.

1 Wagner
 2 Q. Did you inform any bicyclists that
 3 they were under arrest?
 4 A. No, I did not.
 5 Q. Do you recall whether NYPD
 6 personnel at this point had any, or made any
 7 attempt to communicate to the bicyclists as a
 8 group?
 9 MR. CIAPPETTA: Objection as to
 10 the form.
 11 A. As I recall from the group of
 12 officers who debarked from the vans and came
 13 from the opposite end of the block there was
 14 somebody on a bullhorn instructing the
 15 cyclists to move to the side of the road and
 16 to wait.
 17 Q. Do you recall who that officer
 18 was?
 19 A. No.
 20 Q. Do you recall observing that any
 21 cyclists were complying with that instruction?
 22 A. Yes.
 23 Q. And do you recall cyclists who
 24 were not complying with that instruction?
 25 A. Yes.

1 Wagner
 2 A. Yes, there was a truck available.
 3 Q. Did any loading of bicycles on to
 4 that truck occur during this period of time?
 5 A. No.
 6 Q. You mentioned that you were
 7 waiting for officers from another part of NYPD
 8 before, but I missed exactly what unit or
 9 division they were from. Can you repeat that,
 10 please?
 11 A. That would be Manhattan South Task
 12 Force.
 13 Q. And is that part of Patrol Borough
 14 Manhattan South at least for administrative
 15 purposes?
 16 A. Yes.
 17 Q. What was your understanding as to
 18 the role of the Manhattan South Task Force
 19 when it arrived?
 20 A. They would take over our positions
 21 at the end of the block at which point we were
 22 to resume our mobile status, depart that
 23 location, and become an available asset to
 24 the commanding officer of the Republican
 25 National Detail.

1 Wagner
 2 Q. Those were the cyclists who were
 3 attempting to enter buildings?
 4 A. Some, yes.
 5 Q. And what were other cyclists doing
 6 that was inconsistent with that instruction?
 7 A. There were several who tried to
 8 jump over our scooters and escape out our end
 9 of the block as we had fewer officers than
 10 there were at the far end of the block.
 11 Q. And what if anything did the task
 12 force officers do in response to those
 13 attempts?
 14 A. We detained them from jumping over
 15 our scooters and escorted them back into the
 16 block area.
 17 Q. Do you recall whether any cyclists
 18 were handcuffed at this time?
 19 A. As I recall, from the far end of
 20 the street bicyclists were beginning to be
 21 handcuffed at the far end of the block.
 22 Q. Was there a truck available at
 23 that time on which bicycles were being loaded?
 24 MR. CIAPPETTA: Objection as to
 25 the form.

1 Wagner
 2 Q. And do you recall how long after
 3 the containment and compression maneuver was
 4 effected the Manhattan South Task Force
 5 arrived at the scene?
 6 MR. CIAPPETTA: Objection as to
 7 the form.
 8 A. I believe about 30 minutes.
 9 Q. And during that 30 minutes were
 10 there any -- did you observe the restraint by
 11 NYPD of any cyclists other than through
 12 application of handcuffs?
 13 MR. CIAPPETTA: Objection as to
 14 the form.
 15 A. Yes.
 16 Q. Can you describe that use of
 17 force?
 18 MR. CIAPPETTA: Objection as to
 19 the form.
 20 A. Yes. There were several cyclists
 21 that became very agitated and violent at the
 22 prospect of being arrested as they saw
 23 handcuffs being put on various individuals on
 24 the block, and there were some alterations
 25 involving some pushing and shoving between

1 Wagner
 2 cyclists and officers.
 3 Q. Do you recall learning whether any
 4 cyclists or officers were injured as a result
 5 of those altercations?
 6 A. No, I don't recall any injuries.
 7 Q. How many cyclists were there that
 8 were contained on the block through this
 9 maneuver?
 10 MR. CIAPPETTA: Objection as to
 11 the form.
 12 A. I would estimate perhaps 250, 300.
 13 Q. You testified that when you first
 14 encountered the ride on August 27th that it
 15 was quite large and numbering in the
 16 thousands; is that right?
 17 A. Yes.
 18 Q. Can you describe the process by
 19 which the ride initially numbering in the
 20 thousands ultimately became a group of 250 or
 21 so?
 22 A. Yes. During the course of the
 23 ride several groups, varying sizes, I couldn't
 24 estimate, would break off to go do whatever
 25 else they were going to be doing on that

1 Wagner
 2 Q. Did you observe those arrests?
 3 A. No.
 4 Q. Do you know whether the officers
 5 at the far end of the block who were
 6 handcuffing Critical Mass participants in this
 7 containment situation advised any of the
 8 participants that they were under arrest?
 9 MR. CIAPPETTA: Objection as to
 10 the form.
 11 A. No. I have no firsthand knowledge
 12 of that, it was too far.
 13 Q. Did any members of the First
 14 Precinct Scooter Task Force handcuff any
 15 bicyclists at that point?
 16 A. Not that I recall.
 17 Q. At any point prior to the
 18 containment of this group of bicyclists on the
 19 block as you have described did any one of the
 20 NYPD officers warn the bicyclists that they
 21 were about to be arrested for disorderly
 22 conduct?
 23 MR. CIAPPETTA: Objection as to
 24 the form.
 25 A. I couldn't say with any

1 Wagner
 2 Friday evening.
 3 Q. So was the ride down to
 4 approximately 250 participants by the time
 5 that the bicyclists entered the block on which
 6 the containment maneuver was effected?
 7 MR. CIAPPETTA: Objection as to
 8 the form.
 9 A. I don't know a hundred percent
 10 recall if that was the minimum size or if as
 11 we moved in to contain other cyclists
 12 scattered away from the area. It was general
 13 chaos at that time.
 14 Q. So you did not personally effect
 15 any arrests in connection with the Critical
 16 Mass ride on August 27, 2004?
 17 A. Correct.
 18 Q. And to your knowledge none of the
 19 First Precinct Scooter Task Force members
 20 there effected any arrests?
 21 A. To my knowledge we did not.
 22 Q. The arrests were effected by
 23 members of Manhattan South Task Force?
 24 A. Or subsequent unit that replaced
 25 us, yes.

1 Wagner
 2 specificity yes or no.
 3 Q. You just don't know whether the
 4 bicyclists were warned by an NYPD officer
 5 whether they were liable or subject to arrest?
 6 A. Yes, correct. Again like I said
 7 there was general chaos. There was a lot of
 8 noise. I don't know if somebody at the other
 9 end informed them that they were being placed
 10 under arrest or not. I know within earshot of
 11 my position I didn't hear anybody telling them
 12 outside of us verbally warning them you are
 13 about to be arrested.
 14 Q. You did verbally warn them that
 15 they were about to be arrested, is that what
 16 you are saying?
 17 MR. CIAPPETTA: Objection as to
 18 the form.
 19 Q. Did you at any time verbally warn
 20 the cyclists who ultimately were contained on
 21 the block that they were going to be arrested?
 22 A. Yes.
 23 Q. When was that?
 24 A. As we corked our end of the block,
 25 cyclists came up and asked us what is going

1 Wagner
 2 on. We informed them that they are going to
 3 be arrested.
 4 Q. Did any of them ask the charges on
 5 which they would be arrested?
 6 A. Yes.
 7 Q. And what did you advise them?
 8 A. Disorderly conduct.
 9 Q. Am I correct that your memo book
 10 indicates at pages dash 90 and dash 91 of
 11 Exhibit Wagner 1 that you were assigned to
 12 detail in connection with the RNC on August
 13 28th and August 31st?
 14 A. Yes.
 15 Q. Did you make any arrests of
 16 individuals in connection with those details?
 17 A. I don't see the entries, I don't
 18 recall any arrests during that.
 19 Q. Do you recall conducting any
 20 containment maneuvers on individuals or
 21 pedestrians?
 22 MR. CIAPPETTA: Objection as to
 23 the form.
 24 A. Yes.
 25 Q. And what do you recall?

1 Wagner
 2 Q. Do you know whether there were any
 3 arrests made in connection with those
 4 containment and crowd control maneuvers that
 5 you just described that you undertook?
 6 MR. CIAPPETTA: Objection as to
 7 the form.
 8 A. I recall making no arrests
 9 personally at any of those.
 10 Q. Do you know whether you
 11 participated in maneuvers in which individuals
 12 ultimately were arrested?
 13 A. Yes.
 14 Q. Did you?
 15 A. Yes.
 16 Q. Do you know, were you advised of a
 17 plan for the disposition of arrestees --
 18 withdrawn.
 19 Do you recall being aware that
 20 there was a processing site set up for
 21 handling individuals arrested in connection
 22 with the RNC?
 23 A. Yes.
 24 Q. What did you know about that
 25 processing site?

1 Wagner
 2 A. There were several instances
 3 during the period of time during the RNC
 4 during the march around Madison Square Garden,
 5 I think it was the first day, the first full
 6 day of the convention, they marched up Seventh
 7 Avenue, down 34th Street. Just basically a
 8 few million people or several hundred thousand
 9 people, we were at that. We had to hold the
 10 crowd back at certain areas due to the burning
 11 of the effigy on 34th Street -- due to the
 12 burning of a paper mache effigy up at 34th
 13 Street. We had to ask everybody to stop and
 14 wait for that.
 15 There was a demonstration march
 16 that broke away from the main demonstration
 17 area that was contained somewhere in the 30's
 18 north of 34th Street. Again the same
 19 maneuver, holding one end of the block while
 20 Manhattan South Task Force moved in from the
 21 opposite end, and our job was to hold. And
 22 numerous other instances where a protest at a
 23 corner would overflow from the barriers and we
 24 would have to reinstate the barrier line by
 25 getting people to go back over the curb line.

1 Wagner
 2 A. As I recall it was on the west
 3 side, MTA pier used for buses, bus maintenance
 4 or some such thing, I don't recall the exact
 5 location of the pier, but all detainees were
 6 being processed there as a central booking --
 7 a centralized booking facility.
 8 Q. And what were you advised with
 9 respect to the booking procedures that would
 10 be used for those detainees?
 11 A. I received no information
 12 regarding that.
 13 Q. Did you participate in any of the
 14 booking procedures with respect to the
 15 detainees in connection with the RNC?
 16 A. Not that I recall.
 17 Q. Do you recall anything else
 18 regarding the booking procedures that would be
 19 used for those detainees?
 20 A. No.
 21 Q. Did you observe the use of orange
 22 hazard netting to contain Critical Mass
 23 bicyclists on August 27, 2004?
 24 MR. CIAPPETTA: Objection as to
 25 the form.

1 Wagner
 2 A. Yes.
 3 Q. Where and when was that orange
 4 hazard netting used?
 5 A. That was used in conjunction with
 6 the stop at the Lincoln Tunnel incident.
 7 Q. And which of the officers that you
 8 described participating in that incident were
 9 using the orange hazard netting?
 10 A. Those would be the officers at the
 11 far end of the block from my position.
 12 Q. Can you describe what they did
 13 with the netting?
 14 A. Yes. When they received their
 15 order to move out they extended the netting
 16 from the building line to building line at the
 17 far street in front of the vehicles, their
 18 vans, in front of the traffic lanes.
 19 Q. And they then proceeded on foot
 20 with the netting running from building line to
 21 building line in a drag net maneuver to
 22 compress the bicyclists in the middle of the
 23 block?
 24 MR. CIAPPETTA: Objection as to
 25 the form.

1 Wagner
 2 inside of the parameter who had stepped
 3 outside, unknown business why, at the time we
 4 had sealed off the block, and as they tried to
 5 re-enter their building they were detained and
 6 upon showing their ID that they were indeed a
 7 resident there they were allowed to re-enter
 8 the building.
 9 Q. Do you recall any individuals
 10 stating that they were not part of the
 11 Critical Mass ride but not being able to prove
 12 that fact?
 13 A. I don't have any recollection of
 14 those statements, something like that.
 15 Q. Was there more than this one
 16 individual who showed their ID and was
 17 permitted to leave the sealed block that you
 18 recall?
 19 A. Yes.
 20 Q. Do you recall the circumstances as
 21 to how those individuals were handled?
 22 A. Yes. They exited the buildings,
 23 stepped out into what ostensibly was a fairly
 24 chaotic situation. Again they -- we asked for
 25 some ID. After verifying that they were

1 Wagner
 2 A. I wouldn't characterize it in that
 3 form. The netting was deployed behind a line
 4 of officers on foot. So you would have the
 5 cyclists, then a line of officers, then the
 6 netting behind that essentially as a means to
 7 prevent escape.
 8 Q. Do you recall when you first
 9 blocked off the block as part of this
 10 containment maneuver noticing whether or not
 11 there were any pedestrians, bicyclists or
 12 others who apparently were not part of the
 13 Critical Mass ride and were on the block?
 14 MR. CIAPPETTA: Objection as to
 15 the form.
 16 A. Yes.
 17 Q. Were there?
 18 A. Yes.
 19 Q. And did any of those -- what steps
 20 were taken with respect to those individuals,
 21 if any, to distinguish them from the contained
 22 Critical Mass bicyclists?
 23 A. They were asked to show some ID,
 24 and the individuals who I observed were
 25 residents in one of the buildings that was

1 Wagner
 2 living in the apartment building and departing
 3 the area we allowed them to proceed in
 4 whatever business they had.
 5 Q. Do you recall any bicyclists
 6 stating that they were -- any bicyclists who
 7 were sealed on the block stating that they
 8 were not part of Critical Mass?
 9 A. I don't recall any statements to
 10 that effect.
 11 Q. Do you recall what if any steps
 12 were taken to remove bicycles found locked to
 13 street fixtures or trees on the block where
 14 the containment maneuver was effected?
 15 MR. CIAPPETTA: Objection as to
 16 the form.
 17 A. No.
 18 Q. After this incident on August 27th
 19 with the sealing of the block did you have an
 20 understanding that the NYPD policy with
 21 respect to how Critical Mass rides would be
 22 monitored going forward had changed?
 23 A. Not at that time.
 24 Q. Turn to the next page in Exhibit
 25 Wagner 1, Bates reference ending in 92. Am I

1 Wagner
 2 correct this is your log entry for October 29,
 3 2004?
 4 A. Yes, it is.
 5 Q. Do you recall whether there was a
 6 Critical Mass ride held on that date?
 7 A. Yes, there was.
 8 Q. Is this a log entry for the
 9 Critical Mass detail in connection with that
 10 ride?
 11 A. Yes, it is.
 12 Q. Was there a pre-event briefing for
 13 this ride?
 14 A. Yes, there was.
 15 Q. And do you recall the supervising
 16 officer who gave the briefing?
 17 A. Yes.
 18 Q. Who was that?
 19 A. Lieutenant Turco.
 20 Q. Where was the briefing held?
 21 A. At Union Square.
 22 Q. Had the prior briefings on the
 23 prior Critical Mass details in which you
 24 participated been held at Union Square?
 25 A. Sometimes.

1 Wagner
 2 MR. VACCARO: Sure.
 3 THE VIDEOGRAPHER: The time is
 4 1:44. We are off the record.
 5 (Lunch recess taken.)
 6 (Time noted: 1:44 p.m.)
 7
 8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

1 Wagner
 2 Q. What other locations had you held
 3 these pre-event briefings?
 4 A. At our base unit at 104 Washington
 5 Street.
 6 Q. Was there a reason why any of the
 7 prior pre-event briefings had been held at 104
 8 Washington Street as compared to Union Square?
 9 A. At the time that is where we held
 10 our roll call and we were told what we would
 11 be doing for the evening. So the briefings
 12 were held at 104 Washington Street. This
 13 particular instance Lieutenant Turco chose to
 14 give our briefing at Union Square after
 15 checking in with the command vehicle.
 16 Q. What is the command vehicle?
 17 A. Its the mobile tactical
 18 headquarters used by a detail commander for a
 19 large event.
 20 Q. Was there command vehicles in
 21 place in connection with the Critical Mass
 22 details conducted on July 30, 2004 or prior?
 23 A. Not to my knowledge.
 24 MR. CIAPPETTA: Can we break for
 25 lunch?

1 Wagner
 2 AFTERNOON SESSION
 3 (Time noted: 2:41 p.m.)
 4 KENNETH WAGNER, resumed and
 5 testified as follows:
 6 EXAMINATION BY (Cont'd.)
 7 MR. VACCARO:
 8 THE VIDEOGRAPHER: The time is
 9 2:41, we are on the record.
 10 Q. Officer Wagner, I have a few
 11 questions, final questions for you regarding
 12 the August 27, 2004 Critical Mass ride that
 13 coincided with the Republican National
 14 Convention. Turning back to the August 2004
 15 Critical Mass ride, do you recall learning in
 16 advance of that ride that the participants
 17 planned to conduct it differently than prior
 18 Critical Mass rides had been conducted?
 19 MR. CIAPPETTA: Objection as to
 20 the form.
 21 A. Yes.
 22 Q. What did you learn about that?
 23 A. We were informed that it had come
 24 to the department's attention that the bicycle
 25 riders planned to disrupt the Republican

1 Wagner
 2 National Convention by any means necessary.
 3 Q. Who advised you of that?
 4 MR. CIAPPETTA: I am going to
 5 object at the moment, I need to discuss
 6 this with my client for a moment, it
 7 might involve privilege.
 8 MR. VACCARO: You're saying that
 9 information he learned about the
 10 intentions or plans of the August 2004
 11 Critical Mass participants before the
 12 August 2004 Critical Mass ride might be
 13 privileged information?
 14 MR. CIAPPETTA: Potentially. I
 15 can't say at this moment. I am not
 16 directing him not to answer yet, I think
 17 we need a brief consultation first.
 18 MR. VACCARO: So are you asking to
 19 go off the record so you can speak to
 20 your client?
 21 MR. CIAPPETTA: Yes.
 22 MR. VACCARO: Okay.
 23 THE VIDEOGRAPHER: The time is
 24 2:43. We are going off the record.
 25 (Recess taken.)

1 Wagner
 2 A. Other officers working on my shift
 3 during the 4 to 12 shift on the Scooter Task
 4 Force.
 5 Q. What did Lieutenant Turco tell you
 6 regarding the sources of his information for
 7 his view that the August 2004 Critical Mass
 8 participants intended to disrupt the
 9 Republican National Convention by any means
 10 necessary?
 11 A. The lieutenant didn't share his
 12 source of information with me.
 13 Q. Did he in any way characterize his
 14 source of information?
 15 A. Not to my knowledge.
 16 Q. Did he say anything to you other
 17 than stating that the ride was expected to
 18 disrupt by any means necessary the RNC?
 19 A. Could you read that back again.
 20 (Record read.)
 21 A. No.
 22 Q. Did you have any other sources of
 23 information at that time in the weeks leading
 24 up to the August 27, 2004 Critical Mass ride
 25 concerning the intentions of the participants

1 Wagner
 2 THE VIDEOGRAPHER: The time is
 3 2:47. We are on the record.
 4 (Record read.)
 5 A. That was Lieutenant Turco.
 6 Q. Did he make that statement in the
 7 pre-event briefing?
 8 A. Yes.
 9 Q. Did you also hear such statements
 10 prior to the pre-event briefing for the August
 11 2004 ride?
 12 A. Yes.
 13 Q. From whom?
 14 A. Lieutenant Turco.
 15 Q. In what context?
 16 A. Casual conversation.
 17 Q. When did these conversations take
 18 place?
 19 A. The timeframe would be a week or
 20 two leading up to the Republican National
 21 Convention.
 22 Q. Did you discuss this matter with
 23 anyone other than Lieutenant Turco?
 24 A. Yes.
 25 Q. With whom did you discuss it?

1 Wagner
 2 in that ride?
 3 A. Yes.
 4 Q. What were they?
 5 A. Internet web-site.
 6 Q. Did you consult any Internet
 7 web-sites concerning the intentions of the
 8 August 27, 2004 Critical Mass participants?
 9 A. I personally did not consult the
 10 web-site. That came from another officer on
 11 the 4 to 12 who had Internet access.
 12 Q. Who was that officer?
 13 A. Charlie Murphy.
 14 Q. You said another officer on the 4
 15 to 12?
 16 A. The evening shift for the Scooter
 17 Task Force.
 18 Q. Does the Scooter Task Force have a
 19 different set of 30 officers for each of
 20 multiple shifts?
 21 A. No.
 22 Q. What did Charlie Murphy tell you
 23 about what he learned on the Internet
 24 regarding the August 2004 Critical Mass ride?
 25 A. He told me in essence that he had

1 Wagner
 2 looked at the Times Up web-site and saw
 3 statements submitted, not necessarily that
 4 they were policies of Times Up, but statements
 5 to the effect that they were going to disrupt
 6 the Republican National Convention.
 7 Q. Do you recall whether you had
 8 heard of Times Up prior to this conversation
 9 with Officer Murphy?
 10 A. No.
 11 Q. Is it possible that you had heard
 12 of Times Up prior to this conversation with
 13 Officer Murphy?
 14 A. Heard of Times Up, yes.
 15 Q. But you are not sure whether you
 16 did or not?
 17 A. I couldn't put a calendar date of
 18 when I became fully aware of Times Up.
 19 Q. Did Officer Murphy share the
 20 information that he says he got from the Times
 21 Up web-site with anyone other than you at NYPD
 22 to your knowledge?
 23 A. Yes. With the officers within the
 24 task force, the Scooter Task Force. Outside
 25 of that I couldn't say.

1 Wagner
 2 compared to prior rides.
 3 Q. After the August 2004 Critical
 4 Mass ride were you asked by anyone to provide
 5 information regarding the conduct of
 6 participants in that ride?
 7 A. Not to my knowledge.
 8 Q. Were you asked to provide
 9 information or assist in any way in the
 10 booking or the charging of individuals
 11 arrested in connection with that ride?
 12 A. Not that I recall, no.
 13 Q. Have you ever heard of the phrase
 14 bike a block demonstration?
 15 A. No.
 16 Q. Would your answer be different if
 17 I shortened it to bike a block demo?
 18 A. No, the term doesn't ring a bell
 19 to me.
 20 Q. Have you ever practiced maneuvers
 21 on your scooter apart from Critical Mass rides
 22 where it was your understanding that the
 23 purpose of the practicing was to be able to
 24 use those maneuvers at a Critical Mass ride?
 25 MR. CIAPPETTA: Objection as to

1 Wagner
 2 Q. Do you know whether Lieutenant
 3 Turco was advised of Charlie Murphy's
 4 purported findings on the Times Up web-site?
 5 A. Its possible.
 6 Q. Did Lieutenant Turco ever mention
 7 to you information that he stated was
 8 contained on the Times Up web-site?
 9 A. No.
 10 Q. Did you actually observe the
 11 participants in the August 2004 Critical Mass
 12 ride behaving in a manner materially different
 13 from the behavior observed in prior Critical
 14 Mass rides that you had monitored?
 15 MR. CIAPPETTA: Objection as to
 16 the form.
 17 A. No.
 18 Q. Did you observe -- can you --
 19 withdrawn.
 20 Can you describe any activity by
 21 the participants in the August 2004 Critical
 22 Mass ride that you had never seen before on a
 23 previous Critical Mass ride that you had
 24 monitored?
 25 A. No. There was no unusual behavior

1 Wagner
 2 the form. You can answer if you
 3 understand.
 4 A. No. There has been no practicing
 5 in that sense.
 6 Q. I believe you testified that the
 7 next Critical Mass detail on which you -- to
 8 which you were assigned after August 2004 was
 9 in October of 2004?
 10 A. Yes, I believe so.
 11 Q. Do you recall learning at any time
 12 prior to November 26, 2004 what had transpired
 13 in the -- I am sorry, withdrawn.
 14 Prior to October 29, 2004 were you
 15 advised of what had occurred at the September
 16 2004 Critical Mass ride?
 17 A. I don't have any direct
 18 recollection of what happened with the 2004
 19 ride in September, or anybody telling me what
 20 happened, no.
 21 Q. You testified that following the
 22 July 2004 ride it was your expectation that
 23 NYPD might establish a policy for managing
 24 Critical Mass rides that was different than
 25 the monitoring approach that had been used up

1 Wagner
 2 until that point; is that right?
 3 MR. CIAPPETTA: Objection to the
 4 extent it mischaracterizes the witness
 5 testimony. You can answer.
 6 A. Yes.
 7 Q. You also testified that following
 8 the August 2004 Critical Mass ride you still
 9 were not sure whether such a policy would be
 10 established?
 11 A. That is correct.
 12 Q. Do you recall in the period
 13 between August 27, 2004 and October 29, 2004
 14 discussing with anyone at NYPD whether there
 15 would be a change in NYPD policy towards
 16 Critical Mass?
 17 A. No.
 18 Q. Do you recall that topic coming up
 19 at the pre-event briefing for the October 29,
 20 2004 Critical Mass ride?
 21 A. Yes.
 22 Q. What was discussed?
 23 A. It was discussed that, or briefed
 24 I should say, that we would be enforcing
 25 traffic rules and administrative code

1 Wagner
 2 A. The rationale behind waiting for
 3 him to give the word was to allow the Critical
 4 Mass group of cyclists the opportunity to obey
 5 all relevant traffic rules and regulations
 6 pertaining to vehicle and traffic law, and the
 7 administrative code, and the traffic rules of
 8 New York City. At which time if they began
 9 committing violations he would then give us
 10 the word when to move in and effect
 11 enforcement action.
 12 Q. Was there any discussion or
 13 briefing with respect to the particular types
 14 of violations that you would be looking for?
 15 A. Yes.
 16 Q. What were they?
 17 A. As I recall we were looking at the
 18 discon charge, disorderly conduct, and parade
 19 without a permit, and vehicle and traffic law
 20 violations.
 21 Q. Were you aware of the charge of
 22 parading without a permit prior to the
 23 pre-event briefing for the October 2004 ride?
 24 A. No, I was not.
 25 Q. What were you told about the

1 Wagner
 2 regulations in conjunction with monitoring the
 3 ride on October 29th.
 4 Q. Were you briefed that you were to
 5 use a zero tolerance policy on the October
 6 2004 ride?
 7 MR. CIAPPETTA: Objection as to
 8 the form.
 9 A. No.
 10 Q. Was any additional guidance
 11 provided to officers at the briefing as to the
 12 circumstances in which you would undertake to
 13 enforce the traffic laws and the
 14 administrative code against participants in
 15 the October 2004 ride?
 16 A. Yes.
 17 Q. What was that?
 18 A. During the pre-event briefing by
 19 Lieutenant Turco particularly to the Scooter
 20 Task Force we were told to wait until he gave
 21 the word to begin enforcement.
 22 Q. Did he explain the reason for that
 23 plan?
 24 A. Yes.
 25 Q. What was that?

1 Wagner
 2 charges of parading without a permit at the
 3 pre-event briefing?
 4 A. As explained to me and the other
 5 officers present at the time the parade
 6 without a permit statute regarding a
 7 procession of -- sorry, a large number of
 8 people proceeding down a roadway or a block,
 9 no specific number given, just a large group,
 10 and if they did not have a permit to do such a
 11 procession that they were subject to arrest.
 12 Q. Were you briefed as to whether
 13 there was a permit issued for the October 2004
 14 ride?
 15 A. Yes.
 16 Q. What were you told?
 17 A. We were told as of that time of
 18 the briefing to the knowledge of the
 19 department no permits had been issued for the
 20 ride.
 21 Q. In connection with the parading
 22 without a permit statute were you given
 23 guidance as to how to determine whether
 24 particular individuals were proceeding
 25 together or not?

1 Wagner
 2 A. Not to my recollection.
 3 Q. Were any other provisions of
 4 the vehicle -- well, am I correct that both
 5 disorderly conduct and parading without a
 6 permit are not part of the vehicle and traffic
 7 laws of New York State?
 8 A. That is correct.
 9 Q. Were any provisions of the vehicle
 10 and traffic law of New York State discussed or
 11 briefed at the pre-event briefing?
 12 A. Not specifically, no.
 13 Q. Were the rules regarding equipment
 14 required on bicycles under I believe it is the
 15 rules of the City of New York -- withdrawn.
 16 Were the rules regarding required
 17 equipment on bicycles discussed at the
 18 pre-event briefing?
 19 A. I don't recall if they were
 20 specifically discussed.
 21 Q. Were rules regarding bicyclists
 22 use or non-use of bicycle lanes discussed at
 23 the meeting?
 24 A. Yes.
 25 Q. And what was stated on that topic?

1 Wagner
 2 Q. Was there any mention during the
 3 pre-event briefing of the risks to bicyclists
 4 proceeding close enough to parked cars to be
 5 injured by an unexpectedly opening car door
 6 from the parking lane?
 7 MR. CIAPPETTA: Objection as to
 8 the form.
 9 A. No, there was no discussions along
 10 those lines.
 11 Q. Was there any discussion at the
 12 October 2004 pre-event briefing with respect
 13 to the potential for Critical Mass to enter
 14 West Street, the Battery Park Underpass or the
 15 FDR Drive?
 16 A. Not that I recall.
 17 Q. Was there any discussion of the
 18 events of the September 2004 ride at the
 19 October pre-event briefing?
 20 MR. CIAPPETTA: Objection.
 21 Q. At the pre-event briefing for the
 22 October 2004 ride were the events of the
 23 September 2004 ride discussed?
 24 A. Not that I recall.
 25 Q. Were you advised that the

1 Wagner
 2 A. As I recall the statement was that
 3 the cyclists avail themselves of the use of
 4 the bicycle lanes within their means, and that
 5 no action would be taken against the
 6 bicyclists if they stayed in the bicycle lane.
 7 Q. And when you used the phrase
 8 bicycle lane in your last response, are you
 9 referring exclusively to the lanes that are
 10 painted on to the pavement on certain roadways
 11 in New York City?
 12 A. Yes.
 13 Q. Were the rules regarding which
 14 portion of the road bicyclists may or may not
 15 proceed on discussed at the meeting?
 16 A. Yes.
 17 Q. And what was stated regarding
 18 those rules?
 19 A. As I recall it was stated that a
 20 cyclists should maintain a traffic lane for
 21 themselves to the extreme edge of the road,
 22 parked cars notwithstanding, basically keep as
 23 far to the left or to the right as traffic
 24 would allow, that was to allow room for
 25 vehicular traffic to pass.

1 Wagner
 2 objectives and manner of monitoring the
 3 Critical Mass ride for the October 2004 ride
 4 reflected the policies that would apply in
 5 future rides after October 2004?
 6 MR. CIAPPETTA: Objection as to
 7 the form.
 8 A. Yes.
 9 Q. And what were you advised?
 10 A. That the current enforcement
 11 procedures that we were going to be using at
 12 that point in time would probably in all
 13 likelihood be the policies used for future
 14 rides.
 15 Q. And did you receive any
 16 information from Lieutenant Turco regarding
 17 the individuals at NYPD who were responsible
 18 for the change in policy in the monitoring of
 19 the Critical Mass rides?
 20 A. Not that I recall.
 21 Q. Did you learn from any other
 22 source what individuals at NYPD were involved
 23 in the change in policy?
 24 A. Not specifically, no.
 25 Q. When you say not specifically, do

1 Wagner
 2 you have a general understanding as to what
 3 individuals were responsible for the change in
 4 the policy?
 5 A. I believe that the term that was
 6 used were the quote, bean counters at the
 7 pleasure palace at One Police Plaza.
 8 Specifically they didn't attach a name or rank
 9 to who was going to make a decision on what
 10 the policy was going to be.
 11 Q. So it was your understanding that
 12 the change in policy was made by individuals
 13 stationed at One Police Plaza?
 14 MR. CIAPPETTA: Objection as to
 15 the form.
 16 A. Potentially, yes.
 17 Q. Was it your understanding -- did
 18 you believe at the time that Lieutenant Turco
 19 was responsible for the change in policy?
 20 A. No.
 21 Q. It was your understanding that he
 22 had received the change in policy from
 23 individuals of higher rank?
 24 A. Yes.
 25 Q. Did he specifically state so?

1 Wagner
 2 MR. CIAPPETTA: Objection. Asked
 3 and answered. You can answer again.
 4 A. Yes.
 5 Q. You stated that there was a
 6 command vehicle present at the -- at Union
 7 Square at the time of the pre-event briefing
 8 for the October 2004 ride?
 9 A. As I recall, yes, but not directly
 10 at Union Square.
 11 Q. A command vehicle for a layperson
 12 would be a vehicle roughly the size of a
 13 recreational vehicle that has been converted
 14 to NYPD use?
 15 A. That would be correct.
 16 Q. And I believe you testified before
 17 the lunch break that Lieutenant Turco received
 18 instructions from the command vehicle in
 19 connection with the pre-event briefing?
 20 A. Yes.
 21 Q. What were they?
 22 A. That would be the same
 23 instructions that he gave us, that I stated
 24 before.
 25 Q. And until that time had you

1 Wagner
 2 A. No.
 3 Q. What was the basis of your
 4 understanding that the change in policy came
 5 from an individual of higher rank than
 6 Lieutenant Turco?
 7 A. Lieutenant Turco doesn't have
 8 sufficient rank within the department to
 9 effect a detail of that size as to establish a
 10 policy of enforcement. That would have to
 11 come from the borough commander or higher.
 12 Q. And the allocation of
 13 responsibility for establishing those
 14 policies, is that set forth in writing
 15 anywhere to your knowledge?
 16 MR. CIAPPETTA: Objection as to
 17 the form.
 18 A. I have no knowledge of those
 19 procedures or the policies, how those
 20 decisions are made.
 21 Q. But it is your understanding based
 22 upon your experience with the NYPD that it
 23 would only be individuals of the higher ranks
 24 you mentioned who would have the authority to
 25 effect those changes in policy?

1 Wagner
 2 received any information regarding the change
 3 in policy towards Critical Mass?
 4 MR. CIAPPETTA: Objection as to
 5 the form.
 6 A. Again not that I recall.
 7 Q. Do you recall how many officers
 8 participated in the pre-event briefing for the
 9 October 2004 ride?
 10 A. Approximately 30 members of the
 11 Scooter Task Force.
 12 Q. Putting aside the August 27, 2004
 13 ride, was that the largest group of NYPD
 14 officers that you had ever seen assigned to
 15 monitor a Critical Mass ride up until that
 16 point?
 17 MR. CIAPPETTA: Objection. Are
 18 you asking just about the Scooter Task
 19 Force?
 20 Q. I am asking about the 30?
 21 A. Yes, to my knowledge the RNC was
 22 the first time the entire unit had been used
 23 to monitor -- again at the Republican National
 24 Convention to begin with we were assigned
 25 there, but not specifically to Critical Mass.

1 Wagner
2 The Critical Mass ride during the RNC was a
3 tack on. We were not there primarily for
4 them, we were there for the convention.
5 Q. During the pre-event briefing were
6 you advised that there were additional NYPD
7 personnel who would participate in monitoring
8 the Critical Mass ride in addition to the
9 approximately 30 members of the Scooter Task
10 Force?
11 A. Yes.
12 Q. And what additional NYPD personnel
13 in those roles were identified to you?
14 A. As my understanding was from the
15 briefing there were a considerable number of
16 officers detailed. I don't know the exact
17 number.
18 Q. Do you recall learning whether
19 there -- during the pre-event briefing that
20 there would be officers from Community
21 Affairs?
22 A. Yes.
23 Q. And what were you told about those
24 officers and their role?
25 A. We didn't receive too much of

1 Wagner
2 specifically watching us, but if cyclists were
3 in the event performing something, that they
4 could be included in the video footage.
5 Q. And you were briefed on this
6 matter by Lieutenant Turco?
7 A. Yes.
8 Q. No other officer provided any
9 briefing during this pre-event briefing
10 session?
11 A. There was one other officer.
12 Q. And what officer was that?
13 A. Lieutenant Albano.
14 Q. Lieutenant Albano. Do you know
15 him to be a member of the Legal Bureau of the
16 NYPD?
17 A. Yes.
18 Q. Did you know him to be affiliated
19 with the legal or assigned to the Legal Bureau
20 at that time?
21 A. Yes.
22 Q. Did he state at the pre-event
23 briefing that he was assigned to the Legal
24 Bureau?
25 A. Yes, he did.

1 Wagner
2 anything regarding the Community Affairs
3 officers. They have their own job to do on a
4 detail like this. What they would be doing
5 wouldn't really have much of an effect on what
6 we were doing.
7 Q. Were you told that there would be
8 officers of the Technical Assistance and
9 Response Unit, or TARU, participating in the
10 detail that evening?
11 A. Yes.
12 Q. And what were you told about those
13 officers role?
14 A. As briefed to me, I was told that
15 the TARU unit would be taking video footage to
16 document our actions during the ride.
17 Q. The actions of the NYPD?
18 A. Yes. Of the NYPD.
19 Q. And was it specifically stated
20 that TARU would not be documenting the actions
21 of the bicyclists?
22 MR. CIAPPETTA: Objection as to
23 the form.
24 A. I was led to understand that
25 everything on video would be documented,

1 Wagner
2 Q. And on what topics did Lieutenant
3 Albano brief you?
4 A. Specifically Lieutenant Albano
5 briefed us on the parade without a permit
6 statute.
7 Q. What did Lieutenant Albano say?
8 A. In essence a large group moving
9 down a street or sidewalk without a permit
10 could be considered to be parading without a
11 permit and could be subject to arrest.
12 Q. Did Lieutenant Albano brief you
13 with respect to the laws concerning disorderly
14 conduct?
15 A. No.
16 Q. Did he brief you with respect to
17 any portion of the vehicle and traffic laws or
18 other laws regarding traffic behavior
19 applicable in New York?
20 A. No.
21 Q. Did he speak before or after
22 Lieutenant Turco?
23 A. He spoke after Lieutenant Turco.
24 Q. Do you recall being given
25 anything, any paper or documents, statements

1 Wagner
 2 in writing for use in connection with that
 3 Critical Mass detail, October 2004?
 4 A. No.
 5 Q. Do you recall observing that NYPD
 6 officers were distributing documents to
 7 potential participants in that Critical Mass
 8 ride?
 9 A. I don't recall.
 10 Q. Do you recall any discussions
 11 regarding attempts to negotiate a route, a
 12 predetermined route with the participants in
 13 the October 2004 ride?
 14 A. No, nothing comes to mind.
 15 Q. How large was the -- I am going to
 16 take a step back. In your experience
 17 monitoring Critical Mass rides up until this
 18 point, October 2004, what did you observe with
 19 respect to the participants prior to the start
 20 of the ride, how did they behave, what did
 21 they do?
 22 MR. CIAPPETTA: Objection as to
 23 the form.
 24 A. They were milling about, whatever
 25 their area of Union Square they chose to form

1 Wagner
 2 of October '04 there generally is somebody, a
 3 guest speaker so to speak, who would make a
 4 statement or rally the troops for lack of a
 5 better term, they would decry the enforcement.
 6 Rail against the police state, and generally
 7 get everybody I guess psyched for the ride.
 8 Also there would be also an occasional do what
 9 the officers tell you.
 10 Q. And that is activity that you
 11 observed amongst potential participants in the
 12 October 2004 ride that were assembled in Union
 13 Square?
 14 A. Yes, I believe so.
 15 MR. VACCARO: I think we need to
 16 change the tape.
 17 THE VIDEOGRAPHER: The time is
 18 3:21. We are off the record.
 19 (Recess taken.)
 20 THE VIDEOGRAPHER: The time is
 21 3:23. We are on the record.
 22 Q. Was it your understanding based on
 23 the pre-event briefing for the October 2004
 24 Critical Mass ride that you -- that once
 25 Lieutenant Turco gave the word that you should

1 Wagner
 2 up in. Chatting, talking, laughing. Some
 3 singing, some dancing. That is about it.
 4 Q. Would you describe the group as
 5 having all their attention focussed on a
 6 single speaker?
 7 MR. CIAPPETTA: Objection as to
 8 the form.
 9 A. Not at that time.
 10 Q. It was in the nature of a number
 11 of small gatherings?
 12 A. Yes.
 13 Q. Is that still the manner in which
 14 the potential Critical Mass participants
 15 assemble prior to the Critical Mass ride in
 16 your experience after October 2004?
 17 MR. CIAPPETTA: Are you asking
 18 about after October 2004 through the
 19 present?
 20 MR. VACCARO: Yes.
 21 A. Yes, it is different.
 22 Q. It has changed?
 23 A. Yes, it has.
 24 Q. How has it changed?
 25 A. Since October of '04 and inclusive

1 Wagner
 2 enforce the laws with respect to parading
 3 without a permit and disorderly conduct at the
 4 Critical Mass ride?
 5 MR. CIAPPETTA: Objection as to
 6 the form.
 7 A. Yes.
 8 Q. And was anything said at the
 9 briefing with respect to the manner in which
 10 the bicyclists would be given an opportunity
 11 to abide by applicable laws before that
 12 enforcement action could take place?
 13 A. My understanding was that they
 14 were told beforehand while at Union Square of
 15 the regulations. As far as the actions taken
 16 at the time of the stop once the word was
 17 given, there was not going to be a warning of
 18 disperse now or you are going to be arrested.
 19 Q. What was your understanding as to
 20 the warning that would be given to potential
 21 participants at Union Square?
 22 A. Basically that the ride has -- is
 23 known to progress for the sake of argument,
 24 that riding down the street without keeping to
 25 the extreme sides would constitute parading

1 Wagner
 2 without a permit. Again how that information
 3 was disseminated to the cyclists I couldn't
 4 say.
 5 Q. Do you recall the size of --
 6 withdrawn.
 7 With respect to the individuals
 8 that assembled at Union Square prior to 7 p.m.
 9 on the last Friday of the month is there any
 10 sure means of discerning which of them intend
 11 to participate in Critical Mass?
 12 MR. CIAPPETTA: Objection as to
 13 the form.
 14 A. Not precisely.
 15 Q. Have you observed that there are
 16 individuals who bring bicycles to Union Square
 17 at that time of the month, but do not
 18 participate in the Critical Mass ride?
 19 A. Yes.
 20 Q. How many individuals do you recall
 21 seeing assembled at Union Square prior to the
 22 October 2004 Critical Mass ride?
 23 A. As I recall I would put the
 24 estimate at 1,500 to 2,000 individuals.
 25 Q. Do you recall whether there were

1 Wagner
 2 was used in connection with the August 2004
 3 Critical Mass ride that coincided with the
 4 RNC?
 5 A. That would be difficult to say
 6 because the helicopters were up for the
 7 convention regardless.
 8 Q. Do you recall at what point the
 9 participants in the October 2004 Critical Mass
 10 ride exited Union Square Park?
 11 A. That would be approximately 7:30
 12 p.m.
 13 Q. Do you say that because it is your
 14 general recollection that the ride tends to
 15 depart at 7:30 p.m.?
 16 A. Yes.
 17 Q. You don't have a specific
 18 recollection of checking the exact time that
 19 the ride departed?
 20 A. No.
 21 Q. Into what street did the ride
 22 enter as it exited the park?
 23 A. To my recollection it exited the
 24 park on to 14th Street and proceeded
 25 westbound.

1 Wagner
 2 any officers from the Disorder Control Unit
 3 who participated in the Critical Mass detail
 4 that evening?
 5 A. Not that I am aware of.
 6 Q. Do you recall learning the names
 7 of the officers higher in rank than Lieutenant
 8 Turco who would be participating in the
 9 Critical Mass detail that evening?
 10 A. I don't recall the specific names.
 11 Q. Do you recall learning that a
 12 helicopter might be used for aerial
 13 surveillance in connection with the October
 14 2004 Critical Mass ride?
 15 MR. CIAPPETTA: Objection as to
 16 the form.
 17 A. Yes, I believe it was mentioned
 18 that aviation would be up for the event.
 19 Q. Is that the first time that
 20 aviation support had been used in connection
 21 with the Critical Mass ride to your knowledge?
 22 A. Yes, to my knowledge it was the
 23 first time that I saw a helicopter at Critical
 24 Mass.
 25 Q. Do you recall whether a helicopter

1 Wagner
 2 Q. Did members of the Scooter Task
 3 Force assume positions toward the front of the
 4 ride as it departed the park?
 5 A. Yes, I would say so.
 6 Q. Did members of the task force also
 7 assume positions at the rear of the ride when
 8 it had finally exited Union Square Park?
 9 A. No, I don't believe so.
 10 Q. Were there officers stationed
 11 along side of the ride in addition to at the
 12 front as the ride departed from Union Square?
 13 A. Yes. I would characterize that we
 14 were predominantly deployed along the side of
 15 the ride.
 16 Q. 14th Street is a two-way street in
 17 the Union Square vicinity?
 18 A. Yes, it is.
 19 Q. When the bicyclists proceeded
 20 westbound on 14th Street did they occupy the
 21 eastbound lanes?
 22 A. No, they did not.
 23 Q. Am I correct that the scooter
 24 officers deployed to the side of the ride
 25 would have been deployed between the

1 Wagner
 2 bicyclists and the traffic moving in the
 3 opposite direction?
 4 A. That would be correct, along the
 5 dividing line, the double yellow line between
 6 the east and westbound traffic.
 7 Q. And as the bicyclists -- it was
 8 your understanding when the ride commenced
 9 that the bicyclists had already been advised
 10 by some means that they would have to adhere
 11 to applicable traffic rules or face potential
 12 law enforcement?
 13 A. Correct.
 14 Q. Do you recall whether the
 15 bicyclists occupied all available traffic, all
 16 available westbound traffic lanes on 14th
 17 Street as they exited the park?
 18 A. Yes, they did.
 19 Q. How did you expect Lieutenant
 20 Turco to give the word that enforcement action
 21 should begin?
 22 MR. CIAPPETTA: Objection as to
 23 the form.
 24 A. He would use a combination of a
 25 hand gesture and a radio transmission.

1 Wagner
 2 block away at that point. So I can't say what
 3 the phase of the light was when we got to the
 4 intersection.
 5 Q. How many blocks did the ride
 6 stretch once it had fully exited Union Square
 7 Park?
 8 A. Again I don't think I can quantify
 9 that based on my position because there were
 10 still cyclists behind me who were not covered
 11 by a scooter per se, and they were basically
 12 left to their devices. We normally keep a one
 13 scooter distance between myself or the rider
 14 and the rider in front of you as a safety
 15 stopping zone. And with the 30 scooters or so
 16 stretched out, once they hit Fifth Avenue I
 17 would be at least one third of the way there,
 18 and with Union Square behind me, so I couldn't
 19 tell how many were behind me.
 20 Q. Were you able to determine how
 21 many blocks in front of you were occupied by
 22 bicyclists from that position?
 23 A. One.
 24 Q. And you could observe Lieutenant
 25 Turco at the front of the ride?

1 Wagner
 2 Q. What was the hand gesture?
 3 A. To the effect if he is riding in
 4 the front, he would be the front lead scooter,
 5 and he was giving the word to begin
 6 enforcement action. He would put his hand out
 7 and put his arm over his head like that
 8 (indicating), that we would then move forward
 9 and attempt to stop the ride at the front.
 10 Q. And did you proceed as far as
 11 Third Avenue on 14th Street westbound?
 12 A. No, that would be eastbound.
 13 Q. Correct.
 14 Did you proceed as far as Fifth
 15 Avenue westbound on 14th Street?
 16 A. Yes.
 17 Q. Do you recall whether any portion
 18 of the ride entered the intersection of 14th
 19 Street and Fifth Avenue while the traffic
 20 signal was red for westbound traffic on 14th
 21 Street?
 22 A. I don't recall specifically. My
 23 expectation in the formation of scooters is
 24 typically towards the back, the last three
 25 scooters in line, and that would be over a

1 Wagner
 2 A. Barely.
 3 Q. Do you recall bicyclists
 4 proceeding through red lights on 14th Street
 5 as they proceeded westbound?
 6 A. Yes.
 7 Q. Do you recall at which
 8 intersections?
 9 A. I believe Fifth Avenue was in a
 10 red phase as we crossed over while I escorted
 11 the cyclists next to me.
 12 Q. Do you recall specifically
 13 advising any of the bicyclists that as they
 14 were proceeding through the red light that
 15 they were violating applicable traffic rules
 16 and they were subject to potential law
 17 enforcement action?
 18 A. Yes, I believe I did.
 19 Q. Can you recall what your words
 20 were or what you said in that situation?
 21 A. I would in essence characterize it
 22 as I informed the cyclists that if they
 23 continue to run red lights that they would be
 24 subject to ticketing or arrest. And the
 25 response was, we are Critical Mass, we are not

1 Wagner
 2 stopping for anybody.
 3 Q. And did any of the other officers
 4 have conversations like this with Critical
 5 Mass participants as you proceeded westbound
 6 on 14th?
 7 A. Not that I could hear.
 8 Q. And did you have any discussions
 9 with the bicyclists regarding the fact that
 10 they were occupying all available westbound
 11 traffic lanes on 14th Street?
 12 A. No.
 13 Q. Did you discuss any other traffic
 14 violations you observed with any Critical Mass
 15 participants during that portion of that ride?
 16 A. Not outside of the red lights.
 17 Q. Did you discuss with any of the
 18 Critical Mass participants the parading
 19 without a permit statute?
 20 A. No.
 21 Q. Did you hear any other officers
 22 discussing the parading without a permit
 23 statute with any Critical Mass participants
 24 that night?
 25 A. Not that I could hear.

1 Wagner
 2 to direct the ride on to certain avenues; why
 3 would you do that?
 4 A. Primarily to direct the ride away
 5 from the West Side Highway or West Street.
 6 Q. Was it discussed that you would
 7 try to guide the ride in this way during the
 8 pre-event briefing?
 9 A. Not specifically, no.
 10 Q. But it was your understanding that
 11 the detail would attempt to guide the ride in
 12 this manner?
 13 A. Yes.
 14 Q. And what was that based on?
 15 A. Based on a prior experience we had
 16 with guiding pedestrian marches, that would be
 17 spontaneous in nature, and we would try to
 18 escort them around or at least keep them from
 19 acts of civil disobedience, act as a buffer
 20 between the marchers and vehicular traffic.
 21 And this was the same goal with the ride, the
 22 mass ride this day.
 23 Q. Is it fair to say that members of
 24 the Scooter Task Force see a significant --
 25 are deployed in a significant number of mass

1 Wagner
 2 Q. Do you recall when if ever
 3 Lieutenant Turco gave the agreed upon signal
 4 that would indicate that law enforcement
 5 action should begin?
 6 A. Yes.
 7 Q. And at what location was the ride
 8 when that took place?
 9 A. Our location was at approximately
 10 West 10th Street and Tenth Avenue.
 11 Q. And can you describe if you recall
 12 the route that the ride took to get to that
 13 location from 14th Street westbound?
 14 A. I can't describe the precise
 15 route.
 16 Q. Did the officers accompanying the
 17 ride do anything to direct the route of the
 18 ride up until that point on West 10th Street
 19 and Tenth Avenue?
 20 MR. CIAPPETTA: Objection as to
 21 the form.
 22 A. As I recall we tried to use the
 23 scooter line to direct them to turn on to
 24 certain avenues.
 25 Q. What was the objective to attempt

1 Wagner
 2 demonstration context?
 3 MR. CIAPPETTA: Objection as to
 4 the form.
 5 A. Yes.
 6 Q. Are there any other task forces or
 7 units you are aware of within NYPD that play a
 8 more regular role in the management of mass
 9 events?
 10 MR. CIAPPETTA: Objection as to
 11 the form.
 12 A. That would be Manhattan South Task
 13 Force or any borough level task force as each
 14 borough has a task force designated unit
 15 assigned to them.
 16 Q. Can you recall receiving any
 17 training specifically with respect to the
 18 management of bicyclists while operating on
 19 scooters?
 20 A. No training specifically that I
 21 recall.
 22 Q. Do you recall whether there are
 23 any written materials that you ever received
 24 that set forth the procedures NYPD scooter
 25 mounted officers should use in managing

1 Wagner
 2 bicyclists?
 3 A. Nothing that I have ever seen.
 4 Q. And how about any materials
 5 generally, scooter or non-scooter officers,
 6 that address specifically how to manage or
 7 enforce the law against bicyclists?
 8 A. As far as I know there are no
 9 specific guidelines regarding enforcement
 10 against bicyclists.
 11 Q. When Lieutenant Turco gave his
 12 signal at 10th Street and Tenth Avenue, what
 13 happened next on the October 2004 Critical
 14 Mass ride?
 15 A. I detained a cyclist.
 16 Q. How did you determine which
 17 cyclist to detain?
 18 A. It was just a matter of pick the
 19 closest one to where you were at when you got
 20 the word.
 21 Q. Do you recall whether --
 22 withdrawn.
 23 Did you testify earlier that upon
 24 Lieutenant Turco's signal the officers
 25 deployed at the side of Critical Mass were to

1 Wagner
 2 A. No.
 3 Q. Was the ride at this point
 4 proceeding on 10th Street or Tenth Avenue?
 5 A. As I recall they were proceeding
 6 on Tenth Avenue.
 7 Q. Northbound?
 8 A. Yes. Northbound.
 9 Q. Turning back to Exhibit Wagner 1,
 10 page ending in Bates reference dash 93, there
 11 is an individual referred to on that page of
 12 your memo book; is that correct?
 13 MR. CIAPPETTA: Did you say dash
 14 93?
 15 MR. VACCARO: NYC 026893.
 16 MR. CIAPPETTA: Okay.
 17 A. Yes.
 18 MR. CIAPPETTA: Before we proceed,
 19 if there is going to be questions about
 20 this individual I would like this portion
 21 of the transcript to be marked as
 22 confidential.
 23 MR. VACCARO: Off the record.
 24 THE VIDEOGRAPHER: The time is
 25 3:45. We are off the record.

1 Wagner
 2 head up to the front in order to block the
 3 ride?
 4 MR. CIAPPETTA: Objection as to
 5 characterization of the witness prior
 6 testimony.
 7 A. Ideally that would be the
 8 situation.
 9 Q. Is that what you were expecting to
 10 do during the period immediately prior to
 11 Lieutenant Turco giving his signal?
 12 MR. CIAPPETTA: Objection as to
 13 form.
 14 A. I don't know when -- we don't know
 15 when he is going to give the signal. He would
 16 give us basically a 30 second heads up, a
 17 warning, okay, we are going to do something,
 18 go in 30 seconds, and then he would give the
 19 indication to begin the stop.
 20 Q. Did you observe other scooter
 21 officers proceeding up to the front of the
 22 ride to block the bicyclists from proceeding
 23 further?
 24 A. Yes, there were several.
 25 Q. You did not do so?

1 Wagner
 2 (Recess taken.)
 3 THE VIDEOGRAPHER: The time is
 4 3:46. We are on the record.
 5 MR. VACCARO: Counsel have
 6 conferred during the break regarding the
 7 designation of portions of the transcript
 8 as confidential, and have reached the
 9 following stipulated agreement.
 10 The name of an individual that
 11 appears on document NYC 026890 within
 12 Exhibit Wagner 1 is confidential and
 13 should be redacted from the transcript.
 14 Counsel agreed to that redaction.
 15 And counsel do not designate any
 16 portion of this transcript confidential
 17 except for the portion which may commence
 18 regarding the individual referred to on
 19 page NYC 026893 of Exhibit Wagner 1.
 20 MR. CIAPPETTA: I agree with that.
 21 So I would say that I think we should
 22 mark the next portion of the transcript
 23 confidential moving forward.
 24 MR. VACCARO: I will agree with
 25 that.

1 Wagner
 2 don't know what maneuver or what technique
 3 they were trying to use.
 4 Q. Do you recall a change in NYPD
 5 policy with respect to the law enforcement
 6 action that would occur at Critical Mass rides
 7 at or around the time of the ride at which the
 8 scooters collided?
 9 MR. CIAPPETTA: Objection as to
 10 the form.
 11 A. I believe so, yes.
 12 Q. What was the change?
 13 A. I believe at that time we moved
 14 away from the policy of issuing arrests and
 15 instead enforce traffic regulations.
 16 Q. How did you learn of that change
 17 in policy?
 18 A. Pre-ride briefing from the
 19 commanding officer, Lieutenant Turco.
 20 Q. Did you get briefed on that topic
 21 by any person other than Lieutenant Turco?
 22 A. No.
 23 Q. Did Lieutenant Turco explain the
 24 reason for that change in policy?
 25 A. Yes.

1 Wagner
 2 Q. When you say it was handed out
 3 before, was it handed out during the pre-ride
 4 event briefing for that event, or substantial
 5 amount of time before the pre-event briefing?
 6 MR. CIAPPETTA: Objection as to
 7 the form.
 8 A. During the briefing.
 9 Q. And who provided this document?
 10 MR. CIAPPETTA: Objection as to
 11 the form.
 12 Q. To you?
 13 A. Lieutenant Turco provided these.
 14 Q. And do you recall if at that
 15 pre-ride briefing there was any supervising
 16 officer other than Lieutenant Turco?
 17 A. As I recall Lieutenant Albano was
 18 there for this.
 19 Q. Do you recall Lieutenant Albano
 20 commenting upon the sheet of paper that was
 21 distributed at the pre-ride briefing?
 22 A. Yes. This form, yes.
 23 Q. What did Lieutenant Albano say?
 24 A. Basically in substance that he
 25 said -- he offered, he said basically this is

1 Wagner
 2 Q. What was it?
 3 A. He stated that the department --
 4 in substance that the department was getting
 5 hammered in the courts regarding the cases of
 6 parading without a permit and disorderly
 7 conduct. Specifically the City was losing all
 8 the cases. So that the department decided
 9 instead to enforce the vehicle and traffic law
 10 and the traffic regulations. Specifically
 11 running red lights, equipment violations,
 12 things of that nature.
 13 Q. I will mark Exhibit Wagner 6, a
 14 single page, NYC 000355.
 15 (Wagner Exhibit 6, single page,
 16 NYC 000355, marked for identification,
 17 as of this date.)
 18 Q. Do you recall seeing this document
 19 before, Officer Wagner?
 20 A. Yes.
 21 Q. Do you recall when you first saw
 22 it?
 23 A. A sheet similar to this was handed
 24 out prior to the Critical Mass bike ride where
 25 we began to enforce traffic regulations.

1 Wagner
 2 the rules and regulations specifically for
 3 bicycles, in particular the codes, the
 4 applicable sections in order to properly fill
 5 out a moving violation summons if that action
 6 was going to be used.
 7 Q. Did he state that he had prepared
 8 this document?
 9 A. No.
 10 Q. Did he identify the source from
 11 which he obtained this document?
 12 MR. CIAPPETTA: Objection as to
 13 the form.
 14 A. No, he didn't cite his source.
 15 Q. I believe you testified that you
 16 received a document similar to Wagner 6 in
 17 connection with the pre-ride briefing we have
 18 been discussing. Can you identify any
 19 differences between Wagner 6 and the document
 20 that you received at that pre-ride briefing?
 21 A. The document I received had more
 22 concentrated synopsis of some of the other
 23 things. The highway violations you will note
 24 at the top were not included because they were
 25 not bicycle related. For hire vehicles also

1 Wagner
 2 would not be included.
 3 Other than that I believe
 4 everything else is pretty much the same.
 5 Q. Do you notice in the portion, the
 6 middle of the page, Wagner 6, it reads:
 7 Commonly used sections that certain of the
 8 violations had a line drawn through them, in
 9 particular those under Section 1234 of the
 10 vehicle and traffic law?
 11 A. Yes, I see that.
 12 Q. Were sections, any provisions of
 13 Section 1234 included in the hand out that you
 14 received at the pre-ride briefing when the
 15 NYPD policy changed on managing Critical Mass?
 16 MR. CIAPPETTA: Objection as to
 17 the form.
 18 A. I don't recall specifically if
 19 that section was included.
 20 Q. Do you recall personally taking
 21 enforcement action with respect to violations
 22 of Section 1234 of the vehicle and traffic
 23 law?
 24 A. No. I don't recall specifically.
 25 Q. You may have?

1 Wagner
 2 MR. CIAPPETTA: Objection as to
 3 the form.
 4 A. Yes.
 5 Q. When did you learn that?
 6 A. Several months after we began
 7 summonsing, the summonsing portion of
 8 enforcement of Critical Mass.
 9 Q. And how did you learn that?
 10 A. I obtained a copy of the New York
 11 City traffic rules and found that notation
 12 within the traffic rules.
 13 Q. Did you undertake that
 14 investigation on your own?
 15 MR. CIAPPETTA: Objection as to
 16 the form.
 17 A. No.
 18 Q. What prompted you to look in the
 19 vehicle and traffic law to determine the
 20 applicability of Section 1234 in New York
 21 City?
 22 A. After I don't know how many rides
 23 where we used that as the violation somebody
 24 said that that does not apply within the
 25 confines of New York City, but nobody had a

1 Wagner
 2 A. Yes, I may have.
 3 Q. Do you ever recall discussing with
 4 anyone at NYPD the enforcement of Section 1234
 5 of the vehicle and traffic law?
 6 A. No, I don't recall.
 7 Q. Do you recall at the pre-ride
 8 briefing at which the new policy was rolled
 9 out being told that riding more than two
 10 abreast was a violation that should be
 11 enforced?
 12 MR. CIAPPETTA: Objection as to
 13 the form.
 14 A. I believe that may have been said,
 15 yes.
 16 Q. Do you recall generally a rule
 17 against riding more than two abreast being
 18 enforced in connection with Critical Mass
 19 rides?
 20 A. I believe it might have been, yes.
 21 Q. Do you ever recall learning that
 22 the section of the VTL -- withdrawn.
 23 Do you recall at any point
 24 learning that it was not against the law to
 25 ride more than two abreast in New York City?

1 Wagner
 2 traffic rules on hand, so I went and got one
 3 myself and then verified it.
 4 Q. Who was it who said that that
 5 provision didn't apply in New York City if you
 6 recall?
 7 A. I believe it was one of the
 8 officers on my shift, not during a ride, but
 9 in between rides during the course of the
 10 month. Somebody said, hey, we can't write
 11 this.
 12 Q. It was your understanding that
 13 this was being used as a basis for issuing
 14 summonses at Critical Mass rides for several
 15 months prior to the revelation you just
 16 testified to?
 17 MR. CIAPPETTA: Objection as to
 18 the form.
 19 A. Yes, but I can't tell you how many
 20 months we actually used it.
 21 Q. Can you recall when you stopped
 22 using it?
 23 A. I don't recall specifically when
 24 we stopped using that violation.
 25 Q. Do you recall Lieutenant Albano at

1 Wagner
 2 any time making statements with respect to the
 3 applicability of Section 1234 in New York
 4 City?
 5 A. I don't recall him making any
 6 statements.
 7 Q. Over the course of time of your
 8 participation in Critical Mass details from
 9 the period of July 2004 through your most
 10 recent detail did you observe a trend in the
 11 size of the Critical Mass rides?
 12 A. Yes.
 13 Q. What has been the trend?
 14 A. The trend has been the ride has
 15 gotten considerably smaller in size.
 16 Q. Have you observed towards the end
 17 of the time period I just described that on
 18 occasion the ride does not depart from Union
 19 Square en masse?
 20 MR. CIAPPETTA: Objection as to
 21 the form.
 22 A. Yes.
 23 Q. How many times can you recall that
 24 occurring?
 25 A. I would characterize that as

1 Wagner
 2 A. Yes.
 3 Q. Who is that?
 4 A. There were one or two times -- I
 5 can't say one or two specifically. There were
 6 several times when Lieutenant Turco may have
 7 been on vacation and another lieutenant would
 8 fill in, although I could not give you the
 9 name.
 10 Q. And was this practice of following
 11 groups of bicyclists as small as five people
 12 departing from Union Square ever discussed at
 13 a pre-ride briefing?
 14 A. No.
 15 Q. Was it ever discussed at all by
 16 you with anyone at NYPD?
 17 A. Yes.
 18 Q. What were those discussions?
 19 A. Those discussions were between
 20 myself and the officer I might be partnered up
 21 with at the time, what are we going to do once
 22 we follow them. If they join up with another
 23 group what our actions may or may not be at
 24 that point in time.
 25 Q. And what would be your objectives

1 Wagner
 2 majority of times in the recent ones that I
 3 have been to. More often than not they just
 4 stay there or disperse and will not ride en
 5 masse out of Union Square.
 6 Q. On the occasions when that occurs
 7 what if any enforcement action does NYPD
 8 assign to Critical Mass detail take?
 9 MR. CIAPPETTA: Objection as to
 10 form.
 11 A. At that point in time if we see
 12 any group of cyclists depart more than five or
 13 so, five to eight, if it is larger, a group of
 14 that size or slightly larger, one or two
 15 scooters -- I'm sorry, two scooters would be
 16 told to follow them for a period of time.
 17 Q. And who would give the command to
 18 the scooter officers to follow a group of five
 19 to eight?
 20 A. Lieutenant Turco.
 21 Q. Has any officer other than
 22 Lieutenant Turco been the commanding officer
 23 of the Scooter Task Force at any Critical Mass
 24 rides since the policy changed regarding
 25 arrest versus summonses?

1 Wagner
 2 for -- in connection with that activity?
 3 MR. CIAPPETTA: Objection as to
 4 the form.
 5 A. Basically to act as reconnaissance
 6 and see if as they dribbled out in small
 7 groups that they would reform at a different
 8 location such as Tompkins Park or Washington
 9 Park, reconstitute the mass and then ride in
 10 mass from that location.
 11 Q. And have you personally observed
 12 that occur?
 13 A. No.
 14 Q. Has it ever been the case that you
 15 have followed a group of bicyclists the size
 16 of five to eight from Union Square and found
 17 that they are heading to their homes?
 18 MR. CIAPPETTA: Objection as to
 19 the form.
 20 A. Yes.
 21 Q. At which point what do you do?
 22 A. Make a radio transmission to
 23 Lieutenant Turco, inform him that they went
 24 home or that they went to the bar or that they
 25 went to wherever they were going, and that

1 Wagner
2 they are off the street.
3 Q. You testified earlier that you
4 have observed individuals congregating at
5 Union Square prior to 7 p.m. on the last
6 Friday of the month with bicycles who do not
7 participate in the Critical Mass rides; is
8 that correct?
9 A. Yes.
10 Q. What way would you have of
11 distinguishing individuals with no intention
12 of participating in the Critical Mass ride who
13 left in groups of five from groups of five
14 bicyclists who left with an intent to
15 reconstitute themselves at a different
16 location?
17 A. There would be no way to
18 differentiate a group such as that other than
19 given the timeframe of when they would leave
20 the park.
21 Q. Does the determination of whether
22 to follow a particular group of bicyclists
23 hinge upon their age?
24 A. No.
25 MR. CIAPPETTA: Objection as to

1 Wagner
2 A. No. The decision was never mine
3 to make to follow the group. That came from
4 supervision.
5 Q. But did you supply information to
6 your supervisor on which a determination would
7 be made?
8 A. No.
9 Q. Have you ever been asked by anyone
10 other than Lieutenant Turco for information
11 regarding occurrences at a Critical Mass ride?
12 MR. CIAPPETTA: Objection as to
13 the form. Occurrences.
14 A. Yes.
15 Q. Who has asked you information
16 about the events at Critical Mass rides?
17 A. The sergeant associated with the
18 Scooter Task Force.
19 Q. Has anyone outside of the Scooter
20 Task Force asked you for information about
21 what occurred at a Critical Mass ride?
22 A. Can I confer with my counsel for a
23 minute.
24 MR. VACCARO: Yes. Off the
25 record.

1 Wagner
2 the form.
3 Q. Would it hinge upon how they were
4 dressed?
5 MR. CIAPPETTA: Objection as to
6 the form.
7 A. No.
8 Q. Would it hinge upon observations
9 by officers that those individuals had
10 participated in prior Critical Mass rides?
11 MR. CIAPPETTA: Objection as to
12 form.
13 A. Possibly.
14 Q. Have you ever considered that
15 factor in making a determination as to whether
16 to follow a group of bicyclists from Union
17 Square?
18 A. No.
19 Q. Have you ever supplied information
20 with respect to past participation in Critical
21 Mass rides in connection with a decision on
22 whether to follow a group, a small group
23 leaving Union Square?
24 MR. CIAPPETTA: Objection as to
25 form.

1 Wagner
2 THE VIDEOGRAPHER: The time is
3 5:30. We are off the record.
4 (Recess taken.)
5 THE VIDEOGRAPHER: The time is
6 5:38. We are on the record.
7 MR. CIAPPETTA: Read back the
8 question.
9 (Record read.)
10 MR. CIAPPETTA: Are we talking
11 about other police officers?
12 Q. Let's start with anyone other than
13 your lawyers in this lawsuit?
14 A. Yes.
15 Q. Were they lawyers working for the
16 NYPD?
17 A. No.
18 Q. Who was it then to whom you gave
19 this information?
20 MR. CIAPPETTA: What information;
21 I mean the question is very --
22 Q. Information about what events
23 transpired at Critical Mass rides?
24 MR. CIAPPETTA: What does that
25 mean, event?

1 Wagner
 2 Q. Anything that occurred at a ride?
 3 A. I would say yes.
 4 Q. Who asked for that information?
 5 A. The Corporation Counsel is not
 6 NYPD lawyers, correct; it would be -- that is
 7 what I am saying, I am a little bit confused
 8 on who you are talking about because there is
 9 the other lawsuit.
 10 MR. CIAPPETTA: I think we need to
 11 go back off the record again.
 12 THE VIDEOGRAPHER: The time is
 13 5:40. We are going off the record.
 14 (Recess taken.)
 15 THE VIDEOGRAPHER: The time is
 16 5:44. We are on the record.
 17 Q. I believe you testified that you
 18 were asked for information by attorneys from
 19 the Corporation Counsel regarding Critical
 20 Mass rides; is that correct?
 21 A. Yes.
 22 Q. Do you know with respect to -- do
 23 you know if that request came with respect to
 24 any particular litigation?
 25 A. Yes.

1 Wagner
 2 case and the lawyers handling this case for
 3 information regarding events occurring at
 4 Critical Mass rides?
 5 A. Yes.
 6 Q. Who are the people who asked you
 7 for that information?
 8 A. Numerous people. Without specific
 9 clarification I couldn't give you a specific
 10 band of people that let me know.
 11 Q. Do you recall any individuals
 12 within NYPD of rank higher than lieutenant
 13 asking you for such information?
 14 A. Not that I recall.
 15 Q. Any lieutenants within NYPD other
 16 than Lieutenant Turco asking you for such
 17 information?
 18 A. Yes.
 19 Q. Which lieutenants?
 20 A. Lieutenant Albano. That would be
 21 about it as I can recall.
 22 Q. On what occasion can you recall
 23 Lieutenant Albano asking you for information
 24 regarding events on Critical Mass rides?
 25 A. During --

1 Wagner
 2 Q. What litigation was it?
 3 A. Callahan versus New York City I
 4 believe.
 5 Q. And what do you know about the
 6 case of Callahan versus New York City?
 7 MR. CIAPPETTA: Objection to the
 8 extent that it calls for legal
 9 conclusions or legal understanding of the
 10 case.
 11 Q. The question didn't call for that,
 12 but anyway what do you know about the case of
 13 Callahan versus New York City?
 14 A. It is a civil lawsuit of numerous
 15 complainants versus numerous officers and the
 16 NYPD.
 17 DI Q. What information were you
 18 requested to supply in connection with that
 19 case?
 20 MR. CIAPPETTA: Objection.
 21 Instruct the witness not to answer that
 22 question on the basis of attorney/client
 23 privilege.
 24 Q. Have you been asked by anyone
 25 other than the lawyers handling the Callahan

1 Wagner
 2 MR. CIAPPETTA: This could
 3 potentially involve attorney/client
 4 privilege as well. I need to speak with
 5 my client again.
 6 MR. VACCARO: Okay.
 7 THE VIDEOGRAPHER: The time is
 8 5:47. We are going off the record.
 9 (Recess taken.)
 10 THE VIDEOGRAPHER: The time is
 11 5:49. We are on the record.
 12 MR. CIAPPETTA: I will permit the
 13 client -- the witness to answer the
 14 question.
 15 Q. The question was, can we read it
 16 back, please.
 17 (Record read.)
 18 A. Specifically during the period of
 19 time where we were arresting individuals for
 20 parading without a permit, during the period
 21 of time at the precinct location where we were
 22 processing the arrest he would ask what did
 23 you see and verify if it met the needs for an
 24 arrest.
 25 Q. Did anyone other than Lieutenant

1 Wagner
 2 Albano work with you in connection with the
 3 processing of Critical Mass arrests?
 4 A. No. Not outside of the task
 5 force.
 6 Q. Are you familiar with a unit of
 7 the Police Department called the CJB?
 8 A. Yes.
 9 Q. Did CJB personnel assist you in
 10 the processing of arrests?
 11 A. Not routinely, no.
 12 Q. Did they assist you with respect
 13 to any Critical Mass arrests?
 14 A. On one arrest.
 15 Q. And what was the form of that
 16 assistance?
 17 A. On that particular ride the
 18 department was anticipating large scale mass
 19 arrests, and the processing facility was going
 20 to be the booking area of One Police Plaza.
 21 At that point there were some CJB personnel
 22 present. Unfortunately the mass arrest never
 23 materialized and their services were never
 24 utilized.
 25 Q. Can you recall any occasions other

1 Wagner
 2 MR. CIAPPETTA: Objection to form.
 3 You can answer.
 4 A. Yes.
 5 Q. And did Lieutenant Albano indicate
 6 any particular threshold number of bicyclists
 7 that were necessary to support a charge of
 8 parading without a permit?
 9 A. Yes.
 10 Q. What was that number?
 11 A. As I recall the number was 50.
 12 Q. And this was in the 2004 to 2005
 13 timeframe that Lieutenant Albano indicated
 14 that a statement of 50 bicyclists proceeding
 15 together was necessary to support a charge of
 16 parading without a permit?
 17 A. No, I would say later in the 2005
 18 timeframe.
 19 Q. Do you ever recall receiving an
 20 instruction that a group of bicyclists of five
 21 people or more were engaged in parading
 22 without a permit and could be charged with
 23 that offense?
 24 MR. CIAPPETTA: Objection as to
 25 the form.

1 Wagner
 2 than those that you testified to in which
 3 Lieutenant Albano asked you for information
 4 regarding events on Critical Mass rides?
 5 A. No.
 6 Q. On the occasions when Lieutenant
 7 Albano asked you about events on Critical Mass
 8 rides what information did he ask you for?
 9 A. Again just at the time of
 10 processing the arrest he would ask for the
 11 circumstances regarding the arrest.
 12 Q. Did he ever ask you to describe
 13 the number of individuals you saw proceeding
 14 together?
 15 A. Yes, as part of the narrative of
 16 the complaint.
 17 Q. Was it your understanding that in
 18 order to support an arrest for parading
 19 without a permit during this period there
 20 would need to be a statement as to the size of
 21 the group that was proceeding?
 22 MR. CIAPPETTA: In what period are
 23 you talking about?
 24 Q. The period prior to the change in
 25 policy over to summoning?

1 Wagner
 2 A. Not that I recall.
 3 Q. Do you ever recall arresting
 4 bicyclists proceeding in a group of less than
 5 50 and charging them with parading without a
 6 permit?
 7 A. I don't recall.
 8 Q. Do you ever recall an instance in
 9 which a Critical Mass participant was arrested
 10 for parading without a permit but charges were
 11 ultimately were not pursued because the
 12 individual was in a group of less than 50?
 13 MR. CIAPPETTA: Objection as to
 14 the form.
 15 A. I don't recall.
 16 Q. Did that occur with respect to any
 17 of the arrests that you made?
 18 A. Again not that I recall.
 19 Q. During the period when NYPD was
 20 summoning Critical Mass participants was it
 21 your understanding that the law enforcement
 22 activity was to be conducted on a zero
 23 tolerance basis?
 24 MR. CIAPPETTA: Objection as to
 25 the form.

1 Wagner

2 A. Yes, to the extent that it was

3 possible.

4 Q. Do you recall during that period

5 receiving information as to when the sun set

6 on the evenings when Critical Mass rides would

7 take place?

8 MR. CIAPPETTA: Objection as to

9 the form.

10 A. Yes. I believe there was a radio

11 transmission indicating at which time the sun

12 set.

13 Q. And what was the purpose of

14 providing that information to the officers on

15 those Critical Mass details?

16 MR. CIAPPETTA: If you know.

17 A. To facilitate the issuance of

18 equipment violations, and specifically the VTL

19 law stating that bicycle riding after sun

20 down, that 30 minutes after sun down and 30

21 minutes prior to sun up a fixed light white in

22 nature is required to be affixed to a bicycle

23 as well as reflective materials on the top.

24 Q. Have you ever issued summonses for

25 failure of a bicycle to be so equipped?

1 Wagner

2 the law?

3 A. Not for that charge.

4 Q. Have you ever apart from a

5 Critical Mass ride issued a summons to a

6 bicyclist for failure to keep to the extreme

7 left or right of the roadway?

8 A. Not that I recall.

9 Q. Have you ever issued a summons --

10 strike that.

11 Have you ever arrested a person, a

12 pedestrian, bicyclist or motorists for

13 parading without a permit not in connection

14 with a Critical Mass ride?

15 MR. CIAPPETTA: Objection as to

16 the form.

17 A. No.

18 Q. Have you ever issued a summons for

19 parading without a permit to any individual,

20 pedestrian, bicyclist or motorist in

21 connection with an event other than a Critical

22 Mass ride?

23 A. No.

24 Q. Have you ever issued a summons to

25 a bicyclists for proceeding through a steady

1 Wagner

2 A. Its possible, yes.

3 Q. Do you know, do you recall whether

4 you have issued such a summons in connection

5 with a Critical Mass ride?

6 A. Yes, it is possible.

7 Q. Have you ever issued such a

8 summons to a bicyclist apart from a Critical

9 Mass ride?

10 MR. CIAPPETTA: Objection as to

11 the form. Apart.

12 A. Could I ask for a specific?

13 Q. Yes. Do you have a recollection

14 of issuing a summons to a bicyclist for

15 failure to have the proper lights and

16 reflective material on their bicycle in a

17 situation where the bicyclist was not part of

18 a Critical Mass ride, was just an individual

19 bicyclist riding around town?

20 A. Not for that violation.

21 Q. Have you ever issued a violation,

22 issued a summons to a bicyclist who was not

23 proceeding in a Critical Mass ride for the

24 offense of riding outside of a bicycle lane

25 when one is -- when one should be used under

1 Wagner

2 red signal except in connection with a

3 Critical Mass ride?

4 A. Yes, I have.

5 Q. And do you recall the circumstance

6 of that summons?

7 A. Yes. Actually there were several,

8 multiple instances. We would be assigned to

9 enforce an area or an intersection, and on

10 several instances we were specifically looking

11 for bicycle violations. So not related to

12 Critical Mass, specifically looking for

13 bicyclists going through red lights or other

14 associated bicycle related violations, and

15 during those periods there were multiple

16 summonses written.

17 Q. And these operations would be

18 conducted by you and other members of the

19 Scooter Task Force?

20 A. Yes.

21 Q. And would you take up a stationary

22 location and watch for violations by

23 bicyclists?

24 A. Yes.

25 MR. CIAPPETTA: Objection as to

1 Wagner
 2 the form.
 3 Q. And do you recall the locations at
 4 which any of these stationary check points
 5 were conducted?
 6 MR. CIAPPETTA: Objection as to
 7 the form and to the characterization of
 8 the witness' prior testimony.
 9 Q. Can you answer the question?
 10 A. Yes. On Sixth Avenue between the
 11 vicinity of 36th Street and Herald Square.
 12 Q. There is a bike lane in that
 13 vicinity on Sixth Avenue; is that correct?
 14 A. Yes.
 15 Q. Would you issue violations in
 16 connection with that stationary check point
 17 for bicyclists riding outside of the bike
 18 lane?
 19 MR. CIAPPETTA: Objection as to
 20 form.
 21 A. Yes, if we witnessed that
 22 violation.
 23 Q. Do you recall issuing summonses
 24 for that violation at that location?
 25 A. No.

1 Wagner
 2 ride all the summonses issued by the unit
 3 would be collected together, brought to the
 4 command vehicle wherever it was located so
 5 that a recap, a recapitulation of the activity
 6 could be recorded, and then the summonses were
 7 returned to the messenger officer who would
 8 then follow the normal summons handling
 9 procedure afterwards.
 10 Q. Can you recall a Critical Mass
 11 ride at which you issued summonses in which
 12 you did not follow the procedure you just
 13 described?
 14 MR. CIAPPETTA: Objection as to
 15 form. I am not sure it has been
 16 established that he issued a summons at a
 17 Critical Mass ride.
 18 Q. Have you issued any summonses at
 19 any Critical Mass rides?
 20 A. Yes.
 21 Q. Have you ever not followed the
 22 procedure you described for the recapitulation
 23 of the summonses on such a ride?
 24 A. Not that I recall.
 25 Q. Who is the individual who took the

1 Wagner
 2 Q. Do you recall any other locations
 3 at which such stationary check points were
 4 conducted?
 5 MR. CIAPPETTA: Objection as to
 6 the form.
 7 A. Not for that type of operation,
 8 no.
 9 Q. Was there procedures you were
 10 given with respect to summonses issued at
 11 Critical Mass rides in terms of what you were
 12 to do with them?
 13 MR. CIAPPETTA: Objection as to
 14 form. I don't know what that means, what
 15 to do with them.
 16 A. Okay --
 17 Q. Withdrawn.
 18 Was there a special procedure for
 19 the handling of summonses issued in Critical
 20 Mass rides that was different than that for
 21 the handling of other summonses issued in
 22 other situations?
 23 A. I would say yes.
 24 Q. What was that procedure?
 25 A. At the end of the Critical Mass

1 Wagner
 2 summonses from you for that recapitulation
 3 process if you know?
 4 A. Actually I was the officer who
 5 usually conveyed the summonses to the command
 6 vehicle.
 7 Q. Would you collect the summonses
 8 from your fellow officers?
 9 A. The supervisor would collect the
 10 summonses, hand them to me, go back to me,
 11 then to the THV, Tactical Headquarters
 12 Vehicle, then let them record them and take
 13 them back and drop them.
 14 Q. And what is your understanding of
 15 where those summonses go after they are
 16 returned to the officers?
 17 A. Once they are turned in to the
 18 precinct, concern they go into the processing
 19 system at One Police Plaza or wherever they
 20 go, I don't know.
 21 Q. So the officers from all the
 22 different precincts participating in the
 23 Critical Mass detail would bring the summonses
 24 back with them to their home precincts?
 25 A. No.

1 Wagner

2 Q. Then --

3 A. Normally they would drop them in

4 the precincts or the commands where they were

5 written in. If a violation was written in the

6 confines of the 13th Precinct it would be

7 dropped at the 13th Precinct or, you know, as

8 the ride would go to multiple precincts, the

9 effort would be made to drop them in the

10 command that they would be written.

11 Q. Do you recall during any Critical

12 Mass ride after the summoning policy took

13 effect bicyclists being handcuffed in

14 connection with the issuance of summonses?

15 MR. CIAPPETTA: Objection as to

16 the form.

17 A. Yes.

18 Q. What do you recall about that?

19 A. As I recall, different rides, I

20 couldn't tell you which ones the dates were,

21 where a criminal court summons would be

22 issued, not a moving violation, but a criminal

23 court summons, it is standard practice to

24 handcuff a defendant while you are preparing

25 the summons to prevent the person from

1 Wagner

2 for an officer to handcuff the recipient of a

3 type C summons while the summons is being

4 prepared?

5 A. Yes.

6 Q. Does the officer have discretion

7 to not handcuff the recipient to the summonses?

8 A. Yes.

9 Q. Do you recall any discussions

10 regarding the exercise of discretion to

11 handcuff or not in connection with the

12 issuance of C summonses during Critical Mass

13 pre-ride briefings?

14 A. No.

15 Q. Do you recall any discussion at

16 all with other officers regarding the practice

17 of handcuffing recipients of type C summonses

18 during Critical Mass rides?

19 A. No.

20 Q. Do you know whether there was a

21 standard practice with respect to whether

22 Critical Mass detail -- whether participants

23 in Critical Mass details would handcuff or not

24 handcuff recipients of type C summonses?

25 A. No.

1 Wagner

2 departing the scene until the summons is

3 completed, then the person is released and

4 issued the summons.

5 Q. And was that procedure followed on

6 Critical Mass rides in which you participated?

7 A. Yes.

8 Q. Do you recall that procedure being

9 followed in connection with the issuance of

10 summonses for parading without a permit?

11 A. If it was --

12 MR. CIAPPETTA: Objection as to

13 the form.

14 A. If it was a C type summons the

15 person would have been handcuffed until the

16 summons was complete regardless of what the

17 violation was.

18 Q. That is standard -- off the

19 record.

20 THE VIDEOGRAPHER: The time is

21 6:05. We are off the record.

22 (Recess taken.)

23 THE VIDEOGRAPHER: The time is

24 6:06. We are on the record.

25 Q. Is it standard operating procedure

1 Wagner

2 Q. Is there a written rule or policy

3 of NYPD with respect to the handcuffing of

4 recipients of type C summonses?

5 A. I couldn't say if there was an

6 absolute requirement to handcuff a person

7 while a C summons is being issued.

8 Q. Do you believe that there is a

9 policy addressing at all the issue of whether

10 or not to handcuff recipients of C summonses

11 that is written and provided for NYPD use?

12 A. I couldn't say.

13 Q. How many times can you recall

14 observing issuance -- recall observing

15 recipients of C summonses in connection with

16 Critical Mass rides being handcuffed?

17 A. At least once. Myself issuing a C

18 summons I handcuffed the Critical Mass

19 cyclists while preparing the C summons.

20 Q. And do you recall the precise

21 nature of the charge?

22 A. I believe it would be discon, I am

23 not a hundred percent sure without seeing the

24 summons.

25 Q. Do you recall if that bicyclist

1 Wagner
2 that you handcuffed on that occasion attempted
3 to flea before you could issue them the
4 summons?
5 A. No.
6 Q. Do you recall whether that
7 bicyclist attempted to resist the detainer in
8 any way?
9 A. No.
10 Q. Do you recall using your handcuffs
11 in that situation without determining whether
12 the bicyclist would resist the detainer?
13 MR. CIAPPETTA: Could you repeat
14 the question.
15 (Record read.)
16 MR. CIAPPETTA: Objection as to
17 form.
18 A. No, as far as I was -- could
19 remember there was no resistance or attempted
20 flight.
21 Q. Officer Wagner, we are going to
22 show you a video segment and ask you some
23 questions about it. I am going to try to be
24 as orderly as I can in terms of showing you
25 the video and stopping the image and asking

1 Wagner
2 MR. VACCARO: I am not sure. I
3 believe we have that information, but at
4 this moment -- actually I believe he
5 identifies himself on the tape.
6 Q. I just would like to ask Officer
7 Wagner whether he recalls participating in the
8 Critical Mass ride that occurred on June 27,
9 2008?
10 A. I believe I did, yes.
11 MR. CIAPPETTA: Let's be clear off
12 the record what exactly when we want him
13 to start paying attention, or as soon as
14 it plays?
15 MR. VACCARO: I would like Officer
16 Wagner to look at the entire length of
17 the videotape. We intend to show it to
18 you from time stamp 00:16 through time
19 stamp 02:28.
20 MR. CIAPPETTA: That is 16 seconds
21 then, is that correct?
22 (Video clip is being played.)
23 Q. I have asked that the video clip
24 be stopped at time stamp 2:09. I am going to
25 ask the witness whether he recognizes himself

1 Wagner
2 you the questions and letting you finish
3 before we return to any video.
4 If you need to or want to review
5 anything that we have shown you because you
6 believe it would help you answer the question,
7 you can certainly ask us and we will do that.
8 MR. CIAPPETTA: Can we get a
9 description of the video clip?
10 MR. VACCARO: Sure. We are going
11 to show segments of the video that was
12 produced with identification number
13 5BBCVID and then 0000018.
14 MR. CIAPPETTA: Do we have a date
15 that this video was taken on?
16 MR. VACCARO: I believe it was
17 taken on June 27, 2008.
18 MR. CIAPPETTA: I am not sure
19 whether -- was this video, the
20 videographer, has that been identified to
21 defendants in response to their
22 interrogatory request?
23 MR. VACCARO: I couldn't tell you.
24 MR. CIAPPETTA: And do you recall
25 who the videographer was?

1 Wagner
2 in the video, the segment preceding 2:09?
3 A. Yes.
4 Q. Can you turn the video back on,
5 please.
6 (Video clip is being played.)
7 Q. Officer Wagner, did you hear in
8 the video clip being asked the question by
9 the -- by someone off camera why you did not
10 follow other bicyclists who were violating the
11 law?
12 A. Yes.
13 Q. Did you hear yourself give the
14 response because I was told to follow this
15 group?
16 A. Yes.
17 Q. What is the group that you were
18 referring to in that statement?
19 A. That was a small group of cyclists
20 who departed the formation area of Critical
21 Mass at Union Square.
22 Q. The narrator of this video segment
23 described himself as proceeding southbound on
24 Broadway towards Union Square. Did you hear
25 that?

1 Wagner
 2 A. Yes.
 3 Q. Do you recollect the events
 4 depicted in the video sufficiently to be able
 5 to confirm that that was where you were
 6 proceeding at that time?
 7 A. Yes.
 8 Q. So these bicyclists were headed
 9 towards Union Square at this time; is that
 10 correct?
 11 A. At this exact time, yes.
 12 Q. Do you recall for how long you had
 13 been following this group of bicyclists at the
 14 point at which we find them in the video
 15 segment?
 16 A. I don't recall specific time when
 17 we left Union Square.
 18 Q. Would you have been following them
 19 from their departure from Union Square up
 20 until this point?
 21 A. Yes, I believe so.
 22 Q. Can you tell from the videotape or
 23 from your recollection how many bicyclists
 24 were included in this group that you were
 25 following?

1 Wagner
 2 A. No.
 3 Q. Would you say they were merely
 4 following the bicyclists in the bicycle lane?
 5 A. Yes.
 6 MR. CIAPPETTA: Objection as to
 7 the form.
 8 Q. Is one of the purposes of a
 9 bicycle lane to segregate bicycles from motor
 10 vehicles?
 11 A. Yes.
 12 Q. Is the purpose of segregating
 13 bicycles from motor vehicles to avoid the
 14 hazards that come from the mixing of motor
 15 vehicles and bicycles?
 16 MR. CIAPPETTA: Objection as to
 17 the form.
 18 A. Yes.
 19 Q. And what is the reason that you
 20 believe, if you believe, that the mixing of
 21 motor vehicles and bicycles that was depicted
 22 on the video did not create a safety hazard?
 23 A. As I saw in the video the officer
 24 who was in the bicycle lane was maintaining a
 25 safe distance from the bicycles which we were

1 Wagner
 2 A. Four to six perhaps.
 3 Q. Did you observe yourself riding
 4 your scooter in the bicycle lane behind some
 5 of the bicyclists in that group?
 6 A. No.
 7 Q. Did you observe other scooter
 8 officers doing so?
 9 A. Yes.
 10 Q. Does practice of following closely
 11 behind bicycles in a bicycle lane on a scooter
 12 create a safety issue for those bicyclists?
 13 MR. CIAPPETTA: Objection as to
 14 form.
 15 A. I don't believe so.
 16 Q. You are aware of the laws
 17 regarding motor vehicles being operated in
 18 bicycle lanes; right?
 19 A. Yes.
 20 Q. Would you have described the
 21 scooter officers depicted in the video segment
 22 as engaged in a pursuit of bicyclists in the
 23 bicycle lane?
 24 MR. CIAPPETTA: Objection as to
 25 the form.

1 Wagner
 2 following.
 3 Q. Did you have any way of knowing
 4 whether these bicyclists had intended to
 5 participate in Critical Mass when you followed
 6 them?
 7 A. I believe I said I followed them
 8 out of Union Square.
 9 Q. That is correct, but didn't you
 10 also testify earlier that there was no way to
 11 distinguish individuals who merely congregated
 12 in Union Square and then left from those who
 13 might have intended to participate in the
 14 Critical Mass ride?
 15 A. Correct.
 16 Q. So did you have any positive
 17 information that led you to believe that these
 18 individuals were in fact intending to
 19 participate in a Critical Mass ride?
 20 A. It would be hard to tell based on
 21 the footage that I have seen up to this point.
 22 Q. When you see an individual on a
 23 bicycle with a camera does that suggest to you
 24 that they are a participant in a Critical Mass
 25 ride?

1 Wagner
2 MR. CIAPPETTA: Objection as to
3 form. Are you speaking in general or --
4 MR. VACCARO: Speaking in general.
5 A. In general, no.
6 Q. Are there circumstances under
7 which an individual with a camera -- are there
8 circumstances under which the fact that an
9 individual on a bicycle has a camera leads you
10 to conclude that they are a Critical Mass
11 participant?
12 A. Yes.
13 Q. And what are those circumstances?
14 A. The verbal barrage that
15 accompanies the videotaping of myself and the
16 other officers regarding name, badge number,
17 whose civil rights are you going to be
18 violating today. Things of that nature.
19 Q. So it is based on statements like
20 that that you reach conclusions as to whether
21 your pursuit of a group of four to six
22 cyclists is -- withdrawn.
23 Regardless of whether individuals
24 you follow from Union Square in small groups
25 have cameras or make such statements, do you

1 Wagner
2 following the bicyclists and not letting them
3 get away from the officers who were doing the
4 following?
5 MR. CIAPPETTA: Is that a
6 question?
7 Q. Was that the caveat that you
8 described in terms of not taking any
9 unnecessary risks?
10 MR. CIAPPETTA: Objection as to
11 the form.
12 A. Safety of the officers and the
13 people that we would be observing would be the
14 paramount issue. Everything else was
15 secondary.
16 Q. When you are following bicyclists
17 in this manner in order to make sure that you
18 don't lose track of them you are prevented
19 from enforcing the law that with respect to
20 violations you might see while following them?
21 MR. CIAPPETTA: Objection as to
22 the form.
23 A. I wouldn't say prevented. That
24 has a certain level. I mean we are not going
25 to lose sight of the group for a very minor

1 Wagner
2 follow them until told to stop or until they
3 reach their homes once directed to follow them
4 by your superior officer?
5 A. Yes, also with a time caveat of
6 about 15 to 20 minutes.
7 Q. Have you ever heard discussed any
8 concerns about whether bicyclists who were not
9 intending to participate in Critical Mass
10 might become alarmed by the fact that they
11 were being followed by scooter officers in
12 this manner?
13 MR. CIAPPETTA: Objection as to
14 the form.
15 A. No, I don't recall that being
16 expressed to me.
17 Q. And do you ever recall discussion
18 as to whether, you know, as to whether it was
19 important to keep a safe distance in pursuing
20 or following bicyclists in these types of
21 situations?
22 A. Just the usual instructions to be
23 safe. Don't take unnecessary chances or
24 risks.
25 Q. Consistent with the objective of

1 Wagner
2 violation. But if we are following a group
3 and somebody is being stabbed with a knife,
4 then the group goes and we go to the higher
5 priority. So it is a question of prioritizing
6 your task at the time.
7 Q. I would like to show you a
8 different segment. Did we go all the way to
9 the segment that we --
10 MS. DINGLE: There are eight more
11 segments on that.
12 MR. VACCARO: Can we go to time
13 stamp 7 minutes, 18 seconds. Actually go
14 to time stamp --
15 MS. DINGLE: In the same video?
16 MR. VACCARO: Same video, 7
17 minutes, 14 seconds.
18 MR. CIAPPETTA: This is from the
19 same Bates stamp?
20 MR. VACCARO: Yes.
21 (Video clip is being played.)
22 MR. CIAPPETTA: I am having
23 difficulty hearing that. Can we watch
24 that again.
25 MR. VACCARO: Let's go back for 7,

1 Wagner
 2 14.
 3 (Video clip is being played.)
 4 Q. Am I correct, Officer Wagner, that
 5 you advised the bicyclists who asked you
 6 regarding what part of the road he should be
 7 on, that he should be on the extreme side left
 8 or right?
 9 A. Correct.
 10 Q. And you told him that that is what
 11 the VTL says?
 12 A. Yes.
 13 Q. I would like to show you the -- we
 14 can mark this for identification, I am afraid
 15 I only have one copy because it is voluminous,
 16 I would like to read into the record --
 17 MR. CIAPPETTA: I would like to
 18 see a copy of it?
 19 MR. VACCARO: It is 34 Rules of
 20 the City of New York, chapter 4, section
 21 4-12(p)3.
 22 MR. CIAPPETTA: Can we make a copy
 23 of the relevant section instead of the
 24 whole document?
 25 MR. VACCARO: Yes, we can. Maybe

1 Wagner
 2 yourself?
 3 A. Yes.
 4 (Witness complies with request.)
 5 Q. Can you recall reading that
 6 provision of law before?
 7 A. Yes.
 8 Q. Do you believe that that is the
 9 provision of law that you were referring to in
 10 the conversation with the bicyclist on the
 11 video segment that we just looked at?
 12 A. Yes.
 13 Q. Do you notice that the language
 14 used is that: A person operating a bicycle
 15 upon a roadway that carries traffic in one
 16 direction only and is at least 40 feet wide
 17 may, I repeat, may ride as near as is
 18 practicable to either the left or the
 19 right-hand curb or edge of such roadway,
 20 provided that the bicycles are not prohibited
 21 from using said roadway?
 22 MR. CIAPPETTA: I would like to
 23 note that despite the counsel's emphasis
 24 of the word may in the statute, or the
 25 rules, it is not actually emphasized in

1 Wagner
 2 we will take a break and do that.
 3 MR. CIAPPETTA: Yes.
 4 THE VIDEOGRAPHER: The time is
 5 6:30. We are off the record.
 6 (Recess taken.)
 7 MR. VACCARO: Would you mark as
 8 Wagner Exhibit 7, section 4-12, pages 51
 9 through 57.
 10 (Wagner Exhibit 7, section 4-12,
 11 pages 51 through 57, marked for
 12 identification, as of this date.)
 13 THE VIDEOGRAPHER: The time is
 14 6:36. We are on the record.
 15 Q. Officer Wagner, I have marked as
 16 Exhibit Wagner 7, a section of the Rules of
 17 the City of New York that concern traffic
 18 rules for bicyclists, and I wanted to ask you
 19 a question specifically about section 4-12(p)3
 20 which appears on page 54 of the excerpt that I
 21 gave you.
 22 A. Yes.
 23 Q. Could you review that section 3 on
 24 page 54 entitled bicycles permitted on both
 25 sides of 40 foot wide one-way roadways just to

1 Wagner
 2 any way by italics, underline or bold
 3 face.
 4 Q. Does the fact that the word may is
 5 used in the statute mean that this is merely a
 6 provision for the -- a permissive provision
 7 that states bicyclists right to use either
 8 side of the road and is not a mandatory
 9 provision that requires bicyclists to proceed
 10 on the right or left-hand side of the roadways
 11 described in the provision?
 12 MR. CIAPPETTA: Objection to the
 13 extent that it calls for the witness to
 14 engage in statutory interpretation, form
 15 a legal conclusion. You can answer the
 16 question.
 17 A. Yes, as I interpret that it states
 18 that the cyclists can use either left or
 19 right-hand extreme sides of a 40 foot wide
 20 roadway.
 21 Q. And does this provision prohibit a
 22 bicyclists from using a portion of the roadway
 23 that could not be characterized as the left or
 24 the right-hand side?
 25 MR. CIAPPETTA: Are you referring

1 Wagner
 2 to --
 3 Q. Does this provision --
 4 A. That would mean the center.
 5 Q. 4-12(p)3, let's call it the center
 6 of the roadway, the zone that lies in between
 7 the left and right-hand side, do you follow
 8 me?
 9 A. Yes.
 10 Q. Does this provision, section
 11 4-12(p)3, prohibit bicyclists from proceeding
 12 in the center of the roadway as we have
 13 defined it?
 14 A. Not literally, no.
 15 Q. Have you ever discussed with
 16 anyone whether this provision prohibits
 17 bicyclists from proceeding in the center of
 18 the roadway?
 19 A. In that specific paragraph, no.
 20 Q. Is it your understanding that
 21 there is a provision of law that prohibits
 22 bicyclists from proceeding in the center of a
 23 roadway that is at least 40 feet wide and runs
 24 in one direction only?
 25 MR. CIAPPETTA: Give the witness a

1 Wagner
 2 Bates stamped --
 3 MS. DINGLE: 5BBCVID 0000016.
 4 MR. CIAPPETTA: Is this from the
 5 same date?
 6 MR. VACCARO: No. I believe it is
 7 from a different ride.
 8 MR. CIAPPETTA: Okay. Do you know
 9 the ride?
 10 MR. VACCARO: I don't know if I
 11 have that information here. I think it
 12 is -- I think it is the June 2008
 13 Critical Mass.
 14 MR. CIAPPETTA: Do you know who
 15 the videographer is?
 16 MR. VACCARO: We may have that
 17 information, I don't know. I don't have
 18 it available for you right here. I will
 19 just ask that the segment from 6 minutes
 20 and 34 seconds to 7 minutes and 49
 21 seconds be played.
 22 (Video clip is being played.)
 23 MR. CIAPPETTA: Can we watch that
 24 again, I can't hear the video and the
 25 audio?

1 Wagner
 2 chance to look at the statute.
 3 MS. DINGLE: Can we go off the
 4 record for a second.
 5 THE VIDEOGRAPHER: The time is
 6 6:40. Off the record.
 7 (Recess taken.)
 8 THE VIDEOGRAPHER: The time is
 9 6:43. We are on the record.
 10 MR. CIAPPETTA: The witness can
 11 answer the question to the extent that he
 12 understands it. I am going to object to
 13 the extent that it calls for a legal
 14 conclusion.
 15 A. Reading this I see no specific
 16 absolute prohibition on riding in the middle
 17 of the roadway. In the spirit of the law it
 18 is meant for cyclists to be to the extreme
 19 sides of the road along the lines of VTL 1234.
 20 Q. Have you ever discussed the
 21 interpretation of this rule with other NYPD
 22 officers?
 23 A. No.
 24 Q. I would like to show you a clip
 25 from another video. Before you start, it is

1 Wagner
 2 Q. Before we start I have a question
 3 for Officer Wagner, are you the officer shown
 4 in that video?
 5 A. Yes.
 6 MR. VACCARO: We can show it
 7 again.
 8 (Video clip is being played.)
 9 MR. CIAPPETTA: This is the best
 10 view that we can get?
 11 MR. VACCARO: Yes.
 12 Q. Did you hear in the videotape you
 13 explaining to the bicyclists that the
 14 situation in which a car is stopped for
 15 missing a headlight is different from a
 16 situation in which a bicyclist is stopped for
 17 missing a headlight?
 18 MR. CIAPPETTA: I am not sure that
 19 Officer Wagner could hear anything. I
 20 could not hear it.
 21 A. I see myself explaining to
 22 pedestrians, but not bicyclists.
 23 Q. Do you recall the discussion that
 24 is depicted in the video, having that
 25 discussion?

1 Wagner
 2 A. Not specifically.
 3 Q. Did you hear in the audio portion
 4 of the video segment just played your
 5 statements with respect to how a missing
 6 headlight violation is handled for motor
 7 vehicles?
 8 A. Vaguely, yes.
 9 MR. CIAPPETTA: I am going to
 10 object to the extent that that is a
 11 mischaracterization of the witness'
 12 testimony because I can't hear exactly
 13 what he is saying. Perhaps a better more
 14 effective way would be to ask him, can
 15 you actually hear what he said on the
 16 video rather than you telling him what he
 17 said. I can't verify that that is
 18 accurate.
 19 MR. VACCARO: You are basically
 20 saying that I am not allowed to ask
 21 leading questions which I don't accept,
 22 it is my deposition.
 23 Q. Officer Wagner, is it your
 24 understanding that a motor vehicle that is
 25 proceeding at nighttime without a headlight

1 Wagner
 2 York City or New York State, demonstrate to an
 3 officer that the headlight has been fixed
 4 within that 24 hour period at which time a
 5 letter is then prepared by the officer in
 6 question and given to the motorist, and the
 7 ticket is subsequently dismissed.
 8 Q. Is there any similar comparable
 9 procedure of which you are aware that applies
 10 to bicyclist issued a violation for proceeding
 11 at night without a headlight?
 12 A. Not that I am aware of.
 13 Q. Is the grace period procedure that
 14 you described for motorists written down
 15 anywhere if you know?
 16 A. I am not aware of a written
 17 procedure for that, but I have seen and issued
 18 those letters that I described.
 19 Q. And do you know if there is any
 20 provision, written provision of law that
 21 provides for the grace period procedure for
 22 motorists as you have explained it?
 23 A. Yes. It is cited on the letter
 24 given to the motorist. If I had one I could
 25 cite that section.

1 Wagner
 2 and is stopped for that violation --
 3 MR. CIAPPETTA: I am sorry, one
 4 other thing, that was not the basis of
 5 the objection. The objection was not
 6 asking a leading question. It was
 7 stating categorically what Officer Wagner
 8 said on the video, and I am not sure that
 9 Officer Wagner or myself can hear what it
 10 says on the video because of the poor
 11 audio quality.
 12 Q. What I did was ask Officer Wagner
 13 whether he heard himself say a specific -- I
 14 am not going to get involved in this. I am
 15 going to ask the witness the question now that
 16 you clarified your objection, whether there is
 17 a grace period applicable to -- for motorist
 18 who are issued a violation for missing
 19 headlights driving at night?
 20 A. Yes, there is.
 21 Q. How does that grace period work?
 22 A. Within 24 hours of receiving the
 23 summons they can either have -- they have one
 24 of two options. One is to go to their local
 25 police precinct within the confines of New

1 Wagner
 2 Q. And as far as you know there is no
 3 similar procedure available for bicyclists
 4 stopped for having no light and riding at
 5 night?
 6 A. Not that I am not aware of.
 7 Q. Let's continue on with the
 8 videotape.
 9 (Video clip is being played.)
 10 Q. Do you recall yourself --
 11 MR. CIAPPETTA: Before you ask the
 12 question I would like to make a couple of
 13 notes as to video. At one point the
 14 video time went off, or the counter.
 15 Secondly at one point also the
 16 video seemed to pause or freeze for a
 17 moment while audio continued, so I am not
 18 sure what happened with that.
 19 And I continue to note that the
 20 video is barely audio as well as hard to
 21 view in itself. You can continue.
 22 Q. Officer Wagner, did you hear
 23 yourself make the statement it goes back to
 24 the RNC at approximately 9 minutes 11 seconds
 25 in the videotape?

1 Wagner
 2 MR. CIAPPETTA: I am going to
 3 object. I couldn't hear that.
 4 Q. The witness can answer the
 5 question.
 6 MR. CIAPPETTA: I will object
 7 based on whether or not that is an
 8 incorrect characterization of the
 9 witness' testimony.
 10 MR. VACCARO: I don't understand
 11 the speaking objection. Your objection
 12 is you think I am mischaracterizing
 13 something, let's note it and move on.
 14 MR. CIAPPETTA: That is the
 15 objection. It is hard for me to
 16 determine though whether or not you are
 17 mischaracterizing because I cannot hear
 18 the video well.
 19 MR. VACCARO: I am asking the
 20 witness a leading question as is my right
 21 as to whether or not he heard himself
 22 make a particular statement on the
 23 videotape.
 24 Q. Officer Wagner, did you hear
 25 yourself make the statement, it goes back to

1 Wagner
 2 A. Yes.
 3 MR. VACCARO: Can we proceed with
 4 the tape.
 5 (Video clip is being played.)
 6 Q. Did you hear yourself in the
 7 videotape describing the manner in which
 8 different city's police departments handle
 9 Critical Mass rides in those cities?
 10 MR. CIAPPETTA: Can we hear the
 11 clip again, I am sorry.
 12 (Video clip is being played.)
 13 Q. Did you hear yourself describe
 14 your understanding of how San Francisco
 15 handles Critical Mass rides in the videotape?
 16 A. Yes.
 17 Q. Proceed.
 18 (Video clip is being played.)
 19 Q. Did you hear yourself state in the
 20 videotape that going into the Republican
 21 Convention in 2004 some months prior it was
 22 published on Critical Mass or Transportation
 23 Alternatives or whoever has a web-site
 24 somewhere, it was the stated goal to shut
 25 down --

1 Wagner
 2 the RNC, at approximately 9 minutes 11 seconds
 3 in the videotape?
 4 A. It sounds like I possibly said
 5 that, yes.
 6 Q. Do you recall making that
 7 statement at that time?
 8 A. No.
 9 MR. VACCARO: Can we go back to 9
 10 minutes even and then roll the videotape
 11 again.
 12 (Video clip is being played.)
 13 Q. Now that we played that portion of
 14 the videotape again do you -- can you hear
 15 yourself saying that it goes back to the RNC
 16 on the videotape?
 17 A. Yes, with a prior reference to
 18 grid lock.
 19 Q. And what was that reference to
 20 grid lock?
 21 A. I couldn't tell, the audio in that
 22 section was too garbled to make out.
 23 Q. But you made some reference to the
 24 RNC and to grid lock in this conversation; is
 25 that correct?

1 Wagner
 2 MS. DINGLE: We didn't play that.
 3 MR. VACCARO: I would like to go
 4 back and start from the beginning and
 5 start with that question.
 6 (Video clip is being played.)
 7 Q. Did you hear yourself state
 8 specifically because going into the Republican
 9 Convention in 2004?
 10 A. Yes.
 11 Q. Continue.
 12 (Video clip is being played.)
 13 Q. Did you hear yourself state it was
 14 published on Critical Mass or Transportation
 15 Alternatives or whoever has a web-site
 16 somewhere?
 17 MR. CIAPPETTA: Objection to the
 18 extent that it mischaracterizes the
 19 witness's testimony.
 20 A. Yes.
 21 (Video clip is being played.)
 22 Q. Did you hear you say that it was
 23 the stated goal to shut down the convention,
 24 shut down the City?
 25 A. Yes.

1 Wagner
 2 Q. What was the source of the
 3 information -- what was -- what was your basis
 4 for that statement that you made in the video?
 5 MR. CIAPPETTA: Objection. Asked
 6 and answered.
 7 A. I stated that earlier in the
 8 deposition that that was from the web-site
 9 that we perused on the Internet.
 10 Q. Did you peruse any web-site?
 11 MR. CIAPPETTA: Objection. Asked
 12 and answered.
 13 A. I stated that was done with
 14 Officer Murphy at the desk and he told me
 15 about the site.
 16 Q. Officer Murphy perused the
 17 web-site and he told you that they stated that
 18 the Critical Mass was going to shut down the
 19 convention and shut down the City?
 20 A. Yes.
 21 Q. And it was on the basis of that
 22 conversation with Officer Murphy back in 2004
 23 that you made the statements to these
 24 individuals in 2008?
 25 MR. CIAPPETTA: Objection as to

1 Wagner
 2 what the video clip said. But if the
 3 witness heard it he can answer.
 4 A. Yes.
 5 Q. And what is the basis of your
 6 understanding that as long as Critical Mass
 7 meets NYPD is going to show up?
 8 MR. CIAPPETTA: Objection as to
 9 the form.
 10 A. It is my understanding that as
 11 long as the intended stated goal of Critical
 12 Mass was to create a large number of cyclists
 13 to ride throughout the City at random, that we
 14 would be arriving to police the event.
 15 Q. And is that a matter of NYPD
 16 policy?
 17 MR. CIAPPETTA: Objection as to
 18 the form.
 19 A. Yes.
 20 Q. And who at NYPD have you heard
 21 articulate that policy?
 22 A. The supervisor of -- the
 23 commanding officer of the Scooter Task Force,
 24 Lieutenant Turco.
 25 Q. You heard Lieutenant Turco state

1 Wagner
 2 the form.
 3 A. Yes.
 4 Q. Continue the clip.
 5 MR. CIAPPETTA: We are starting at
 6 10:02, is that correct; 9:56.
 7 (Video clip is being played.)
 8 Q. Therefore they got our attention
 9 and they had our attention ever since. Did
 10 you make that statement?
 11 A. Yes.
 12 Q. In that sentence who is the "they"
 13 that you are referring to?
 14 A. Critical Mass.
 15 Q. Who was the -- when you say "our",
 16 who are you referring to?
 17 A. The NYPD.
 18 Q. And.
 19 (Video clip is being played.)
 20 Q. Did you just state as long as they
 21 continue to meet we are going to continue to
 22 show up?
 23 MR. CIAPPETTA: Objection to the
 24 extent that that mischaracterizes the
 25 witnesses testimony. I couldn't hear

1 Wagner
 2 that as long as Critical Mass continues to
 3 meet that NYPD is going to continue to show
 4 up?
 5 MR. CIAPPETTA: Objection as to
 6 the characterization of the witness'
 7 testimony.
 8 A. Not specifically Critical Mass,
 9 but any large group demonstration or
 10 organization would be monitored or policed by
 11 NYPD.
 12 Q. Is it your view that Critical Mass
 13 will continue to be monitored by NYPD
 14 regardless of whether it adheres to traffic
 15 rules or not?
 16 MR. CIAPPETTA: Objection as to
 17 form.
 18 A. Yes.
 19 Q. And why is that?
 20 A. As with any large number of people
 21 at an event there is going to be a level of
 22 police presence to monitor and ensure the
 23 safety of the general public and ensure that
 24 no violations are committed.
 25 Q. When refer to large number of

1 Wagner
2 people at an event, are you referring to
3 Critical Mass rides of as few as 50
4 participants?
5 MR. CIAPPETTA: Objection as to
6 the characterization of the witness'
7 testimony.
8 A. We respond to all events that have
9 the potential to attract several hundreds of
10 people, there is no minimum size. There is no
11 basement level where -- no minimum level where
12 we would not go to the event. If there is a
13 potential to draw several hundred or several
14 thousands of people we will be going to the
15 event to monitor. If nobody shows up then it
16 is no big deal.
17 MR. CIAPPETTA: Can we get a
18 number on time?
19 THE VIDEOGRAPHER: We just went
20 past the seven hours.
21 MR. VACCARO: We are just about
22 done.
23 MR. CIAPPETTA: What time is it
24 exactly?
25 THE VIDEOGRAPHER: We are at 7

1 Wagner
2 we are aware that there have been
3 depositions that have been limited to a
4 very brief period of time. We think this
5 is a situation in which certainly a few
6 more minutes is justified or justifiable.
7 So I am reiterating my request to
8 continue the deposition and I am
9 certainly, depending on your response,
10 reserving our right to seek additional
11 time with Officer Wagner.
12 MR. CIAPPETTA: We understand
13 plaintiff's objection, and we would
14 request then that we will not -- we do
15 not agree that it should go past the
16 seven hour period, and we won't permit
17 any more questions at this point.
18 Plaintiff of course has all rights
19 (Continued on next page)

1 Wagner
2 hours and 7 minutes.
3 MR. CIAPPETTA: That is the end of
4 the deposition.
5 MR. VACCARO: You are not going to
6 allow me to conduct even as much as ten
7 minutes more of questioning.
8 MR. CIAPPETTA: No. That is
9 correct.
10 MR. VACCARO: You won't permit me
11 to ask any more questions?
12 MR. CIAPPETTA: That is correct,
13 and actually I may ask that we should
14 have been informed that we went past
15 seven hours. I may consider that
16 testimony to be stricken as well.
17 MR. VACCARO: Plaintiffs reserve
18 their right to resume this deposition.
19 We have found Officer Wagner to be an
20 extremely knowledgeable forthright
21 witness with a tremendous amount of first
22 hand experience with Critical Mass rides.
23 While there is a presumptive seven
24 hour limit on depositions, that limit has
25 not always been observed in this case and

1 Wagner
2 necessary.
3 THE VIDEOGRAPHER: The time is
4 7:06. We are off the record.
5 (Time noted: 7:06 p.m.)
6 _____
7 KENNETH WAGNER
8
9 Subscribed and sworn to before me
10 this ___ day of _____, 2008
11 _____
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____
19 _____
20 _____
21 _____
22 _____
23 _____
24 _____
25 _____

1
2 CERTIFICATE
3 STATE OF NEW YORK)
4 : ss.
5 COUNTY OF NEW YORK)
6
7 I, Philip Rizzuti, a Notary Public
8 within and for the State of New York, do
9 hereby certify:
10 That KENNETH WAGNER, the witness
11 whose deposition is hereinbefore set forth,
12 was duly sworn by me and that such deposition
13 is a true record of the testimony given by
14 the witness.
15 I further certify that I am not
16 related to any of the parties to this action
17 by blood or marriage, and that I am in no way
18 interested in the outcome of this matter.
19 IN WITNESS WHEREOF, I have
20 hereunto set my hand this 17th day of
21 October, 2008.
22 _____
23 PHILIP RIZZUTI
24
25

1
2 Wagner Exhibit 7, section 4-12, 322
3 pages 51 through 57,
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2 ----- I N D E X -----
3 WITNESS EXAMINATION BY PAGE
4 KENNETH WAGNER Mr. Vaccaro 6
5
6 ----- INFORMATION REQUESTS -----
7 DIRECTIONS: 290
8
9 CONFIDENTIAL PAGES: 131 to 132, 218 to 269
10
11 ----- EXHIBITS -----
12 Wagner Exhibit 1, ten-page document 22
13 Bates stamped NYC 026886 through
14 NYC 026895,
15 Wagner Exhibit 2, multipage 220
16 document Bates stamped NYC 002896
17 through 002926,
18 Wagner Exhibit 3, document Bates 232
19 stamped NYC 012876,
20 Wagner Exhibit 4, document Bates 243
21 stamp NYC 000331,
22 Wagner Exhibit 5, letter dated 257
23 October 29, 2004,
24 Wagner Exhibit 6, single page, NYC 274
25 000355,

1
2 *** ERRATA SHEET ***
3 NAME OF CASE: FIVE BOROUGH VS. CITY OF NY
4 DATE OF DEPOSITION: October 7, 2008
5 NAME OF WITNESS: KENNETH WAGNER
6 PAGE LINE FROM TO
7 _____
8 _____
9 _____
10 _____
11 _____
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____
19
20 _____
21 KENNETH WAGNER
22 Subscribed and sworn to before me
23 this ____ day of _____, 2008.
24 _____
25 (Notary Public) My Commission Expires: